

WILL WE MISS IT BEFORE IT'S GONE?

UNEXPECTED DEFEAT OF FARMLAND PROTECTION MEASURE IN WAYNE COUNTY, OHIO

On November 6, 2001, nearly 1.3 million voters in 14 states approved state and local ballot measures that generated \$905 million in funding for new land protection. But in Ohio, open space measures were defeated in four counties, including a purchase of development rights (PDR) program in Wayne County, where a well-designed and locally supported campaign seemed destined to succeed. What happened, and what lessons can be learned to improve the chances of future campaigns?

The Wayne County Initiative

Wayne County is at a crossroads. It has not yet felt intense growth pressure, but neighboring counties like Medina and Summit are losing precious farmland to urban sprawl. In a community where farming is still the leading industry, many people in Wayne County want to establish programs to protect agriculture *before* development permanently alters their landscape and rural lifestyle. Approximately 65 percent of Wayne County's land is in agricultural production—250,000 of the county's 350,000 acres.

In November 2000, Ohio voters approved the funding for a statewide PDR program. The program earmarks \$6.25 million per year for four years starting in 2002 to cover the cost of 75 percent of the value of agricultural easements. The Wayne County initiative would have increased the local sales tax by 0.25 percent for a period of 10 years to generate the 25-percent local match, about \$2.3 million annually.

"Because the Wayne County measure was defeated, participating landowners will have to donate the remaining 25 percent. Most of them probably will. But the county funds would have helped and would have kicked in when the state money ran out," said American Farmland Trust Ohio Field Representative Jill Clark. *continued on page 6*

INNOVATIONS

SAVING FARMLAND, INVESTING IN A WAY OF LIFE

It took a proposed theme park in Skagit County, Washington, to jolt concerned citizens into action. Before a developer sought to build upon hundreds of agriculturally zoned acres in the mid-1980s, residents thought zoning rules that prohibited commercial or residential development on fewer than 40 acres were enough to protect farming in the region.

Zoning variances had become the norm in the county, and the theme park developer had a good shot at one. However, a group that had worked 15 years earlier to encourage the 40-acre rule re-formed, energized by younger people who vehemently agreed to protect Skagit Valley agriculture and a rural character that reached back generations. In 1989, they formed Skagitonians to Preserve Farmland (SPF). In the 12 years since, they have succeeded in saving the land base *and* promoting the economic viability of the region's farms. *continued on page 2*

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LANDWORKS

*Serving the people
who conserve
the land*



American Farmland Trust

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American Farmland Trust is a private, nonprofit conservation organization dedicated to protecting the nation's strategic agricultural resources. Founded in 1980, AFT works to stop the loss of productive farmland and to promote farming practices that lead to a healthy environment.

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**"We've created a
context for farmland
preservation."**

**—Bob Rose,
Skagitonians to
Preserve Farmland**

Innovations *continued from page 1*

"Skagit County has always been a pretty progressive, unique place," said David Hedlin, a farmer who is one of the organization's founding board members. "It's an incredible place to farm, but we also have a diverse community that goes beyond agriculture."

Skagit's productive soil and mild climate combine to produce an agricultural powerhouse that includes a \$12 million annual bulb industry as well as high-value seed crops, vegetables, berries, dairy and grains. Renowned for a world-class tulip festival, Skagit County's landscape also lures non-farming residents from Seattle to the south and Vancouver just north—many of them seeking to live among fields colored tulip red. In 1997, American Farmland Trust (AFT) identified the Puget Sound region as the fifth most threatened agricultural area in the United States. The Skagit Valley is considered the keystone for farming in the Puget Sound region.

Skagit farmers also contend with efforts to protect estuarine habitat for important fish like salmon, which are listed under the U.S. Endangered Species Act. Farmers trying to persuade the public that they can produce crops in an estuarine floodplain without further damaging fisheries habitat have an uphill battle. Regulators have called for taking as much as half of some farmers' land to protect salmon habitat; instead, the Skagit group calls for improving management practices on whole farms, arguing that Skagit farmers are some of the best stewards in the country.

Amid these pressures, SPF has helped buy time for agriculture to regain a foothold in the economy and not fold to development pressure.

"In the beginning, members of the farming community thought we were telling them what to do with their land," said Bob Rose, the organization's executive director. "We don't do that. We made a clear statement that we are dedicated to long-term economic sustainability."

One of the 500-member, nonprofit SPF's major victories was prompting the Skagit County Commission to adopt a purchase of development rights (PDR) program. In the three years since it began in 1998, the program has permanently protected 2,000 acres of farmland. "We feel that if we weren't here, that program wouldn't be in place," Rose said. "We've created a context for farmland preservation."

The organization's very makeup has been key to its strength. According to Hedlin, maintaining a strong farmer presence on SPF's board of directors goes far toward gaining credibility in the farming community. The group embraces farmland protection strategies that go beyond zoning, conservation easements and protection from nuisance suits. Among the organization's initiatives: calling for compensation for farmers whose land is deemed vital to salmon habitat protection; performing a feasibility study for a fruit storage facility, which would help apple growers and others cut costs; and exploring new marketing options. A climate-controlled fruit storage warehouse would help control persistent pests such as the apple maggot and help support farming with dedicated infrastructure, while "point-of-purchase" information for shoppers about how and where their food is grown can serve as one effective marketing strategy.

By developing programs that boost farm profits, the group has maintained support from farmers as well as more traditional land trust supporters. "We don't say: 'You can't do anything on your land but farm it.' Instead, we ask: 'What things can we do to improve farm economics?'" said Hedlin, who with his wife raises 300 acres of vegetable seeds, pickling cucumbers, peas for



processing and wheat. "We work more to provide tools to do the right thing than setting a simple 'yes' or 'no' set of rules."

The following strategies have contributed to the organization's success:

- **When an opportunity to gain public support presents itself, don't hesitate.** When Skagit residents became emotional about the theme park concept, it was a perfect time to build the organization.
- **Build credibility over time, on several fronts.** Keep people from all walks of life, especially farming, in decision-making roles.
- **Avoid setting rules for property owners.** Opt instead to provide them with land protection tools (PDR, for example) as well as market incentives.
- **Do the research.** SPF's first director analyzed the successes of land trusts across the country, assembling them into an inch-thick book, before launching local programs. A key piece was AFT's Cost of Community Services (COCS) study for the county, which has been widely circulated in the region and state.
- **Invite the experts.** SPF hosted an IRS tax expert, who explained the tax benefits of donating easements, as well as the chairman of the New York City Watershed Council about protecting valuable water resources. 🚜

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POLICY REPORT

TAX UPDATE: 2001 CHANGES ADD COMPLEXITY TO FARM ESTATE PLANNING

Under the *Economic Growth and Reconciliation Act of 2001*, estate taxes will decline over the next decade and then be repealed for 2010. The tax law changes are likely to make farm estate planning and transfer more complex and may reduce incentives for private land conservation, say specialists in farmland protection and agricultural law. The law repeals estate taxes only until 2010. If Congress doesn't extend the repeal or make it permanent, the estate tax will return in 2011, with a \$1 million unified credit and 2001 rates.

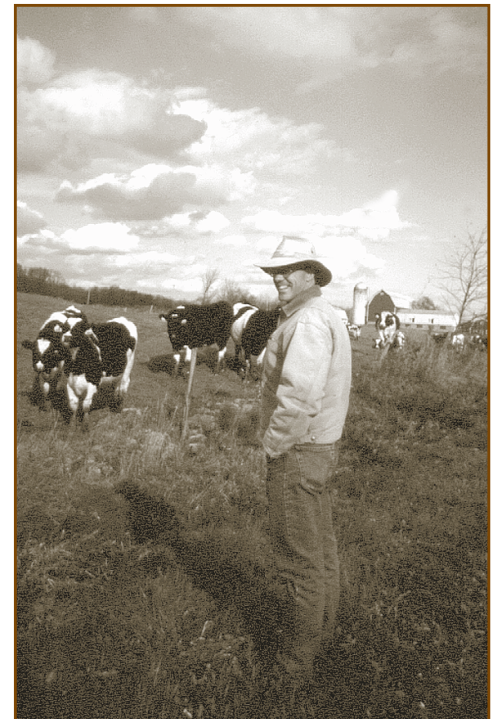
"From a planning perspective it's a mess," says American Farmland Trust (AFT) Northeast Director Jerry Cosgrove, who is also an attorney.

For most farm and ranch families, avoiding estate tax liability likely will be less of an immediate concern over the next decade, and so too will be the financial incentive for placing a conservation easement on a farm, Cosgrove says. Meanwhile, long-range farm estate planning will be difficult because of uncertainty about what will happen when the law sunsets in 10 years.

"I would characterize the impact as one of immense uncertainty—more than I have ever seen in my professional lifetime—over the possible future course of a tax provision," says Neil Harl, an Iowa State University professor who focuses on agricultural law and farm estate and business planning. "The sunset provision, effective for deaths after 2010, is simply unfathomable."

Even before the tax changes, few family farmers or ranchers died leaving a taxable estate. According to IRS data, in 1998 out of 2.3 million decedents, approximately 47,000 paid federal estate taxes. In only 641 cases, however, did farm property make up half or more of the estate.

The tax changes of 2001 make it even more unlikely that family farmers will be subject to estate taxes—at least over the next decade. The value of an individual's estate that is exempt from federal taxes rose from \$675,000 in 2001 to \$1 million in 2002. It will continue to rise to \$1.5 million in 2004, \$2 million in 2006 and \$3.5 million in 2009. The upshot: a married couple could pass an estate of \$2 million in 2002—and \$7 million in 2009—free from federal estate taxes. It's a sizable estate, even for farms and ranches located near metropolitan areas and vacation spots where development pressure and land values are high. *continued on page 4*



Jerry Cosgrove grew up on a dairy farm in Clinton, New York, now farmed by the fourth generation of the Cosgrove family.

"The increase in the applicable exclusion amount will probably affect farmers the most—that is, the roughly 2 percent who are affected at all by the federal estate tax," Harl observes.

At the same time, the top estate tax rate will gradually drop from 55 percent now to 45 percent in 2007, further reducing potential tax liability for those with estates larger than the exempted amount.

For landowners with sizable income, income tax advantages of donating conservation easements remain. By donating conservation easements while they are alive, such landowners can receive substantial income tax deductions (unavailable if it is donated in a will or post-mortem), according to the Land Trust Alliance (LTA).

"Many landowners donate conservation easements with no regard whatsoever for the tax benefits. Many landowners are highly motivated by the income tax deduction for conservation easement donations. I do not think the new tax bill will have any effect at all on these donations," says Stephen Small, an attorney and land protection specialist. "However, if you are wondering whether to consider a conservation easement as an important part of your estate planning, the new law may cause you to think twice . . . and may cause you to hesitate, or delay or simply reject the idea."

Other Important Tax Law Changes:

- **Expansion of the American Farm and Ranch Protection Act.**

A conservation easement donor is now eligible for an additional federal exclusion of up to \$500,000, beyond the exclusion of the easement itself, regardless of where the land is situated. Previously, the exclusion was limited to land within 25 miles of a metropolitan statistical area, a national park or a federal wilderness.

- **Income Tax Reductions.** Marginal income tax rates will be reduced gradually over the next five years. Because the alternative minimum tax (AMT) has not been reduced, it may become more of a factor for farm and ranch families in future years.

- **Reduction of Credit for State Death Taxes.** State death tax credits will be gradually reduced and ultimately replaced with a deduction in 2005. Cosgrove predicts that the change could lead to increased state inheritance taxes in states that rely on such taxes for revenue.

- **Carryover Basis Rules after 2010.** If the estate tax remains repealed, there will be a new system of modified carryover basis to tax capital gains on inherited property. "Carryover basis will create record keeping challenges," Cosgrove predicts. "It will be incredibly complicated to administer and may prove unpopular with planners and taxpayers."

Cosgrove predicts the tax changes will "greatly decrease, if not eliminate, the use of conservation easements as a tax reduction strategy" for farmers and ranchers because, for them, both estate and income tax benefits will be negligible. In fact, for most farm and ranch families, the tax advantages of donating conservation easements were minimal even before the tax changes because agricultural income is generally small compared to the value of a donated easement. Currently, such easement donors get nearly nothing in return, LTA observes.

From a policy perspective, Cosgrove, LTA and others suggest other tax incentives—such as refundable tax credits or capital gains exemptions on easement sales—would provide more benefit to low- and moderate-income farmers and ranchers and therefore would be more effective in protecting their farmland.

"PDR [purchase of development rights] programs are expensive, but they do bring farmers to the table. One way to make them even more attractive would be to cut or exclude capital gains taxes on the sale of

easements," because it would put more cash in farmers' hands than sales for development, Cosgrove says. Similarly, a transferable income tax credit, rather than income tax deductions, would provide incentives to donate easements to farm and ranch owners regardless of their income.

While proponents touted the estate tax changes as a way to keep agricultural lands in production, Cosgrove says effective farm and ranch transfer is far more complicated.

"Estate taxes, reduced or repealed, are only part of the transfer equation. The issues of developing management capacity, transferring management and ownership of the agricultural operation, treating children fairly and ensuring financial security all remain critical components," he says.

"It's the intra-family estate settlement issues that remain the more difficult problem. If your brothers and sisters want you to buy them out and you can't, that's what leads to selling the farm." 🚗

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USING RESOURCES WISELY

PROTECTING THE BEST: THE MANY USES OF LESA

When planners in Larimer County, Colorado, needed to determine valuable farm and ranch land, they turned to a federal tool called Land Evaluation and Site Assessment System, or LESA. In their effort to define which agricultural lands were truly important, Larimer community officials participated in workshops co-sponsored by American Farmland Trust (AFT) and the USDA Natural Resources Conservation Service (NRCS), walking away with pilot programs to field test in their community.

Developed by NRCS, LESA offers an objective rating system to evaluate a parcel's agricultural value. The acronym itself explains how it works. "LE" (land evaluation) measures land quality based on soil type and productivity. "SA" (site assessment) allows community planners to specify the importance of other factors—such as a parcel's proximity to other protected areas, environmental sensitivity, distance from a city, development pressure or the parcel's anticipated agricultural viability in the future—and incorporate them in the rating system. These factors are assigned numerical values—NRCS allocates up to 100 points for the "LE" and 160 points for "SA" portion—that are measured against a total possible score of 260 points. Local communities have adjusted the relative weight of the LE and SA scores to meet local needs and make it easier to use, often using a 200-point rating system.

NRCS developed LESA to implement the 1981 federal Farmland Protection Policy Act, which requires federal agencies to use the scoring system before building new highways, airports and other infrastructure, in order to minimize the extent to which federal programs contribute to the unnecessary conversion of farmland to non-agricultural uses. But communities have found it can be used to achieve a broad range of land use goals.

"LESA is a flexible, locally adapted and collaboratively derived system that enables communities to improve their planning and land protection decisions," said Martha Sullins, who has been working on behalf of AFT to encourage the use of LESA in the Rocky Mountain region. "Communities can use conservation dollars more efficiently and better coordinate land protection opportunities with public and private partners."

The Rocky Mountain region lags behind other areas in its use of LESA, perhaps because extremes in topography and climate make it difficult to determine categories and scores, even at the county level. Last year, Sullins helped Larimer and Delta counties develop pilot LESA programs. After attending workshops, committees for each county developed LESA systems reflecting local conditions and values. AFT hopes that these pilot programs will encourage other Colorado municipalities to launch their own LESA systems and build a statewide network.

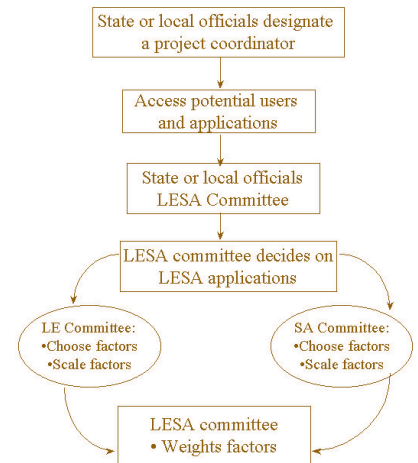
The Larimer County Open Lands Board decided to use LESA to prioritize which lands to protect through a fledgling purchase of development rights (PDR) program. In Delta County, officials are using LESA as part of their comprehensive planning process. They hope to decide which agricultural lands to protect from development and integrate those findings into their subdivision review. "The process provided a forum through which key representatives from different constituencies met frequently over many months," Sullins said. "It demonstrated the possibilities for reaching a consensus on land protection and growth management."

Nationally, interest appears to be growing. A LESA workshop at AFT's 2001 national conference was well attended. NRCS is planning another meeting on LESA in Indianapolis on July 17 and 18, following the 2002 Soil and Water Conservation Society (SWCS) annual meeting. "There's a thirst out there for information and tools to protect different landscapes," said Cheryl Simmons, an NRCS LESA expert.

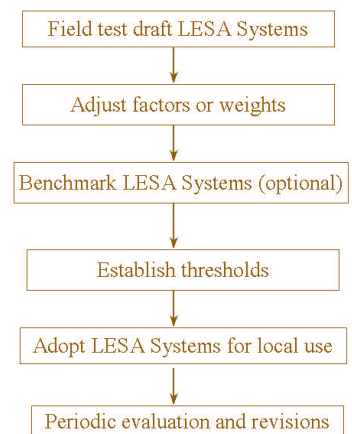
In 1991 a study found that after 10 years, 212 state and local governments in 31 states were active or former LESA users. NRCS and SWCS are slated to conduct a survey this spring to provide a 20-year update.

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LESA System Process



LESA System Process



Flow chart illustrating how LESA Systems are developed. Excerpted from Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands by James R. Pease and Robert E. Coughlin

Will We Miss It Before It's Gone? *continued from page 1*

The Campaign

In July 2001, Wayne County's PDR initiative was approved for the November ballot, leaving only three months to conduct a campaign. Proponents did their homework, including conducting a poll, reviewing previous surveys, analyzing voting trends and researching demographics. Campaign organizers learned that without voter education, the initiative would not pass. They also learned that when voters were given key information, support for the program rose to 60 percent. Farmland protection was a top concern for residents—even above crime and schools. Based on previous, off-year turnout, organizers anticipated that between 9,000 and 16,000 people would cast ballots.

The 17-member campaign committee included a cross section of Democratic and Republican voters. They represented business, education, government and farming, and came from rural and urban areas. All members were volunteers and were extremely dedicated, although most of them had never worked on a campaign before.

The committee reached out to Wayne residents through meetings with particular groups (like the Amish), presentations for social organizations (like Rotary Clubs), guest columns and letters to the editor in the *Daily Record* (the largest paper in Wayne County), press releases and displays at the popular Wayne County fair and at the largest grocery store in Wooster. In the last two weeks of the campaign, the committee mailed four flyers to 10,400 registered voters. The mailers used images and simple phrases to educate people about the PDR program and were followed up with phone calls in the last four days before the vote.

Supporters of the initiative included farmers, owners of most of the county's large businesses, one of the three county commissioners and the Farm Bureau, which made a significant financial contribution to the campaign. "The leaders of most large businesses were behind the PDR initiative, and we got financial contributions from them," said Chris Schmid, president of the U.S. headquarters for Tekfor, a German-owned company that manufactures automotive parts. A business leader in Wayne County and an active member of the campaign committee, Schmid helped develop the county's Comprehensive Development Plan in the 1990s, which recommended establishing a PDR program.

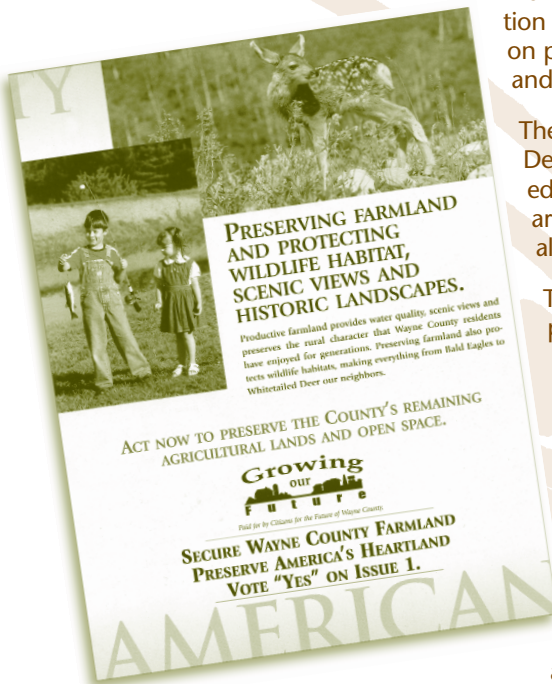
Election Day Surprises and Initial Analysis

With strong bipartisan, farm and business support, campaign organizers expected the PDR program to pass. But, it didn't—by a large margin. Of the 23,738 people who cast ballots, 14,221 voted against it. Initial analysis indicates stronger support for the PDR program in areas that have experienced more development pressure. Following are factors campaign committee members suggest contributed to the defeat.

- **Resistance to the sales tax.** Supporters considered several funding mechanisms, including property taxes and general obligation bonds, but settled on the sales tax for several reasons. Residents and tourists alike pay sales tax, and because it is linked to spending, it gives taxpayers more control over the amount they pay than the property tax, for example. Additionally, even with a 0.25 percent increase, Wayne County's sales tax would have remained among the lowest in Ohio. Finally, it was the only mechanism on which the three county commissioners could agree.

But Wayne County voters have not approved a new sales tax in 20 years, and the PDR measure was no exception. Some observers speculate that opponents focused on the PDR program's funding mechanism to ensure its demise. Plus, the weak national economy may have made voters less likely to support a sales tax. "Lots of farmland protection measures that had different funding mechanisms, like bonds, use taxes and general funds, passed that day in other parts of the country," said AFT's Clark.

- **Lack of key political support.** Only one of three county commissioners publicly supported the initiative, and township trustees and mayors were split about 50-50. "The economy played a role, as did the tax levy, but lack of support from leaders in the community was the major reason it failed," said County Commissioner Fred Cannon, who supported it. "It also hurt us that the state didn't yet have the rules and regulations in place for the state program."



Campaign flyers distributed by the Citizens for the Future of Wayne County

LAY OF THE LAND

Percentage of registered voters in Wayne County who said during the pre-campaign poll that they would support the measure	52%
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Percentage of registered voters in Wayne County who, after being informed about the measure during the pre-election day campaign, said that they would support the measure	60%
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Source: American Viewpoint, Inc., Wayne County Survey Analysis, July 2001

Percentage of voters who voted for the measure on election day	40%
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- **The campaign didn't educate enough voters.** Forty percent of registered voters came to the polls, far more than organizers anticipated, so a majority of voters did not get information about the PDR program. Some observers speculate that in the wake of September 11, citizens may have been demonstrating increased patriotism by voting.

- **Lack of local PDR examples.** Though two of the nation's most successful PDR programs are in neighboring Maryland and Pennsylvania, none exist in Ohio, making it even more critical that the majority of voters received effective educational information. "In my experience, people who are against the PDR program have some fundamental misunderstandings about what it would do, including county commissioners and other politicians," said Mark Weaver, professor of political science at the College of Wooster and chair of the campaign committee.

- **Phantom opposition.** A final challenge was that opponents did not campaign against the issue. "I knew we had a problem, because the opposition was not vocal. People were against it [the measure] but didn't want to speak out because PDR was part of the county's Comprehensive Development Plan," said Schmid. This meant that proponents were not given a chance to hear, and then address, the opposition's concerns. Wayne County realtors and builders were neutral, though observers speculate that some political leaders were swayed by lobbying from building groups in neighboring counties that are running out of land for residential development.


The Future in Ohio and Beyond

Though the initiative was defeated, most campaign committee members believe they successfully raised awareness about the issues. "This isn't the end of farmland protection in Wayne County or in Ohio," said Clark. To support farmland protection in Ohio, AFT and local leaders are exploring alternative funding mechanisms, like a property tax increase or bonds.

"Forty-five farmers were interested in the local PDR program that was voted down, and I'm already getting calls for the state program from farmers not among those 45, so I believe interest will be high," said Amy Miller, farmland preservation coordinator for the Wayne County Office of Rural Land Preservation.

Furthermore, local observers believe that the vote was less a referendum on farmland protection than a rejection of a new sales tax at a time when voters feel financially vulnerable. Many hope that a local PDR program is funded soon.

"What is really unfortunate is that people don't realize that these initiatives increase land value and help keep property taxes from increasing," said Mike Kovac, auditor for neighboring Medina County. In the spring of 2000, he spearheaded a similar PDR initiative that was to be funded by a sales tax and was defeated by voters. "Studies have shown that the average \$250,000 new home does not generate enough taxes to pay for the services it requires in school, police, fire, road and other services. New residential development always results in an increase in property taxes," he said.

Wayne County Commissioner Fred Cannon agrees. "As development pressures increase, so will farmland protection pressures. People don't see this until it's too late. We eat up the best land first in most development because we don't have the love of the countryside that we should have. Will we miss it before it's gone?" 

"What is really unfortunate is that people don't realize that these initiatives increase land value and help keep property taxes from increasing."

**—Mike Kovac,
County Auditor,
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**LandVote 2001, an online
service of the Land Trust
Alliance (LTA) and the
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at www.lta.org
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**For a copy of the Wayne
County Survey Analysis
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Using Resources Wisely *continued from page 5*

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to access The California
LESA Model

LESA's flexibility allows for a variety of uses. Like Larimer County, communities around the country have adapted LESA to help prioritize conservation easement purchases.

Others use LESA models to evaluate zoning permits and establish zoning districts. In Fairfield County, Ohio, for example, planners rely on a computerized LESA model to identify farmland that should be protected and to keep those properties outside districts targeted for development. Still others use LESA to comply with state environmental laws. California's statewide LESA model, for example, helps state agencies measure potential environmental impacts of farmland conversion and make sure those impacts are quantitatively and consistently considered in the state environmental review process.

"If a local community interested in protecting important farmlands finds LESA, it seems to adopt at least one aspect of it," Simmons said. "It takes out bias because the first part is based on soils—which are quantitative factors—and the second part contains qualitative factors decided by the community."

In Churchill County, Nevada, planners, politicians, residents and federal agency representatives hope LESA will help with the seemingly impossible task of dividing perhaps the scarcest resource in Nevada—water. The Churchill County committee is trying to resolve claims among residents, farmers, developers, environmental groups and the U.S. Department of Interior. With a population growth rate of 3.5 percent annually, Churchill County's use of water has made identifying the true agricultural gems all the more important.

"We take the LESA system, go through ranking criteria, get a score and compare it to a piece somewhere else," said Rodney Dahl, a resource specialist with NRCS in Fallon, Nevada. "Those places that are hard to irrigate and not very productive would be the first ones to sell" their water rights.

While the county is far from settling just who will get what within the Truckee-Carson Irrigation District, Dahl expects LESA will help.

"We've worked hard to keep people in farming," Dahl said. "We'd rather keep the land in ag, and LESA helps identify the best land." 🚜



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