

Farmland conservancies: A middleground approach to agricultural land preservation

Somewhere between the extremes of zoning and purchase of development rights is an alternative means to control the loss of important farmland

By Charles E. Little

IN the effort to come to grips with the problem of how to preserve farmland permanently and affordably, analysts have been casting about for new approaches to the direct control of farmland. The idea is to find something that can be added to standard techniques to increase the options for farm communities to protect their land.

What has been sought, in short, is a kind of middleground between zoning (mutable, but cheap) and development rights purchase (permanent, but expensive) that has the best features of both. There are no perfect examples of such a middleground, but there are enough bits and pieces to fit together a passable concept. And while the bits and pieces are quite variable, there is one feature that seems to be central: the purchase of land as a last resort, when its sale would result in an inappropriate change of use, and its resale with restrictions insuring continued agricultural use.

Various expressions of this idea exist in Pennsylvania, California, Canada, France, and among private land conservancies in the United States that have used purchase and resale extensively for natural areas

preservation and now are seeking to adapt the activity for farmland.

Deed restrictions in Pennsylvania

It started out naturally enough. Amish and Mennonite farmers in southeastern Pennsylvania did not want to see land going out of farming, so they cooperatively bought land so threatened and resold it to people interested in retaining the land in agriculture. Subsequently, and for the past seven years, Amos Funk, a vegetable farmer and conservation leader in Lancaster County, Pennsylvania (the most productive nonirrigated county in the United States), has sought to codify such a notion in his county and in the laws of Pennsylvania. The result is called the "deed restriction" proposal.

The idea is to place a covenant in the deeds over farmland within a duly established agricultural preserve district. The deed restriction is to last 25 years and preclude inappropriate conversion of the land to other uses. Landowners would pay lower taxes. They would also be protected from condemnation, nuisance ordinances, and the like.

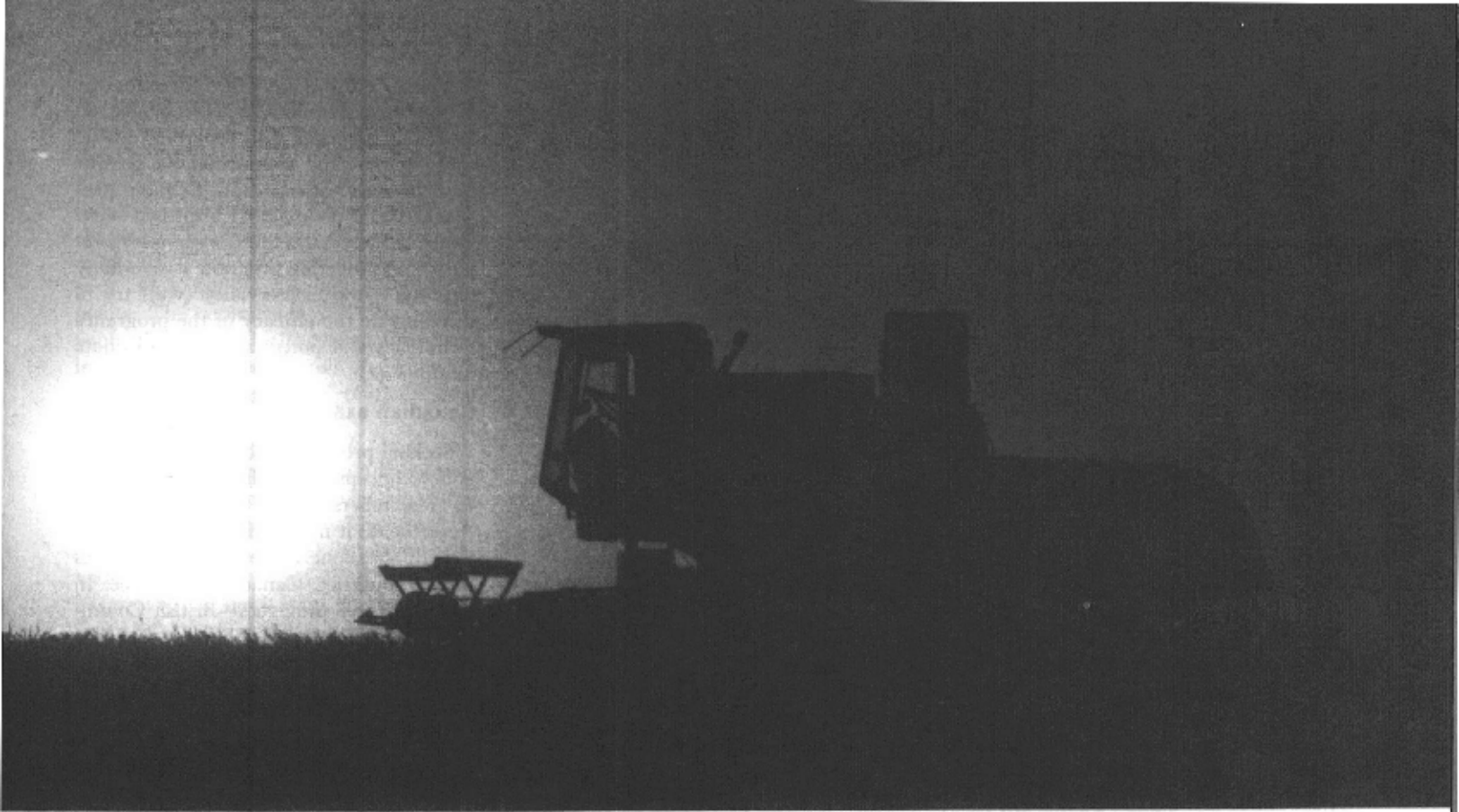
The effort to secure covenants would take place in three "tiers." First, donated covenants would be sought. Where donations are not made over land thought to be

significant in the district, the agricultural preserve board would seek to purchase such covenants based on a percentage of the overall land value or for a flat fee per acre. The price offered would be significantly less than "development rights" permanently deeded as a negative easement running with the land. For Lancaster County, the figure of \$200 per acre was agreed upon.

Assuming that not all landowners within the district would think the compensation offered for a 25-year deed restriction sufficient, a third tier could come into play. If and when unrestricted farmland were sold, the board could insert itself into the transaction if it wished by exercising a presumptive option on the land at a purchase price at or exceeding the selling price, then resell the land itself, with the 25-year restriction, to the buyer or to someone else. This transaction is voluntary on both sides—the agricultural preserve board does not have to buy the land, nor does the new owner have to sell it. Moreover, the board cannot keep the land; and if it cannot resell it with a restriction, it may sell the land without one.

All of this is complicated, but important as an example of a purchase and resale approach. Following is a summary prepared for an early draft of the agricultural pre-

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U.S. Department of Agriculture photo by Marr

serve district bill by the chief counsel of the Pennsylvania House of Representatives:

"It (a preliminary draft of the bill) would authorize counties to adopt agricultural preserve ordinances. The ordinances could enable counties to create special agricultural preserve districts. Any time land is sold within a special district, a copy of the contract must be submitted to a newly created agricultural preserve board. The sale of land would have no binding legal effect and could not be recorded for a period of 30 days after the filing of such a contract with the board. The board would be authorized to acquire the purchaser's interest in the land, within this 30-day period, by making a binding, written offer to the seller at a price which *exceeds* the original contract price. Such an acquisition must be approved by a majority of the county commissioners. If the board fails to take any action within this 30-day period, the initial land sale takes effect and cannot be set aside. The board must impose a restrictive covenant upon any land it acquires under this act, limiting it to agricultural (use). The board must resell the land as restricted. The county is authorized to lease the land until it is resold. The board must first offer the land, at cost, to the initial purchaser, and if rejected, to any person leasing the land. If neither offer is ac-

cepted, the board must sell the land at a public sale. The draft (bill) would also enable persons owning land within an agricultural preserve district to voluntarily subject their land to such a restrictive covenant (presumably by either donation or with compensation). Land voluntarily restricted would be entitled to the same benefits (tax abatement, e.g.) and protections (against condemnation, nuisance ordinances, etc.) as land acquired and resold by the county."

In November 1979 a bill generally conforming to this description was introduced in the Pennsylvania legislature. The bill, H.B.1983, failed to be reported out of the Agriculture and Rural Affairs Committee.

While state-level legislation did not succeed, Lancaster County did establish a first-step deed restriction program. On April 2, 1980, the county commissioners unanimously passed a measure establishing an agricultural preserve board, and a voluntary program can now begin in most townships. The board's mandate includes the following (5):

- Development of sample deed restrictions.
- Delineation of agricultural preserves, initially and on a continuing basis, in cooperation with the Lancaster County Planning Commission and similar groups.

- Education of the general public and potential participants about the deed restriction program.

- Provision of assistance to those farmland owners who wish to apply deed restrictions.

- Administration of necessary procedures for obtaining restrictions.

- Preparing recommendations for legislation for a more effective deed restriction program.

- Expansion of the deed restriction program when and if new legislation is passed.

The last two points, of course, are crucial if the central element of the idea—purchase and resale—is to be realized. But even though this element is missing, most believe that the county's action to establish a board is an important step and should not be thought of merely as a compromise.

"It is very affordable," says Amos Funk, "and offers, by providing large contiguous areas designated as preserves, the only real assurance farmers have to provide for themselves 'the right to farm.' We certainly have not given up on bill 1983. We will push for its passage as hard as we can. However, we can wait."

The California Coastal Conservancy

Possibly the most ambitious land use regulatory effort in the United States is the

California Coastal Commission program, enacted under a citizen-led ballot initiative known as Proposition 20. Proposition 20 was approved by 55 percent of those voting in the general elections of the fall of 1972, and it was by all accounts an amazing demonstration of a shared sense of the value of an important resource (3).

The regulatory aspects of the Commission's program have received most of the attention since—both good and bad. This involves permit and planning authority over lands within the coastal zone, in some cases severely limiting its use. Less well known is a state-level agency called the State Coastal Conservancy that was established by the legislature in 1976 to augment the planning and regulatory work of the Commission (4).

Beginning operations in 1977 with a \$7 million budget, the Conservancy has undertaken 39 projects through one or another of its five program areas: (a) to preserve coastal "resource" lands, such as wetlands and habitat areas; (b) to redesign unacceptably planned developments, such as the many 40-by-60-foot seaside subdivisions of the thirties, still uncompleted but still "legal," by lot consolidation and resale; (c) to provide public accessways to the shore; (d) to reserve coastal resource sites, that is, advance acquisition of land for later development as recreation areas by municipalities or state agencies; and (e) to preserve agricultural land by acquisition of fee or lesser interest if necessary to restore such lands to productivity (1).

What distinguishes the Coastal Conservancy is its conscious effort to come up with innovative solutions to land preservation challenges, using all forms of acquisition and resale or leaseback, to achieve its purposes. Most spectacular are the projects consolidating lots in badly *platted* subdivisions by purchasing the unbuilt-upon lots, replatting, and then offering better planned homesites for sale. In the Santa Monica Mountains, one subdivision, El Nido, was reduced from 202 lots to 16 this way. In Seal Beach, the Conservancy developed a public/private investment scheme in which seven percent of the site will pay for 80 percent of the public cost on the remainder of the site. Working with a private land trust in Humboldt, the Conservancy saved the state as much as 34 percent in land costs by judicious, advance purchase of lands slated for park use by means of creatively using tax laws to negotiate so-called "bargain sales" from landowners (1).

Despite these successes, the most monumental of the Conservancy's mandates, as agency officials describe it, is the preserva-

tion of agricultural land; and this mandate seems also to be the most elusive. Under the State Coastal Conservancy statute, "The Conservancy may acquire fee title, development rights, easements, or other interests in land located in the coastal zone in order to prevent loss of agricultural land to other uses and to assemble agricultural lands into parcels of adequate size permitting continued agricultural production.

"The Conservancy shall take all feasible action to return to private use or ownership, with appropriate use restrictions, all lands acquired for agricultural preservation under this division" (9).

Though the instructions are clear, the Conservancy has been unable to get started on the purchase and resale, or lease, of any of the 3.5 million acres of the state's coastal agricultural lands (1).

A model agricultural land preservation project was to be undertaken in the Morro Valley in San Luis Obispo County. The idea was to purchase, in fee, some 46 acres, record an agricultural preservation easement over the land, and transfer the land to an adjoining farmer who would, in turn, place an easement over his own 192-acre property. The scheme would have permanently preserved 238 acres as agricultural land. The difficulty was that the Conservancy's appraisal of the value of the land did not meet the owner's expectations and the deal fell through (1).

Though the agency has indirect powers of eminent domain (through the State Public Works Board), condemning the property in order to carry out the plan apparently was not appropriate. Among other things, the Conservancy must get approval from the Coastal Commission before any effort to condemn land; and the Commission must, in turn, assure itself that there is "no other reasonable means, including the use of police power, of assuring continuous use of such lands for agricultural purposes" (10).

Subsequently, four other efforts were made to bring about an agricultural purchase and resale. Though one of these remains a possibility, no project has yet been completed.

The Conservancy blames its lack of success on the relatively short time it has been in operation and extreme budget constraints. Based on its research and field experience, the Conservancy estimates that, because of dramatic increases in the development value of coastal land, the resale of purchased land would recoup only 50 cents for each acquisition dollar after imposition of a restrictive easement on the land. Therefore, a fund for purchase and resale would have to be substantial in order to

sustain such losses on each transaction. At present, only \$1 million is allocated for the farmland program; and according to the Conservancy, the acquisition budget for most projects, disregarding a whole program, would be about \$1.5 million each. "Nevertheless," says the Conservancy's report, "because this program is so vitally important, the Conservancy (will) try to demonstrate the efficacy of the program's techniques and potential, given adequate funding" (1).

Canadian examples

Seeking precedents abroad for domestic policy concepts is usually of more interest to researchers than to policy-makers. Nevertheless it may be important to know something about conservancy techniques in two countries, Canada and France. In Canada, three provinces—British Columbia, Saskatchewan, and Prince Edward Island—seem to have lessons for the United States.

Agricultural districting in British Columbia. British Columbia's experience demonstrates well the concept of agricultural districting by means of governmental edict. In 1972, when the New Democratic Party (NDP) was elected to form a government for the province, one policy priority was the protection of farmland from urban encroachment. Accordingly, the NDP government ordered a "freeze" on the subdivision of farmland, except as ordered to the contrary by the government. Under the 1973 Environment and Land Use Act, the freeze was redefined as pertaining to any parcel of land two acres or more that had been designated as agricultural for property taxation or was in Canadian soil class 1, 2, 3, or 4, meaning good to excellent in terms of soil capability.

A Land Commission was empowered to establish permanent agricultural land reserves wherein nonagricultural use of land is prohibited. Such reserves now represent about five percent of the total land area in the province. Appeals for exclusion from the reserves are possible; and as of 1978, about 25,000 acres has been exempted out of the 11.6 million acres in reserve status. In dealing with amendments to reserve zoning, the basic criterion is agricultural land capability, which indicates how seriously British Columbia takes the preservation of its prime farmland (7).

Germane to the conservancy idea, the province also takes seriously the nature of farmland ownership. Preservation of family farms is second only to land preservation in terms of Commission priorities.

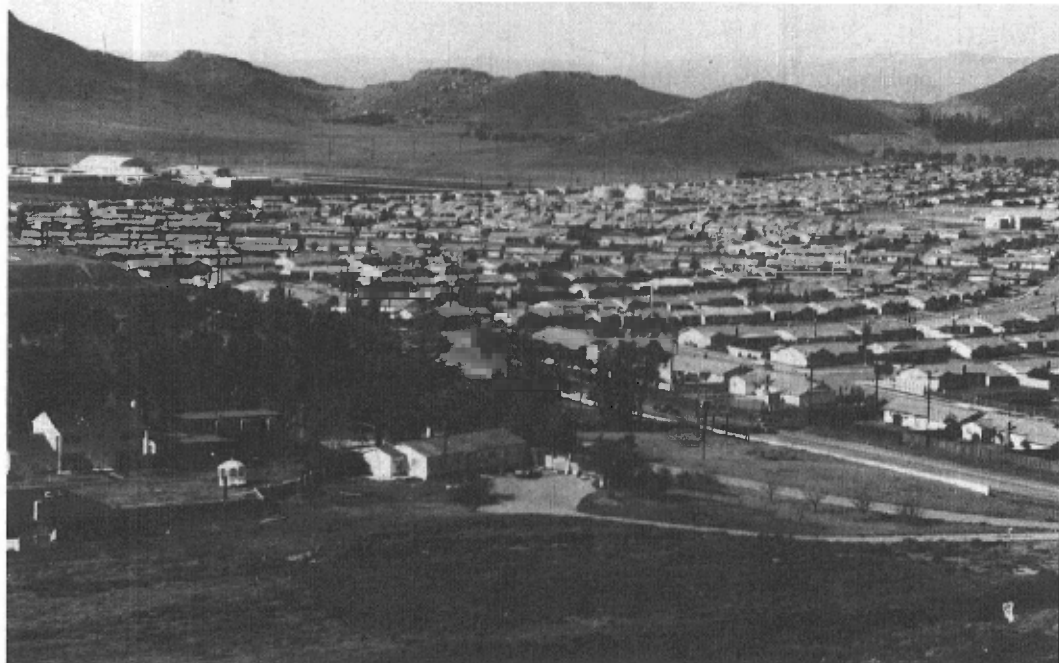
One way the Commission helps to encourage small proprietorships is to purchase farms that come on the market and resell them to young farm families unable to afford the high capital costs of entering the industry as an owner. Fifteen such purchases had been made by the commission as of 1976. Total acres, just over 6,000; the cost, \$4.3 million, including improvements. The commission will also permit young farm families to sign a long-term lease that provides a sense of ownership "just short of outright title" (12).

Saskatchewan's land bank. It is Saskatchewan, though, that is best known for its land purchase program to enable young farmers to enter agriculture. The Saskatchewan Land Bank Act of 1972 has been widely reported in the United States and has served as inspiration for a "Young Farmers" program in Minnesota and for a 1978 proposal introduced in the U.S. House of Representatives as part of the Family Farm Development Act (H.R. 10716).

The land bank program was established to help solve a number of interrelated farmland ownership and use problems. In rural Saskatchewan, farm areas needed economic revitalization: farmers wishing to sell land could not find qualified buyers; and young or new farmers were unable or unwilling to make the large capital investments required to enter agriculture. As a result, farm ownerships were getting larger and small farms were disappearing. Land was being lost to agriculture, and rural economies were becoming depressed.

The objective of the land bank program was to help owners of farmland dispose of their land at a fair price and to help new or young farmers get established in the industry. This was accomplished by purchasing land, then leasing it to qualified applicants on a long-term basis with an option to buy after five years if conventional financing could be secured (13).

As of 1978, some 350 of the program's 2,300 participants had completed five years of leasing and were eligible to purchase their land. During that year, the province changed the policy to reduce the amount paid by the buyer. According to a Lands Directorate report (13), "The land will be sold at average market price, with 20 percent of the market price, to a maximum of \$5,000, refunded to the purchaser at a rate of 20 percent of that amount for the next five years so long as the purchaser continues to farm and live in Saskatchewan during those five years." Hence, those persons exercising the purchase option would be the most likely to keep the land in



Soil Conservation Service photo
Though budget constraints have precluded progress to date, California's State Coastal Conservancy has among its legislative mandates the preservation of agricultural land. The agency is looking at all forms of acquisition and resale or leaseback in an attempt to prevent the conversion of prime agricultural land, such as this near Ventura, to nonagricultural uses.

productive agriculture over a long period of time.

Prince Edward Island's Land Development Corporation. Of all the provincial agricultural land programs, perhaps the most interesting is one of the least well known—the Prince Edward Island Land Development Corporation, established in 1969. In part, the corporation's job is, like the California Coastal Conservancy's, to augment the regulatory provisions of the province's development plan by means of judiciously buying and selling properties to advance the purposes of the plan.

A major problem in Prince Edward Island, as in British Columbia and Saskatchewan, was the abandonment of small farm holdings, many on first-rate agricultural land. The corporation can purchase such lands, improve them by repairing structures, installing drain tiles, undertaking erosion control measures, and the like, then resell them on favorable terms to adjoining or other bona fide farmers. In acquiring land, the corporation may buy land outright from an owner; but if the owner is a farmer of retirement age, the corporation will set up an annuity program for him, if he chooses, providing him with a pension. Also, the farm owner can be eligible for a lifetime lease of his house, plus one acre and guaranteed access (2).

Another element in the province's program is the Rural Development Council, a now-inactive citizen organization that in the early stages worked closely with the

Land Development Corporation and the Land Use Service Center. The latter agency prepared local plans throughout the province. The Rural Development Council organized meetings to discuss these local plans, obtain feedback, and generally involve citizens in the planning effort. In connection with land acquisition and resale by the Development Corporation, a council staff person is located in the Land Use Service Center to determine those farmers who might be interested in expanding their holdings by purchasing corporation land and those farmers who might be interested in retiring (2).

The Land Development Corporation also purchases land proffered to nonresident or alien buyers but not approved for sale by the lieutenant governor in council, who, under a 1972 provincial law, must approve all such transactions involving 10 acres or more than 330 feet of shoreline. In a 1976 update, the lieutenant governor in council may require a nonresident purchaser whose petition to buy more than 10 acres (or 330 feet of shore frontage) has been approved to enter into an agreement with the provincial Land Use Commission to guarantee satisfactory use of that land as a condition of the approval (8).

Taken together, the activities of the Prince Edward Island Land Development Corporation, the early work of the Rural Development Council, and the provision in provincial law regulating land sales to nonresidents suggest a means by which many interrelated agricultural land use

problems can be dealt with creatively, sensitively, and comprehensively at the local level.

French SAFERs

Despite the proximity of Canada and similarities in settlement patterns and historical land use, the foreign program most significant to a study of conservancy techniques may be the SAFERs of France. As described by Professor Ann Louise Strong of the University of Pennsylvania Law School, the work of local, nonprofit *Societes d'Amenagement Foncier et d'Etablissement Rural*, which are statutorily empowered with the right to preempt any sale of farmland in their district, is effective "both to assist those who wish to remain in farming to obtain suitable land, and to keep prime land from being subdivided" (11).

The basic operation of a SAFER is relatively straightforward. Authorized in 1960 as nonprofit corporations empowered to buy and sell farmland, a SAFER could be established for a single *departement* (county) or for several together. SAFERs now extend to virtually all *departements* in France. The largest covers five *departements*.

Most capital for their operation, primarily for a revolving fund, comes from local farm organizations and farm lending institutions. The average start-up capital subscription is \$200,000.

SAFERs can buy farmland either through voluntary sale or by right of preemption in previously designated areas. Preemption, which is used in 16 percent of the cases, is considered essential to the effective operation of the SAFER. Professor Strong (11) describes the process as follows:

"The SAFER requests the prefect to designate a given area as subject to the right of preemption for farm use. No land in a development district and no land shown in an adopted plan as intended for urban uses may be included. The prefect must seek the advice of farm organizations concerning the proposed designation and then submits a recommendation to the Minister of Agriculture. If the recommendation is favorable, the Minister publishes a decree designating the area (as subject to preemption). The decree is published among the legal notices in newspapers, posted at municipal offices, and mailed to notaries. People selling farm land are deemed to have notice of it, and any sale without prior notice to SAFER is void. The right of preemption is granted for a three to five year term and may be renewed. About 60 percent of agricultural land is subject of a SAFER right of preemption."

Under a voluntary sale of land to a SAFER, the price paid is negotiable. When preemption takes place, the price is set by a public appraisal. Farm organizations in France insisted on the right of preemption coupled with a public appraisal to assure that the SAFER could keep good land in agriculture and avoid a hit-or-miss performance that might vitiate a preservation program if these authorities were not available.

After acquiring land, the SAFER may make conservation and other improvements before resale. The land may be held for up to five years (10 under special circumstances) so that a tract-assembly project can be carried out. In France the tradition has been to divide land among heirs rather than passing it on to the eldest son. The result is that in some areas farmland holdings are in inappropriately small acreages.

The SAFER resells most of its land to farmers. "The objective is to sell the land not to the highest bidder," writes Professor Strong (11) "but to the person who will benefit most as a farmer by its acquisition. Favored by the law are farmers with too little land, farmers willing to change their present tracts for more efficient holdings, farmers whose land had been condemned for a public purpose, and young farmers anxious to establish themselves." Significantly, the purchaser must farm the land for a minimum of 15 years. The land may not be sold or subdivided during that period, except in extraordinary circumstances approved by the SAFER.

Altogether, from 1964 to 1975, SAFERs purchased 2.1 million acres of land and sold 1.7 million. They buy an average of only 12 percent of the agricultural land up for sale each year, but most people believe the SAFERs influence is much greater than this figure suggests. The key feature is the right of preemption. Even when not used, the possibility of its use can have an important effect on market behavior, an aspect of the device that might be overlooked by those concerned that preemptive purchase is too expensive or too controversial for effective use in the United States. Says Professor Strong (11), "Preemption is a power compatible with the American legal system and with American values. There is ample precedent for it in the private market's use of the right of first refusal. Preemption is an approach which, with minor modifications, could be adopted in the U.S. for the purpose of preserving farmland."

Nongovernmental programs

Real estate activity has become a common land preservation technique for both

national and local private conservation organizations in recent years. During the 1960s, the Nature Conservancy, with a substantial line of credit guaranteed by the Ford Foundation, began the advance purchase of natural areas for later resale to public agencies, such as the National Park Service. Other organizations have used this technique also, including the Western Pennsylvania Conservancy and the Trust for Public Land. What such institutions can provide is an opportunistic and efficient way to acquire needed land for public use quickly and cheaply—two qualities tending to elude public agencies, which must move slowly and carefully in the sensitive matter of land acquisition.

By and large, such private acquisitions for resale to public agencies have been limited to recreational sites, natural areas, and historic places. But since the emergence of national concern about the loss of farmland, many organizations have sought to adapt their expertise on behalf of farmland preservation.

One model for such an effort is the Lincoln, Massachusetts, Rural Land Foundation. Though Lincoln is a Boston suburb and not a farm community, the Foundation, in effect a consortium of public-spirited investors, has been able to purchase land and "repackage" it, selling off some areas for development and protecting others as open space (6).

Possibly the first private conservancy established solely for the preservation of farmland in association with a state-level program is the Massachusetts Farmlands Trust. In Massachusetts, a statewide governmental program to purchase "agricultural preservation restrictions," called APRs, was established in 1977, with an initial \$5 million budget to acquire APRs on 19 farm properties in the state, plus another \$5 million available from a recent bond issue. Aware that the effectiveness of this state-managed program might be significantly augmented by a parallel private organization, officials of the Nature Conservancy, along with state agency executives and other conservation leaders, helped bring the Massachusetts Farmlands Trust into being. It is to begin operations this year (1980).

According to Davis Cherington, director of the Trust, the organization is prepared to undertake the following five functions:

1. The Trust will acquire farm property that comes on the market, using established bank lines of credit. The Trust will then hold the property in its own name, ultimately placing ownership of the development rights (APRs) with the State of Massachusetts, the municipality, the local

land trust, or a combination of these. The farm can then be resold to a qualified buyer at a price that will permit operations as an economically viable farm.

2. At the request of the (Massachusetts) Department of Food and Agriculture, the Trust will buy an APR on a specific farm in those instances where the owner cannot afford to wait for the department approval process to be completed. Later, the Trust will resell the APR to the Department.

3. In cooperation with professional capital management specialists, the Trust will organize tightly controlled private partnerships to acquire key farm properties for which the state lacks a preservation solution.

4. The Trust will serve as an interstate clearinghouse for information on methods to protect agricultural land.

5. The Trust can assist local conservation commissions and (local land) trusts with farmland acquisition and protection projects. The Trust can provide real estate negotiation expertise, financial loans, and fund-raising assistance.

There have been no major farmland preservation programs mounted by national organizations as yet. The possibilities appear good, however, given the success of private groups in natural areas preservation, that nongovernmental conservancy techniques might provide a significant capability in certain areas, espe-

cially if activities are designed to complement governmental programs.

Defining the middleground

The foregoing case histories are surely not the only examples of creative new techniques to preserve farmlands, but they provide a basis for discussion. The new middleground approaches have been described as "conservancy techniques." So long as the term is not thought to represent any specific kind of organization, public or private, or an overly narrow set of purposes, conservancy¹ may be a helpful term to use in conceptualizing a middleground land-saving program. What kind of activities, then, would a farmland conservancy undertake?

Sources for a definition

The best of all possible farmland conservancies should draw upon the best parts of predecessor programs and leave aside ir-

¹Conservancy, in its modern European definition, refers to an official commission or court charged with protecting natural resources. The Courts of Conservancy were established in 1755 to manage the Thames fishery. In the present century the British established the Nature Conservancy to own and manage scientific preserves. A private, nonprofit counterpart was established in the United States with the same name. The Coastal Conservancy of California uses the word in a sense somewhat closer to the earlier meanings, as do some "conservancy districts" established in rural areas of the United States. American dictionaries usually define the term simply as "conservation."

relevant aspects. Thus, the conservancy might be a local body with close ties to its constituency, such as the Lancaster County Agricultural Preserve Board, but draw its authority from a nonlocal level of government, as does the Coastal Conservancy in California (or as envisioned in the Pennsylvania Agricultural Preserve Act). Its area of operation should be specific, based in part at least upon the quality of the land, as in the British Columbia Agricultural Preserves, but also correlate with political boundaries, as do the French SAFERs. Like the SAFERs, too, the conservancy should be able to undertake a range of imaginative real estate operations, with the fast-moving, opportunistic quality of private land trusts, such as the Lincoln Rural Land Foundation or, prospectively, the Massachusetts Farmland Trust.

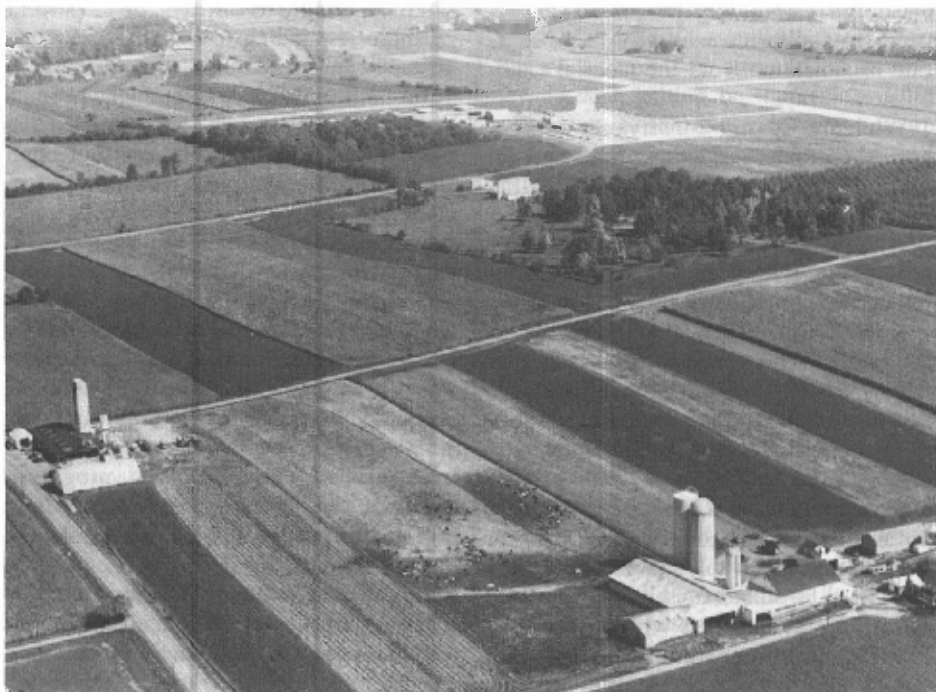
Like these private organizations and the Rural Land Council, the citizen group in Prince Edward Island, the conservancy should have a civic group ambience, not a bureaucratic one. In terms of its particular powers, though, the conservancy should part company with the civic-group model. It should possess preemptive power, like the SAFERs, or at least have the power at one remove, such as the ability of the Coastal Conservancy to "borrow" eminent domain powers from the California Public Service Board.

The conservancy should be well-financed, of course, an attribute difficult to locate in any of the cases examined. But like most of them, the bulk of the financing should consist of separate, "up front" money to establish a revolving fund, replenished from time to time, to carry out a core program of purchase and resale.

Institutional possibilities

Another way to assess the potentials for adapting conservancy techniques is to evaluate them in the context of possible institutions charged with carrying out a program. This way, the farmland conservancy concept begins to lose its ivory tower quality. For the sake of argument, a description of the duties of a conservancy might be summarized this way:

"A farmland conservancy is a local organization operating within a conservancy district coterminous with county or multicounty lines. The conservancy is empowered by state law to buy and sell land or rights in land for the purpose of maintaining prime, unique, and locally important farmland in farm use, to use its lands to retain or increase the numbers of farms in appropriately sized family proprietorships; and on its properties (and others as



U.S. Department of Agriculture photo

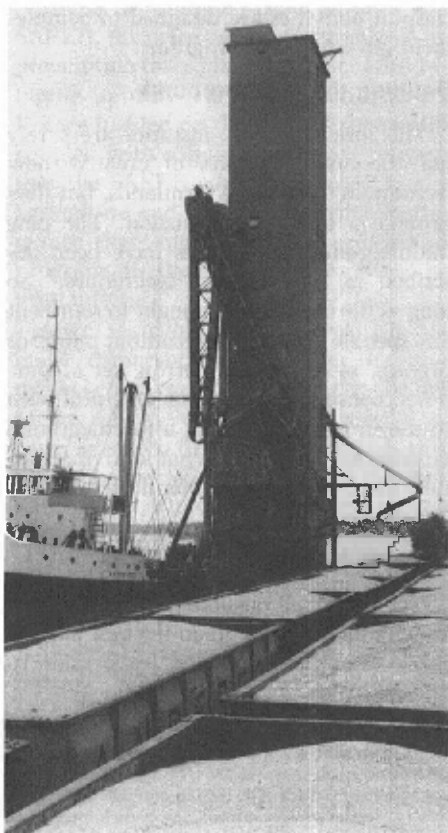
Efforts in Pennsylvania to protect agricultural land include a new Agricultural Land Condemnation Board, which referees the condemnation of agricultural land for a variety of nonagricultural uses.

appropriate) to undertake needed soil and water conservation improvement projects. The conservancy may acquire land when offered for sale when it believes that the sale will result in a use inimical to farming, farmland, and conservation values in its area. It may resell the land with restrictions on use to an appropriate buyer. If there is a dispute over the price of land, the price offered shall be based on independent appraisals, or determined by a court in a condemnation proceeding. The conservancy has the right to intervene in any sale of land previously designated by the conservancy as prime, unique, or locally important farmland. The conservancy may use a wide variety of real estate transactions to pursue its purposes, including trades of land or rights in land, payment through pensions or annuities, and the like. It may assemble tracts of land for efficient farm use, or subdivide large tracts into smaller units appropriate to family farming or for young farmers. If the conservancy has undertaken extensive conservation projects on land it has acquired, it may stipulate in the deed upon resale that the conservation improvements be maintained, enforceable by right of reverter. In the area of its operations, the conservancy will cooperate with other government authorities, encouraging them to plan, regulate, tax and otherwise control land use in the agricultural area in such a way as to stabilize and enhance farming as an enterprise and way of life."

For a concept such as the foregoing, any number of different institutions might be able to carry out the program, including agencies of local government, agencies of state government, special districts (especially conservation districts), or private organizations with public charter.

The Lancaster Agricultural Preserve Board is an example of an agency of general-purpose local government. It was created by the county commissioners as, in effect, a committee. This status gives the board access to the powers of the local government, and vice versa. The board does not yet have its sought-after deed restriction authority, but if this element is added to the program, the work of the board can be coordinated with other authorities held by local government, including zoning, taxation, and eminent domain.

There are some who believe that it might be improper for the same government that depresses the value of land through regulation to turn around and buy the land at the reduced price to accomplish the same general purposes as the regulation. This would be especially improper, some think, if condemnation is used, or



U.S. Department of Agriculture photo
Concern about the retention of important agricultural land in the United States and Canada was spurred on throughout the 1970s by substantial increases in export demand for food and feed grains from the two countries.

even if condemnation is threatened. This is one of the reasons why the Coastal Conservancy in California was set up as a separate organization from the Coastal Commission.

While the Coastal Conservancy does not have the problem of zoning land and acquiring it too, there are other difficulties with it as a model. The main problem is that the Conservancy is *unlocal* and does not operate within any kind of predetermined area in which farmland values are specifically identified. This should not be interpreted as a criticism of the Conservancy, for its program is comprehensive and not limited to agricultural land. Still, there are probably better models for state-level agencies taking on the role of a farmland conservancy. Localized state park authorities possibly could be looked to for guidance. Conceivably, there could be a state-level farmland conservancy operated on a farm-district basis with local operations in each cooperating district. This would effectively separate the program from general-purpose local government, but it could become a bit more bureaucratic than necessary.

Special districts are a traditional means to provide for special programs. School districts are the most prevalent case in point, but in many areas, special districts provide most services, and farmland conservancy activities need not be an exception. It is entirely conceivable that state-enabling legislation could be enacted that would provide sufficient statutory authority for a local conservancy district to be established, drawing funds and its general powers from the state level of government.

In this connection, there already exists a special district program associated with agricultural land nationwide. Conservation districts were set up under a model state-enabling act sent to state governments in 1937 by President Franklin Delano Roosevelt. Such districts duly established under suitable state law are eligible for soil and water conservation grants and technical assistance from the U.S. Department of Agriculture and other agencies. The standard state law provides a procedure, including a local petition and referendum, for the organization of conservation districts as governmental subdivisions of the state, but governed by a local board of supervisors. A state-level committee administers the procedures establishing the districts and provides administrative assistance and coordination of programs.

What is significant about the nation's nearly 3,000 conservation districts is that some might be able to undertake most farmland conservancy techniques, as described, with little if any change in their charters. Some 775 districts, or 41 percent of those responding to a 1979 survey, expressed concern about the loss of agricultural land to urban development. In some areas, conservation districts have led the way in urging local farmland protection ordinances. In others, they are not so effective.

Lastly, it is possible that private organizations might have a direct as well as a complementary role in conservancy-type activities. State governments could charter existing private organizations, such as land trusts in New England towns, to undertake expanded programs for land-saving and be empowered to use or "borrow" authorities necessary to carry out such programs. Without the authority to preempt land sales or to protect against profiteering by private land sellers, however, private groups would be limited to a kind of "augmenting" role, such as that described for the Massachusetts Farmlands Trust.

Issues and options

There are, without question, serious issues to be resolved concerning any possi-

ble farmland conservancy program. Five issues stand out: the problem of money, the problem of equity, the problem of sufficiency, the problem of unintended effects, and the problem of politics.

The *money* issue has several parts, the most important being the amount of money needed up front for a revolving fund. Also important is the amount of money needed to replenish the fund, assuming that stripping development rights from land titles would lower the price considerably in some areas. With farmland prices averaging \$1,500 per acre in the Northeast and the Cornbelt, the acquisition of a single 250-acre farm in these areas would run \$375,000. According to Coastal Conservancy calculations, one should expect to lose 50 percent on a turn-around transaction after taking out development value. The net cost for "processing" a 250-acre farm thus would be \$187,500, not counting overhead or cost of improvements on the property. Using SAFER figures, where *departement* capitalization averaged \$200,000 (much higher today), one farm turnover would be enough to break the budget.

But this manner of figuring may be excessively negative. To begin with, only three percent of farm properties turn over in a given year. And not all of these would necessarily relate to preservation of prime land. Therefore, only a small percentage of farms in any given conservancy district would be up for sale, and only a fraction of those would require intervention. Moreover, if the French experience is any guide, inappropriate sales will probably be suppressed by the very existence of a conservancy-type institution.

One last observation: With the cost of land escalating at present rates, chances are that many conservancies might well recoup their investment, even after stripping development rights from the title. Given this rough arithmetic, money would be a problem, but possibly not across the board.

Equity issues concern "fairness." On the one hand, is it fair to the farm owner in a conservancy district to subject his property to special rules and regulations, inhibiting his freedom to sell his property to whom-ever he wishes? On the other hand, is it fair to the taxpayer to be asked to subsidize, in effect, the farm sector by having to insure that land is not misused? While these are serious questions, and not the only ones bearing on equity issues, the fact remains that conservancy techniques may well have less difficulty in this regard than either the use of police power without compensation or the use of tax revenues for the large-scale purchase of development

rights, the perpetuity of which is open to question.

The problem of operational *sufficiency* has several aspects. First, can a local body be expected to undertake sophisticated land transactions? Won't problems of loopholes, favoritism, or just plain administrative stupidity creep in? The SAFERs of France are heavily criticized for various operational failures. At the same time, the program is still in effect; and while not perfect, most believe that the French agricultural land base has benefitted enormously from the program, possibly in ways that are difficult to measure. Moreover, the U.S. agricultural community is well organized. By virtue of the institutional and agency programs in operation, much administrative capability is already in place.

These days, official Washington, as well as many state capitals, are concerned about the *unintended effects* of new governmental programs. Indeed, it is almost mandatory to mention in any analysis of land use policy that governmental programs are more a part of the problem than a part of the solution. Could this be true of an organized farmland conservancy program?

The fact is that an aggressive operation could, by intervening vigorously in the land market, distort prices. Worse, it might be that a future generation will find that the wrong land has been preserved. Areas that might have been best used for urban expansion, say, might be those protected as farmland.

There are some technical problems too. What, for example, should a conservancy program imply for agricultural zoning? Would such zoning be superfluous in an area where farmland is subject to preemptive purchase and resale with deeded restrictions? And if this is true, could conservancies ultimately be subversive of the long and difficult efforts many farm counties have made to achieve farm-use zoning?

There is hardly any way to answer these questions, except possibly to place the issue of potential unintended effects stemming from farmland conservancies against the effects stemming from zoning and/or development rights purchase, or simple tax abatement for that matter. In every case, government intervention into the market mechanism has and will have the *possibility* of producing an unhelpful result. Still, this possibility may well be less pronounced for conservancy techniques than for more traditional, routine approaches.

This last point leads into the problem of *politics*. Any kind of intervention in land use is difficult to sell in the United States, and most difficult in rural areas where a

laissez-faire attitude about land use has been a long tradition. Conservancy techniques, while perhaps more in "the American grain" than some kinds of zoning or even purchase of development rights, are easily misunderstood, especially when coupled with the right of preemption and back-up powers of eminent domain to settle problems of compensation. A new idea is always hard to introduce. It is harder usually in rural areas than in urban ones. And if the idea has something to do with "land use," there are those who would not even consider trying.

One would hope, though, that the farmland conservancy concept will continue to attract interest. What is so different about this approach to farmland preservation—in contrast to zoning and development rights acquisition—is that a single mechanism can deal with and integrate the primary issues of farmland ownership and use: the family farm issue, the resource stewardship issue, and the farmland conversion (urbanization) issue. These problems are all that's awry with farming these days, but they go to the very foundations of U.S. agriculture.

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