



**Keeping Farmland Available for  
Klickitat County Agriculture:  
Report to the Klickitat County Commission**

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## **Keeping farmland available for Klickitat County agriculture:**

### **Report to Klickitat County Commission**

#### **1. Background and rationale:**

Agriculture is a critical industry in Klickitat County producing over \$50 million annually in direct crop value and perhaps three times that amount in local economic impacts. The 2002 USDA Census of Agriculture recorded 702 operating farms with an average market value of production per farm of \$74,680. These farms cover 607,000 acres (about ½ the total land area of the County) and have an average size of 864 acres – roughly twice the State average. For a county with a total population of about 20,000, this represents a highly significant industry – almost certainly the top economic driver.

These economic numbers, however, are probably only a small part of the story. No one has yet placed a credible dollar figure on the values these farms contribute to the Klickitat County community that are not reflected in the farm commodity marketplace. Just by staying in agriculture, these farms are contributing hugely important environmental values like aquifer recharge, wildlife habitat and migration corridors, surface and groundwater filtration, flood water detention, etc. And this is not to mention their social/aesthetic values like open natural landscapes and access to local food and the cultural values like community stability, work ethic, or sense of history and place.

So problems that affect the future of agriculture are a concern for all the citizens of Klickitat County. And there are growing issues about the increasing fragmentation of the agricultural land base, the rise in the cost of farmland above what farmers can generally afford to pay for it out of agricultural earnings, and the loss of agricultural lands to non-farm uses and the inevitable conflicts many of these new uses may create for agriculture. These emerging issues can (directly or indirectly) increase the burdens of operating a profitable agricultural business and threaten the future of the agriculture industry in Klickitat County along with all of the economic, environmental, social, and cultural values it provides – including the future uses of the land.

Responding to these issues, Klickitat County applied for and received a grant from the Washington State Office of Farmland Protection to consider and identify possible actions that could be taken to address them. The grant called for broad public involvement in a process that would identify emerging problems – especially local problems, help identify potential solutions, draw the community into a discussion of the possible solutions, and provide recommendations to County Government for components of a local farmland protection plan that could help protect and enhance the future of Klickitat County's agriculture industry. The County contracted with American Farmland Trust to help with this process and recommendations.

Working with the County, AFT made an initial assessment of potential issues in Klickitat County and prepared a working "discussion paper" on "Options and Issues for Protecting Agricultural

Lands in Klickitat County” along with supporting materials. These were placed on line<sup>1</sup> and also provided on paper to the public at 6 community meetings around the County during October and November 2008. AFT also created and followed an outreach plan for the broad distribution of notice of the 6 public meetings. The meeting notice was provided to local conservation districts, community councils, agriculture organizations and other citizen groups likely to be interested in the issues. These groups, in turn, got the word out through newsletters, direct mailings, and word of mouth. The notice was also mailed to local citizens on a list assembled with help from the County and local citizens. And the meetings were also made known through local newspapers and radio. The notice of the meetings was also placed on line at the Klickitat County Planning Department’s web page.

The six meetings were each held at 6:30 p.m. to 8:30 p.m. at the following dates and at three locations in the County:

- Centerville Grange #81, 2288 Centerville Highway, Centerville, WA 98613
  - Tuesday, October 21, 2008
  - Tuesday, November 18, 2008
- Mountain View Grange #98, 1085 Main St., White Salmon, WA 98672
  - Wednesday, October 22, 2008
  - Wednesday, November 19, 2008
- Alder Creek Grange #890, Main Street, Bickleton, WA 99322
  - Thursday, October 23, 2008
  - Thursday, November 20, 2008

At the first three of these public meetings held in October, after briefly reviewing the topics covered in the “Options and Issues” discussion paper, we held a facilitated discussion that first focused on a “20-year vision” for where people wanted to see agriculture go in the years ahead, and then on issues, concerns, and barriers that might stand in the way, along with some discussion of potential opportunities and actions that could be taken to overcome those barriers and concerns. And at the second set of three meetings held in November, we focused our discussion on potential actions that could be taken, mostly locally, that might help agriculture and increase the ability of the agriculture industry to retain land for agricultural use. A set of rough notes and then a “Topical List of Public Comments” were prepared that sought to capture the ideas that emerged from all 6 of these public meetings. (These are attached as Appendices D and E.) Further public comments have also been received by phone, e-mail and post. And all of this input has been considered in the completion of this Report.

## **2. A vision for the future of agriculture in Klickitat County**

At all of our public meetings, the vision was clearly expressed that the Klickitat County community (farm and ranch producers and non-farm citizens alike) believes in the future of agriculture and has a strong desire to see farming and ranching continue as an economic force and a major land use in Klickitat County.

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<sup>1</sup> See materials at: <http://www.farmland.org/programs/states/wa/Klickitat-County-Papers.asp>. This link was provided also through the Klickitat County Planning Department website and in the meeting notice that was distributed concerning the 6 public meetings.

Following our first set of meetings, this was summarized as a 20-year vision as follows:

**20-year vision:** We retain a rural landscape with a profitable, diverse, and sustainable agriculture industry engaged mostly in family farming operations suitable to the varied landscapes in Klickitat County.

There is a clear sense in this community that agriculture is a key part of the rural landscape and the local economy and that its health and vitality are critical to the rural feel and character, to the environment, and to the current and future quality of life in Klickitat County.

The market for agricultural lands in Klickitat County is, however, facing increased competition from residential, retirement, recreational, and other non-farm uses – much of it coming from buyers from nearby urban areas. These non-farm buyers will generally make more intensive use of the land than a farm or ranch operator and can therefore typically afford to pay a good deal more for it than can agricultural producers. Some recent sales of 20-acre parcels appear to be bringing in the range of \$8,000 to \$10,000 per acre – considerably more than agricultural value, yet still quite affordable for a residential, recreational, or other non-agricultural uses.

Combined with 20-acre (or smaller) agricultural zoning, these circumstances have several impacts on local agriculture:

- **Less farmland:** Current agricultural zoning can result in residential/non-agricultural ownerships that collectively (and perhaps unnecessarily) consume very large areas of land that could otherwise be profitably used in agriculture – diminishing the useful agricultural land base.
- **Fragmentation:** The land base becomes fragmented in a way that makes it increasingly difficult for farmers and ranchers to find the large contiguous (or at least nearby) acreages needed for a full profitable agricultural operation.
- **Land cost:** The cost of land, even where it has not yet been subdivided, increases beyond what a normally profitable farm or ranch can afford to pay. This prevents existing farmers from being able to expand their farms. It prevents new farmers from entering agriculture. It makes it difficult for retiring or semi-retiring farmers to reduce the scope of their operations while staying on the land. And, since investments in land necessarily incur an “alternative use cost” that must be recognized as an annual business expense, it affects the actual profitability of farming as a business.
- **Investment:** Higher land values discourages investments in land improvements intended to strengthen agricultural profitability since those improvements are generally long-term investments that will usually be of little or no use to the likely future non-agricultural buyer.
- **Inconsistent uses:** The influx of non-farm residents mixes non-agricultural land uses in among agricultural uses in a way that can create conflict between neighboring landowners over nuisance claims (dust, noise, odors, chemicals, etc.), trespass, household pets, traffic, and other issues.
- **Farming infrastructure and critical mass:** It diminishes the total agricultural economy resulting in the loss of needed local agricultural support businesses like suppliers, service providers, and food processors.
- **Competition for water:** It increases the competition from other parts of the community for scarce water, an essential component of agriculture.

- Options for agriculture: It diminishes the choices available to landowners for the types of agriculture they can conduct and thus reduces their flexibility in adapting to changed markets for agricultural products while, conversely, can make some land unusable for the limited type of agriculture to which it is most suitable.

Not all of these consequences are being experienced equally throughout the county. So far, for example, it appears that the worst of the market cost pressure is taking place to the west – for example in the Trout Lake area. And particular concerns exist in the eastern parts of the County concerning land fragmentation – where non-irrigated grain crops or livestock operations require large (2,000 acres plus and ever-increasing) farms if they are to be economically viable. Yet examples of many of these issues appeared through our meetings and investigation in various locations around the County.

It also needs to be noted that current land use laws in Klickitat County have been in place and largely unchanged for some 30 years. Perhaps change is in order after this length of time. Certainly improvements may be possible. But also, expectations for and reliance upon those existing laws would make them difficult to change. Our public meetings were aimed at (and drew) an audience largely composed of agricultural landowners. We did receive comments favoring substantial increase in minimum parcel size in agricultural areas above the current 20-acres. But among the group we worked with there appeared to be little collective appetite for any changes in Klickitat County's land use laws that might diminish the market value of private lands. This report does not make recommendations for land use law changes of this kind.

Our effort in this project was to find solutions to the above concerns and ways to minimize the above listed consequences that respect current property values while, at the same time, seeming cost-efficient, practical, and politically possible enough for early implementation.

### **3. Issues and recommendations:**

Based on this research and public input and upon these findings, we have assembled the following recommendations for actions that might be taken in Klickitat County to improve conditions for local agriculture, to enhance the future for this important industry, and to protect the future of Klickitat County agricultural lands. Our recommendations are presented in the following areas of concern about the future of agriculture which were raised in our research and our public meeting process. For each set of issues or concerns we have provided a “rationale” for action followed by our recommendations and, if needed, specific notes issues that pertain to the recommendations. The recommendations have been kept general since their specific form will still demand further and more specific input from the community and from professional staff. And they are stated broadly and “topically” since their appropriateness for local Klickitat County conditions will still require the judgment of local citizens and lawmakers as they address the real, on-the-ground challenges facing this community in the years ahead.

Also note that we also received was a plea that forest landowners be included as the community debates these issues. The community discussion we launched was really about “working lands” rather than just about farm, ranch or forest lands. So the majority of what is said in this report and of what was discussed in our public meetings would apply with equal force to the many small private forest operations in Klickitat County.

## **a. Cost and availability of land for future agricultural use**

**Rationale:** As discussed above, the cost of much of the farmland in Klickitat County has risen to the point that it is worth more on the market than what a farm business can afford to pay for it out of earnings from agriculture. According to 2007 statistics from the Washington Department of Revenue, there are 531,595 acres in the current use tax program in Klickitat County<sup>2</sup> – roughly 88% of the 607,000 total acres in agriculture according to the National Agricultural Statistics Service Census of Agriculture.<sup>3</sup> On average, the appraised fair market value of these lands is some 88% higher than their agricultural business value.<sup>4</sup> Under these circumstances, it becomes highly likely that these lands will, when they next sell, be sold for a more intensive, non-agricultural use.

Most of Klickitat County's agricultural land is currently zoned for 20-acre parcels, with some smaller sizes as well. There was concern expressed in our public meetings that a 20-acre parcel size is usually much too small to support most kinds of profitable agriculture while also being considerably larger than is either really desired or needed for most practical residential use. This parcel size consumes a great deal of otherwise useful farmland for each residential buyer and contributes to the fragmentation of the agricultural land base and to many of the problems listed above. At the same time, it is small enough to be affordable for residential purposes and to thus still generate substantial price competition for agriculture from non-agricultural buyers.

Our discussion, in the public process, focused on what we might realistically be able to do that might help keep land available and affordable (especially in larger parcels) for agricultural producers in the years ahead and avoid the fragmentation of the agricultural land base.

**Community support:** Subject to the comments below, there was broad and substantial support in our community meetings for the use of clustering as a tool for protecting agricultural lands so long as the use of clustering is kept optional for the landowner. And, also subject to the below comments there was broad and substantial support for the use of purchase of development rights (purchase of agricultural conservation easements) as one tool for the protection of agricultural lands – especially for option (a), below, at least initially.

### **Recommendation 1 – cluster zoning:**

Encourage the use of cluster zoning:

- Make it easier and less costly for landowners to subdivide into 1-2 acre residential parcels while leaving a farm-sized parent parcel protected and while retaining overall allowed area densities. Provide incentives that make clustering at least as or more desirable for the landowner than simple division into 20-acre (or other allowed size) parcels.

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<sup>2</sup> See Washington Department of Revenue Current Use statistics at:  
[http://dor.wa.gov/docs/reports/2008/Property\\_Tax\\_Statistics\\_2008/Table\\_19.pdf](http://dor.wa.gov/docs/reports/2008/Property_Tax_Statistics_2008/Table_19.pdf).

<sup>3</sup> See Klickitat County Profile on NASS website at:  
[http://www.agcensus.usda.gov/Publications/2002/County\\_Profiles/Washington/cp53039.PDF](http://www.agcensus.usda.gov/Publications/2002/County_Profiles/Washington/cp53039.PDF). Keep in mind the potential uncertainties in making a comparison between these two different data sources.

<sup>4</sup> See note 2, above. Fair market value and agricultural value are shown.

- Consider possible density bonuses or other financial incentives that make it easier to use the current cluster ordinance, where circumstances allow.
- Require or at least strongly encourage location of the clustered non-agricultural parcels on those parts of the land which are the least valuable for agriculture and in locations that will have the least impact on agricultural operations.
- Consider potential use of deed restrictions, conservation easements, or other tools to assure that the protected agricultural “parent” parcels that remain after clustering receive long-term protection from further subdivision so they can remain affordable for future agriculture.
- Actively seek changes from State government in the current use tax code that would help remove disincentives for clustering.

#### **Notes and issues 1 – cluster zoning:**

- Current use tax disincentives to cluster: 20 acres is the minimum parcel size that is considered presumptively to be in agriculture under State current use tax law. So subdivision into 20-acre parcels can allow the original agricultural landowner to avoid having to acknowledge a change in use that might, otherwise, require payment back taxes or penalties owing under the current use tax system. Clustering will, at least for the acreage included in the cluster, probably involve such a change of use and require payment of these taxes. This creates a disincentive for clustering.
- Cost of clustering: There were indications that the process for clustering is sufficiently more complicated, more uncertain, and more costly than simply dividing into the current minimum parcel size. Some means to simplify and clarify the process and to reduce that cost for the landowner might increase the use of clustering.
- Preservation of rural character: There were some misgivings expressed about clusters, especially larger ones, as a possible threat to the rural appearance and character of the community. Conversely, it will be the larger clusters that will leave the largest and most farmer-friendly agricultural parcels available (and hopefully protected and affordable) for agriculture. So the greatest benefit for agriculture may generally be gained from the largest clusters. Some balance needs to be struck between encouraging the use of clustering and addressing neighborhood concerns about the creation of areas of concentrated housing in rural parts of the County.
- Affordability: The key to improving the affordability of farmland for farmers is to remove speculation that large farmable parcels might be further divided. It would greatly help clustering to work if there was assurance that the parent agricultural parcel reserved following the original cluster subdivision is protected from further subdivision for the long-term future. One way to achieve this might be through the use of covenants (see discussion in 3.j., below, on the Trout Lake clustering proposal) or of long-term easements, perhaps held by the County or perhaps held in cooperation with a respected local land trust like the Columbia Land Trust. (This use of easements was not consistently considered at our meetings.)
- Voluntary program: There would be community concern if clustering became a requirement rather than a voluntary option.

#### **Recommendation 2 – purchase of development rights:**

Facilitate and support use of purchase of development rights (PDR) programs which prevent subdivision and non-agricultural development:



- Option (a) – facilitate local landowner access to existing State and Federal PDR programs: Encourage and support Klickitat County staff in helping to facilitate applications from local landowners (either on their own or through local non-profits like the Columbia Land Trust) that seek to sell agricultural conservation easements through the Farmland Protection Program of the Washington Wildlife and Recreation Program (WWRP), through the Federal Farm and Ranchlands Protection Program (FRPP), or through other programs currently available for this purpose.
- Option (b) – provide local County funds to match and leverage State and Federal PDR funding: Also provide local Klickitat County funding that can be contributed toward the acquisition of development rights on agricultural lands and as a match for other funding available through other programs at the State and Federal levels. Create a priority system to guide these acquisitions toward the most appropriate locations in the County.

#### **Notes & issues 2 – purchase of development rights:**

- Time-limited vs. perpetual easements: Some landowners will probably choose not to participate in the sale of a perpetual easement – preferring an arrangement that is more time-limited. The existing State and Federal programs typically fund only perpetual easements (although this is not necessarily required). A County-funded local program could opt to handle this matter as it saw fit.
- The requirement of County participation: Both the Federal FRPP program and the State WWRP program will provide a 50% match for the cost of purchasing an agricultural conservation easement at its appraised market value. Each can match the other to cover the full cost, but the use of both programs is required to obtain the revenue for an acquisition. The State WWRP program also requires that local county government must be the applicant. So unless Klickitat County participates – at least to the extent of submitting the application – local Klickitat County landowners are effectively unable to use either the existing State or the Federal program.
- The desirability of County funding: Both the State and the Federal programs are competitive processes. Several other counties in Washington (e.g. Skagit, Whatcom, San Juan, Pierce, King, etc.) have local programs in place that also provide local match funding for deserving local PDR acquisitions offered to WWRP and FRPP. It is, nonetheless, possible for a strong application to succeed in winning WWRP and FRPP support, but the commitment of county-level funding definitely helps make an application more competitive.
- Setting local priorities: The competitiveness of a local PDR application in the WWRP and FRPP process can also be enhanced if the local community has established priorities for which agricultural lands most need or deserve protection. This may be less important early on, when there are few such applications. If the number of applications increases over time, it may be more desirable (and effective) if some process is developed for prioritization of applications among those submitted.
- Transfer of development rights: Transfer of development rights (TDR) programs generally require developers in certain designated “receiving areas” to purchase development rights from landowners in designated “sending areas” where the protection of farmland may be seen as desirable. It does not appear that TDR is likely to be a useful strategy in Klickitat County so no recommendation has been made with respect to this technique.

## **b. Limiting the impacts of government action:**

**Rationale:** Most of our participants were in agreement that, while regulation and other government actions are a concern, there does not seem to be a great deal of undue regulatory pressure coming from Klickitat County government itself. Most of the issues seem to come out of action at the State or Federal levels. Permitting for farm structures in Klickitat County, for example, is permitted under an easy and inexpensive process. There also does not appear to be a great deal of pressure for condemnation or acquisition of lands for public purposes from County government. State and Federal governments, however, can and do occasionally use their condemnation or acquisition authority or their overarching regulatory authority with significant potential for impacts on local farms. So, there are two recommendations, in this area, that were discussed in our public meetings and that appear to deserve consideration.

**Community support:** While there was broad agreement on this topic, the limited role of County government made it one of the less pressing of the issues we discussed in our community events.

### **Recommendation 3 - Farmer education about farm structure permitting:**

Provide educational material to the farm community about the existing County program for farm structure permitting – perhaps a brochure, on line materials, and distribution of information at agriculture venues and through farm groups and agencies that serve farm constituents.

#### **Notes and issues 3 - Farmer education about farm structure permitting**

- While the existing farm structure permitting process is a good one and is thankfully inexpensive, it was suggested at our meetings that it might be helpful to make it more broadly known and understood in the farm community. Some farmers appear to be unaware of the process.

### **Recommendation 4 - County participation in State or Federal land acquisitions:**

Continue active implementation of Klickitat County Ordinance (Ch. 2.76.010 – 170) on coordinating regulatory actions by State and Federal governments affecting land and natural resources in Klickitat County.

#### **Notes and issues 3 - County participation in State or Federal land acquisitions**

- To the extent that Klickitat County is consulted or involved in decision-making about land acquisitions or condemnation actions or about regulatory action by State or Federal agencies, the County should continue to urge a policy of considering and avoiding impacts on valuable farm and ranchlands and encourage their State or Federal partners to seek alternatives where practicable and to mitigate any harm to farm and ranchlands where possible. Ch. 2.76.010 – 170 appears to be a good process with well designed policies to this end.

## **c. Limiting the impacts of taxation:**

**Rationale:** As with the regulatory arena, taxation is seen as a major potential discouragement for the survival and profitability of agriculture. But most of the concern about taxes seems to

arise out of State and Federal law. There is, however, some discretion left to County Assessors in implementing the Current Use program. While there are only limited ways that County government has the opportunity to help, the following emerge as potentially useful local actions.

Community support: Taxes are seen as an important issue by the community. So, even though there is limited direct impact from the County in this arena, there was broad support for any actions the County may be able to take.

#### **Recommendation 5 - Educate landowners on agriculture related taxes:**

Provide educational materials that help clarify and inform agricultural landowners as to opportunities and responsibilities for taxes particularly relevant to farm operations:

- Clarify and inform about opportunities to participate in current use taxation to make it clearer who does and does not qualify, perhaps with some relevant examples. Include targeted information for new landowners purchasing smaller (e.g. 20 acre) parcels to enhance their decisions about the location of access roads and structures that might impair their ability to farm the balance of the land or lease it to a farmer for agriculture.
- Research, identify and explain agriculture-related tax exemptions that may particularly apply to agricultural operations, personal property, or lands – especially those that may not be well known in the community.

#### **Notes and issues 5 – Educate landowners on agriculture related taxes:**

- Education and clarity re current use program: The current use taxation program provides significant protection and benefit for farmers and has broad support within the agriculture community. But not all farm landowners are aware of the program or of the eligibility requirements or opportunities it provides. Helping to educate the landowner community about the program would help assure that those who should be in the program are as well as helping to discourage those who should not from participating – an important outcome if the current use program is to retain its credibility and public support.
- Identification of relevant tax exemptions: There is a concern that many farm operators may not be aware of some of the tax exemptions that may potentially apply to them. For example, few of the farmers in our meetings seemed aware of the exemption for real property improvements made for natural resource conservation under RCW 84.36.255. It would be useful if there was a source of information that identified all of these potential exemptions and got that information out to Klickitat County landowners.
- Educate new owners of agriculture-zoned lands: This education could extend to new buyers of smaller parcels (e.g. 20-acre parcels that are, at least presumably, agricultural) to help them avoid placing homes, access roads, and other improvements in locations that would prevent the land from leasing for agriculture and thereby qualifying them for continued inclusion in the current use taxation program.

#### **Recommendation 6 – County support for State and Federal tax relief:**

Affirmatively support the local agriculture industry in forums, organizations, and opportunities at which the County and its officers can encourage tax relief by the State and Federal governments in the following particulars:

- Change current use tax code to eliminate disincentives to use clustering (see Recommendation 1, above).
- Change personal property tax requirements to ease complications in identifying business-taxable personal property for farm households that are both a business and a home residence.
- Seek exemption or other relief from Federal estate taxes for agricultural lands.

**Notes and issues 6 – County support for State and Federal tax relief:**

- Current use disincentives to cluster: As mentioned under Recommendation 1, above, one of the significant disincentives for clustering seems to be the potential requirement to pay back taxes and penalties on property that is in the current use program. County political support at the State level might help secure changes in State law that would provide relief from this consequence – perhaps under the special circumstance where the landowner is clustering under a local ordinance.
- Personal property complications: Because family farms are also generally residences, the segregation of residential personal property from farm business personal property can be complicated and creates uncertainty for taxpayers. County assistance in supporting changes in these rules that would create clarity on personal property tax responsibilities for residential and business personal property would be helpful.
- Estate taxes: Concern was expressed at the meetings that federal estate taxes can force the sale or division of agricultural parcels in order to pay the tax. The hope was that County officials, through associations of public officials or of local governments, could help support federal legislation to exempt or provide relief from these tax impacts.

**d. Public education:**

**Rationale:** With farmers and ranchers making up an ever-diminishing percentage of the general and the local population, it is increasingly important that the agriculture industry work to gain and keep the understanding and the confidence of the non-farm public. Similarly, it is critical that agricultural landowners be aware of and fully understand their own options and responsibilities. A strong system of education, both for the public about agriculture and farm-ranch issues and for the agriculture community about matters important to their industry is a critical need.

Public education (of both these kinds) is probably a shared responsibility between agriculture industry organizations and groups, conservation districts, WSU Extension, other community groups, and County government. In some circumstances, for example, it may be that the most effective source of information would be the industry associations. In others, it may be that the County could be most effective. In either case, County financial support might be helpful and County cooperation is likely to be essential.

Recommendations 7 and 8 would benefit from a mutual partnership between government, the agriculture industry, WSU Extension, private nonprofits, and conservation districts, with the County providing financial support where possible, input where useful, and, as in the case of information pertaining to County programs, perhaps taking the lead role.

Community support: The discussions about public education were consistently the most vigorous we had in our community meetings. There is a strong belief in the agriculture community that the public does not understand agriculture. There is broad and substantial community support for actions in this arena.

### **Recommendation 7 – Support for public education about agriculture**

Support and provide public education about agriculture related issues, including:

- Consumer education concerning environmental, economic, and other benefits of local agricultural products,
- Improved and broadly distributed educational materials for buyers of properties located in or adjacent to agricultural use areas concerning what to expect from agricultural land users in the area, appropriate location of access roads, homes and other structures, and other agricultural issues about which they may not be familiar,
- Strong support for County Fair and other events that celebrate or feature agriculture,
- Support for agriculture in the classroom.
- Educate buyers of smaller parcels (e.g. 20 acres) as to the current use tax issues and other potential income opportunities they will be dealing with and inform them of the potential advantages of locating their access roads and structures in a way that might facilitate the leasing or use of the balance of the property for agriculture.

### **Notes and issues 7 – Support for public education about agriculture**

- Lease of small parcels for agriculture: While the non-farmer/buyers of small 20-acre properties may not farm these properties themselves, the opportunity to receive lower taxes on the land tends to encourage them to lease that land to local farmers. This is a benefit to local farmers. Unfortunately, these new buyers often place their access roads and home structures in the center of the property or in a place that makes it difficult or impossible to use the balance of the property for agriculture. Some encouragement or education that would help them avoid this mistake would be useful.

### **Recommendation 8 – Support for agriculture industry education**

Provide public education for agriculture on issues important to their industry, including:

- Eligibility for current use taxation (also for landowners generally),
- Eligibility for other tax benefits and exemptions that pertain to their industry,
- Availability of programs and assistance with issues like conservation management, farm transition, extension education, business planning, etc.,
- Energy audits for farms to help farmers save on energy,
- Other issues relevant to farm success and profitability.

## **e. Economic development and profitability for agriculture**

**Rationale:** There is no farmland without farmers. That is to say, unless there is a viable farm business to manage and support the ownership of that land, it will ultimately sell for some other, probably less environmentally desirable and more intensive purpose. And since the direct driver for loss of farm and ranchlands is land affordability, anything that increases the profitability of agriculture and which thereby increases the ability of farm and ranch businesses to afford to own the land they need helps keep that land in agriculture.

Agriculture is the lead industry in Klickitat County, yet because it is composed mostly of a great many small, independent family farming operations rather than being made up of only a few large, monolithic companies, it has greater need of public support and encouragement in the area of economic development. It does appear that larger agricultural operations in Klickitat County participate in and advise the Public Economic Development Authority and the County's Economic Development Department. But there is little awareness of that in the agriculture community. And there does not appear to be a recent economic development strategic plan that helps to guide the future of local agriculture. The many small family farm and ranch businesses could greatly benefit from some focused attention to their economic development needs.

Community support: Of all the topics we discussed in our public meetings process, economic development and public education were the two that sparked the most interest. There is broad and substantial support for actions that enhance economic development for agriculture.

**Recommendation 9 – Ag participation in economic development planning**

Provide for active participation in economic development planning with representation from the diverse geographies and commodities produced by Klickitat County agriculture.

**Recommendation 10 – Agriculture industry economic development strategic plan**

Support and complete a professional economic development strategic plan for the future of Klickitat County agriculture that:

- Addresses current and projected future markets, locally, nationally, and internationally, for agricultural products grown in Klickitat County and that suggests strategies for taking maximum advantage of those markets and trends
- Identifies key threats and issues affecting the profitability of agriculture and opportunities to address those issues, maximize profitability and minimize expenses
- Outlines opportunities for action by government, by industry associations and cooperatives, and by individual agricultural operators that will enhance business success
- Suggest opportunities for cooperative action by farmers, farm groups, and local government
- Assess the viability of local branding for local and outside-county sale of Klickitat County agricultural products
- Suggests ways to fund the needed actions.

**Notes and issues 10 – Agriculture industry economic development strategic plan**

- Strategic planning of this kind for agriculture has been done in many communities across the country and here in Washington. There was such a plan recently completed, for example, in Pierce County, WA.
- The below recommendations for economic development actions could be usefully added to and made more specific with completion of such a plan.

**Recommendation 11 – Support for local direct marketing of agricultural products**

Provide financial and regulatory support, where possible, for farmers markets, farm stands, farm stand signage, on-farm value-added processing, and other activities that enhance farmer opportunities to sell locally grown product to local consumers.

**Recommendation 12 – Support for farmer cooperatives and Ag support infrastructure**

Support and enhance opportunities that arise for farmer cooperatives (such as mobile USDA-certified meat processing, grain processing, or a cooperative winery) and other industry support businesses, encourage, and facilitate such opportunities

**Recommendation 13 – Support for ancillary income sources on agricultural lands consistent with agricultural production**

Continue to support and facilitate alternate energy opportunities for agricultural landowners, agriculture tourism, conservation markets, and other ancillary businesses income opportunities that can take advantage of agricultural properties without undue negative impact on traditional agriculture.

**Notes and issues 13 – Agriculture industry economic development strategic plan**

- Farmers in our discussions had considerable interest in the development of alternate energy on their lands – done in a way that minimizes the impacts on agriculture. There has also been discussion of potential natural gas resources.
- In the 2008 Washington Legislature, a study of conservation markets for agriculture and forestry was commissioned (SB 6805). The results of that study may demonstrate ways to use carbon sequestration, water quality trading, and environmental mitigation funding to both improve the environment and provide additional revenue for agriculture and forest landowners for providing environmental services that keep our communities healthy.

**Recommendation 14 – Encourage purchasing of local foods at County-operated public institutions**

Encourage, support, and facilitate the purchase and sale of local agricultural products by food service and provisioning facilities at County-run public institutions.

**f. Community process and consultation:**

**Rationale:** As a critical industry and an important contributor of economic, environmental, and social value to the Klickitat County community, agriculture should be methodically consulted with respect to its needs and with respect to concerns about actions that may have an impact on its success. Certainly local farmers and ranchers are already active in the political arena and communicate often with public officials on government issues. But with an agriculture industry and an agricultural landscape as diverse and as important as it is in Klickitat County, there may be a place for creation of an official, broadly representative, organized advisory group that methodically considers proposed government actions and affirmatively identifies new possibilities for action.

**Community support:** Participants in our public discussion had mixed feelings about the need for an agriculture advisory group, but ultimately the sense was that, if the County does decide to go ahead with some kind of farmland protection program or effort, creation of such an advisory group may be quite appropriate as a means to advise and shepherd the implementation of the program. They do, however, definitely believe it is important that the agriculture community be consistently consulted on key issues affecting their industry – from all parts of the industry.

### **Recommendation 15: Agriculture Advisory Commission**

Consider creation of an Agriculture Advisory Commission that is broadly representative of the Klickitat County agriculture industry and that can provide advice on industry needs and on proposed actions that may have an impact on the industry.

#### **Notes and issues 15: Agriculture Advisory Commission**

- Appointment by County Commission or Chair: Similar advisory groups exist in perhaps a dozen other counties in Washington including Skagit, Whatcom and Pierce Counties. They are typically appointed by a County Commission or Council or by a County Executive usually from among names offered by local agriculture related groups and sometimes specifically representing certain commodities, geographies, or elements of the agriculture industry.
- Existing Natural Resources Coordinating Committee: Klickitat County has an existing Natural Resources Coordinating Committee (NRCC) established to provide advice concerning actions by Federal and State governmental agencies affecting lands and activities in Klickitat County. (Klickitat County Ordinance Ch. 2.76 of 5/98) The NRCC includes representation from agriculture and contains an agriculture and livestock subcommittee. It also includes representation from a broad spectrum of other interests on natural resources issues. Certainly the agriculture members of the NRCC would be appropriate participants in an Agriculture Advisory Commission, but there may be benefit to having a group that exclusively focuses on agriculture issues only, that specifically represents perspectives from within agriculture only, and whose responsibilities go beyond actions by State or Federal government within the County.
- Role for County Assessor: State law authorizes the County Assessor to create an agriculture advisory committee to provide counsel on current use taxation issues. Many Assessors across the State (apparently including the Klickitat County Assessor) have not seen the need to do so. If such a need is felt, it might be possible for a broader Agriculture Advisory Commission to serve in that role as well.

### **g. Water:**

**Rationale:** As important for agriculture as the land itself is the water that makes that land productive. So water is a key factor in the survival of agriculture and in the future of agricultural lands. Despite Klickitat County's location alongside the "Mighty Columbia," water is scarce. And there are many competing demands for water – development, fish and wildlife, recreation, etc. in addition to agriculture. There was a sense from participants in the meetings of a suspicion that there is more water that could be made available for use than is currently being allowed. At the same time, there is also concern that growth and non-agricultural development will create competition in the years ahead that will "drain" the water rights from agricultural lands and, hence, destroy their productivity. And there was recognition that the drilling of a great many exempt wells will ultimately have a detrimental effect on agriculture.

Much of the water in Klickitat County (both that used for agriculture and that used for development) comes from ground water. One of our participants in the public meetings pointed



out that the fact that much of the land in the County is open land helps enhance the recharge of ground water for the benefit of all residents. Simply preserving agricultural lands thus has a positive effect on water availability for everyone.

For the most part, water issues are driven by actions at other levels of government. But if, in fact, there is indeed more water that could be made available for use than is currently allowed, there will need to be sound, credible scientific evidence to make that case to the Washington Department of Ecology and there will need to be broad political support from the public and from County government. So there are some indirect steps that the local community and that Klickitat County Government might take to improve supplies of water for present and future agriculture.

Community support: Water is clearly understood by everyone as critically important to the future of agriculture. At the same time, there is appreciation for the limited authority of the County to affect changes in water law. There would, however, be broad and substantial community support for actions the County can realistically take to improve access to water for agriculture. Recommendation 16 received a good deal of discussion and positive reaction at all three of our meeting locations.

#### **Recommendation 16 – Hydrologic studies**

Encourage, facilitate, and support the hydrologic studies now being conducted as well as future studies that will provide credible evidence of availability and supplies of water for human use in Klickitat County.

#### **Recommendation 17 – Water storage**

Consider and investigate ways Klickitat County can participate in projects for the storage and increased access to water for agriculture. This should be done consistent with the Governor's Columbia River Initiative.

#### **Recommendation 18 – Aluminum plant water**

Consider and investigate the possibility of allowing farmers who have long-standing outstanding water rights claims to temporarily lease existing “set-aside” water rights associated with the now-idle aluminum plant while their claims are being decided.

#### **Recommendation 19 – Water advocacy**

Represent the County's agricultural producers and advocate for their interests in water at forums, in organizations, and with State and Federal agencies that manage water resources.

#### **Notes and issues 18 & 19 – Aluminum plant water and water advocacy**

Several issues pertaining to water rights that require decision by the Washington Department of Ecology (DOE) were raised in the public meetings:

- It is not clear whose approval would be needed to allow the temporary leasing of aluminum plant water to local farmers, no doubt it includes the Department of Ecology. So to the extent that it is not a County decision, the hope is that the County could play a role in advocating for this outcome.

- There is concern that the water rights requirements of DOE have the effect of discouraging use of the cluster ordinance by making it easier for non-clustered short-plat applications that simply subdivide into 20-acre parcels and do not require specific approval to be accepted for use of exempt wells than those that involve clustering. This is an area where the County might help to make the case for changes in State law or Ecology policy that would facilitate use of the cluster ordinance.
- The suggestion was made in our public meetings that landowners who have water rights in a stream crossing their property ought to be allowed to use that stream for small scale hydropower generation where there will be no harmful effect on downstream or in-stream uses or on other environmental values.

## **h. Right to farm**

**Rationale:** Klickitat County reviewed and rewrote its Right to Farm ordinance not long ago (Ordinance #0-60595) and most participants in our public meetings were of the view that the current ordinance is a good one. The current law essentially implements the State Right to Farm law (RCW 7.48.300 - .310) which was amended to improve nuisance protections for farmers in 2007. It is not clear whether this 2007 amendment of the State law might occasion a need to, again, reexamine the Klickitat County ordinance.

The private property rights of potential plaintiffs in nuisance lawsuits arise out of common law and are protected under the U.S. Constitution. To the extent one can legislate in this area, the State Right to Farm law probably also supersedes the County's authority. So there are limits to the County's legal authority to write ordinance protections for farmers against nuisance lawsuits. Nonetheless, some matters arose during the public discussions on Right to Farm laws that seemed potentially to offer a way to enhance protections for farm operations. And there are other steps, beyond a rewrite of the ordinance, which might also offer some relief.

**Community support:** Agricultural landowners broadly support strong right to farm legislation, and there was positive community reaction to improvements in the County's right to farm laws, insofar as that is legally possible and reasonable.

## **Recommendation 20 – Right to farm ordinance improvements**

Research, consider, and, if possible, amend the Klickitat County Right to Farm ordinance to include whichever of the following features seem practical:

- A requirement that information be provided, prior to sale, to buyers of real property located in or adjacent to an agricultural zone that specifically advises the buyer of potential "enjoyment" issues that may exist on the property they are considering buying, which issues exist by reason of the lawful conduct of agriculture activities on nearby lands and of the fact that their rights to sue for nuisance because of these activities are limited by law.
- A requirement that, prior to sale of such properties, the buyers be required to sign a statement acknowledging that they have read and understand the above information and also a requirement that this signed statement be recorded in the public records of the County related to that sales transaction.

- A requirement that the above-described statement also contain a specific legal waiver of any potential claim of nuisance for lawfully conducted agricultural activities and that this waiver be also signed by the buyer and the statement be filed of record with the County.

#### **Notes and issues 20 – Right to farm ordinance improvements**

- A legal review will probably be needed to ascertain which of the above additional requirements would be constitutional and consistent with Washington State law.
- With respect to the third bulleted requirement above, requiring buyers of properties in or near agricultural zones to legally waive their nuisance claims, if legal, might have an impact on the value of the land – a concern that was expressed at our public meetings.
- It was also suggested at our public meetings that, in doing any rewrite, care needs to be taken not to undermine or weaken the existing law.
- Note that one of the recommendations of the Farmland Preservation Task Force would be for the Office of Farmland Preservation to write a model county right to farm ordinance that local counties might choose to copy or from which they could draw ideas. The Task Force report will, apparently, also contain an appendix of existing right to farm ordinances from around the State which might provide an excellent resource in any rewrite.

#### **Recommendation 21 – Public education about right to farm**

Educate and inform the public about Right to Farm issues and about the lawful rights of agricultural producers to conduct usual and accustomed farming practices on their land without facing claims of nuisance, including:

- A notification explaining the farmers' rights to farm should be included with mailing of the annual real property tax statement that is sent out to owners of properties that are located in or adjacent to lands on which agriculture is a lawful activity.
- The County should publish a pamphlet/brochure outlining the farmers' rights to farm and help make sure it is broadly distributed to the public at appropriate venues and opportunities.
- Seek and implement other opportunities to educate the public about the farmers' rights to farm as may be workable and appropriate.

### **i. Farm transition**

**Rationale:** Every transition of ownership of an agricultural business (and of the land it owns) involves the risk that the land will fall to non-farm uses. With high non-farm values on that land, this risk is substantial. Helping farmers and ranchers who prefer to sell or otherwise convey their land to another farmer or rancher to make these transitions occur as seamlessly and effectively as possible can increase the likelihood that the land will continue in agriculture.

To accomplish these transitions, many farmers can benefit from good advice and counsel concerning legal and accounting issues like trust, estate and taxation planning; with professional business planning; or, with professional advice on potential land use and/or development options that may be available (e.g. clustering and easements). There are educational programs that bring in knowledgeable lawyers, accountants, business planners and other specialists in farm business transition matters for workshops and to publish educational materials to aid with transition

issues. There are also programs available that facilitate mentoring relationships between retiring farmers and new, potentially inexperienced farmers who wish to buy and operate a farm but who may need guidance from the current owner to do so. And there are programs – other than realtors – that keep updated listings of farms and ranches for sale and of interested farm buyers and attempt to match buyers and sellers specifically for the purpose of helping to keep land in agriculture.

Various public agencies and private nonprofits currently provide these educational and other services including the Washington Department of Natural Resources, Farm Credit Services, local conservation districts, various producer associations, the Washington Office of Farmland Preservation, and the Washington FarmLink program. These programs and organizations often subsist on charitable contributions or small contracts but can provide significant help for farmers facing transition issues.

Community support: Participants in our community meetings generally indicated that farm transition was a significant issue and broadly supported taking some actions that would be helpful in helping farmers make these transitions.

#### **Recommendation 22 – Transition services**

Provide support to groups and agencies (farm organizations, conservation districts, and others) that can provide farm transition education and informative written materials available to local farmers interested in or concerned about farm transition issues.

### **j. Outstanding proposals from the community**

At our public meetings process, comments were received concerning two specific proposals currently being considered that would help farmland preservation in the Klickitat County community. Both of these outstanding proposals were written primarily to address needs associated with current zoning in the County. Both offer creative ideas for addressing some of the specific issues discussed above, so they provide an opportunity to illustrate how some of the above suggestions might be made to work together in practice.

- **Jacob Anderson proposal:**

Jacob Anderson, a farmer/rancher from the Trout Lake area, has proposed that the County allow the creation of a new type of agriculture “zone” that could be made available to those landowner(s) who request to be included in such a zone. Participation/inclusion in this new “zone” would be strictly voluntary for the landowners affected. Being included in the zone would be an additional option that would be available if the landowner desired to use it. If a landowner or group of adjacent landowners selected this option for their lands, a separate new set of rules for subdivision, etc., would apply to their properties.

Anderson’s proposal received some discussion at the six public meetings we conducted and has also had a good deal of public input in other previous forums, including a special High Prairie community meeting held October 9, 2008. The essence of the proposal is an effort to use a number of existing zoning tools in combination to minimize or eliminate the negative impacts of several of the concerns discussed in the above Report and that currently limit farm landowners’

ability to protect their land for farming or ranching while still being allowed to draw revenue from some, limited sales of residential parcels. (The proposal itself is quite complete and is attached as Appendix H). So, for example:

- (1) Use of the short plat process: Landowners would be able to use successive short plats scheduled in such a way that, over time, they would be able to draw revenue from small subdivisions while ultimately ending up being able to develop the full number of allowable parcels currently allowed for their land.
- (2) Scheduling: Permission for subdivision would be essentially automatic on a predictable schedule so the landowner could plan for the future, factor anticipated parcel sales into their ongoing business decisions, and use the potential for such sales as a part of their security when credit is needed.
- (3) Clustering: Clustering would be encouraged by making the cluster approval easy, by minimizing the potential impact of current use taxes in land converted out of agriculture, and by facilitating the use of exempt wells without the need (at least under current law and Department of Ecology procedure) to secure a water right in order to get a permit for each small cluster.
- (4) Slowing the rate of subdivision: Because subdivisions would only be allowed on an established schedule, the process slows the rate of subdivision over time rather than encouraging it to occur in large clumps or large individual developments.
- (5) Protecting farmland: Because clustering is used, and because there are incentives for the small residential (2-5 acre parcels) to be located away from prime farmland and in locations that do not interfere with agriculture, the proposal results in larger and higher quality land parcels being preserved and available for agriculture in the long term.
- (6) Protection from future zoning change: The proposal calls for a requirement that owners of 80% of the land within the zone approve any future zoning change. (It should be noted, however, that what the County Commission can do in the first instance, it seems likely it may be able to undo at some point in the future.)
- (7) Grants for clustering expenses: The proposal also includes a provision for the County to provide small grants to landowners to cover their higher costs of clustering and/or to pay or forgive the back taxes and penalties due on conversion of land out of the current use program if the landowner chooses to cluster.

The use of voluntary agricultural districts where participating landowners are provided with special incentives to join but also, in exchange, give up some development potential is commonly used in some parts of the country. Not all landowners will be interesting in participating in such a “district” or “zone,” but those who can help protect the land and slow the rate of development. (See the Agricultural Districts “Fact Sheet” provided as Appendix J to the Issues and Options Discussion Paper which is, itself, also made an Appendix to this Report.)

Jacob Anderson’s proposal offers several creative ideas that deserve close consideration by the community.

- **Trout Lake Cluster/Extensive Agriculture Zone proposal:**

Citizens in the Trout Lake area have offered this proposal as a way to preserve agricultural lands while preserving allowed overall density. There are several features to the Trout Lake Cluster proposal (attached as an Appendix), but one of them stands out as an interesting mix of zoning

and permanent protection through the use of a covenant: the future protection of the “parent” – agricultural parcel would be protected by covenant.

The potential for future zoning changes (and buyer speculation that such changes might occur) can drive up the cost of the agricultural “parent” parcel in the years that follow a clustering development. This especially becomes true as that larger “parent” parcel ends up more or less surrounded by non-farm residential properties and owners and potential buyers begin to eye that remaining farm for what it might be worth “if only” it could be divided up and developed. This can happen despite the fact that the existence of that large, undeveloped farm may be providing much appreciated open space to the surrounding communities and desirability value to the properties in its immediate vicinity.

So, the use of a covenant to permanently protect these cluster “parent” agricultural parcels seems worthy of consideration.

#### **4. Summary and Conclusions:**

This project has been undertaken with the objective of helping Klickitat County residents and the Klickitat County Commission identify “doable” actions that could be implemented with limited public cost and with, hopefully, limited controversy. The problem of preserving a future for agriculture is not, however, an easy one to solve in the face of market pressures that make farmland worth perhaps 8 times more to non-farm buyers than it is worth for farmers.

Even so, these suggestions would provide a meaningful start at addressing these problems. In our view, and quite clearly in the view of the many Klickitat County residents who participated in our public meetings last October and November, the agriculture industry is worth the effort.

Respectfully submitted:

Don Stuart  
American Farmland Trust.

## **List of Appendices**

- A. Notice of Public Meetings**
- B. “Options and Issues for Protecting Agricultural Lands in Klickitat County”**
- C. Appendices A – O to “Options and Issues” discussion paper**
- D. Notes of discussions at public meetings**
- E. Topical list of public comments at public meetings**
- F. “Protecting Agriculture and Agricultural Lands” - PowerPoint presentation at October public meetings**
- G. “Protecting Agriculture and Agricultural Lands” - PowerPoint presentation at November public meetings**
- H. Jacob Anderson farmland preservation proposal**
- I. Trout Lake Cluster/Extensive Agriculture**

**Public meeting notice:**

## **Keeping Farmland Available for Klickitat County Agriculture**

Klickitat County is sponsoring a series of six public meetings in October and November 2008 to learn the public's input, preferences, ideas, and suggestions about how our community might better protect its open farm and ranch lands and keep them available for agriculture.

**Meeting times, dates, and locations:**

All meetings will be held **6:30 p.m. to 8:30 p.m.** at the following dates and locations:

- **Centerville Grange #81, 2288 Centerville Highway, Centerville, WA 98613**  
(Central Klickitat County)
  - Tuesday, October 21, 2008
  - Tuesday, November 18, 2008
- **Mountain View Grange #98, 1085 Main St., White Salmon, WA 98672**  
(Western Klickitat County)
  - Wednesday, October 22, 2008
  - Wednesday, November 19, 2008
- **Alder Creek Grange #890, Main Street, Bickleton, WA 99322**  
(Eastern Klickitat County)
  - Thursday, October 23, 2008
  - Thursday, November 20, 2008

**Informational materials available:**

A written discussion paper with background information on issues and options for supporting and protecting local agricultural lands, and other materials, will be available in advance of the meetings on line at the Klickitat County Planning website at: [www.klickitatcounty.org/planning](http://www.klickitatcounty.org/planning) and on paper at the meetings.

**Who should attend:**

Citizens who care about the future of agriculture and of agricultural lands in Klickitat County are welcome to attend and participate. There will be a brief explanation of the process and introduction of the issues, but the bulk of the meeting will be a facilitated discussion by those attending in which they can express their views, ideas, concerns, and suggestions.

**Written comments:**

Written comments are also welcome. They should be sent to Don Stuart, American Farmland Trust, 3211 Beacon Ave. S #26, Seattle, WA, 98144 or by email to: [dstuart@farmland.org](mailto:dstuart@farmland.org).

**Deadline:** Wednesday, November 26, 2008.

**For further information, please contact:**

Don Stuart  
American Farmland Trust  
(206) 860-4222  
[dstuart@farmland.org](mailto:dstuart@farmland.org)

or

Pat Arnold  
Green Pastures Farm  
(509) 395-2233  
[greenpastures@gorge.net](mailto:greenpastures@gorge.net)



# Options and Issues for Protecting Agricultural Lands in Klickitat County

Prepared to help stimulate discussion for  
Klickitat County Farmland Protection Process meetings:  
October 21, 22, and 23, 2008  
November 18, 19, and 20, 2008

## **Introduction: The land input for agricultural businesses:**

The success of any business turns upon its ability to assemble the inputs required for profitable operation. For agriculture,\* these might include land, capital, labor, water, energy, innovation, marketing, management, etc. (See Appendices A & B) Land, in particular, often emerges as a critical issue – as a core necessity for agriculture and an especially costly one. Land is usually at the heart of a farming operation so it takes on special importance for most farmers. And, since continued use of land in agriculture is hugely important for the broader community, non-farmers also have an interest in the continued success of agricultural businesses. (See Appendix C – Why Save Farmland?)

To have value as a farm business input– the land must be useful for the particular agricultural operation in several ways:

- **Affordability**: It must be available at a price that can be afforded the farm enterprise.
- **Productivity**: It must possess soil, climate, and other conditions that will make it productive.
- **Location and contiguity**: It must be appropriately located for the particular farm and, in some cases, located near or adjacent to particular public or other private agricultural lands to minimize conflicts with neighbors or to facilitate management between parcels.
- **Size**: It must of a size appropriate to and useful for the intended use.
- **Zoning**: It must be zoned appropriately and hopefully protected by right-to-farm laws.
- **Sustainability**: Its productivity must be sustainable with management at a reasonable cost and without undue restrictions on its use.
- **Timing**: It must be available at a time when the farmer has the desire and the capacity to buy.

Of course land is but one among many requirements for a farm business. But having the right land is critical. And with increased competition from other, more land-intensive uses, the land base can become fragmented and the right land can move out of reach for most farmers.

If agricultural lands are to continue to be available for farm and ranch businesses, we will need to understand and employ as many as possible of the options for protecting them as possible. (See Appendix D – The Farmland Protection Toolbox.) The items that follow explain each of several approaches currently in use to support the availability of key farmland for agriculture – particularly here in Washington. Of course everything having to do with farms, in one way or another, affects farmland. The focus here is generally limited to those approaches and programs that are, more-or-less directly, focused on helping assure the long term availability of land for the agriculture industry.

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\* Forestry issues can also be a part of this discussion – the issues associated with forest lands are quite similar to those associated with agriculture.

# Summary of Options

## **A. Regulatory zoning**

**Pg. 4**

Regulatory zoning prevents the further fragmentation of important agricultural lands. It also tends, to some degree, to dissuade non-agricultural buyers who do not wish to own, or cannot afford to buy, larger parcels of land.

## **B. Purchase of development rights**

**Pg. 6**

A purchase of development rights (or PDR) is a voluntary transaction in which a landowner is paid a negotiated market price in exchange for placing an easement restriction on his or her land that will prevent its subdivision or development in ways inconsistent with agriculture.

## **C. Transfer of development rights**

**Pg. 8**

Transfer of development rights (TDR) programs allow landowners to sell their rights to residential development at a fair market price to another party, usually a developer, who transfers those rights to a more urban location and is allowed to use them to increase residential density there.

## **D. Donated agricultural conservation easements**

**Pg. 10**

A donated agricultural easement works like a purchased one – a restriction is placed on the title to the land, usually in perpetuity. It can prevent those future uses that the landowner believes should be restricted. The donation is charitable for tax purposes and is generally made to a land trust.

## **E. Right to Farm laws**

**Pg. 11**

A right to farm law provides some limited immunity to farm landowners from nuisance lawsuits brought by neighbors complaining about the side effects of active agriculture such as noise, odor, dust, long working hours, etc.

## **F. Market demand and economic development**

**Pg. 12**

One way to assure agricultural lands are preserved is to strengthen the agricultural business. In particular, a marketing program that builds consumer support for local farm products can help enhance the profitability of the local farms that produce them. Community-level economic development strategic planning for agriculture is another way to support local farm businesses.

## **G. Limiting taxes - current use taxation**

**Pg. 15**

Current use taxation recognizes that a viable farm business can only afford to pay property taxes on land at a level commensurate with its productivity for agriculture. Under a current use tax system, farmers and ranchers are required to pay property taxes based on the agricultural value of their land, not on its fair market value. Other tax breaks for agriculture can also be provided.

## **H. Supporting environmental sustainability**

**Pg. 16**

Strong, readily available conservation cost share and technical assistance programs can help farmers deal with environmental costs, reduce their regulatory pressure, improve their profitability, and potentially provide an added source of farm revenue.

## **I. Assisting with farm transition**

**Pg. 21**

Farm transition programs help farmers deal with the complications of transitioning ownership/operation of a farm to a new owner. They provide education, legal, accounting, counseling, and other resources, and they can keep listings of farms available for sale and of people interested in beginning in farming to help make early connections between retiring farmers and those who wish to take over their operation.

**J. Credit to buy farmland**

**Pg. 22**

Agricultural credit programs, through institutions like Farm Credit Services, seek to provide a dependable source of credit, from lenders who are expert in the complications of agricultural businesses, and at a reasonable cost using federally assured credit markets.

**K. Reducing the impacts of government action**

**Pg. 23**

Government impacts on agriculture through condemnation, land transactions, environmental restoration, regulations, or other government actions can also affect the preservation of agriculture and of agricultural lands. Farmland Protection Policy Acts can establish government policies that minimize these impacts, require thoughtful criteria before allowing them, and establish processes and public input before such actions are taken.

**L. Access to public lands**

**Pg. 24**

The success of some of agriculture, the cattle industry in particular, depends heavily on access to public lands. Easement programs, land use laws, agricultural districts, and the other agriculture lands protection mechanisms discussed here can at times be applied in ways that target properties or activities that protect and assure that access.

**M. Agricultural districts**

**Pg. 25**

Agricultural protection district programs provide voluntary incentives to motivate adjacent farm landowners to join together in protecting significant areas of contiguous land for agriculture. In exchange for their participation, landowners may receive special protections, land use or other accommodations, and access to programs offered to encourage and support agriculture.

## **A. Regulatory zoning**

Washington's regulatory zoning under the Growth Management Act preserves land for agriculture by prohibiting subdivision to parcel sizes smaller than would be useful for agriculture. This prevents the further fragmentation of important agricultural lands. It also tends, to some degree, to dissuade non-agricultural buyers who do not wish to own, or cannot afford to buy, larger parcels of land. Targeting agricultural zoning to specific areas of important agricultural lands is one of the few techniques for protecting farmland that can directly help to assure the availability of large contiguous areas of land dedicated to agriculture. There are other means that can protect individual parcels – perhaps sizable ones. Zoning in Washington does not, however, require that farm-zoned lands be used for farming. (See Appendix L – Agricultural Protection Zoning.)

Klickitat County is required, under GMA, to identify important agricultural lands. But it is not necessarily required to protect them, although that is optional if the county desires to do so. GMA does encourage the use of innovative land use management techniques like density bonuses, cluster housing, and transfer of development rights. (See below.)

Beyond, and in addition to, simply requiring a large minimum lot sizes in substantial, contiguous areas of agriculture, there are other zoning tools that can also be useful in preserving agriculture. For example:

- **Density bonuses**: Density bonuses allow developers to build more units than would normally be allowed in a zoning district in exchange for preserving and enhancing designated resources or providing other public benefits. For example, a developer might be allowed to exceed density requirements in one location (perhaps one that is already somewhat developed) in exchange for protecting an area for large-parcel agriculture nearby or in another location.
- **Cluster zoning**: This is a type of zoning in which density is determined for an entire area, rather than on a lot-by-lot basis. Within the cluster zone, the developer can have greater flexibility in designing and placing structures so long as the overall density requirement is met. For example, a developer might be allowed to develop a 200 acre parcel zoned 1-20, but do so by clustering the 10 home sites on 10 adjacent two-acre lots, leaving the remaining 180 acres protected for potential agriculture.
- **Transfer of development rights**: This is a technique that allows developers to build to higher than currently allowed density in designated urban “receiving areas” if they purchase and retire “development rights” in designated agricultural “sending areas.” (See details in section C, below)

For example, Klickitat County residents Monte Pearson, Robert Schmid, and Hans Wintelich of the Trout Lake Sub-Area Plan Committee have proposed cluster zoning to allow development of clustered non-farm lots of 1-2 acres on “parent” parcels of at least 40 acres while preserving at least 90% of the farmable area or 75% of the total area for a larger, agricultural parcel. Current overall densities of 1 residence per 20 acres would be maintained. Thus, for example, a farmer owning 40 acres could, if desired, develop a 2-acre non-farm home site situated to minimize interference with farming and on that part of the land least suitable for agriculture. The other 38 acres would be retained for a farm dwelling and for agriculture. Or the owner of 200 acres might develop 9 one-acre non-farm parcels. The remaining 191 acres could include the farm dwelling. In these examples, the larger farm parcels would be preserved by covenant from further subdivision.

### *Issues and limitations:*

- Financial impact on existing landowners: When zoning changes, existing landowners can be financially affected, sometimes gaining a financial windfall (e.g. with increased density), and sometimes suffering a financial loss (e.g. if allowed density is reduced). These gains or losses can be substantial. They can easily seem unfairly generous or punitive for landowners who own the property at the time of the change. Subsequent owners, of course, presumably purchase the land knowing of its current zoning.
- Lack of certainty: For zoning to successfully keep land prices in an agricultural zone at a level that will be affordable for the farmers who might wish to own it, that zoning must be seen by everyone as stable and certain over time. If buyers can anticipate that zoning density may increase, or if they can potentially influence future zoning, speculation will drive the price up and can erode the effectiveness of the zone in accomplishing its purpose. There can often be political pressure to increase zoning density.
- Political resistance: Because of the impacts on current landowners, zoning restrictions are politically difficult to impose and are often less aggressive than they need to be to accomplish the designated purpose. The average farm in Washington is 458 acres. But the largest parcel sizes zoned for agriculture in Washington are mostly in the range of 35-40 acres. There is a good deal of agricultural zoning at 20 (e.g. in Klickitat County), 15, 10, and even 5 acre parcels. Even in the agricultural zones, many of the parcels are grandfathered in at much smaller sizes. And a good deal of the roughly 15.1 million acres currently in agriculture in this state is actually being conducted in “rural” or other non-agricultural zones.
- No requirement to farm: Because zoning can have such direct impact on landowners, Washington has not required (like Oregon) that a parcel in an agricultural zone be farmed for a residence to be built upon it. To do so would place even further financial burdens on the owner – something the political community has been reticent to do. As a result, large farm parcels can still be used as so-called “country estates.” Often, residential buyers can easily afford to out-bid a farmer for the land even if the parcel size is larger than they particularly need.

### *Current programs:*

- Washington has a statewide Growth Management Act (GMA), RCW Ch. 36.70A. Implementation of the GMA is the responsibility of participating local governments (Klickitat County partially plans under the GMA) guided by regional Growth Management Hearings Boards which provide administrative court interpretation of the requirements of State law. The Washington Department of Community, Trade, and Economic Development [Local Government Division, Growth Management Services <http://www.cted.wa.gov/site/375/default.aspx>.] facilitates implementation of the Act and provides support and guidelines for local communities in fulfilling its requirements. **Contact:** Leonard Bauer, Managing Director, Growth Management Services, (360) 725-3055, [leonardb@cted.wa.gov](mailto:leonardb@cted.wa.gov).
- Klickitat County Planning: Klickitat County is one of the Counties that has opted out of certain requirements in the State’s Growth Management Act, but it still does do partial planning and has adopted certain land use rules for the protection of agriculture (<http://www.klickitatcounty.org/planning>). **Contact:** Curt Dreyer: Director, Klickitat County Planning Department, Annex I, 228 W Main, MS-CH-17, Goldendale, WA 98620, (800) 765-7239, (509) 773-5703, [planning@co.klickitat.wa](mailto:planning@co.klickitat.wa).

## **B. Purchase of development rights**

A purchase of development rights (or PDR) is a voluntary transaction in which a farmer/seller is paid a negotiated market price in exchange for placing a restriction on his or her land. This restriction usually takes the form of an “agricultural conservation easement” that will prevent future subdivision and development. The easement can be written to apply to whatever portion of the land is mutually desired and can contain whatever restrictions are agreed upon. The market value paid for the easement-restriction is the difference between the full fair market value of the land and its value subject to the restriction. The seller remains the owner in fee simple. But following the transaction, the land can no longer be subdivided or developed in ways inconsistent with agriculture. So when it next sells, it will sell at a reduced price – usually a price that reflects its value for agriculture. The owner, of course, receives full payment for the reduced value which can be invested as he or she sees fit – for example, in additional land, in the business, in a retirement plan, etc. Payment for the easement can be made in cash, or can be deferred over time.

PDR programs are generally established by governments and funded through taxes (although see TDR, below). Interested farmers are invited to apply to the program. Usually there are criteria for participation that may give priority for certain soils, locations, circumstances, or characteristics of the land or farm. Because the seller of an easement remains the fee simple owner, these programs keep land in private ownership. If the owner is already enrolled in Washington’s current use tax program, the assessed value will generally stay the same with no change in property taxes. (See generally: Appendix F – Agricultural Conservation Easements, and Appendix G – Purchase of Agricultural Conservation Easements.)

### ***Issues and limitations:***

- **Property rights:** Participation in PDR programs is voluntary, and landowners receive payment for the impact on the value of their land.
- **Cost:** PDR programs can be expensive. This is why most such programs are usually targeted on the lands which seem most important to protect.
- **Funding:** Because funding may be limited, it can be difficult for the PDR program to assemble enough protected land from voluntary sellers in key locations that it can fully protect contiguous areas or address key policy needs.
- **Excess demand:** Also because of lack of funding, a PDR program may be unable to keep up with farmer demand to sell easements. There may be long waiting lists and missed opportunities to protect important land.
- **Long perspective:** These programs must take a long view – making a few acquisitions each year pursuant to a long-term vision for the protection of agriculture. There needs to be a matching long-term resolve on the part of the community to assure its willingness to continue with the acquisition program over time.
- **Ongoing investment in monitoring.** Monitoring and enforcing easements requires a continuing investment of time and resources.
- **Slow process:** These acquisitions can be time consuming and the process cumbersome making them a less-than-perfect solution if the landowner is in a hurry. For example, the WWRP program (below) is only open for applications every other year, and it can be as long as 16-18 months between application and a final decision.
- **Focus on agriculture:** PDR programs seem to work best when they are focused most on the needs of agriculture rather than when they are designed to address other public needs and when



protecting agriculture is a secondary purpose. Without an agricultural focus, the program may tend to ignore key priorities of a successful farming industry, such as:

- Vigorous availability of the program in the areas of a where agriculture is most prevalent;
- Respect and account for local differences in needs of the industry;
- Capacity to step in quickly when an important property is threatened;
- Ability to consistently pay the full difference between market and agriculture value;
- Priority for farmland contiguous with other farmland;
- Recognition of the necessary relationship with nearby agricultural infrastructure businesses like processors, suppliers, and support services; and
- Determination to keep a program available over time rather than bonding out the revenue and spending it all at once but having the program only available for a short period.

***Current programs:***

Current PDR programs that might now be available to Klickitat County farmers include the following:

- **Federal Farmland Protection Program (FPP) (formerly FRPP):**  
The recent Federal Farm Bill renewed and increased funding authorization for the FPP which could double over the next 5 years. This program will pay up to 50% of the cost for purchases of agricultural easements by a local PDR government program or land trust. There can be as much as several million dollars available from this source annually here the State of Washington. FPP funds can be matched by private, county, or state funds. And up to 25% of the purchase price can be contributed by the landowner (if so desired) in the form of a bargain sale. FPP will not pay for program or administration costs. For more information, see: <http://www.nrcs.usda.gov/programs/frpp>. **Contact:** Jeff Harlow, Soil Conservationist, NRCS Olympia Office, (360) 704-7784, [jeff.harlow@wa.usda.gov](mailto:jeff.harlow@wa.usda.gov)
- **Washington Wildlife and Recreation Program(WWRP) Farmland Protection Program:**  
In 2005, a farmland protection program was added to the WWRP. It pays up to 50% of the cost of purchasing an agricultural conservation easement. (This funding can match the Federal FPP funding to cover the full acquisition price.) The WWRP program is funded biennially in Washington's budget (odd) year. Applications are submitted to the Washington Recreation and Conservation Office (RCO) early in even-numbered years. They are evaluated and placed on a priority list and will receive funding in priority order, based upon the amount of the appropriation provided by the subsequent Legislature. WWRP will not pay for program or administrative costs. Applications are required to be received from local counties on behalf of the landowner so the county must be willing to participate – at least to the extent of submitting the application. See: [http://www.rco.wa.gov/documents/Manuals&Forms/Manual\\_10f.pdf](http://www.rco.wa.gov/documents/Manuals&Forms/Manual_10f.pdf). **Contact:** Kammie Bunes, Washington Recreation and Conservation Office, (360) 902-3019, [Kammie.Bunes@rco.wa.gov](mailto:Kammie.Bunes@rco.wa.gov)
- **Washington Office of Farmland Preservation:**  
The 2007 Legislature created a new Office of Farmland Preservation within the Washington State Conservation Commission. The office was tasked with developing a plan for the preservation of farmland in Washington. (See SB 5108.) As this plan is being developed with the help of a statewide Task Force, the new office is also providing technical and other assistance to citizens and local communities in creating new local programs. Klickitat

County's own Jacob Anderson represents South Central Washington as a member of the Task Force. **Contact:** Josh Giuntoli, Washington State Conservation Commission, (360) 407-6200, [rshu461@ECY.WA.GOV](mailto:rshu461@ECY.WA.GOV)

- **County programs:**  
Since both the State WWRP and Federal FRPP programs require a match, neither can be used alone. But funding from each can potentially match funding from the other so, in theory at least, no additional funding is required. There are a few independent county programs around Washington (most notably in Whatcom, San Juan, Skagit, King, and Pierce Counties). Counties have the authority to adopt a small increase in property taxes to fund such programs locally, if they wish. While there is no county-level program here in Klickitat County, an interested farmer can apply to the WWRP and FRPP programs if the County is willing to officially sponsor the application. (Counties are required to be the applicants under the WWRP Program.) Klickitat County Planning Department (<http://www.klickitatcounty.org/planning/>) would be the starting point for a request for County involvement. **Contact:** Kurt Dreyer, Klickitat County Planning, 800 765-7239, [planning@co.klickitat.wa.us](mailto:planning@co.klickitat.wa.us).
- **Other State or Federal agencies:** Upon occasion, when the circumstances are appropriate, government agencies other than those specifically associated with agriculture may find money to preserve agricultural lands – when doing so can serve some specific need related to their particular mission. For example, the Washington Department of Fish and Wildlife or the National Fish and Wildlife Service have, occasionally, purchased easements on agricultural lands when some specific habitat or other environmental goal was threatened by its conversion. The easements required by such purchases will, of course, focus on preserving the environmental or other value sought by the agency. But this often turns out to be quite possible while still preserving continued successful agriculture on the property.
- **Private PDR funding – land trusts:** Upon occasion, some land trusts or other private charitable funders will be willing and able to purchase agricultural conservation easements. More often, however, land trusts will lack the funding needed to make such acquisitions. (See discussion of land trusts under D. Donated Easements, below.) And private charitable money to do is rare. Also, most land trusts are focused more on the preservation of natural habitat than on preserving working lands – although it is important to realize that most do also include protection of agricultural lands as one of their areas of interest and many are quite familiar with the needs of agriculture and have a good deal of experience dealing with farmers. A local land trust may also be willing to help a farmer assemble a purchase transaction that could be funded through some government agency or program. The Columbia Land Trust, which operates in Klickitat County, has a very good reputation for working with agriculture. See: <http://www.columbialandtrust.org/>. **Contact:** Lindsay Cornelius, Columbia Land Trust, 360-213-1212, [lindsayc@columbialandtrust.org](mailto:lindsayc@columbialandtrust.org).

### **C. Transfer of development rights**

Transfer of development rights (TDR) programs allow landowners to sell their rights to residential development at a market price to another party who may use those rights to increase residential density in a more urban location. Such transfers draw upon the frequent wish of developers to build to densities higher than already allowed or to obtain other land use accommodations that will make a project more profitable. Often, local governments (and the communities they serve) are



willing to accept additional densities in one place in the community or to adapt existing rules for a particular project if, in exchange, the developer will pay an extra premium to help reduce densities elsewhere – for example, to protect farm or forest lands. The term “development right” usually refers to the right to build one residence for a family but it can be used in other ways as well. A TDR program will generally designate “receiving areas” where increased density may be allowed in the form of additional “development rights” if the developer has acquired those rights by purchasing them from a landowner in a designated “sending area” where less density is in the public interest. (See Appendix H – Transfer of Development Rights.)

For example:

- A county might require that development of any properties newly included within an expanded urban growth boundary be supported by development rights purchased by the developer from landowners in a designated agricultural sending area. Because of the increase in allowed density resulting from the urban boundary expansion, the newly included landowner receives a windfall in new value. Through TDR, some of that value is used to support reduced density in the designated agricultural sending area. Pierce County recently adopted an ordinance that will work in this way. <http://www.co.pierce.wa.us/xml/Abtus/ourorg/council/2007-91s%20final%20ord.pdf>
- A small city whose economy, character, and identity, are closely tied to the existence and economic health of surrounding farms may require new development projects within the city to purchase development rights from farmers in the surrounding agricultural countryside to protect it from sprawl. For example, the City of Arlington is currently working with Snohomish County to create such a program. See Mayor Margaret Larson’s description at: <http://www.ci.arlington.wa.us/index.asp?NID=88> and the explanation on Snohomish County’s website at: [http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR\\_Planning/Projects\\_Programs/Agriculture\\_Resources/Transfer\\_of\\_development\\_rights.htm](http://www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Projects_Programs/Agriculture_Resources/Transfer_of_development_rights.htm)

#### ***Issues and limitations:***

- **Lack of demand:** A strong TDR program depends upon a strong growth management program. It is difficult to make TDR work if development rights are already readily available with few restrictions.
- **Resistance to density:** Of course a major objective of growth management is to concentrate density in some areas and to protect others. But despite the potential conveniences and advantages, residents of urban areas do not, necessarily always happily embrace more density. They may resist designation as a receiving area for a TDR program just as they might resist an increase in zoning density generally.
- **Lack of motivation:** For TDRs to make sense, the receiving community needs to want to protect the farm, forest, or other open lands that will be sending areas under the program. Many times this motivation is limited.
- **Complexity:** TDR transactions are complicated and time-consuming, which can make them slow and/or costly. There is a need for clear rules and public institutional support if TDR programs are to become cost efficient.

***Current programs and contacts:*** Some communities around the State have adopted (or are developing) TDR programs of various types. Two examples are provided above with web information.

#### **D. Donated agricultural conservation easements**

Most land trusts will accept donated agricultural conservation easements from those landowners who wish to make such a donation. A donated easement works like a purchased one – a restriction is placed on the title to the selected land generally for perpetuity. It can prevent those future uses that the landowner and the land trust agree should be restricted. While most land trusts will be somewhat more focused on other environmental values than on agriculture itself, most are also quite familiar with agricultural easements and may have considerable experience dealing with farmers and may care deeply about agriculture.

The charitable donation of an easement to a land trust may have tax advantages: For example, there may be a charitable income tax deduction for the amount of the landowners reduced land value and other contributions and expenses in the transaction. There may also be a reduction in the value of the landowner's estate that could reduce inheritance/estate tax liabilities.

In addition to the value loss resulting from contributing the easement itself, the landowner is likely also to incur other associated expenses. The land will need to be surveyed. For tax purposes, an appraisal will be needed of its value before and after the transaction. There are likely to be professional costs for tax accountants, attorneys, title insurance, and escrow. The land trust may need a contribution to cover its own expenses in completing the transaction. There will usually be a necessary contribution to a "stewardship" endowment account that will cover long-term monitoring and enforcement of the easement. All of these costs may be tax deductible, but they certainly add expense. (See Appendix F – Agricultural Conservation Easements.)

#### ***Issues and limitations:***

- Charitable capacity: Many landowners are either unable or unwilling to make charitable contributions of this magnitude.
- Land trust priorities: The level of interest of a land trust in any particular farmland transaction may depend on its own priorities.
- Strategic protection: It is difficult to use donated easements to protect large contiguous areas of agriculture in multiple ownerships or to focus on other strategic policy considerations because of limited options in selecting which farms will be protected.
- Landowner cost: Even if a landowner wishes to donate an easement, he or she may still lack to cash resources for the associated contribution, stewardship endowment, and transaction costs.
- Public cost: There is no particular public cost associated with a donated easement – it can provide a public benefit with no current burden on taxpayers.
- Coordination with land use planning: Donated easements are not necessarily coordinated with long range land use planning as are public PDR or TDR programs.

#### ***Current programs:***

- The Columbia Land Trust is a strong, respected land trust working in the Klickitat County area. See: <http://www.columbialandtrust.org/>. **Contact:** Lindsay Cornelius, Columbia Land Trust, 360-213-1212, [lindsayc@columbialandtrust.org](mailto:lindsayc@columbialandtrust.org).

- The Washington Association of Conservation Districts is currently forming a statewide land trust that will specifically focus on protecting working natural resource lands. Contact: John Larson, Executive Director, [wacd-exec@wa.nacdn.org](mailto:wacd-exec@wa.nacdn.org), (360) 754-3588 x125.
- The Washington Cattlemen's Association is also in the process of either forming a statewide land trust or joining in a regional effort with the Oregon Rangelands Trust. To learn the status of the Washington Cattlemen's efforts, contact: Jack Field, Executive Director, Washington Cattlemen's Association, (509) 925-9871, [jfcattle@kvalley.com](mailto:jfcattle@kvalley.com).
- There are also some nationwide land trusts that may be appropriate for a particular landowner's needs: These include: The Nature Conservancy: [www.tnc.org](http://www.tnc.org), Trust for Public Lands, [www.tpl.org](http://www.tpl.org), and American Farmland Trust, [www.farmland.org](http://www.farmland.org).
- The Land Trust Alliance's website contains a locator that can help find land trusts in various places around the country at: <http://www.ltanet.org/landtrustdirectory>. LTA is a national organization that supports and certifies local land trusts.

## **E. Right to Farm laws**

As agricultural lands are fragmented and surrounded by inconsistent residential uses, farmers become the target of nuisance lawsuits. These suits may be driven by concerns about noise, the use of pesticides, fertilizers, or other chemicals, odors from livestock operations, or a host of other complaints that may be largely unavoidable as a normal part of agricultural operations. Right-to-farm laws are typically written to specifically allow farmers to conduct normal agriculture and to provide some level of immunity from such lawsuits. (See Appendix I, Right to Farm Laws.)

Constitutional limitations (see below) can, reduce the effectiveness of right to farm laws. There have, however, been some useful approaches to emerge where a strongly agricultural community wants strong right to farm protection for its farmers:

- A community may pass a very aggressive, right-to-farm law that might otherwise skirt or exceed constitutional limits but also provide that these protections only apply if the farmer is using farming practices that are considered "reasonable" or "commonly accepted" in the industry at the time. It becomes more difficult for a complaining neighbor to recover if the jury will be instructed that the farmer's conduct was commonly accepted in the industry and more difficult for the court to find a commonly accepted practice is also a "nuisance."
- A community may require that all purchasers of land in or near to an agricultural area be notified that when they purchase in a farm area, that there may be sights, sounds, smells, or issues associated with agriculture that may affect their property, and that the farmers in the area are legally protected by right-to-farm laws and will be insulated from nuisance lawsuits.
- The community may go further and require purchasers to actually sign a statement at the time of purchase of such properties, as a part of the closing documents, that acknowledges that the buyer knows they are buying land in a farming area and that they understand and accept the possibility that nearby agricultural activities may impinge on their enjoyment of their property. This document is filed of record at the time of sale. The idea behind this is that, should a suit occur, the farmer can present a copy of this document to the jury to weaken the plaintiff's case.
- Finally, a community may actually require, as a part of the sale of any properties in an agricultural area, that the buyer sign a document expressly and legally waiving and relinquishing any rights they may have to sue a farmer for nuisance arising out of a reasonably and normally managed farming operation. It is not entirely clear if such a waiver will be fully effective, but this may also be worth a try.

### ***Issues and limitations:***

- Constitutional limitations: The weakness in right-to-farm laws is that reasonable enjoyment of one's real property free from unreasonable "nuisance" uses on neighboring lands is a British common-law right that was incorporated into the notion of property rights at the time of our U.S. Constitution. There are, therefore, limitations on the legal authority of governments to pass laws that limit that common law and constitutional property right.
- Divergent interpretations: What is "reasonable" or "commonly accepted in the industry" can sometimes be unclear and subject to differing opinions.
- Anyone can sue: One can pass a law that helps farmers defend against nuisance lawsuits, but it is essentially impossible to completely prevent someone who feels aggrieved from filing one. Even if one wins, defending such a case can be costly and discouraging.
- Administrative or set-up cost: It may be a bit complicated and potentially costly to create and administer a system that requires certain properties in a county, depending on their zoning or on their proximity to a particular zone, to be sold subject to a signed "waiver" or "acknowledgement" by the buyer like that described above.

### ***Current programs:***

- Klickitat County right-to-farm ordinance: The Klickitat County Commissioners maintain a great website entitled: "Tips for Country Living" that advises new community members about the issues and potential adjustments that might be associated with moving to a rural area. (See: <http://www.klickitatcounty.org/commissioners/ContentROne.asp?fContentIdSelected=662204162&fCategoryIdSelected=1521804453&fX=X>.) Included there is a section called: "Living with Agriculture," that lays out some of the potential conflicts people might experience when residing in a farming area. The site indicates that Klickitat County has adopted a right-to-farm ordinance.
- State of Washington right-to-farm law: Washington's right-to-farm statute is at: [RCW 7.48.300 ff](#). The law was rewritten and made stronger in 2007. It provides that farming activities that are conducted in conformity with law are presumed not to constitute a nuisance. And it allows a farmer who successfully defends such a suit to recover costs and attorney fees incurred in its defense as well as to recover "exemplary" damages if the court finds the suit was brought maliciously or without just cause.

## **F. Market demand and economic development**

Making sure agriculture is profitable is key to the success of any farmland protection effort – but supporting market demand for local farm products and stimulating economic development for local agriculture are among the most direct.

- Local markets: The vast majority of the market for agricultural products is global. But one way to help keep land in production here in local communities is to encourage market demand for farm products grown locally as opposed to those grown elsewhere. This may require new local support or infrastructure (like farmers markets) or land use changes (to allow or encourage direct market activities on private farms) and it may require changes by the producer in crops, marketing, and approach. But it also may generate a sufficient price bonus for the farmer to justify the effort.

There is an emerging “community food connections” movement here in Washington and elsewhere in the country. People want to know the sources of their food. They want to know who produced it, under what conditions, and with what practices. There is, of course, no local food without local farms (and farmland) to supply it. So tying into the food connections movement is a viable approach to increasing the ability of farms here to afford land here – helping to address the land location issues identified at the start of this paper. This can also help cover increased costs of environmental performance through so-called “green” marketing. (E.g. through environmental certification programs, “Salmon-Safe,” marketing non-use of pesticides, etc. See “Assuring Environmental Sustainability – G, below.) Or the farmer may create supplemental income for the farm and increase market visibility by selling other environment related or consumer connection services (e.g. ag-tourism, on-farm sales of non-farm or off-farm products, wildlife viewing, hunting and fishing, etc.) In each case, the above consumer preferences can leverage programs that help farmers market their products locally and that address the emerging consumer demand for connections to the sources of their food.

- Economic development planning: Wherever the markets are, however, there is often a need for local, community-based economic development planning. Typically, local communities have Economic Development Councils. And these Councils generally develop an economic development strategic plan for the community. But it is extremely rare for agriculture to be included in the planning – even where agriculture is the largest, most significant industry in the community. The development and existence of such a plan provides insights for community leaders, opportunities for farmers and farm services, and credibility to the local agriculture industry as a positive contributor to the economy and as an industry that expects to thrive and grow in the years to come. (See, generally, Appendix E – Agricultural Economic Development.) Such planning can highlight opportunities and issues that could affect the future of the local industry.

### ***Issues and limitations:***

- Lack of Agriculture involvement in economic development. Most Economic Development Councils do not include agriculture, which makes it easy for local communities to ignore or forget to plan for the future of what may be their largest industry.
- Lack of clarity in consumer motivations: It is not yet entirely clear how willing consumers are to pay more for the assurance that their products were produced in ways that are socially responsible or friendly to the environment. Clearly they will pay for quality, freshness, healthfulness, etc. But studies have not yet decisively sorted out the market impact of environmental or social responsibility. Programs related to both are listed below.
- Perceptions of “local”: There are differing perceptions about how “local” people want their food to be. This uncertainty can dilute the effectiveness of collective local marketing efforts.
- Direct marketing is expensive: Making direct connections with consumers is time-consuming and, hence, costly. Often the difference can be made up for through the price advantage of bypassing the wholesale distribution network – but not always.
- Farmer preferences: Many producers prefer growing over marketing.
- Land-cost leverage: Those farms that are the most “local” to urban markets, and the ones for which it is most convenient to form consumer connections, will probably also be on land that is the most expensive and vulnerable to competition from development.



### ***Current programs:***

- ***Organic certification:*** People buy organic for a variety of the reasons listed above – including the belief that the product is more environmentally friendly, more healthful and, perhaps, more local. **Contacts:** The WSDA organic program manager is: Miles McEvoy, 360-902-1924, [mmcevoy@agr.wa.gov](mailto:mmcevoy@agr.wa.gov). See WSDA organic program website at: <http://agr.wa.gov/FoodAnimal/Organic/default.htm#OrganicFoodProgram>.
- ***Washington Tilth:*** The Washington Tilth Producers is a non-profit representing the State's organic producers. They maintain a directory of its members on their website at: Their Administrative Director is: Nancy Allen, 206-442-7620, [nancy@tilthproducers.org](mailto:nancy@tilthproducers.org)
- ***From the Heart of Washington (HOW):*** HOW is a public-private effort, supported by WSDA, to market Washington products locally. See: <http://www.heartofwashington.com>. **Contacts:** From the Heart of Washington, Washington State Department of Agriculture Attn: Communications Director, (360) 902-1800, [HOW@agr.wa.gov](mailto:HOW@agr.wa.gov)
- ***Food Alliance:*** The Food Alliance certifies producers as environmentally and socially responsible and then helps them market their products under a widely recognized label. See the Food Alliance website at: [www.foodalliance.org](http://www.foodalliance.org). **Contact:** Scott Exo, Executive Director, 503.493.1066, ext 30, [scott@foodalliance.org](mailto:scott@foodalliance.org).
- ***Salmon-Safe:*** Salmon-Safe certifies farms as friendly to salmon, provides a marketing label, and assists farmers in obtaining their certification by doing (and helping to fund) salmon restoration work on the farm. The Washington program is managed by Stewardship Partners in Seattle. The Stewardship Partners website is at: [www.stewardshippartners.org](http://www.stewardshippartners.org). **Contact:** David Berger, Executive Director, (206) 292-9875, [david@stewardshippartners.org](mailto:david@stewardshippartners.org)
- ***Farming and the Environment:*** Farming and the Environment is a non-profit dedicated to bridging the gap between farmers and environmentalists. They also certify and then recognize approved farmers as environmentally responsible on its website thus allowing them use this recognition in their marketing efforts. They are on line at: [www.farmingandtheenvironment.org](http://www.farmingandtheenvironment.org). **Contact:** Wendie Dyson, (206) 310-8040, [market@dmfm.org](mailto:market@dmfm.org)
- ***USDA federal grant assistance:*** USDA agricultural grants are available through Sustainable Agriculture Research and Education (SARE) and other programs to help farmers with marketing, including environmental marketing. The SARE website is at: <http://www.sare.org>. **Contact:** For more information, contact the Western SARE office, (307) 837-2674.
- ***WSDA Small Farms & Direct Marketing:*** The Washington State Department of Agriculture operates a Small Farms and Direct Marketing division that helps with environmental marketing, among other things. Their web address is: <http://agr.wa.gov/Marketing/SmallFarm>. **Contact:** Patrice Barrentine, Program Coordinator, (360) 902-2057, [smallfarms@agr.wa.gov](mailto:smallfarms@agr.wa.gov)
- ***WSU Small Farms Program:*** The Small Farms Program at Washington State University is a part of WSU's Cooperative Extension program and of its Center for Sustaining Agriculture and Natural Resources (CSANR). The program is on line at: <http://smallfarms.wsu.edu>. **Contact:** Marcy Ostrom, Director, (253) 455-4514, [mrostrom@wsu.edu](mailto:mrostrom@wsu.edu)
- ***Washington State Farmers Market Association (WSFMA):*** WSFMA represents the local farmers markets in Washington. See: <http://www.wafarmersmarkets.com> where there is a directory of markets for WA. **Contact:** Jackie Aitchinson, Executive Director, Washington State Farmers Market Association, (206) 706-5198, [info@wafarmersmarkets.com](mailto:info@wafarmersmarkets.com)

- *Pacific Northwest Farm Direct Marketing Association:* This group represents direct farm marketers in our region. **Contact:** Peggy Black, President, (541) 863-3770
- *Food Policy Councils:* There is increasing interest in food policy councils. Both King County and the Seattle City Councils recently took action on this front. See WSU – King County Extension’s website at: <http://king.wsu.edu/foodandfarms/foodpolicycouncil.htm>. **Contact:** Sylvia Cantor, 206-205-3131, [sylvia.kantor@kingcounty.gov](mailto:sylvia.kantor@kingcounty.gov)
- *Agricultural Commodity Commissions:* Washington’s commodity commissions have not yet been deeply active in direct marketing – although there is doubtless some work going on and it is probably best to inquire directly. The Washington State Department of Agriculture maintains a list with contacts for commodity commissions at: <http://agr.wa.gov/Marketing/CommodityCommissions/CommodityCommissionList.htm>.
- *Gorge Grown Food Network:* This group represents direct market farmers in the Columbia River Gorge and promotes their products with consumers. See: [http://www.gorgegrown.com/about\\_ggfn.cfm](http://www.gorgegrown.com/about_ggfn.cfm). **Contact:** Gorge Grown Food Network, 993A Tucker Rd., Hood River, OR 97031, 541.490.6420, [info@gorgegrown.com](mailto:info@gorgegrown.com).

## **G. Limiting taxes – current use taxation**

Current use taxation recognizes that a viable farm business can only afford to pay property taxes on land at a level commensurate with its productivity for agriculture. If farmers and ranchers were required to pay property taxes based on the actual fair market value of their land, this would create substantial additional pressure for them to sell for development. Washington’s current use taxation law (RCW Ch. 84.34) was adopted by voter initiative in 1968 and created a State Constitutional amendment that was supported by some 68% of the electorate. There are a little over 11 million acres enrolled in the program in every county in the State, including Klickitat County. Counties can appoint a 5-member Advisory Committee to help administer these programs – but only about half of the State’s counties have actually done so.

Landowners who believe their lands qualify as agricultural and that the program will save them taxes apply with their local County Assessor. The Assessor performs a dual appraisal – determining the full fair market value and the value for agricultural production. If the property qualifies as engaged in agriculture, it can be taxed at its lower current agricultural use value rather than its higher fair market value – often at a very substantial saving (in some places this can amount to a tax savings of as much as 97%). If the landowner subsequently decides to develop the property and remove it from Current Use designation, he/she must give two years notice, and pay back taxes for the seven years preceding the change in use. The back tax is measured by the difference between what would have been paid and what was actually paid in the current use program, plus interest and penalties depending on how far in advance notice of the change is provided. (Generally, see Appendix K – Differential Assessment.)

### ***Issues and limitations:***

- *Mostly preventative:* Current use taxation does a good job of preventing skyrocketing property taxes (based on skyrocketing land values) from becoming a driving factor that pressures landowners out of agriculture. The program is probably not, however, a significant deterrent preventing land from being removed from agriculture. The market value of the land is usually so high that it minimizes any back taxes, interest, or penalties due at the time of conversion to development.

- Cost effectiveness: Of course the program only makes financial sense if the landowner intends to keep the land in agriculture for 10 years or more. But there is no way to know how many of those landowners who participate after that initial 10 years really intend to develop at some point in the near future. For those who do, the program may sometimes be seen as a subsidy for speculative land investment in future development.
- Fiscal impact on county tax revenue: The program can have a significant impact on county tax revenue. In rural counties, property taxes on farm and ranch lands may represent a large percentage of total revenue. But, even paying at such levels, farmers still generally pay more in taxes than they receive in community services. (See Appendix M – Cost of Community Services Studies.)
- Inconsistencies in application: Assessors are somewhat free to interpret the Current Use program with a good deal of local discretion. Tighter requirements may generate more county revenue, so Assessors tend, understandably, to look closely. But there is a good deal of variation among different counties in how, for example, the requirements for keeping livestock are interpreted. Assessors in agricultural counties tend to be more friendly for agriculture.
- No application to farm improvements: The current use program applies only to the land, not to improvements on the farm – fences, barns, worker housing, etc.
- Cost of community services: Even under current use taxation, farms still pay considerably more in taxes than they require in community services. There is strong justification for arguing that farm taxes should be even lower, or that government should be providing farmers with greater support.

**Current programs:** Current Use taxation programs are operated independently by each County Assessor in compliance with the State statute (RCW Ch. 84.34). The Washington State Department of Revenue provides support to local assessors and collects statistical data on the program which is of interest to the State since a portion of local property taxes also supports the State budget. See the description at the Department of Revenue's website at: [http://dor.wa.gov/docs/Pubs/Prop\\_Tax/OpenSpace.pdf](http://dor.wa.gov/docs/Pubs/Prop_Tax/OpenSpace.pdf). And see the statistics at: [http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2007/Property\\_Tax\\_Statistics\\_2007/default.aspx](http://dor.wa.gov/Content/AboutUs/StatisticsAndReports/2007/Property_Tax_Statistics_2007/default.aspx) **Contact:** The State Department of Revenue number for Current Use/Open Space taxation questions is: (360) 570-5865. The Klickitat County Assessor's Office is at: <http://www.klickitatcounty.org/assessor/>, Van Vandenberg, Assessor, 509 773-3715 or 800 764-2235.

## **H. Supporting environmental sustainability**

Agricultural lands offer a huge opportunity to improve the environment and correct for societal environmental degradation – without diminishing their economic viability for traditional farming. Much, perhaps most of what farmers already do and can do by way of environmental conservation actually also increases the productivity of the farm/ranch business. Whether it is planting and growing trees or other native vegetation, managing for the protection of water quality, minimizing floods, recharging aquifers, assuring the survival of animals, sequestering carbon, or simply preserving a productive open landscape, our farmers are the ultimate skilled professionals. Much of this is already done by farmers every day – for free.

Most farmers believe, however, that ever rising public expectations for environmental performance from agriculture is at least one of the pressures driving them off the land. Certainly the costs of



environmental compliance have increased over the years. As the population of our region continues to grow, it seems likely that the need to mitigate for its environmental impacts will also grow. It also seems inevitable that urban, non-farm majorities will increase. And it seems likely that these pressures will continue to produce greater environmental demands on agricultural lands – which represent roughly half of the private lands in our State. One way to help our farmers, therefore, is to make it financially possible and practical for them to manage their land for environmental sustainability while also keeping it in economically viable traditional food and fiber production. (See Appendix O – Discussion Paper on the Impact of Environmental Regulation on Washington Agriculture.)

This conflict plays itself out in four general approaches to assuring environmental sustainability in agriculture:

- Regulation – Critical Areas Ordinances, etc: One approach to assuring environmentally sustainable management of agricultural lands is through environmental regulation. Some (but not all) of the land-use-related environmental regulation currently experienced by agriculture is driven by long-standing, ever-tightening requirements of federal law (e.g. Clean Water Act, Endangered Species Act, National Environmental Policy Act, Tribal Treaties and related court decisions, pesticide regulation under the Food Quality Protection Act, etc.). These local governments are often required to assure compliance with these laws. Local critical areas ordinances under Washington’s Growth Management Act, or under the Shorelines Management Act, for example, are among of the places where farmers directly experience specific local requirements that may have resulted from the dictates of federal law.
- Conservation incentives and assistance: A second approach has been to provide technical assistance and so-called “cost-share” funding to farmers willing to implement conservation best management practices. Implementing these practices generally provides a mix of benefits – some private to the landowner, some public. To the extent that current or future “conservation cost-share” programs can provide sufficient revenue, they may also come to be seen as a source of financial support for agriculture.
- Conservation markets: To the extent that farmers can now or in the future, receive payment specifically in exchange for providing environmental services needed by the rest of society, this could increasingly become a way for them to pay for improved environmental performance that will make their operations more profitable. Examples include payments for carbon sequestration, for water quality trading credits sold to regulated point-source pollution dischargers, and environmental mitigation payments made by developers to farmers who help them make up for the damage caused by development projects.
- Green markets: A fourth approach, “green” marketing, uses the power of a green marketplace to support environmentally friendly farming. (See “local market demand” in Sec. E, above.)

#### ***Issues and limitations:***

Regulation and incentives: Understanding the role of regulations requires consideration of the choice to regulate vs. other, more incentive-based approaches:

- Private vs. public costs: Regulations may be less costly for *government* since the expense of their implementation largely lies with the regulated community but broader, non-governmental costs may be hidden. For example, there may be a disruption cost associated with regulation that can be avoided with incentives. Because incentives are administered on a case-by-case basis, they typically result in costs being incurred at only those sites where improvements are actually needed and have been deemed beneficial (rather than throughout a community, activity, area, or regulated industry). Actions resulting from incentives are usually well-adapted to the site-specific needs of the particular property involved, avoiding unexpected economic side-effects. Incentives minimize unnecessary disruption of private economic activity because they are only used where they are truly workable and where the landowner is a willing participant.
- Landowner contributions to cost: Because the landowner is an active participant, often they will share the cost of incentive-based projects thus reducing the expense for the public.
- Individual and community synergy and support: Incentives can enlist willing, even enthusiastic landowner participation in achieving social objectives rather than tending to incite potential opposition and unanticipated enforcement battles.
- Opportunities for affirmative restoration: Achieving affirmative physical improvements in conditions on the land may be easier with incentives than regulations. When the landowner is an active, willing participant, such improvements will quite possibly address both the needs of the landowner and of the public.
- Encouraging socially-beneficial landscapes: Incentive programs can have the added positive effect of helping farmers stay in business and helping them keep their land in agriculture and out of landscape-fragmenting, environmentally harmful development.
- Fairness: It is not always easy to differentiate between what duties should fall on the landowner's shoulders and what should be society's collective responsibility. So it is difficult to assess when to use regulation and how much should be paid for through the public purse.
- Future regulatory uncertainties: There can be uncertainties about how both regulations and incentives are administered, but much of the concern over regulation expressed by farmers arises out of uncertainty about increased requirements in the future. Like other businesses, farmers also need to correctly anticipate new costs and to have stability in those costs.
- Lack of differentiation between shared responsibilities: Science is increasingly identifying tolerable overall limits on our collective environmental impacts. But the performance expectations in avoiding these impacts for any particular group or activity (like agriculture) are not yet clear. So it is not yet clear how much should be seen as a social responsibility and be required through regulation, and how much should, in fairness, be seen as a duty of citizenship and be purchased through incentives (see above). This debate undermines the argument for adequately funding incentives. And it pervades any discussion of the use of regulations.
- Counter-productive outcomes: Since regulation imposes cost, it will generally decrease a farm's profitability and can be a factor driving the land out of agriculture. Since the more intensive uses that will replace the farm should the farm business fail are much more harmful to the environment, the net outcome may be environmentally negative.

#### Issues and concerns with incentive programs:

- Insufficient funds: Total funding for the conservation cost-share system is woefully inadequate. The result is that only a few farmers are actually able to participate and only a very small portion of the need is addressed. This lack of funding is at the root of many of the further problems listed below.

- Lack of strategic focus: Cost-share programs are voluntary. But because funding is limited, there are typically only a few applicants – mostly volunteers for whom the money may not be a major consideration. So the projects and environmental improvements go where the applicants are, not necessarily where the need is the greatest. Keeping public expenditures low by enlisting motivated volunteers is probably a good thing. But lack of strategic focus may undermine some of the gains.
- Lack of enforcement: Because the incentives system is so under-funded, it depends highly on volunteers. So the agencies providing cost-share assistance tend to de-emphasize enforcement that might discourage participation. If the amounts offered were more substantial, participation would be more robust and the potential for enforcement much less of an issue.
- Lack of access to and awareness of programs: While total conservation funding is low, the total number of programs offering it is large. Each program has a different goal and focus and different requirements for participation. The result is a system that is very difficult for farmers to navigate in finding assistance, even assuming that it is available. And once help is found, the application process is often complex and time-consuming to a degree that many will simply opt out of participating.
- Programs not coordinated or offered as a package: Because each conservation funding program is offered independently, often by a separate agency, they are not easily assembled into a package that makes sense for any individual farmer. The farm may qualify for one, but not for the other, etc. For good reason, the farmer may not wish to participate unless multiple issues can be handled simultaneously.

#### Issues concerning “conservation markets”:

- Lack of conservation marketplace: So far, conservation markets are poorly funded and not generally available to most farmers. For example, there are carbon markets, but they still pay very little and generally apply only to a few producers.
- Uncertainty about what will be involved: The potential issues of concern for agriculture that might be involved in conservation markets are still open for debate. Addressing these uncertainties will be needed if the agriculture industry is to ultimately support them.

#### ***Current programs, missions, and contacts:***

Regulations: There are regulatory programs at all levels of government – including at the Federal, State, and county level, e.g. through critical areas and shorelines management authority. A few useful contacts:

- *Department of Ecology*: The Washington Department of Ecology is responsible for air and water quality protection. Its website on non-point pollution may be particularly useful for farmers: <http://www.ecy.wa.gov/programs/wq/nonpoint/index.html>. **Contact**: Ecology’s staff directory is on line at: <http://www.ecy.wa.gov/org.html>.
- *Department of Fish and Wildlife*: WDF&W’s role is the protection of fish and wildlife habitat. Its authority in connection with water hydraulic permitting and other habitat related regulation is discussed at: <http://wdfw.wa.gov/habitat>. **Contact**: WDF&W Habitat Program, 360-902-2534, [habitatprogram@dfw.wa.gov](mailto:habitatprogram@dfw.wa.gov).
- *Office of Regulatory Assistance*: The Governor’s Office of Regulatory Assistance is on line at: <http://www.ora.wa.gov>. **Contact**: 800-917-0043, 360-407-7037, [help@ora.wa.gov](mailto:help@ora.wa.gov)
- *WSDA Small Farms & Direct Marketing – direct marketing “green book”*: WSDA’s Small Farms and Direct Marketing division publishes a “Green Book” that provides regulatory

assistance to farmers engaged in direct market work. Their web address is:

<http://agr.wa.gov/Marketing/SmallFarm>. **Contact:** Patrice Barrentine, Program Coordinator, (360) 902-2057, [smallfarms@agr.wa.gov](mailto:smallfarms@agr.wa.gov)

- *County ombudsmen:* Some counties (not Klickitat) have also adopted programs with the specific purpose of helping farmers navigate complex government requirements. One example is the Pierce County Farmbudsman program. **Contact:** (For the Pierce County program) Carrie Sikorski, (253) 798-FARM, [csikors@co.pierce.wa.us](mailto:csikors@co.pierce.wa.us)
- *Ruckelshaus process:* Also in 2007, the Legislature passed SB 5248 creating a multi-year negotiation/study process to include leading farm and environmental groups and interests in a negotiation and study to deal with increasing environmental pressures on farms. The process is facilitated and supported by the William D Ruckelshaus Center. There is more information on the web, including who is participating in this process at: <http://ruckelshauscenter.wsu.edu/projects/caop.html>. **Contact:** Lane Rawlins, Ph.D., Director, Ruckelshaus Center, (509) 335-2937, [rawlins@wsu.edu](mailto:rawlins@wsu.edu)

Conservation incentives: There are a great many conservation incentives programs available for farmers from all levels of government. The following are definitely the most significant places to start in order to learn more about them:

- *Natural Resources Conservation Service (NRCS):* NRCS is the USDA agency that administers the conservation programs in the Federal Farm Bill, so it is the agency to contact concerning cost share, technical assistance, or other help under those programs. There are local NRCS offices throughout Washington (see local field office locator at: <http://www.wa.nrcs.usda.gov/contact/fieldoffices.html>). **Contact:** In Klickitat County, the NRCS Office is located at the Goldendale Service Center at 1107 South Columbus Avenue, Goldendale, WA 98620-9268, (509) 773-5822. The NRCS employee contact directory is on line at: <http://www.wa.nrcs.usda.gov/contact/index.html>. Gus Hughbanks, Washington State Conservationist, (509) 323-2900.
- *Local conservation districts:* There are three conservation districts in Klickitat County. These are independent local governments whose purpose is to “work with landowners on a voluntary basis, providing incentive-based conservation help on private lands.” Their local staffs provide farmers with technical assistance and help identify sources of cost-share funding to support implementing those practices. They are supported at the State level by the Washington State Conservation Commission. **Contacts:** Mark Clark, Executive Director, Washington State Conservation Commission, (360) 407-6200. Klickitat County’s three local conservation districts are: Eastern Klickitat Conservation District, 1107 S. Columbus Ave., Goldendale, WA, 98620-9296, (509) 773-5823 ext 5; Central Klickitat Conservation District, (same location and phone as Eastern); Underwood Conservation District, 1770 NW Lincoln St., White Salmon, WA 98672-0096, (509) 493-1936.
- *Conservation Incentives Clearinghouse:* Among the tasks assigned to the new Office of Farmland Preservation by SB 5108 in 2007 was creation of a conservation incentives clearinghouse, that would help people identify useful incentives programs. This work, as of the present date, is only partly completed, but in the months to come, the new clearinghouse should become a new tool for the public and conservation professionals to help identify what sources of funding and help are available to assist landowners interested in voluntary conservation assistance. **Contact:** The contact for the Office of Farmland Preservation is Ron Shultz, (360) 407-6200, [rshu461@ecy.wa.gov](mailto:rshu461@ecy.wa.gov).

Conservation markets: There is, so far, no formal “conservation marketplace” in Washington. The 2008 Legislature did commission a study of the workability of such markets which is now getting started, due for submission at the end of 2008. **Contact**: The lead on the study, and potential pilot projects, under SB 6805, is the Washington State Conservation Commission. Ron Shultz, (360) 407-6200, [rshu461@ecy.wa.gov](mailto:rshu461@ecy.wa.gov).

## **I. Assisting farm transition**

Transitioning ownership/operation of a farm to a new owner – whether by outright sale or to a family member – can be challenging. Farm businesses are complicated. And transitioning their ownership involves issues of business contract and real estate law, estate planning, retirement planning, business planning, training, mentoring, personal counseling, and a host of other matters that many farm families tend to ignore, even as retirement draws near.

For example, a farm family that gives careful, advance consideration to retirement and estate planning may be able to avoid selling their land for development and to pass the farm along to a child who wishes to take over the operation. Similarly, how and when will ownership and (equally importantly) responsibility be transitioned to a child? Is there a role for life insurance? Should the farm be incorporated? Farm Transition programs are designed to help with these issues. They provide workshop education and written materials to help farmers make this transition. They identify legal, accounting, counseling, and other resources that are available in the community. And they, in some cases, keep listings of farms available for sale and of people interested in beginning in farming and make early connections between retiring farmers and those who wish to take over their operation. (See Appendix N – Farm Transfer and Estate Tax.)

### ***Issues and limitations:***

- Difficulty getting to those who need the service: These programs can provide education, professional information, and assistance to farmers, but they still depend upon the farmer coming to the program. Many farmers do not know the services exist and it is expensive to get the word out to all those who might need or make time for them
- Estate planning is challenging: Most people tend to ignore estate planning – including farmers. And the issues associated with farm transition tend to cut to the heart of farm family personal issues. There is a tendency to ignore them until it is too late.
- Land cost differentials: FarmLink (see below), for example, is a program that can put a retiring farmer together with a new, entering farmer. But the land cost differential between market value and value for agriculture still exists and can stall a successful transition.

### ***Current programs:***

- Washington FarmLink. This program is housed in Seattle, but it is a statewide program, available to anyone (new farmers sometimes come from Seattle). FarmLink is described at: <http://dnr.metrokc.gov/wlr/wafarmlink/What%20is%20farmlink.htm> and at: <http://www.cascadeharvest.org>. **Contact**: Mary Embleton, Executive Director, Cascade Harvest Coalition, (206) 632-0606, [mary@oz.net](mailto:mary@oz.net)
- Office of Farmland Preservation: In its starting legislation, the Office of Farmland Preservation was charged to “begin the development of a farm transition program to assist in the transition of farmland and related businesses from one generation to the next, aligning the farm transition



program closely with the farmland preservation effort to assure complementary functions.” The OFP website is: <http://ofp.scc.wa.gov>. **Contact:** Ron Shultz, (360) 407-6200, [rshu461@ecy.wa.gov](mailto:rshu461@ecy.wa.gov).

## **J. Credit to buy farmland**

Agriculture is a tough, competitive business. Farmers do not just compete with their similarly-situated neighbors. They also compete with every other farmer on the planet, with every level of sophistication and from the most capital intensive first world operation to third world farmers driving donkey carts. When farmers seek a business loan, they are asking the lender to join in the same risks the farmer faces – risks involving the weather, commodity markets, labor, regulation, input prices, water, etc. Only a savvy and experienced lender will undertake such risks. All borrowing by farmers (for whatever purpose – land, operations, equipment, etc.) involve these uncertainties. Land investments are among the largest most farmers will make and they are, therefore, the ones where their problems with credit may be the greatest. And land will often be included as security for almost any loan.

There are particular limitations on the availability of credit for farmland acquisitions. Agricultural lenders make what they consider to be “business loans.” These are loans that are expected to be paid back from revenue generated by the business enterprise. When lenders “pencil out” the viability of a loan for a farmland acquisition, they are generally looking at whether the farm business that is buying that land will be able to pay back the loan – not just at whether the market value of the land is sufficient to provide security. It is not considered sound lending practice to make what are termed “security loans” where the lender looks primarily to its position in a foreclosure rather than at the real prospect for normal repayment.

This places farms in a difficult borrowing position for land acquisitions. Both the lender and the farmer must carefully consider whether the additional productive earning capacity of the land being bought will be enough to cover the anticipated loan payments. With equipment purchases, this may be fairly straightforward. But given that land values throughout Washington are being driven far out of reach by competition from non-farm uses, the price being paid may have to be far in excess of the productive capacity of the land being purchased. So securing sufficient credit to buy land for agriculture can be a serious problem.

The current approach to making credit available to farmers for land is the same as for all farm credit needs. The Federal government, through the Federal Farm Credit Banks Funding Corporation, (see: <http://www.farmcredit-ffcb.com/farmcredit/fcssystem/overview.jsp?uniq=1218659191427>) makes wholesale credit available to a system of independently owned local funders known to farmers as Farm Credit Services (FCS). FCS specializes in agricultural lending. There are also special, reduced loan rates, available to beginning farmers in Washington through FCS supported by federal loan guarantees through the Washington State Housing Finance Commission. The Washington use of this federal lending guarantee was authorized by statute in SB 5092 passed by the 2005 Legislature.

### ***Issues and limitations:***

- Same issues apply: A Farm Credit Services lender, supported by the availability of federal credit through the Federal Farm Credit Banks Funding Corporation, might be able to offer a

slightly better deal to a farmer than a standard bank lender, but FCS lenders are still constrained by the same sound lending practices faced by all business lenders.

- Leverage from reduced interest: There is leverage to be gained through reduced interest, since loan payback capability of a business will depend heavily on the amount of the payments and the total that must be repaid is heavily affected by the interest over time. So it is worth considering whether there may be other ways (in addition to the new farmer loan program) to provide low interest lending to farmers – perhaps especially for land acquisitions.
- Limited lending pool: The pool of knowledgeable farm lenders is limited with few options available for most farmers.

#### ***Current programs:***

- Northwest Farm Credit Services provides competitive loans to farmers as a part of the Federal Farm Credit System. Their main NW office is in Spokane, but they have lending offices throughout the Pacific Northwest (see their office locator at: <http://www.farm-credit.com/Default.aspx?pageid=85>). **Contact:** Northwest Farm Credit Services – Spokane Office, (800) 743-2125, [farm-credit@accountlist.com](mailto:farm-credit@accountlist.com). There are local offices in The Dalles at 3591 Klindt Drive, Suite 110, The Dalles, OR 97058, (541) 298-3400, (800) 452-8575; Pasco at 9530 Bedford Street, PO Box 2585, Pasco, WA 99301-2585, (509) 542-3720; and, Sunnyside at 2735 Allen Road, PO Box 1610, Sunnyside, WA 98944, (509) 836-3080.
- The Beginning Farmer/Rancher loan program made possible by passage of SB 5092 by the 2005 Legislature is administered by the Washington State Housing Finance Commission and is available through Northwest Farm Credit Services, above. It provides low interest loans to beginning farmers up to \$450,000. Additional information about the program can be found at: <http://www.wshfc.org/farmranch>. **Contact:** With FCS, contact the local office or: [Wendy.knopp@farm-credit.com](mailto:Wendy.knopp@farm-credit.com), (509) 340-5476. In addition to FCS, one can contact: Tia Peycheff, Washington State Housing Finance Commission, 206-287-4416, [Tia.peycheff@wshfc.org](mailto:Tia.peycheff@wshfc.org).

### **K. Reducing the impacts of government action**

The private marketplace is, by no mean, the only way farmland can be fragmented or fall to non-farm uses. Actions of government itself can also play a role. This may happen through condemnation, environmental restoration, government purchases, or shifting government policy that affects the continued use of land for agriculture. For example:

- Suppose a new school is needed somewhere near a city or town. Where will this school be built – on expensive land within the city, or out on open, flat, uncluttered, inexpensive farmland? The temptation to save money may just be too great to resist.
- Suppose a growing town area needs water and decides to condemn water rights now belonging to a nearby farmer? Will the impact on that farm or on its neighbors be a significant consideration that is taken into account in making this decision?
- Suppose a State institution, (like Washington State University or the Department of Natural Resources, for example), decides to sell off local farmland that it owns. Will it consider the possibility of restricting its future development to protect agriculture? Or will it just sell to the highest bidder and see it get developed?
- Suppose a new wetland mitigation banking site is needed to help make up for the impacts of a local transportation project or a housing, commercial, or other development. Will that site be placed on prime farmland without any particular consideration of the effects on agriculture?

In any of the above cases, will there be a chance for public input? Will any consideration be given to the impacts on local agriculture? Will there be a formal process for the decision with some standards and criteria that must first be met? Will there be some required exploration of possible alternatives that to not affect agriculture?

These questions are the kind that can be addressed through a farmland protection policy act (FPPA). The federal government has adopted such an Act. The federal law creates certain procedural requirements and standards of conduct when actions by federal agencies will have a negative impact on farmland. The FPPA is included in Public Law 97-98, Subtitle I of Title XV, Section 1539-1549. There is currently no such law at the State level in Washington, although there is a neglected, but still-legally effective Executive Order that was signed by Governor Dixy Lee Ray in 1980 that directs State agencies to “consider” the impacts of their land use actions on farmland protection. (Ex. Order 80-01, Farmland Preservation). Should such a policy be adopted at the local level?

#### ***Issues and limitations:***

- Lack of State and local policy legislation: The existing (but largely forgotten) Governor’s Executive order requiring that State agencies “consider” farmland impacts provides little real protection from State action. And there is nothing in place that affects government actions at the county and municipal levels.
- Federal law weak: Even though there is a Federal Farmland Protection Policy Act, it is thought to be largely toothless and ineffective.
- No clear policy statement: There are arguments both ways about whether the State should adopt an effective “no net loss of farmland” policy. But without something of this kind, pressures for development, from the existing national “no net loss of wetlands” policy, from the need for environmental restoration, condemnation, and other uses simply overwhelm any pushback farmland protection advocates can provide.

#### ***Current programs:***

- The USDA Natural Resources Conservation Service (NRCS) is the watchdog agency for tracking the existing Farmland Protection Policy Act. There is a description of the act and of their responsibilities on the NRCS website at: <http://www.nrcs.usda.gov/programs/fppa>.  
**Contact:** Gus Hubanks, NRCS Washington State Conservationist, (509) 323-2900,  
[Gus.Hughbanks@wa.usda.gov](mailto:Gus.Hughbanks@wa.usda.gov)

## **L. Access to public lands**

Public lands represent a huge percentage of the Western U.S. About 1/3 of Washington is public lands. America’s cattle industry, in particular, badly needs access to these lands for grazing livestock. Grazing on public lands is a long-standing practice (not without controversy: <http://www.publiclandsranching.org>), but with proper management, it is beneficial for both the producer and the public. The grazing lease program operated by the U.S. Bureau of Land Management (BLM) is described at: <http://www.blm.gov/wo/st/en/prog/grazing.1.html>. And the Washington Department of Natural Resources program for land leases for agriculture is at: [http://www.dnr.wa.gov/BusinessPermits/Topics/LandLeasing/Pages/psl\\_og\\_leasing\\_agriculture\\_lands.aspx](http://www.dnr.wa.gov/BusinessPermits/Topics/LandLeasing/Pages/psl_og_leasing_agriculture_lands.aspx).



Even where these lands are available to be leased, the steady sale of small properties that increasingly ring the boundaries of existing public lands can create a practical barricade against the movement of cattle from private ranchlands to and from lands leased from public agencies. These adjacent private properties are, of course, in high demand by recreational users who can pay a much higher price than can a rancher. This was one of the reasons for the original formation of the Colorado Cattlemen's Agricultural Land Trust (the first of its kind in the country: <http://www.ccalt.org/>) and is at least partly behind the Washington Cattlemen's consideration of similar action here.

***Issues and limitations:***

- Lack of programs: The various cattlemen's associations have been forced to fight the ongoing political challenges to cattle grazing leases on public lands – so far, pretty effectively. But that struggle is undermined when there is little or nothing in place to maintain the cattle industry's physical access across private property and to slow the conversion of adjacent private lands to small acreage recreational use.
- Consistency with the public interest: Public lands, of course, need to serve the interests of a wide variety of constituencies with varied perspectives. Grazing, of course, should be (and is generally required to be) properly managed. Recreational uses can also, at times, be destructive. The public agencies involved need strong, consistent, well-designed policies that protect the public interest and create a predictable framework for private leaseholders.

***Current programs:***

The Washington Cattlemen's Association has considered the possibility of creating a Washington Cattlemen's Land Trust or of expanding the Oregon Rangelands Trust to include Washington. But, to date, there are no current programs using this approach in Washington. And none that specifically target access to public lands. **Contact**: Jack Field, Executive Director, Washington Cattlemen's Association, (509) 925-9871, [jfcattle@kvalley.com](mailto:jfcattle@kvalley.com); Also contact: Oregon Rangeland Trust, P.O. Box 2000, Pendleton, OR 97801, 541-969-9696.

**M. Agricultural districts**

Agricultural protection districts are an effort to create voluntary motivation for contiguous farm landowners with substantial collective or individual acreages to create "districts" within which there will be special protections, accommodations, and programs offered to encourage and support agriculture. (See Appendix J – Agricultural District Programs.) The enticements offered can potentially include such things as:

- Eligibility for agricultural economic development grants and technical assistance
- Priority for conservation cost-share assistance
- Access to purchase of development rights programs
- Additional insulation from nuisance litigation under special right to farm laws (See Appendix I – Right to Farm Laws.)
- Special accommodation for some regulatory requirements
- Recognition in marketing direct
- Special agricultural property tax relief
- Possible priorities for water rights transfers
- Etc.

In exchange for these incentives, there may also be expectations of the landowner – including limitations on the options for development. But, since the programs are voluntary, the incentives need to be sufficiently beneficial to motivate landowners to undertake whatever requirements may be expected in return.

No counties in Washington counties have yet formed agricultural districts and there is no State legislation encouraging them, so there are no real programs of this type here. There have, however, been hybrid ideas in some locations. In King County, for example, farmers receive additional benefits and priorities from County agriculture programs if their farms are located within the GMA farm-zones. King County's purchase of development rights program was limited to farms within these zones. But, of course, the landowners did not have a choice about their original zoning. In Whatcom County, their original purchase of development rights program established a number of small, contiguous areas eligible for PDR acquisitions. But, again, farmers did not make a choice about whether they would be in these areas.

Jake Anderson of Klickitat County recently proposed a new "Farmland Preservation Zone" that involves a mix of voluntary incentives and cluster zoning. Being in such a "zone" would be entirely voluntary. But if the farmer elected to do so, and if the County agreed, the farm would be subject to different subdivision rules than currently exist in farming areas in the County – much of which calls for 20-acre parcels. Instead, the farmer would be allowed to subdivide off and sell, over time, as much as 20% of the farm in small, 1-2 acre parcels. In exchange, the farmer would retain the balance (80%) of the farm, as a single, contiguous agricultural parcel.

#### ***Issues and limitations:***

- Lack of programs: Other than a few hybrid ideas and structures like the ones mentioned, there are, so far, no Agricultural Districts in Washington.
- Relationship to GMA zoning: It isn't clear how, in our Washington GMA setting, agricultural districts might work. Once we have zoned certain areas for agriculture, the inclination is likely to be to provide whatever assistance and support that might be available to all of the farmers within that zone.
- Utility of the idea: The big advantage of Agricultural Districts is their potential for aggregating several motivated landowners together into a contiguous, but still voluntary area that can be targeted for long-term farm protection. This idea, in some form, can be a useful starting point in a search for solutions.

#### ***Current programs:***

- Other than as described above, there are no current programs using this approach in Washington. **Contacts**: For information about the proposed Klickitat County Agricultural Preservation zone: Jake Anderson, Supervisor, Underwood Conservation District, Member, Washington Farmland Preservation Task Force, (509) 637-4437. For information about King County's agriculture programs generally: Steve Evans, Agriculture Programs – King County Water and Land Resources Division, 206-296-7824, [steve.evans@kingcounty.gov](mailto:steve.evans@kingcounty.gov). For information about Whatcom County's PDR program: Samya Lutz, (360) 676-6970.

**Summary and conclusion:**

The above list of approaches to preserving agriculture is not necessarily exhaustive – such a list would be limited only by the creative imagination. It is, however, intended to briefly describe the most commonly used and relied upon ways currently in use for this purpose here in Washington and around the country. This list also does not discuss all of the issues affecting the economic viability of agriculture, issues such as: water, international marketing, energy, business planning, access to labor, research, education, technical support and assistance, freight transportation, a access to markets, etc. The table provided in Appendix A and the outline in Appendix B is designed to help provide an orientation for such issues.

Whatever the Klickitat County community decides, the general lesson from the above materials is that there are many options available for helping farmers succeed and helping them keep their land in agriculture.

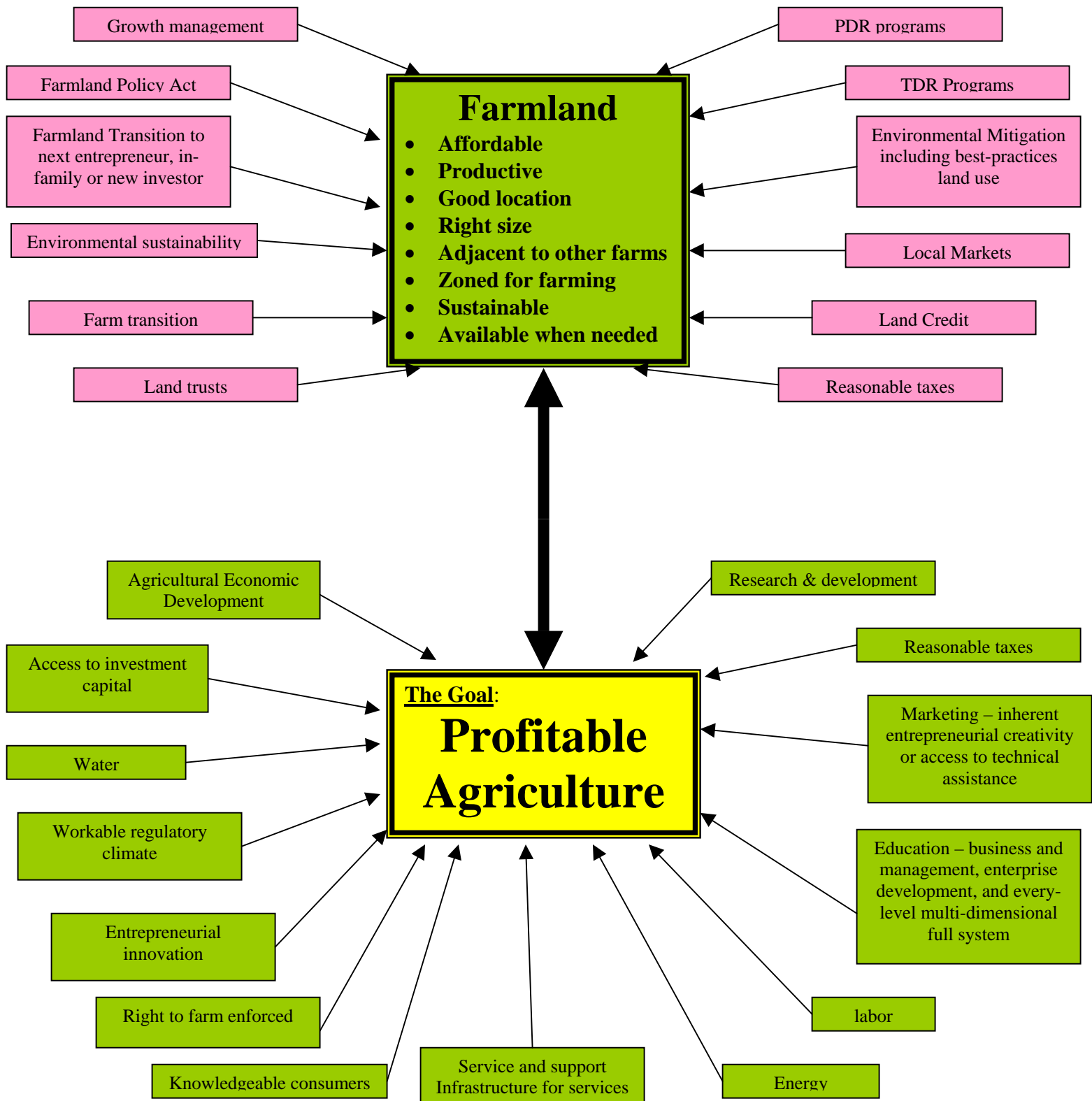
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## **Options and Issues: APPENDICES**

- A. Agricultural business input chart
- B. Agricultural business input outline
- C. Why save farmland
- D. Farmland protection toolbox
- E. Economic development for agriculture
- F. Agricultural easements
- G. Purchase of agricultural conservation easements
- H. Transfer of development rights
- I. Right to farm laws
- J. Agricultural districts
- K. Current use taxation
- L. Agricultural zoning
- M. Cost of community services
- N. Farm estate planning
- O. Environmental regulation

# Inputs Needed for Economically Sustainable Agriculture: The Land Input



## **A Successful Farm Business – Beyond the Land**

Farmland is just one of several inputs needed to create a successful farm business. The more economically viable that farm business buyer is, the more readily it will compete with other non-farm buyers. For the purposes of stimulating further discussion on the land issues, the following list is provided of non-land agricultural business inputs as well, along with some of the needed infrastructure that may support each input.

### **1) Water**

Water is fundamental to all of agriculture. Even in rainy Western Washington, access to supplementary water is usually required for dry periods. Issues:

- a) Reliable water rights rules and systems
- b) Access to water at the right time
- c) Infrastructure for water delivery
- d) Sale/lease/disposition of conserved water
- e) Water trusts
- f) Condemnation of water

### **2) Marketing**

Agriculture is a global business but the vast majority of farming is done by relatively small, family owned farmers who are, individually, poorly positioned to engage in large scale, market wide, and particularly global marketing. These farm businesses can benefit from the support of cooperative, collective, and public programs to fill this need. Issues:

- a) Interstate and international trade assistance
  - i) Export assistance
  - ii) Identification of market opportunities
  - iii) Promotion of local products in international trade
  - iv) Resolution of trade barriers
  - v) Database of agricultural product suppliers
- b) Virtual marketplace
- c) Access assistance to mass markets for small and medium-sized producers – cooperatives
- d) Farmer assistance with green marketing
- e) State and county fairs
- f) Support for direct farm to consumer sales
  - i) Farmers markets
    - (1) New farmers market development
    - (2) Stable site establishment
    - (3) Investments in farmers market infrastructure
  - ii) Consumer education programs – food connections programs
  - iii) Grant assistance for direct marketing investments
  - iv) Farm-direct-market maps, websites, lists, and consumer assistance programs
- g) Buy local efforts

## APPENDIX B

- i) Branding efforts (Heart of Washington, Puget Sound Fresh, Salmon Safe, Food Alliance, etc.)
- ii) Healthy foods, healthy farms, healthy kids
- iii) Institutional buy-local efforts.
- h) Strong commodity commissions

### 3) Investment capital

As with any business, farmers need access to capital. This may be for land, improvements to land, equipment, conservation infrastructure, or innovation and diversification. Capital is also needed for off-farm infrastructure businesses necessary for the farm's survival. Issues

- a) Infrastructure on-farm
  - i) Land
  - ii) Fixtures and improvements to land
  - iii) Equipment
  - iv) On farm processing
  - v) Direct marketing infrastructure – structures, marketing, refrigeration, processing
  - vi) Conservation investments in land management
- b) Industry support infrastructure off-farm (suppliers, processors, services, financial, etc.)
  - i) Local/accessible processing, supply, and services industries
  - ii) Mobil slaughtering
  - iii) Ag centers
  - iv) Cooperative marketing/processing efforts
  - v) Diversification to more broadly serve industry
- c) Annual operating capital
- d) New technologies and innovation
- e) Marketing support and innovation
- f) Distribution networks – especially for small or medium sized operations
- g) Beginning farmer loan programs <http://www.wshfc.org/FarmRanch/index.htm>.

### 4) Energy

The cost of fuel is driving up the cost of farmers doing business. At the same time, agriculture is well positioned to be a provider of energy. Issues

- a) Low cost on-farm energy sources
- b) Support for energy crops and development of agricultural energy infrastructure
- c) Support of local agriculture

### 5) Business and economic development planning

Individual farms need business plans, and farming communities need economic development strategic planning for the industry. The Future of Farming study is a statewide effort, but there need to be local county-level efforts as well. And farmers need support for their own business planning informed by and consistent with the plans for their community. Issues

- a) Business planning (and training) for farm businesses
- b) Economic development planning at State and local community level
  - i) Demand assessment
  - ii) Market assessment
  - iii) Emerging opportunities

## APPENDIX B

- iv) Comparing economic impacts
- v) Etc.
- c) Integrating programs between state/community planning and farm business planning

### 6) **Regulatory accommodation**

Our -growing society and its ever-increasing complexity are creating a burgeoning of regulation. Often these new rules are designed for activities or concerns that have little to do with agriculture, but agricultural businesses end up included unnecessarily. At the same time, especially as farmers become more vertically integrated, as they increasingly wish to process their own product, as they enter niche markets or directly sell their production to the public, they increasingly engaged in activities that have been included in regulatory schemes. Farmers need to be able to responsibly and efficiently use the essential inputs of agriculture. Issues

- a) Labor – (What are the unique issues that suggest that agriculture be treated differently, e.g. outdoor work, transitory labor, part time labor, seasonal labor, housing needs, etc.?)
- b) Health – (What are special needs of direct markets, unique issues for small operations, on site processing, meats, eggs, dairy products sold at farmers markets, etc.?)
- c) Pesticides, fertilizers, herbicides, etc.
- d) Permitting – (Can we have special permits for farm sales that do not require multiple renewals or huge fees designed for much larger events?)
- e) Traffic – (How could limited access issues, and traffic concerns be addressed for on-farm sales operations?)
- f) Land use laws – (Can we define the kinds of not growing activities that should be permitted on farms in a way that allows reasonable direct sales and on-farm processing without eroding the intent of agricultural zoning of easements?)
- g) Environmental – (What

### 7) **Regulatory assistance**

Because of the welter of complicated regulatory systems farmers increasingly face, there is a need for technical assistance in government regulatory arena (e.g. “farmbudsman,” permit assistance, farmer advocacy, clearinghouse/matrix of assistance available, etc.)

### 8) **Right to Farm laws**

Washington has relatively sound right to farm laws, but these laws need to be re-examined with some regularity to assure that they are as strongly written as is constitutionally possible and that they incorporate the most recent and creative approaches to assure that agriculture receives the protections it needs to operate. Issues

- a) Strong, up-to-date, well-designed right to farm laws at the State and local level.
- b) Community support in enforcement of right-to-farm.

### 9) **Access to labor**

Farms need labor. There are some highly skilled jobs in agriculture, but most of the labor needed is semi-skilled and highly seasonal. Because agricultural products sell in an intensely competitive international marketplace, it is extraordinarily difficult for producers to pay the kind of high wages that would draw U.S.-resident labor away from the higher paying employment available to them – especially on a seasonal basis. Additionally, because the intense harvest-labor needed on many farms is so short-term each year, the labor pool needs to be willing and able to move quickly from



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place to place to take advantage of employment opportunities region-wide during the season of opportunity. Fortunately there has, historically, been a transient labor pool of skilled immigrant labor available to provide this service at a sufficiently competitive price. Issues

- a) Regulatory accommodation
- b) Housing issues
- c) Employment services
- d) Immigration issues
- e) Industrial insurance
- f) Unemployment insurance

### **10) Reasonable taxation**

Current use property taxation is discussed above. But there are many ways in which taxation can affect a farm business. The full list should, for example, include the following:

- a) Current use tax
- b) Surface water management taxes
- c) Conservation practice sales tax exemption
- d) Cost of community services – taxes on farms too high
- e) Other tax exemptions and tax benefits
- f) Other tax issues and concerns

### **11) A supportive public**

Agriculture also needs programs and organizations in place that help create the positive, supportive public setting in which agriculture can be securely and reliably conducted. Issues:

- a) Ag in classroom
- b) WSU extension
- c) Industry and Commodity Associations & Commissions
- d) Non-profits
- e) Harvest celebrations
- f) Fairs
- g) Improvements in access to and information to urban press
- h) Etc

### **12) Research, education, technical assistance**

The agriculture industry needs the services of strong, full-service, land grant universities and of the agricultural extension services they can provide. This support also needs to extend beyond just the university level to include continuing education, technical assistance, and educational programs in our primary schools. And it needs a strong, well-funded, reliable research program. Issues:

- a) Foundational education in agriculture
  - i) Primary and secondary educational curriculum in agriculture
  - ii) College major education
  - iii) Scholarly advancement of field of agriculture
- b) Continuing education and training
  - i) Business management
  - ii) Enterprise development
  - iii) Agronomy, animal husbandry, IPM, and the full suite of needs for producers in a diverse farm economy

## APPENDIX B

c) Research programs.

### **13) Freight transportation**

Transportation of agricultural products to market is an increasing concern, especially in congested Western Washington. And its cost is rising with the cost of fuel. Issues:

- a) Freight Mobility Strategic Investment Board - <http://www.fmsib.wa.gov>
- b) Local market as addressing rising cost of transportation

### **14) Etc.**



# FACT SHEET

## WHY SAVE FARMLAND?

### AMERICA'S AGRICULTURAL LAND IS AT RISK

Fertile soils take thousands of years to develop. Creating them takes a combination of climate, geology, biology and good luck. So far, no one has found a way to manufacture them. Thus, productive agricultural land is a finite and irreplaceable natural resource.

America's agricultural land provides the nation—and world—with an unparalleled abundance of food and fiber products. The dominant role of U.S. agriculture in the global economy has been likened to OPEC's in the field of energy. The food and farming system is important to the balance of trade and the employment of nearly 23 million people. Across the country, farmland supports the economic base of many rural and suburban communities.

Agricultural land also supplies products with little market value, but enormous cultural and ecological importance. Some are more immediate, such as social heritage, scenic views, open space and community character. Long-range environmental benefits include wildlife habitat, clean air and water, flood control, groundwater recharge and carbon sequestration.

Yet despite its importance to individual communities, the nation and the world, American farmland is at risk. It is imperiled by poorly planned development, especially in urban-influenced areas, and by the complex forces driving conversion. USDA's Economic Research Service (ERS) developed "urban influence" codes to classify each of the nation's 3,141 counties and county equivalents into groups that describe the degree of urban influence.<sup>1</sup> AFT found that in 1997, farms in the 1,210 most urban-influenced counties produced 63 percent of dairy products and 86 percent of fruits and vegetables.<sup>2</sup>

According to USDA's National Resources Inventory (NRI), from 1992 to 1997 more than 11 million acres of rural land were converted to developed use—and more than half of that conversion was agricultural land. In that period, an average of more than 1 million

agricultural acres were developed each year. And the rate is increasing—up 51 percent from the rate reported in the previous decade.

Agricultural land is desirable for building because it tends to be flat, well drained and generally is more affordable to developers than to farmers and ranchers. Far more farmland is being converted than is necessary to provide housing for a growing population. Over the past 20 years, the acreage per person for new housing almost doubled.<sup>3</sup> Most of this land is outside of existing urban areas. Since 1994, lots of 10 to 22 acres accounted for 55 percent of the growth in housing area.<sup>4</sup> The NRI shows that the best agricultural soils are being developed fastest.

### THE FOOD AND FARMING SYSTEM

The U.S. food and farming system contributes nearly \$1 trillion to the national economy—or more than 13 percent of the gross domestic product—and employs 17 percent of the labor force.<sup>5</sup> With a rapidly increasing world population and expanding global markets, saving American farmland is a prudent investment in world food supply and economic opportunity.

Asian and Latin American countries are the most significant consumers of U.S. agricultural exports. Latin America, including Mexico, purchases an average of about \$10.6 billion of U.S. agricultural exports each year. Asian countries purchase an average of \$23.6 billion/year, with Japan alone accounting for about \$10 billion/year.<sup>6</sup> Even as worldwide demand for a more diverse diet increases, many countries are paving their arable land to support rapidly expanding economies. Important customers today, they are expected to purchase more agricultural products in the future.

While domestic food shortages are unlikely in the short term, the U.S. Census predicts the population will grow by 42 percent in the next 50 years. Many developing nations already are concerned about food security.



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January 2003

Of the 78 million people currently added to the world each year, 95 percent live in less developed regions.<sup>7</sup> The productivity and diversity of American agriculture can ensure food supplies and continuing preeminence in world markets. But this depends upon an investment strategy that preserves valuable assets, including agricultural land, to supply rapidly changing global demand.

### FISCAL AND ECONOMIC STABILITY

Saving farmland is an investment in community infrastructure and economic development. It supports local government budgets and the ability to create wealth locally. In addition, distinctive agricultural landscapes are often magnets for tourism.

People vacation in the state of Vermont or Steamboat Springs, Colo., because they enjoy the scenery created by rural meadows and grazing livestock. In Lancaster, Pa., agriculture is still the leading industry, but with the Amish and Mennonites working in the fields, tourism is not far behind. Napa Valley, Calif., is another place known as a destination for “agro tourism.” Tourists have become such a large part of most Napa Valley wineries that many vintners have hired hospitality staff. Both the valley and the wines have gained name recognition, and the economy is thriving.

Agriculture contributes to local economies directly through sales, job creation, support services and businesses, and also by supplying lucrative secondary markets such as food processing. Planning for agriculture and protecting farmland provide flexibility for growth and development, offering a hedge against fragmented suburban development while supporting a diversified economic base.

Development imposes direct costs to communities, as well as indirect costs associated with the loss of rural lands and open space.<sup>8</sup> Privately owned and managed agricultural land generates more in local tax revenues than it costs in services. Carefully examining local budgets in Cost of Community Services

(COCS) studies shows that nationwide farm, forest and open lands more than pay for the municipal services they require, while taxes on residential uses consistently fail to cover costs.<sup>9</sup> (See COCS fact sheet.) Related studies measuring the effect of all types of development on municipal tax bills find that tax bills generally go up as communities become more developed. Even those communities with the most taxable commercial and industrial properties have higher-than-average taxes.<sup>10</sup>

Local governments are discovering that they cannot afford to pay the price of unplanned development. Converting productive agricultural land to developed uses creates negative economic and environmental impacts. For example, from the mid-1980s to the mid-1990s, the population of Atlanta, Ga., grew at about the same rate as that of Portland, Ore. Due to its strong growth management law, Portland increased in size by only 2 percent while Atlanta doubled in size. To accommodate its sprawling growth, Atlanta raised property taxes 22 percent while Portland lowered property taxes by 29 percent. Vehicle miles traveled (and related impacts) increased 17 percent in Atlanta but only 2 percent in Portland.<sup>11</sup>

### ENVIRONMENTAL QUALITY

Well-managed agricultural land supplies important non-market goods and services. Farm and ranch lands provide food and cover for wildlife, help control flooding, protect wetlands and watersheds, and maintain air quality. They can absorb and filter wastewater and provide groundwater recharge. New energy crops even have the potential to replace fossil fuels.

The federal government owns 402 million acres of forests, parks and wildlife refuges that provide substantial habitat for wildlife. Most of this land is located in 11 western states. States, municipalities and other non-federal units of government also own land. Yet public agencies alone cannot sustain wildlife populations. Well-managed, privately

## WHY SAVE

## FARMLAND?

*The Farmland Information Center offers publications, an on-line library and technical assistance. For additional information on farmland protection, Call (800) 370-4879. Or visit us on the web at [www.farmlandinfo.org](http://www.farmlandinfo.org)*

owned agricultural land is a critical resource for wildlife habitat.

With nearly 1 billion acres of land in farms, agriculture is America's dominant land use. So it is not surprising that farming has a significant ecological impact. Ever since the publication of Rachel Carson's *Silent Spring*, environmentalists have called attention to the negative impacts of industrial agricultural practices. However, converting farmland to development has detrimental long-term impacts on environmental quality.

Water pollution from urban development is well documented. Development increases pollution of rivers and streams, as well as the risk of flooding. Paved roads and roofs collect and pass storm water directly into drains instead of filtering it naturally through the soil.<sup>12</sup> Septic systems for low-density subdivisions can add untreated wastes to surface water and groundwater—potentially yielding higher nutrient loads than livestock operations.<sup>13</sup> Development often produces more sediment and heavy metal contamination than farming does and increases pollutants—such as road salt, oil leaks from automobiles and runoff from lawn chemicals—that lead to groundwater contamination.<sup>14</sup> It also decreases recharge of aquifers, lowers drinking-water quality and reduces biodiversity in streams.

Urban development is a significant cause of wetland loss.<sup>15</sup> Between 1992 and 1997, NRI showed that development was responsible for 49 percent of the total loss. Increased use of automobiles leads to traffic congestion and air pollution. Development fragments and often destroys wildlife habitat, and fragmentation is considered a principal threat to biodiversity.<sup>16</sup>

Keeping land available for agriculture while improving farm management practices offers the greatest potential to produce or regain environmental and social benefits while minimizing negative impacts. From wetland management to on-farm composting for

municipalities, farmers are finding ways to improve environmental quality.

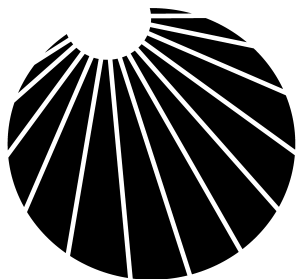
## HERITAGE AND COMMUNITY CHARACTER

To many people, the most compelling reasons for saving farmland are local and personal, and much of the political support for farmland protection is driven by grassroots community efforts. Sometimes the most important qualities are the hardest to quantify—such as local heritage and sense of place. Farm and ranch land maintain scenic, cultural and historic landscapes. Their managed open spaces provide beautiful views and opportunities for hunting and fishing, horseback riding, skiing, dirt-biking and other recreational activities. Farms and ranches create identifiable and unique community character and add to the quality of life. Perhaps it is for these reasons that the contingent valuation studies typically find that people are willing to pay to protect agricultural land from development.

Finally, farming is an integral part of our heritage and our identity as a people. American democracy is rooted in an agricultural past and founded on the principle that all people can own property and earn a living from the land. The ongoing relationship with the agricultural landscape connects Americans to history and to the natural world. Our land is our legacy, both as we look back to the past and as we consider what we have of value to pass on to future generations.

Public awareness of the multiple benefits of working lands has led to greater community appreciation of the importance of keeping land open for fiscal, economic and environmental reasons. As a result, people increasingly are challenging the perspective that new development is necessarily the most desirable use of agricultural land—especially in rural communities and communities undergoing transition from rural to suburban.

- <sup>1</sup> "A County-Level Measure on Urban Influence," *Rural Development Perspectives*, Vol. 12, No. 2, Feb. 1997.
- <sup>2</sup> "How AFT Created Its 2002 Farming on the Edge Map," *Connection*, Vol. V, Issue 4, Fall 2002 (Northampton, Mass.: AFT).
- <sup>3</sup> U.S. Department of Housing and Urban Development, *State of the Cities 2000*, Fourth Annual, June 2000, online at [www.hud.gov/library/bookshelf18/pre-srel/socprt.pdf](http://www.hud.gov/library/bookshelf18/pre-srel/socprt.pdf).
- <sup>4</sup> Ralph E. Heimlich and William D. Anderson, *Development at the Urban Fringe and Beyond: Impacts on Agriculture and Rural Land*, Agricultural Economic Report No. 803 (Washington, D.C.: USDA ERS, 2001), 14.
- <sup>5</sup> Kathryn Lipton, William Edmondson and Alden Manchester, *The Food and Fiber System: Contributing to U.S. and World Economies*, Agricultural Information Bulletin No. 742, July 1998 (Washington, D.C.: USDA ERS).
- <sup>6</sup> U.S. Bureau of the Census, *Statistical Abstract of the United States 2001* (Washington, D.C.: U.S. Department of Commerce), 535.
- <sup>7</sup> United Nations Population Division, *The World at Six Billion*, 3.
- <sup>8</sup> Heimlich and Anderson, *ibid.*
- <sup>9</sup> Julia Freedgood, *Cost of Community Services Studies: Making the Case for Conservation* (Northampton, Mass.: AFT, 2002).
- <sup>10</sup> Deb Brighton, *Community Choices: Thinking Through Land Conservation, Development, and Property Taxes in Massachusetts* (Boston, Mass.: The Trust for Public Land, 1999).
- <sup>11</sup> *New Research on Population, Suburban Sprawl and Smart Growth*, online at [www.sierraclub.org/sprawl](http://www.sierraclub.org/sprawl).
- <sup>12</sup> Real Estate Research Corporation, *The Costs of Sprawl: Environmental and Economic Costs of Alternative Development Patterns at the Urban Fringe* (Washington, D.C.: U.S. Government Printing Office, 1974); Heimlich and Anderson, *ibid.*; Robert W. Burchell, *Impact Assessment of New Jersey Interim State Development and Redevelopment Plan, Report II* (Trenton: N.J.: Office of State Planning, 1992).
- <sup>13</sup> R.J. Perkins, "Septic Tanks, Lot Size and Pollution of Water Table Aquifers," *Journal of Environmental Health* 46 (6), 1984.
- <sup>14</sup> A.J. Gold et al., "Nitrate-Nitrogen Losses to Ground Water from Rural and Suburban Land Uses," *Journal of Soil and Water Conservation*, March-April 1990; *Results of the Nationwide Urban Runoff Program, Volume I - Final Report* (Washington, D.C.: U.S. Environmental Protection Agency, 1983).
- <sup>15</sup> Heimlich and Anderson, *ibid.*; *The Costs of Sprawl*, Maine State Planning Office, 1997.
- <sup>16</sup> Heimlich and Anderson, *ibid.*; G. Macintosh, ed., *Preserving Communities and Corridors* (Washington, D.C.: Defenders of Wildlife, 1989); R.F. Noss and A.Y. Cooperrider, *Saving Nature's Legacy* (Washington, D.C.: Island Press, 1994).



## FARMLAND INFORMATION CENTER

# FACT SHEET

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### DESCRIPTION

This fact sheet provides a brief description of the tools and techniques that state and local governments are using to protect farmland and support the economic viability of agriculture. Some of the techniques result in programs that are enacted and administered at the state level, others are used primarily by local governments. Sometimes, municipal governments adapt and strengthen state laws to meet unique local needs. Some of the most effective farmland protection programs combine regulatory and incentive-based strategies.

### AGRICULTURAL DISTRICT PROGRAMS

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. Typically, programs are authorized by state law and implemented at the local level. Enrollment in agricultural districts is voluntary. In exchange for enrollment, farmers receive a package of benefits, which varies from state to state.

There are 19 agricultural district programs in 16 states. California, New Jersey and North Carolina offer farmers two levels of benefits. Minnesota and Virginia have statewide and local agricultural district programs. Ohio has two statewide programs.

Agricultural district programs are intended to be comprehensive responses to the challenges facing farmers in developing communities. To maintain the land base for agriculture, some agricultural district programs protect farmland from annexation and eminent domain. Many also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. A few offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district programs help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices and by providing enhanced protection from private nuisance lawsuits.

To reduce farm operating expenses, some programs offer automatic eligibility for differential

assessment or property tax credits to farmers who enroll.

Some states encourage local planning by limiting district authorization to jurisdictions with comprehensive or farmland protection plans, requiring the adoption of land use regulations to protect farmland, involving planning bodies in the development and approval of districts, and limiting non-farm development in and around agricultural districts.

### AGRICULTURAL PROTECTION ZONING (APZ)

Agricultural protection zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. They designate areas where farming is the primary land use and discourage other land uses in those areas. APZ limits the activities that are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming.

APZ ordinances restrict the density of residential development in agricultural zones. Maximum densities range from one house per 20 acres in the eastern United States to one house per 640 acres in the West. Exclusive agricultural use APZ prohibits non-farm residential development. Non-exclusive APZ ordinances use different approaches to limit density. Large minimum lot size APZ sets a minimum lot size for each residence. For example, some ordinances require 40 acres per dwelling unit. Area-based allowance APZ uses a formula to achieve a desired density on the parent tract but allows or requires houses to be situated on small lots of 1 or 2 acres. The ratio may be fixed or based on a sliding scale that requires more acreage per dwelling for larger parcels.

In addition to limits on residential development, some APZ ordinances also contain limits on subdivision, site design criteria and right-to-farm provisions. They may also authorize commercial agricultural activities, such as farmstands, that enhance farm profitability. Occasionally, farmers in an agricultural zone are required to prepare farm management plans.

# THE FARMLAND PROTECTION TOOLBOX

In most states, APZ is implemented at the county level, although towns and townships may also have APZ ordinances. Zoning can be modified through the local political process. Generally, the enactment of an APZ ordinance results in a reduction of permitted residential densities in the new zone. This reduction in density, also called downzoning, may be controversial because it can reduce the market value of land. A change in zoning that increases permitted residential densities is known as upzoning. A change in the zoning designation of an area—from agricultural to commercial, for example—is known as rezoning. Successful petitions for upzoning and rezoning in agricultural protection zones often result in farmland conversion.

APZ stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development. This can reduce the likelihood of conflicts between farmers and their non-farming neighbors. Communities can use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land can ensure that there will be enough farms to support local agricultural service businesses. By restricting the development potential of large properties, APZ limits land speculation and helps keep land affordable to farmers and ranchers. Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

## CLUSTER ZONING

Cluster zoning ordinances allow or require houses to be grouped together on small lots to protect open land. The portion of the parcel that is not developed may be restricted by a conservation easement. Cluster developments are also known as cluster subdivisions, open space or open land subdivisions.

Cluster subdivisions can keep land available for agricultural use, but generally they are not designed to support commercial agriculture. The protected land is typically owned by developers or homeowners’ associations. Homeowners may object to renting their property to farmers and

ranchers because of the noise, dust and odors associated with commercial agricultural production. Even if the owners are willing to let the land be used for agriculture, undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently, and access can also be a problem. For these reasons, cluster zoning has been used more successfully to preserve open space or to create transitional areas between farms and residential areas than to protect farmland.

## COMPREHENSIVE PLANNING

Comprehensive planning allows counties, cities, towns and townships to create a vision for their joint future. Comprehensive plans, which are also known as master or general plans, outline local government policies, objectives and decision guidelines, and serve as blueprints for development. They typically identify areas targeted for a variety of different land uses, including agriculture, forestry, residential, commercial, industrial and recreational activities. Comprehensive plans provide a rationale for zoning and promote the orderly development of public services.

A comprehensive plan can form the foundation of a local farmland protection strategy by identifying areas to be protected for agricultural use and areas where growth will be encouraged. It may include policies designed to conserve natural resources and provide affordable housing and adequate public services. Some counties have used the comprehensive planning process to encourage their cities and towns to develop designated urban growth areas or boundaries (UGBs) and adopt APZ. Others have incorporated the use of purchase of agricultural conservation easements (PACE) and transfer of development rights (TDR) into their master plans.

## CONSERVATION EASEMENTS

Conservation easements are deed restrictions that landowners voluntarily place on their land to protect important resources. They are used by landowners (“grantors”) to authorize a qualified conservation organization or public agency (“grantee”) to monitor and enforce the restrictions set forth in the agreement.

Forty-nine states have a law pertaining to conservation easements. The National Conference

of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act was designed to serve as a model for state legislation to allow qualified public agencies and private conservation organizations to accept, acquire and hold less-than-fee-simple interests in land for the purposes of conservation and preservation. Since the Uniform Act was approved, 23 states have adopted conservation easement-enabling legislation based on this model and 26 states have drafted and enacted their own conservation easement-enabling laws.

Agricultural conservation easements are designed to keep land available for agriculture. Grantors retain the right to use their land for farming, ranching and other purposes that do not interfere with or reduce agricultural viability. They hold title to their properties and may restrict public access, sell, give or transfer their property, as they desire. Producers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent; term easements impose restrictions for a limited number of years. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights.

Agricultural conservation easements are a flexible farmland protection tool. Private land trusts and other conservation organizations educate farmers about the tax benefits of donating easements, and state and local governments have developed programs to purchase agricultural conservation easements from landowners. In addition, agricultural conservation easements can be designed to protect other natural resources, such as wetlands and wildlife habitat.

## EXECUTIVE ORDERS

State executive orders are policy statements issued by governors to accomplish specific

purposes. They may be advisory or carry the full force and effect of law, depending on the state. Governors from at least nine states have issued executive orders directing state agencies to avoid contributing to the conversion of agricultural land. These state-level policies mirror the federal Farmland Protection Policy Act (FPPA), which was enacted as a subtitle of the 1981 Farm Bill to "...minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to non-agricultural uses...." Some orders identify a lead agency, typically the state department of agriculture, to review state agency activities that may result in farmland conversion. These policies may help head off condemnation and/or may be used to justify mitigation.

Massachusetts Executive Order 193, for example, issued in 1991, has been used by the Department of Agricultural Resources (DAR) to negotiate mitigation for farmland loss. The DAR seeks mitigation for projects involving state funds and privately funded development projects subject to the state's environmental permitting process. Mitigation options include permanently protecting equivalent agricultural land by granting an agricultural preservation restriction to the Commonwealth or by making a financial contribution to its farmland protection program, a municipality or a qualified conservation organization.

Other executive orders have created task forces to investigate farmland conversion and recommend possible solutions. For example, Ohio's executive order created a state-level farmland preservation task force and ultimately led to the creation of the state's easement acquisition program.

State executive orders have the potential to build public and institutional support for other farmland protection programs. By restricting the use of state funds for projects that would result in the loss of agricultural land, executive orders also can influence the actions of local governments. To the extent that they call attention to the problem of farmland conversion and facilitate discussion about solutions, orders can serve as a building block of a comprehensive farmland protection program.

# THE FARMLAND PROTECTION TOOLBOX



# THE FARMLAND PROTECTION TOOLBOX

## FARM VIABILITY PROGRAMS

Farm viability programs provide technical assistance and, in some cases, small grants to improve the profitability of farm operations. These programs are administered by departments of agriculture, extension and/or nonprofit organizations. Typically, teams of experts work with operators to evaluate the current operation and develop individualized plans. Funds may also be available to implement practices or undertake capital projects identified in the planning process. Some of the programs include farmland protection and resource conservation components. The Massachusetts Farm Viability Enhancement program, for example, awards implementation grants in exchange for term easements. All viability programs assume that changes at the farm level—be it better management of existing resources or a new direction in marketing and/or products offered—can lead to enhanced farm profitability.

The first two agricultural viability programs were developed in Massachusetts and Minnesota in the mid 1990s. Subsequent programs have been adopted by Connecticut, Maine, New Jersey, New York and Vermont. In the 2002 Farm Bill, a federal Farm Viability Program was created, authorizing the Secretary of Agriculture to provide grants to eligible entities with approved farm viability programs. The federal program has not yet been implemented.

## GROWTH MANAGEMENT LAWS

Growth management laws are designed to control the timing and phasing of urban growth and to determine the types of land use that will be permitted at the local and regional levels. At least 12 states have laws that control development or set planning standards for local governments. Of these, several address the issue of farmland conversion.

Growth management laws take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within UGBs. They direct local governments to identify lands with high resource value and protect them from development. Some growth management laws

require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

Oregon has one of the nation's strongest growth management laws. As a result of the state's 1972 Land Conservation and Development Act, every county in Oregon has implemented agricultural protection zoning, protecting more than 16 million acres of agricultural land. Washington's Growth Management Act (GMA), passed in 1990 and strengthened in 1991, also is proving to be an effective farmland protection tool. Since the enactment of the GMA, most of Washington's counties have developed inventories of important agricultural land, and several have adopted agricultural protection zoning and/or created purchase of agricultural conservation easement and transfer of development rights programs. Growth management laws in Hawaii, Vermont, New Jersey and Maryland have been somewhat less effective in preventing farmland conversion and promoting the development of local farmland protection programs.

## MITIGATION LAWS AND POLICIES

Farmland mitigation laws and policies attempt to compensate for the conversion of agricultural land to another use by requiring permanent protection of "comparable" agricultural land. In 1995, city officials in Davis, Calif., enacted an ordinance that requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee in lieu of direct protection.

King County, Wash., has a "no net loss of farmland" policy in its comprehensive plan. The policy prohibits the conversion of land subject to APZ unless an equal amount of agricultural land of the same or better quality is added to the county's agricultural production zones.

In 2004, Connecticut lawmakers adopted Public Act No. 04-222, which requires municipalities, towns, cities, boroughs and districts to mitigate

the loss of active agricultural land taken by eminent domain. Local governments may either purchase an agricultural conservation easement on comparable land within its jurisdiction OR pay a mitigation fee to the state's farmland protection program to protect similar land elsewhere in the state subject to the approval of the state's farmland preservation program and the Commissioner of Agriculture.

### **PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT PROGRAMS (PACE)**

Purchase of agricultural conservation easement programs pay farmers to protect their land from development. PACE is known by a variety of other terms, the most common being purchase of development rights (PDR).

Landowners voluntarily sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land for agriculture and the value of the land for its "highest and best use," which is generally residential or commercial development.

Easement value is most often determined by professional appraisals, but may also be established through the use of a numerical scoring system that evaluates the suitability for agriculture of a piece of property. Twenty-seven states have authorized state-level PACE programs and independent local programs operate in 18 states.

State and local governments can play a variety of roles in the creation and implementation of PACE programs. Some states have passed legislation that allows local governments to create PACE programs. Others have enacted PACE programs that are implemented, funded and administered by state agencies. Several states work cooperatively with local governments to purchase easements. A few states have appropriated money for use by local governments and private non-profit organizations. Finally, some local governments have created independent PACE programs in the absence of any state action.

Cooperative state-local PACE programs have some advantages over independent state or local

programs. Cooperative programs allow states to set broad policies and criteria for protecting agricultural land, while county or township governments select the farms that they believe are most critical to the viability of local agricultural economies and monitor the land once the easements are in place. Involving two levels of government generally increases the funding available for PACE. Finally, cooperative programs increase local government investment in farmland protection.

PACE programs allow farmers to cash in a fair percentage of the equity in their land, thus creating a financially competitive alternative to selling land for non-agricultural uses. Permanent easements prevent development that would effectively foreclose the possibility of farming. Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land. Finally, PACE gives communities a way to share the costs of protecting agricultural land with farmers.

### **RIGHT-TO-FARM LAWS**

Every state in the nation has at least one right-to-farm law. State right-to-farm laws are intended to protect farmers and ranchers from nuisance lawsuits. Some statutes protect farms and ranches from lawsuits filed by neighbors who moved in after the agricultural operation was established. Others protect farmers who use generally accepted agricultural and management practices and comply with federal and state laws. Many right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

State right-to-farm laws are a state policy assertion that commercial agriculture is an important activity. The statutes also help support the economic viability of farming by discouraging

## **THE FARMLAND PROTECTION TOOLBOX**

# THE FARMLAND PROTECTION TOOLBOX

neighbors from filing lawsuits against agricultural operations. Beyond these protections, it is unclear whether right-to-farm laws help maintain the land base.

At the same time, local governments around the nation are enacting their own right-to-farm laws to strengthen and clarify language in state laws. Local activity has been encouraged by model local ordinances developed by state agriculture agencies (e.g., New Jersey's State Agriculture Development Committee) and/or farm advocacy groups (e.g., California Farm Bureau).

Local right-to-farm ordinances can serve as a formal policy statement that agriculture is a valuable part of the county or town economy and culture. Some require that a notice be placed on the deed to all properties in agricultural areas, cautioning potential buyers that they may experience noise, dust, odors and other inconveniences due to farming and ranching operations. At a minimum, local ordinances help educate residents about the needs of commercial agriculture and reassure farmers that their communities support them.

## TAX RELIEF

### Circuit Breaker Tax Relief Credits

Circuit breaker tax programs offer tax credits to offset farmers' property tax bills. Four states have circuit breaker programs. In Michigan, Wisconsin and New York, farmers may receive state income tax credits based on the amount of their real property tax bill and their income. In Iowa, farmers receive school tax credits from their local governments when school taxes exceed a statutory limit. The counties and municipalities are then reimbursed from a state fund. In Michigan, landowners who wish to receive circuit breaker credits must sign 10-year restrictive agreements with their local governments to prevent farmland conversion. In Wisconsin, counties and towns must adopt plans and enact agricultural protection zoning to ensure that tax credits are targeted to productive agricultural land.

Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are required to pay in taxes. The key differences between the programs are that most circuit

breaker programs are based on farmer income and are funded by state governments.

### Differential Assessment

Differential assessment laws direct local governments to assess agricultural land at its value for agriculture, instead of its full fair market value, which is generally higher. Differential assessment laws are enacted by states and implemented at the local level. With a few exceptions, the cost is borne at the local level.

Differential assessment programs help ensure the economic viability of agriculture. Since high taxes reduce profits, and lack of profitability is a major motivation for farmers to sell land for development, differential assessment laws also protect the land base. Finally, these laws help correct inequities in the property tax system. Owners of farmland demand fewer local public services than residential landowners, but they pay a disproportionately high share of local property taxes. Differential assessment helps bring farmers' property taxes in line with what it actually costs local governments to provide services to the land.

Every state except Michigan has a differential assessment law. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value assessment.

## TRANSFER OF DEVELOPMENT RIGHTS (TDR)

Transfer of development rights programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally established through local zoning ordinances, TDR programs can protect farmland by shifting development from agricultural areas to areas planned for growth. When the development rights are transferred from a piece of property, the land is typically restricted with a permanent agricultural conservation easement. Buying development rights generally allows landowners to build at a higher density than ordinarily permitted by the base zoning in designated receiving areas. TDR is known as transfer of development credits in California and in some parts of New Jersey.

TDR is used by counties, cities, towns and townships. Two regional TDR programs were developed to protect the pine barrens of Long Island, N.Y., and New Jersey's Pinelands. TDR programs are distinct from PACE programs because they involve the private market. Many TDR transactions are between private landowners and developers. Local governments approve transactions and monitor easements. A few jurisdictions have created "TDR banks" that buy development rights with public funds and sell them to developers and other private landowners.

Some states have enacted special legislation authorizing local governments to create TDR programs. In 2004 the New Jersey Legislature enacted the State Transfer of Development Rights Act. The State TDR Act enables municipalities to develop and participate in intra-municipal and inter-municipal programs. This law also formalized the planning process required to enact TDR and mandated a list of planning documents required prior to adopting a TDR ordinance. The Act also authorized the State TDR Bank Board to provide planning grants to communities developing programs.

Other states have consistently refused to give local governments such authorization. Counties and towns have created TDR programs without specific state authorizing legislation; municipal governments must work with their attorneys to determine whether other provisions of state law allow them to use TDR.

TDR programs are designed to accomplish the same purposes as publicly funded PACE programs. They prevent non-agricultural development of farmland, reduce the market value of protected farms and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners often oppose agricultural protection zoning and other land use regulations because they can reduce equity. APZ can benefit farmers by preventing urbanization, but it may also reduce the fair market value of their land. When more restrictive land use regulations are enacted in conjunction with a TDR program, communities can maintain equity for landowners. For example, development rights for transfer may be allocated based on the "underlying" or prior zoning.

While dozens of local jurisdictions around the country allow the use of TDR, only a few of them have used the technique successfully to protect farmland. TDR programs are complex and must be carefully designed to achieve their goal. Communities that have been most successful in using TDR are characterized by steady growth, with the political will to maintain and implement strong zoning ordinances and planning departments that have the time, knowledge and resources to administer complex land use regulations.

## THE FARMLAND PROTECTION TOOLBOX

For additional information on farmland protection and stewardship, contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)

(800) 370-4879

## FARMLAND PROTECTION ACTIVITY BY STATE

State	Agricultural Districts	Conservation Easements	Circuit Breaker	Differential Assessment	PACE	Right-to-Farm*	TDR
Alabama		▲		▲		▲	
Alaska		▲		▲		▲	
Arizona		▲		▲	▲	▲	
Arkansas		▲		▲		▲	
California	▲	▲		▲	▲❖	▲	❖
Colorado		▲		▲	▲❖	▲	❖
Connecticut		▲		▲	▲	▲	❖
Delaware	▲	▲		▲	▲	▲	❖
Florida		▲		▲	▲	▲	❖
Georgia		▲		▲	▲❖	▲	❖
Hawaii		▲		▲	▲	▲	
Idaho		▲		▲		▲	❖
Illinois	▲	▲		▲	❖	▲	
Indiana		▲		▲		▲	
Iowa	▲	▲	▲	▲		▲	
Kansas		▲		▲		▲	
Kentucky	▲	▲		▲	▲❖	▲	❖
Louisiana		▲		▲		▲	
Maine		▲		▲	▲	▲	❖
Maryland	▲	▲		▲	▲❖	▲	❖
Massachusetts	▲	▲	▲	▲	▲	▲	❖
Michigan		▲			▲❖	▲	
Minnesota	▲❖	▲		▲	❖	▲	❖
Mississippi		▲		▲		▲	
Missouri		▲		▲		▲	
Montana		▲		▲	❖	▲	❖
Nebraska		▲		▲		▲	
Nevada		▲		▲		▲	❖
New Hampshire		▲		▲	▲❖	▲	❖
New Jersey	▲	▲		▲	▲❖	▲	❖
New Mexico		▲		▲		▲	❖
New York	▲	▲	▲	▲	▲❖	▲	❖
North Carolina	▲	▲		▲	▲❖	▲	
North Dakota				▲		▲	
Ohio	▲	▲		▲	▲	▲	
Oklahoma		▲		▲		▲	
Oregon		▲		▲	❖	▲	
Pennsylvania	▲	▲		▲	▲❖	▲	❖
Rhode Island		▲		▲	▲	▲	
South Carolina		▲		▲	▲	▲	
South Dakota		▲		▲		▲	
Tennessee	▲	▲		▲		▲	
Texas		▲		▲		▲	
Utah	▲	▲		▲	▲	▲	❖
Vermont		▲		▲	▲	▲	❖
Virginia	▲❖	▲		▲	▲❖	▲	❖
Washington		▲		▲	▲❖	▲	❖
West Virginia		▲		▲	▲	▲	
Wisconsin		▲	▲	▲	❖	▲	❖
Wyoming		▲		▲		▲	

TOTAL	16	49	4	49	32	50	24
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▲ State level

❖ Local level

\* A number of local jurisdictions also have enacted right-to-farm ordinances. We do not have a complete inventory.



# FACT SHEET

## AGRICULTURAL

## ECONOMIC

## DEVELOPMENT



### TECHNICAL ASSISTANCE

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## DESCRIPTION

Farmers often say that the best way to protect farmland is to ensure that farming is profitable. Many farmland protection programs are designed to prevent development of productive land. Protecting the land base is an investment in the infrastructure of agriculture. Building and maintaining a strong agricultural economy is just as important to the viability of farms and ranches. An increasing number of states, communities, organizations and producers are promoting investment in agriculture through loan and grant programs, the development of high-value agricultural products and services, direct marketing of farm products and diversification.

## HISTORY

For most of U.S. history, agriculture was the foundation of local economies. Food was produced, marketed and sold close to home. Farmers and ranchers reaped most of the profits from the sale of food and fiber products. With the emergence of national and global markets, supermarkets and changes in the structure of agriculture, the producers' share of food and fiber profits decreased substantially. Since the 1970s, state and local governments and nonprofit organizations have been helping farmers and ranchers develop new products, processing facilities, services and marketing strategies to increase farm profits.

## FUNCTIONS & PURPOSES

State and local agricultural economic development programs provide technical assistance to farmers, ranchers and agricultural communities and facilitate access to capital for agricultural business development and expansion. They are designed to build and support local agricultural economies and to improve the economic health of individual farms and ranches. Some jurisdictions also use agriculture as a foundation to develop other industries, such as food processing and tourism. Programs use different strategies to achieve different objectives.

## STRATEGIES

### Planning for agricultural viability

Some local governments are incorporating agricultural business strategies into their traditional economic development plans. Four local governments in Maryland employ economic development specialists who advise farmers on new products, services, marketing strategies and management techniques to increase profitability. New York's county Agricultural and Farmland Protection Boards have the authority to receive state matching funds to develop and implement county agricultural and farmland protection plans. Many of these plans include the promotion of economic development initiatives for agriculture.

### Business planning and capital investment

Preparing a business plan can allow farmers and ranchers to examine a range of strategies to increase profits. A new Massachusetts program gives farmers access to a team of agricultural, economic and environmental consultants. Team members assess farm operations and make recommendations to improve performance. Farmers may receive state grants for capital improvements based on their business plans. In return, the farmers agree to sign five- or ten-year covenants restricting development of their land. The plans and grants are designed to make farms more profitable; the covenants give the strategies time to work. Canada has a national program that provides incentives for farmers to develop business plans through cost-sharing and grants.

### Purchase of agricultural conservation easement programs

Purchase of agricultural conservation easement programs compensate property owners for restricting the future use of their land. Selling an easement allows farmers and ranchers to cash in a percentage of the equity in their land, thus creating a financially competitive alternative to development. Producers often use PACE program

## AGRICULTURAL ECONOMIC DEVELOPMENT

funds to buy and improve land, buildings and equipment, to retire debt and to increase the viability of their operations.

### **Loan programs and economic development incentives**

Farmers need access to capital to purchase land and equipment and to invest in the development of new products, services, production technologies and marketing strategies. Yet commercial banks often are reluctant to lend money to farmers for agricultural enterprises. Public economic development programs are generally targeted to the industrial and service sectors and do not consider loans to agricultural businesses. State and local governments can facilitate agricultural economic development by treating farms as other businesses, making loan funds, tax incentives and technical assistance available to producers.

Twenty-four states offer public agricultural financing programs. Many of these programs are targeted to beginning farmers. Few, if any, have the capital to meet the demand for credit among farmers. One promising approach is a private initiative in Maryland that is experimenting with getting commercial banks to participate in an agricultural loan program through the commitment of Community Reinvestment Act funds.

### **Direct Marketing**

Growers who market agricultural products directly to customers usually receive higher prices than farmers and ranchers who sell wholesale. Counties and towns can encourage the development of agricultural retail businesses by specifically permitting roadside stands, pick-your-own operations, nurseries and other agricultural uses in their zoning by-laws. Many communities also have developed and distributed maps showing the location of farmstands, pick-your-own operations and farmers' markets, and some have posted signs directing drivers to farm businesses.

### **Farmers' markets**

Farmers' markets give growers access to a large base of customers. Most markets are open-air public spaces where farmers gather to sell home-grown products. Farmers may travel hundreds of miles to downtown markets in big cities. The markets are good for the city as well as the farmers, as they attract customers who patronize other downtown businesses.

### **Marketing to restaurants and food retailers**

Much of the retail price of food pays for marketing and distribution. By selling directly to food retailers, farmers and ranchers can capture more profit. A growing number of natural and specialty food stores are expressing interest in selling local farm products. Several nonprofit organizations are working to establish links between growers and chefs. Encouraging restaurants to use local produce and meats and promote them on their menus may help build a retail customer base for both local farms and dining establishments. Contact with restaurants and food retailers also helps keep farmers informed about trends in the food industry.

### **Community supported agriculture**

Community supported agriculture is a relatively new form of direct marketing. CSA farm customers pay for a share of the harvest at the beginning of the year and receive a weekly bundle of vegetables and fruits throughout the growing season. This system takes some of the risk out of farming and shifts the time that growers must spend on marketing to the beginning of the year. Some organizations are working to build CSA networks that would allow individual growers to offer a larger selection of farm products to their customers.

## AGRICULTURAL ECONOMIC DEVELOPMENT

*For additional information on farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

### Diversification

Agricultural operations that specialize in commodities such as corn or milk are vulnerable to economic shocks caused by low prices or bad weather. State departments of agriculture, Extension agents and economic development agencies promote diversification to reduce risk and increase profits. Diversification can mean planting new crops or shifting to a different mix of crops and livestock, developing new products or services or targeting new markets.

#### New products and marketing strategies

State and local governments and agricultural organizations are helping growers create and market specialty products such as cheese, wine, preserves and sauces, potato chips and cereals. These products can be sold year-round - a big advantage in cold climates - and some can be marketed through the mail. Several states are investigating the feasibility of public commercial kitchens that could serve as incubators for farm-based food businesses. An organization in Virginia is developing a brand of local farm and seafood products, and an organization in Maine is experimenting with selling farm products on the internet.

### Agritourism

Several state and local governments offer workshops for farmers who are interested in developing recreational businesses. Agricultural tourism is increasingly popular in farming communities near urban areas. Entrepreneurial growers are offering educational and recreational services such as school tours, hay and sleigh rides, crop mazes, petting zoos, restaurants, ranch vacations and bed-and-breakfast facilities. These services bring in new customers and promote farm products.

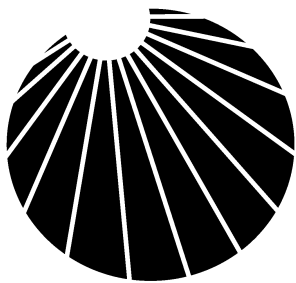
### Grower Cooperatives

Growers who sell wholesale can increase their access to lucrative markets by forming cooperatives. High-volume retailers such as supermarkets that find it too difficult to buy from individual producers may welcome the opportunity to purchase locally-grown food from a well-organized cooperative. Cooperatives can also offer a diverse selection of products to retailers at a competitive price.

#### Reducing the costs of production

Most agricultural economic development strategies are designed to help producers increase revenues, but a few help them cut costs. A project in Vermont is training dairy farmers to implement pasture-based management. By switching from growing and storing feed crops to grazing, dairy farmers can cut costs and improve their quality of life. Other organizations promote the use of integrated pest management and organic farming, which reduce the cost of inputs and may increase the prices that growers can demand for their products. Purchasing cooperatives for seeds and other agricultural supplies also can reduce production costs.





## FARMLAND INFORMATION CENTER

# FACT SHEET

## AGRICULTURAL CONSERVATION

## EASEMENTS



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### DESCRIPTION

A conservation easement is a deed restriction landowners voluntarily place on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. They are used by landowners ("grantors") to authorize a qualified conservation organization or public agency ("grantee") to monitor and enforce the restrictions set forth in the agreement. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They cover either an entire parcel or portions of a property. The landowner usually works with the prospective grantee to decide which activities should be limited to protect specific resources. Agricultural conservation easements are designed to keep land available for farming.

### RESTRICTIONS

In general, agricultural conservation easements limit subdivision, non-farm development and other uses that are inconsistent with commercial agriculture. Some easements allow lots to be reserved for family members. Typically, these lots are small—1 to 2 acres is common—and located on the least productive soils. Agricultural conservation easements often permit commercial development related to the farm operation and the construction of farm buildings. Most do not restrict farming practices, although some grantees ask landowners to implement soil and water conservation plans. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.

### TERM OF THE RESTRICTIONS

Most agricultural conservation easements are permanent. Term easements impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. An agricultural conservation easement can be modified or terminated by a court if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain proceedings.

### RETAINED RIGHTS

After granting an agricultural conservation easement, landowners retain title to their property and can still restrict public access, farm, use the land as collateral for a loan or sell their property. Land subject to an easement remains on the local tax rolls. Landowners continue to be eligible for state and federal farm programs.

### VALUATION

Landowners can sell or donate an agricultural conservation easement to a qualified conservation organization or government body. In either case, it is important to determine the value of the easement to establish a price or to calculate tax benefits that may be available under federal and state law. The value of an agricultural conservation easement is generally the fair market value of the property minus its restricted value, as determined by a qualified appraiser. In general, more restrictive agreements and intense development pressure result in higher easement values.

### TAX BENEFITS

Grantors can receive several tax advantages. Donated agricultural conservation easements that meet Internal Revenue Code section 170(h) criteria are treated as charitable gifts. The 2008 Farm Bill renews through 2009 the increased incentives authorized by the Pension Protection Act of 2006. The extension allows landowners to deduct the value of conservation easements up to 50 percent of their Adjusted Gross Income (AGI) compared to the former limit of 30 percent. The unused portion of the easement value may be carried forward for up to 15 years, as opposed to five. In addition, "qualified farmers and ranchers"—defined as individuals or corporations who earn more than 50 percent of their gross income from the business of farming in the taxable year in which the gift is made—still can deduct the value of the easement up to 100 percent of their AGI with a 15-year carry forward. Corporations were formerly limited to 10 percent of AGI with a five-year carryforward.

In addition to the federal income tax incentives, most state income tax laws provide for charitable deductions of conservation easements.

## AGRICULTURAL CONSERVATION EASEMENTS

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Twelve states offer income tax credits for easement donations on agricultural land.

Tax codes in some states direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry, rather than for residential, commercial or industrial development.

The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. However, as exemption levels increase, there may be less incentive from an estate tax perspective.

The Economic Growth and Tax Relief Reconciliation Act of 2001 expanded an estate tax incentive for landowners to grant conservation easements by removing the geographic eligibility requirements. Under Section 2031(c) of the tax code, executors can exclude 40 percent of the value of land subject to a donated qualified conservation easement from the taxable estate regardless of the property's location. This exclusion is limited to \$500,000 but is in addition to any reduction in the value of the estate as a result of protecting the land with a conservation easement. The full benefit is available for easements that reduce the fair market value of a property by at least 30 percent. A smaller exclusion is available for easements that reduce property value by less than 30 percent.

### HISTORY

Forty-nine states have a law enabling conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire and hold less than fee simple interests in land for the purposes of conservation and preservation. Since the Uniform

Conservation Easement Act was approved, 23 states have adopted conservation easement enabling laws based on this model, and 26 states have drafted and enacted their own enabling laws. In addition, 27 states have authorized state-level purchase of agricultural conservation easement (PACE) programs since 1977. PACE programs compensate landowners for placing restrictions on their land to keep it available for agriculture.

### BENEFITS

Agricultural conservation easements:

- Permanently protect important farmland while keeping the land in private ownership and on local tax rolls.
- Are flexible documents that can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Can provide farmers with several tax benefits including income, estate and property tax reductions.
- Can help farmers and ranchers transfer their operations to the next generation.

### DRAWBACKS

- Agricultural conservation easements do not ensure that the land will continue to be farmed.
- Donating an easement is not always a financially viable option for landowners.
- Monitoring and enforcing conservation easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Conservation easements do not offer protection from eminent domain. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.



## FARMLAND INFORMATION CENTER

# FACT SHEET

## PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS



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### DESCRIPTION

Purchase of agricultural conservation easement (PACE) programs compensate property owners for restricting the future use of their land. PACE is known as Purchase of Development Rights (PDR) in many locations.

PACE programs are based on the concept that property owners have a bundle of different rights, including the right to use land; lease, sell and bequeath it; borrow money using it as security; construct buildings on it and mine it; or protect it from development, subject to reasonable local land use regulations. Some or all of these rights can be transferred or sold to another person. When a landowner sells property, generally all the rights are transferred to the buyer. PACE programs enable landowners to separate and sell their right to develop land from their other property rights. The buyer, however, does not acquire the right to build anything on the land, but only the right and responsibility to prevent development. After selling an easement, the landowner retains all other rights of ownership, including the right to farm the land, prevent trespass, sell, bequeath or otherwise transfer the land.

Landowners voluntarily sell agricultural conservation easements to a government agency or private conservation organization. The agency or organization usually pays them the difference between the value of the land as restricted and the value of the land for its “highest and best use,” which is generally residential or commercial development. The easement price is established by appraisals or a local easement valuation point system. Typically, PACE programs consider soil quality, threat of development and future agricultural viability when selecting farms for protection.

Easements give qualified public agencies and private organizations the right to prohibit land uses and activities that could interfere with present or future agricultural use.

Terms may permit the construction of new farm buildings and housing for farm employees and family members. Easements “run with the land,” binding all future owners unless the document establishing the easement provides that the covenant may be terminated for cause or at the end of a specified period of time.

### HISTORY

Suffolk County, New York, created the nation’s first PACE program in the mid-1970s. Following Suffolk County’s lead, Maryland and Massachusetts authorized PACE programs in 1977, Connecticut in 1978 and New Hampshire in 1979. Concern about regional food security and the loss of open space were motivating forces behind these early PACE programs. The number of state-level programs continued to grow during the 1980s with the addition of Rhode Island in 1981, New Jersey in 1983, Vermont in 1987 and Pennsylvania in 1988. The creation of the federal Farmland Protection Program (FPP) in 1996, which provided matching funds to tribal, state and local governments to buy easements on agricultural land, spurred additional public activity. The 2002 Farm Bill expanded the program to non-governmental organizations and encouraged participation by land trusts and soil and water conservation districts. The 2008 Farm Bill authorized \$743 million for the FPP through fiscal year 2012, a historic high, which may result in new state and local efforts.

### FUNCTIONS AND PURPOSES

PACE compensates landowners for permanently limiting non-agricultural land uses. Selling an easement allows farmers to cash in a percentage of the equity in their land, thus creating a financially competitive alternative to development.

Permanent easements prevent development that would effectively foreclose the possibility of farming. Because non-agricultural development on one farm can cause problems for neighboring agricultural operations, PACE may help protect their economic viability as well.

Removing the development potential from farmland generally reduces its future market value. This may help facilitate farm transfer to the children of farmers and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. The reduction in market value may also reduce property taxes and help prevent them from rising.

PACE provides landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate

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family tenure on the land. For example, the proceeds from selling agricultural conservation easements may be used to reduce debt, expand or modernize farm operations, invest for retirement or settle estates. The reinvestment of PACE funds in equipment, livestock and other farm inputs may also stimulate local agricultural economies.

Finally, PACE gives communities a way to share the costs of protecting farmland with land-owners. Non-farmers have a stake in the future of agriculture for a variety of reasons, including keeping locally grown food available and maintaining scenic and historic landscapes, open space, watersheds and wildlife habitat. PACE allows them to “buy into” the protection of farming and be assured that they are receiving something of lasting value.

### ISSUES TO ADDRESS

The effectiveness of PACE programs depends on how jurisdictions address several core issues, which include:

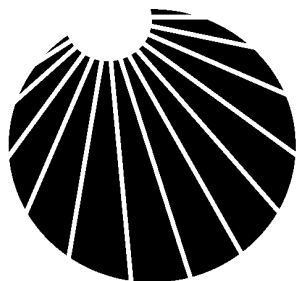
- What is the stated purpose of the program;
- What kind of farmland to protect, which areas to target and how to set priorities;
- What restrictions to put on the use of the land;
- How to determine the value of easements;
- How to raise purchase funds;
- How to distribute state funds among local jurisdictions;
- How to administer PACE programs; and
- How to monitor and enforce easements.

### BENEFITS

- PACE protects farmland permanently, while keeping it in private ownership.
- Participation in PACE programs is voluntary.
- PACE can be implemented by state or local governments, or by private organizations.
- PACE provides farmers with a financially competitive alternative to development, giving them cash to help address the economic challenges of farming in urban-influenced areas.
- PACE programs can protect ecological as well as agricultural resources.
- PACE may make agricultural land relatively more affordable to farmers.
- PACE programs involve the non-farming public in farmland protection.

### DRAWBACKS

- PACE is expensive.
- PACE can rarely protect enough land to eliminate development pressure on unrestricted farms.
- PACE programs are generally unable to keep up with farmer demand to sell easements. This results in long waiting lists and missed opportunities to protect land.
- Purchasing easements is time-consuming.
- The voluntary nature of PACE programs means that some important agricultural lands are not protected.
- Monitoring and enforcing easements requires an ongoing investment of time and resources.



## FARMLAND INFORMATION CENTER

# FACT SHEET

## TRANSFER OF DEVELOPMENT RIGHTS

### DESCRIPTION

Transfer of development rights (TDR) programs enable the transfer of development potential from one parcel of land to another. TDR programs are typically established by local zoning ordinances. In the context of farmland protection, TDR is often used to shift development from agricultural land to designated growth zones located closer to municipal services. TDR is also known as transfer of development credits (TDC) and transferable development units (TDU).

TDR programs are based on the concept that landowners have a bundle of different property rights, including the right to use the land; lease, sell and bequeath it; borrow money using it as security; construct buildings on it; and mine it; subject to reasonable local land use regulations. When a landowner sells property, generally all the rights transfer to the buyer. TDR programs allow landowners to separate from their other property rights, and to sell, the right to develop land.

The parcel of land where the development rights originate is called the “sending” parcel. When the rights are transferred from the sending parcel, the land is typically protected with a permanent conservation easement. A few localities record transfer documents to track the number of rights transferred and to notify buyers and local officials of limited future development potential. This approach, however, offers less protection than a conservation easement because changes in local land use regulations—even if such changes require a comprehensive plan update—could alter the rules for determining the remaining development potential on sites in sending areas.

The parcel of land to which the rights are transferred is called the “receiving” parcel. Transferred rights generally allow the purchaser of the rights to build at a higher density than ordinarily permitted by the base zoning on the receiving parcel.

TDR is most suitable in places where large blocks of land remain in agricultural use. In communities with a fragmented agricultural land base, it may be difficult to find viable sending areas. Communities also must be able to identify receiving areas that can accommodate the development potential to be transferred. Well-planned receiving areas have the

infrastructure needed to absorb additional density. They also respond to residents’ concerns about increased residential density while taking advantage of market conditions.

Local officials in Chesterfield Township, New Jersey, for example, designed a mixed-use community, Old York Village, *outside* of previously developed areas to accommodate transferred development potential. Other communities have authorized, or are considering, alternate applications of development potential such as increases in non-residential floor area, impervious surface area, decreases in parking requirements and even *decreases* in residential density.

The most effective TDR programs help facilitate transactions between private landowners and developers. A few programs allow developers to make payments in lieu of actual transfers. The locality then buys conservation easements on land in the sending area, sometimes in partnership with established purchase of agricultural conservation easement (PACE) programs and/or local land trusts. Other programs maintain public lists of TDR sellers and buyers. Some buy and retire rights to stimulate the market and/or reduce overall building potential. Lastly, at least a dozen communities have established TDR banks that buy development rights with public funds and sell the rights to developers. Some banks finance loans using the rights as collateral.

Some states have enacted legislation explicitly authorizing local governments to create TDR programs. For example in 2004, the New Jersey Legislature enacted the State Transfer of Development Rights Act. The State TDR Act authorizes municipalities to develop and participate in intra-municipal and inter-municipal programs. This law also established a formal planning process to enact a TDR ordinance and authorized the State TDR Bank Board to provide planning grants to communities.

TDR programs are distinct from PACE programs because TDR programs harness private dollars to achieve permanent land protection. TDR programs also differ from PACE programs in that they permit development potential to be transferred to a more appropriate location while PACE programs permanently retire development potential.



### AMERICAN FARMLAND TRUST

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## TRANSFER OF DEVELOPMENT RIGHTS

### HISTORY

TDR is used predominantly by counties, towns and townships. The 1981 National Agricultural Lands Study reported that 12 localities had enacted TDR programs to protect farmland and open space, but very few of these programs had been implemented. In the 1980s and 1990s, many local governments adopted TDR ordinances. An American Farmland Trust (AFT) Farmland Information Center (FIC) survey in 2000 identified 50 jurisdictions with TDR ordinances on the books.

In 2007, the FIC identified 99 TDR programs that protect agricultural land. We collected information from 64 programs. Of these, 38 had protected land or received payments in lieu of transfers. This activity is summarized in the accompanying table. Seventeen programs had not protected any agricultural land to date. Nine programs had been discontinued.

As of January 2008, 12 programs had each protected more than 1,000 acres of agricultural land, compared to eight programs during our previous survey. Since 1980, Montgomery County, Maryland, has protected 51,489 acres using TDR, or 40 percent of the agricultural land protected by the programs that responded to our survey (129,810 acres). The county's share of protected agricultural land via TDR dropped significantly, down from 60 percent of the national total at the time of the 2000 survey. Two programs that permit payments in lieu of transfers have received a combined total of more than \$1.4 million for agricultural land protection.

### FUNCTIONS & PURPOSES

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and preservation of historic landmarks. In the context of farmland protection, TDR programs prevent non-agricultural development of farmland, help keep farmland affordable and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners may

oppose agricultural protection zoning (APZ) and other land use regulations because of their concern that such controls will reduce the value of their land. When more restrictive land use regulations are enacted in conjunction with a TDR program, communities can retain equity for landowners. For example, development rights for transfer may be allocated based on the "underlying" or prior zoning. Selling development rights enables landowners to recapture the equity available under the previous zoning.

When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

### ISSUES TO ADDRESS

In developing a TDR program, planners must address a variety of technical issues. These issues include:

- Which agricultural areas should be protected?
- What type of transfers should be permitted?
- How should development rights be allocated?
- Where should development potential be transferred, how should rights be applied, and at what densities?
- Should the zoning in the sending area be changed to create more of an incentive for landowners to sell development rights?
- Should the zoning in the receiving area be changed to create more of an incentive for developers to buy development rights?
- Should the local government buy and sell development rights through a TDR bank?

One of the most difficult aspects of implementing TDR is developing the right mix of incentives. Farmers must have incentives to sell development rights instead of building lots. Developers must benefit from buying development rights instead of building according to existing standards. Thus, local governments must predict the likely supply of, and demand for, development rights in the real estate market, which determines the price. TDR programs are sometimes created in conjunction with

APZ: New construction is restricted in the agricultural zone, and farmers are compensated with the opportunity to sell development rights.

Because the issues are so complex, TDR programs are usually the result of a comprehensive planning process. Comprehensive planning helps a community envision its future and generally involves extensive public participation. The process of developing a community vision may help build understanding of TDR and support for farmland protection.

### BENEFITS OF TDR

- Most TDR programs protect farmland permanently, while keeping it in private ownership.
- Participation in TDR programs is voluntary—landowners are never required to sell their development rights.
- TDR can promote orderly growth by concentrating development in areas with adequate public services.
- TDR programs allow landowners in agricultural protection zones to retain their equity without developing their land.

- TDR programs are market-driven—private parties pay to protect farmland, and more land is protected when development pressure is high.
- TDR programs can accomplish multiple goals, including farmland protection, protection of environmentally sensitive areas, the development of compact urban areas, the promotion of downtown commercial growth and the preservation of historic landmarks.

### DRAWBACKS

- TDR programs are technically complicated and require a significant investment of time and staff resources to implement.
- TDR is an unfamiliar concept. A lengthy and extensive public education campaign is generally required to explain TDR to citizens.
- The pace of transactions depends on the private market for development rights. If the real estate market is depressed, few rights will be sold, and little land will be protected.

## TRANSFER OF DEVELOPMENT RIGHTS

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## LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
<b>California</b>					
City of Livermore	2003	56 payments	\$1,200,000	Increase residential density	Allows payments in lieu of transfers
Marin County	1981	11	660	Increase residential density	Multi-purpose program
<b>Colorado</b>					
Larimer County	1994	721	503	Increase residential density	Multi-purpose program
Mesa County	2003	10	50	Increase residential density	Multi-purpose program
<b>Delaware</b>					
Kent County	2004	157	157	Increase residential density Change permitted land use	Multi-purpose program
New Castle County	1998	93	300	Increase residential density	Multi-purpose program
<b>Georgia</b>					
City of Chattahoochee Hill Country	2003	21	21	Increase residential density Increase commercial square footage	Multi-purpose program Chattahoochee Hill Conservancy operates TDR bank
<b>Idaho</b>					
Payette County	1982	154	4,000	Permit development on substandard lots	Multi-purpose program
<b>Maryland</b>					
Calvert County	1978	UNK	13,260	Increase residential density	Multi-purpose program Purchases and retires rights
Caroline County	2006	136	1,500	Increase residential density	Multi-purpose program Maintains registry of interested buyers/sellers
Charles County	1992	1,110	3,330	Increase residential density	Multi-purpose program
Howard County	1993	NR	2,045	Increase residential density	Multi-purpose program Purchases and retires rights
Montgomery County	1987	9,630	51,489	Increase residential density	Operated bank but discontinued in 1990
Queen Anne's County	1987	UNK	8,032	Increase residential density Increase commercial square footage Increase impervious surface area	Multipurpose program Non-Contiguous Development activity included in county figures
St. Mary's County	1990	155	465	Increase residential density	
<b>Massachusetts</b>					
Town of Groton	1980	25	100	Increase residential density Increase rate of development	Multi-purpose program
Town of Hadley	2000	3 payments	\$206,772	Increase commercial or industrial floor area Reduce parking requirements	Allows payments in lieu of transfers
Town of Plymouth	2004	13	118	Increase residential density	Multi-purpose program
<b>Minnesota</b>					
Blue Earth County	1996	150	6,000	Increase residential density	Multi-purpose program
Chisago County	2001	11	290	Increase residential density	Multi-purpose program
Rice County	2004	102	3,252	Increase residential density	Multi-purpose program
<b>Nevada</b>					
Churchill County	2006	200	688	Increase residential density	Multi-purpose program Operates TDR bank
Douglas County	1997	3,518	3,727	Increase residential density Increase commercial square footage	
<b>New Jersey</b>					
Chesterfield Twp., Burlington Co.	1998	652	2,231	Increase residential density Increase commercial square footage	Burlington County operates bank used by township
New Jersey Pinelands	1981	4,000	25,000	Increase residential density Permit development on substandard lots	Multi-purpose program Operates TDR bank Maintains registry of interested buyers/sellers



## LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
<b>New York</b>					
Central Pine Barrens	1995	48	48	Increase residential density Increase commercial or industrial density/intensity All permitted increases in density or intensity relate to, and are capped by, increases in sewage flow	Multi-purpose program Commission operates bank Maintains registry of interested buyers/sellers
Town of Perinton	1993	68	174	Increase residential density	Multi-purpose program Purchases and retires rights
<b>Pennsylvania</b>					
Honey Brook Twp., Chester Co.	2003	18	50	Increase residential density Increase non residential square footage Increase impervious surface area	
Manheim Twp., Lancaster Co.	1991	422	476	Increase residential density Increase commercial square footage Increase impervious surface area	Operates TDR bank Purchases and retires rights
Shrewsbury Twp., York Co.	1976	30	60	Increase residential density Allowance of certain non-residential uses	Operates TDR bank
South Middleton Twp., Cumberland Co.	1999	8	135	Increase residential density	Multi-purpose program
Warrington Twp., Bucks Co.	1985	187	UNK	Increase residential density Increase commercial square footage Increase impervious surface area	Multi-purpose program
Warwick Twp., Lancaster Co.	1993	447	897	Increase commercial and light industrial square footage	Operates TDR bank Partners with Lancaster Farmland Trust
West Vincent Twp., Chester Co.	1998	162	NR	Increase residential density Increase commercial square footage	Multi-purpose program
<b>Vermont</b>					
South Burlington	1992	414	497	Increase residential density	Operates TDR bank
<b>Washington</b>					
King County	2000	8	80	Increase residential density	Multi-purpose program Operates TDR bank
Snohomish County	2004	49	70	Increase residential density Increase commercial square footage	Operates TDR bank
<b>Wisconsin</b>					
Cottage Grove Twp., Dane Co.	2000	3	105	Increase residential density	
<b>TOTALS</b>		<b>22,733</b>	<b>129,810</b>		

Most of the programs listed in this table protect multiple resources including agricultural land. For the purposes of this table, we only included transfers from agricultural land and acres of agricultural land protected by each program.

Two programs included in this table—Livermore, Calif., and Hadley, Mass.—allow payments in lieu of transfers. For these programs, the figure in "Rights Transferred" column represents the number of payments received to date and the figure in the "Agricultural Acres Protected" column equals the funds received to date. These numbers are not included in the totals at the bottom.

UNK means the program manager did not know. NR indicates that the program manager did not respond.

Surveys were sent to programs identified by staff and profiled in publications and reports about TDR programs, including *Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes* by Margaret Wells and Virginia McConnell and *Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges* by Rick Pruetz.

Figures for St. Mary's County, Md., are from the Wells/McConnell report. Figures for Queen Anne's County, Md., are from a presentation posted on the county's Department of Land Use, Growth Management and Environment Web site.



# FACT SHEET

## RIGHT-TO-FARM LAWS

### DESCRIPTION

Right-to-farm laws are designed to accomplish one or both of the following objectives: (1) to strengthen the legal position of farmers when neighbors sue them for private nuisance; and (2) to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations. Most laws include a number of additional protections. Right-to-farm provisions may also be included in state zoning enabling laws, and farmers with land enrolled in an agricultural district may have stronger right-to-farm protection than other farmers. A growing number of counties and municipalities are passing their own right-to-farm legislation to supplement the protection provided by state law.

The common law of nuisance forbids individuals from using their property in a way that causes harm to others. A private nuisance refers to an activity that interferes with an individual's reasonable use or enjoyment of his or her property. A public nuisance is an activity that threatens the public health, safety or welfare, or damages community resources, such as public roads, parks and water supplies.

A successful nuisance lawsuit results in an injunction, which stops the activity causing the nuisance, provides monetary compensation, or both. In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors:

- The degree of harm and its duration, permanence and character: Is it continuous or sporadic? Is it a threat to health, or simply a minor annoyance?
- The social value that state and local law places on both farming and the type of neighboring use that has been harmed;

- The suitability of the two sets of uses to the character of the locality; and
- The ease with which the neighbor could avoid the harm, and the farmer's ability to prevent or minimize the undesirable external effects of the farming operation.\*

One of the most important issues is whether the person bringing the lawsuit should have been able to anticipate the problem, and thus has assumed the risk of injury. If the farm was in operation before the person with the complaint moved to the neighborhood, the farmer may argue that the plaintiff "came to the nuisance." In most states, "coming to the nuisance" does not necessarily prevent farm neighbors from winning in court, but a farmer usually has a stronger legal case if his or her operation was there before the plaintiff moved to the area. Right-to-farm laws give farmers a legal defense against nuisance suits; the strength of that defense depends on the provisions of the law and the circumstances of the case.

### HISTORY

Between 1963, when Kansas enacted a law to protect feedlots from litigation, and 1994, when Utah included right-to-farm protections in its agricultural district law, every state in the Union enacted some form of right-to-farm law. Several states have enacted two types of right-to-farm legislation, and Minnesota and Iowa have enacted three.

### FUNCTIONS & PURPOSES

Right-to-farm laws are intended to discourage neighbors from suing farmers. They help established farmers who use good management practices prevail in private nuisance lawsuits. They document the importance of farming to the state or locality and put non-farm rural residents on notice that generally accepted agricultural practices are reasonable activities to expect in farming areas. Some of these laws also limit the ability of newcomers to change the local rules that govern farming.



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Local right-to-farm laws often serve an additional purpose: They provide farm families with a psychological sense of security that farming is a valued and accepted activity in their communities.

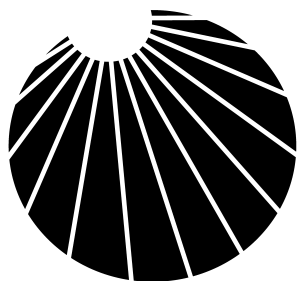
\* American Law Institute, Restatement of Torts (Second) (St. Paul, Minn., 1982), Sections 827-828.

## RIGHT-TO-

## FARM LAWS

*For additional information on right-to-farm laws and farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order **Right-to-Farm Laws: What Works**, a 28-page comprehensive technical report (\$9.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).



FARMLAND  
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# FACT SHEET

AGRICULTURAL

DISTRICT

PROGRAMS

## DESCRIPTION

Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. Programs are authorized by state legislatures and implemented at the local level. Enrollment in agricultural districts is voluntary. In exchange for enrollment, farmers receive a package of benefits, which varies from state to state. Minimum acreage requirements and initial terms of enrollment also vary. Agricultural district programs should not be confused with zoning districts that delineate areas governed by local land use regulations.

There are a total of 19 agricultural district programs in 16 states. California, New Jersey and North Carolina offer farmers two levels of benefits. Minnesota and Virginia have statewide and local agricultural district programs. Minnesota's local program applies to metropolitan areas. Ohio has two statewide programs. Provisions vary widely, but most agricultural district programs are intended to be comprehensive responses to the challenges facing farmers in developing communities.

To maintain a land base for agriculture, some agricultural district programs protect farmland from annexation and eminent domain. Many also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts. Two states offer participants eligibility for purchase of agricultural conservation easement programs, and two states include a right of first refusal in district agreements to ensure that land will continue to be available for agriculture.

Agricultural district programs help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices and by enhancing protection from private nuisance lawsuits.

To reduce farm operating expenses, programs offer automatic eligibility for differential tax assessment, property tax credits and/or tax exemptions.

Some states encourage local planning by: limiting district authorization to jurisdictions with comprehensive or farmland protection plans, requiring the adoption of land use regulations to protect farmland, involving planning bodies in the development and approval of districts, and limiting non-farm development in and around agricultural districts.

Agricultural district programs are designed to stabilize the land base and to support the business of farming by providing farmers with an attractive package of incentives.

## HISTORY

In 1965, California enacted the California Land Conservation Act to preserve agricultural land and open space and promote efficient urban growth patterns. The Williamson Act, as it is commonly known, allows landowners within locally designated "agricultural preserves" to sign renewable 10-year contracts with local governments. Landowners agree to restrict use of property within preserves to agriculture or open space for the term of the contract. In return, the land is assessed at its agricultural use value, providing participants with significant property tax relief.

The New York legislature created a comprehensive agricultural district program in 1971. Article 25 AA of the New York Agriculture and Markets Law made differential assessment available to New York farmers. The program also contained provisions that have been incorporated into other agricultural district laws, including protection against unreasonable local regulations, special review of the use of eminent domain and a requirement that state agency policies support the continuation of farming in agricultural districts.

Between 1971 and 1995, 14 additional states and one region followed the examples set by California and New York. Agricultural district programs continue to evolve.

In 1992, amendments to the New York law reconstituted and strengthened local agricultural advisory committees, added new right-to-farm protections and required local governments to recognize the intent of the agricultural district program when making local land use decisions. In 1998, New York State added a nuisance disclaimer to its district law and a requirement that enrolled farmers adopt sound conservation practices.

A 1994 amendment to California's Williamson Act made it more difficult for local governments to acquire land for public use in agricultural preserves. In 1998, California passed a new law that authorized the creation of Farmland Security



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PROVISION	# of Programs with Provision	Agricultural Preserves or Farmland Security Zones Calif.	Agricultural Preservation Districts Del.	Agricultural Areas Ill.	Agricultural Areas Iowa
Limits on non-farm development	14	▲	▲	▲	▲
Limits on use of eminent domain <sup>a</sup>	12	▲			
Local planning requirement <sup>b</sup>	11	▲			▲
Limits on special assessments	11	△		▲	▲
Farmers in districts receive extra right-to-farm protection	9		▲	▲	
Sound conservation practices required <sup>c</sup>	8			▲	
Penalty for early withdrawal from districts	7	▲			
State agency policies must support districts or farming in districts <sup>d</sup>	6			▲	
Agricultural impact statement required for public projects	6				▲
Limits on public investment for non-farm development	5				
Protection from siting of public facilities and improvements (e.g., schools and solid waste mgt. facilities)	5	▲		▲	
Farmers are automatically eligible for differential assessment <sup>e</sup>	4	▲			
Local governments compensated for taxes reduced by differential assessment	4	▲			
Limits on local governments' ability to annex land	4	△			
Landowners adjacent to districts must sign agricultural nuisance disclaimer	3		▲		
Farmer can recover legal fees if he/she wins nuisance lawsuit	3		▲		▲
Soil and water conservation cost sharing for farmers	3				
Enrollment in districts required to be eligible for Purchase of Agricultural Conservation Easements (PACE)	2		▲		
Land Evaluation and Site Assessment (LESA) used to define boundaries of district <sup>f</sup>	2		▲		
Landowner consent required prior to adoption of more restrictive zoning	2				
Enrolled land gets priority in water rights allocation	2				▲
Public entities have right of first refusal to purchase land	2				
Mediation required for land use disputes	1				
Land use controls on adjacent land must consider districts	1				
Farmers may earn up to 25% from non-farm sales and retain exemption from local zoning	1				
Farmers are automatically eligible for annual per acre property tax credit	1				
Limits on rate of property tax increases	1				
Land enrolled in districts exempt from school, real estate transfer, county property and applicable ad valorem taxes	1		▲		
Local governments may offer property tax exemption on new or expanded farm buildings	1				
Buffer strips required for development adjacent to districts	1		▲		
Initial term of enrollment (in years)		10/20*	10	10	3
Minimum acreage requirement		100	200	350	300

▲ Provision included in program.

△ Benefit provided only to landowners who sign FSZ contracts in Calif., enrollees in EVADs in N.C. and participants in "municipally approved" districts in N.J.

■ Minimum acreage requirement established by local entity, but in N.C. it is also tied to qualifications for the state's present-use-value taxation program.

<sup>a</sup> The degree of protection varies significantly from state to state. N.J. prohibits eminent domain in municipally approved programs; Pa., Utah and Va. can prohibit eminent domain, subject to review by state and/or local officials; Calif., Ky., Minn., Minn. Metro, N.Y., Ohio and Tenn. cannot prohibit eminent domain, but may require prior notification, agricultural impact statements, alternative proposals, and/or public hearings.

<sup>b</sup> Planning requirements vary among states. Calif., Minn. and Minn. Metro require plans (i.e., comprehensive or agricultural land preservation) to be eligible to establish districts, and zoning or other "official controls" to protect farmland. Md., N.J., N.Y., Pa., Utah, Va. and Va. Local involve planning bodies in the development and approval of districts. Iowa requires counties to create land use inventories prior to establishment of districts.

<sup>c</sup> In Md., conservation plans are required for land of lower agricultural capability to be eligible for districts. In N.J. conservation plans are required for participants to

# PROVISIONS OF AGRICULTURAL DISTRICT LAWS

Agricultural Districts Ky.	Agricultural Preservation Districts Md.	Agricultural Incentive Areas Mass.	Agricultural Preserves Minn.	Metropolitan Agricultural Preserves Minn. Metro	Farmland Preservation Programs and Municipally Approved Farmland Preservation Programs N.J.	Agricultural Districts N.Y.	Voluntary Agricultural Districts and Enhanced Voluntary Agricultural Districts N.C.	Agricultural Districts Ohio	Agricultural Security Areas Ohio	Agricultural Security Areas Pa.	Agricultural Districts Tenn.	Agricultural Protection Areas Utah	Agricultural Districts Va.	Local Agricultural Districts Va.
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receive grants for soil and water conservation projects. N.C. mandates conservation plans for highly erodible land. All other states require conservation practices—Ohio calls for best management practices—but do not stipulate development of a plan.

*d* Ill., N.Y., Pa., Utah, and Va. support agriculture in districts by requiring agencies to modify existing rules and policies that may restrict farming. Utah also prohibits state agencies from enacting unreasonably restrictive rules and policies. Ky. supports districts by requiring state agencies to mitigate the impact of their plans and programs on agriculture within the district.

*e* In Calif., farmers who sign a FSZ contract receive additional property tax relief.

*f* Del. requires use of LESA; Va. suggests it.

\* The initial term is 10 years for Williamson Act contracts and 20 years for FSZ contracts. Each year, contracts automatically are extended for one year unless a notice of non-renewal is submitted.

❖ Maryland's state-level agricultural districts program, administered by MALPF, is being discontinued. All MALPF districts will be terminated by 2012.

# AGRICULTURAL DISTRICT PROGRAMS

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

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Zones (FSZ). Farmers who elect to sign a 20-year FSZ contract receive expanded district benefits, including a 35 percent reduction in property tax assessments, on top of values calculated under the Williamson Act contracts, and protection from annexation and school sitings on agricultural land.

In 1997, Utah added provisions requiring that landowners adjacent to districts sign a nuisance disclaimer; in 1998, local planning and minimum acreage requirements were added.

In 1998, the Iowa State Supreme Court ruled that the right-to-farm provision contained within Iowa's agricultural district program constituted a taking of property rights without compensation. The Court held that the provision, which immunized farms in agricultural districts from nuisance lawsuits, amounted to an interest in, or easement on, adjacent land without payment of just compensation.

In 2000, Kentucky placed limitations on special assessments on land enrolled in districts. Virginia's state district law also was amended in 2000 to include significant economic consequences for early withdrawal from the program.

More recently, Ohio and North Carolina authorized new benefits and protections to supplement existing provisions. Ohio legislators created a second, stand-alone program, known as agricultural security areas, effective as of 2005. The same year, North Carolina lawmakers amended the existing program to offer landowners the option of establishing Enhanced Voluntary Agricultural Districts (EVADs).

In 2007, the Maryland legislature voted to eliminate agricultural districts from the Maryland Agricultural Land Preservation Foundation (MALPF) Program. As of July 1, 2007, MALPF no longer requires enrollment in a district as a prerequisite for selling an agricultural conservation easement. District petitions will not be accepted by MALPF as of July 1, 2008, and all MALPF districts will be terminated by June 30, 2012. While eliminating agricultural districts at the state level, the 2007 law gave counties the ability to create districts.

## FUNCTIONS & PURPOSES

Agricultural district programs are intended to be comprehensive responses to the challenges facing farmers in developing communities. They can be

designed to protect agricultural land, head off land conflicts, reduce farming expenses and encourage local planning.

## ISSUES TO ADDRESS IN DESIGNING A PROGRAM

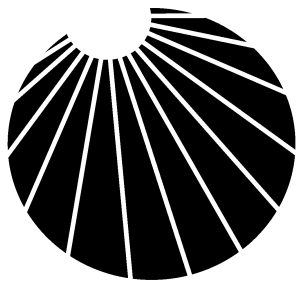
- Who will be eligible to enroll land in an agricultural district?
- What are the procedures for enrollment?
- What are the incentives for enrollment?
- What restrictions, if any, are placed on land enrolled in an agricultural district?
- How easy—or difficult—is it to withdraw land from an agricultural district?
- Who has the authority to terminate agricultural district agreements?

## BENEFITS

- Enrollment in an agricultural district is voluntary, making the programs popular with farmers.
- Agricultural district programs are very flexible; benefits and restrictions can be tailored to meet local objectives.
- Agricultural districts provide multiple benefits to farmers, including tax relief, protection from local regulation and eligibility for PACE programs.
- Agricultural districts help secure a critical mass of land to keep farming viable.

## DRAWBACKS

- Sanctions for withdrawing land from agricultural districts may not be strong enough to discourage conversion.
- Limits on non-farm development may not prevent expansion of public services, such as water and sewer lines, into agricultural areas. Some agricultural district laws address this issue; others do not.
- In some states, the benefits provided by agricultural districts are not enough incentive for farmers to enroll.
- In some states, the procedure for creating agricultural districts is lengthy and complex.



## FARMLAND INFORMATION CENTER

# FACT SHEET

## DIFFERENTIAL ASSESSMENT AND CIRCUIT BREAKER TAX PROGRAMS



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### DESCRIPTION

Tax incentives are widely used to maintain the economic viability of farming. All states have at least one program designed to reduce the amount of money farmers are required to pay in local real property taxes.

The most important type of agricultural tax program is known as differential assessment. Every state except Michigan has a differential assessment program that allows officials to assess farmland at its agricultural use value, rather than its fair market value, which is generally higher. Agricultural use value represents what farmers would pay to buy land in light of the net farm income they can expect to receive from it. Full fair market value represents the amount a willing buyer—whether farmer or developer—would pay for the land. Differential assessment is also known as current use assessment and use value assessment.

Three states—Michigan, New York and Wisconsin—allow farmers to claim state income tax credits to offset their local property tax bills. These programs are called “circuit breakers” because they relieve farmers of real property taxes that exceed a certain percentage of their income. Iowa and New York offer a credit against school taxes on agricultural land. While circuit breaker programs are not widespread, they are receiving increasing attention from state governments looking for ways to relieve farmers’ tax burden.

### HISTORY

Iowa’s Agricultural Land Credit Fund, established in 1939, was the first state program to provide farmers with relief from property taxes. Maryland enacted the nation’s first differential assessment law in 1956. Between 1959 and 1969, 20 other states adopted differential assessment legislation. Michigan adopted its circuit breaker tax relief program in 1974. By 1989, all 50 states had at least one type of agricultural tax program for farmland owners, and several states had more than one program.

As the value of farmland has risen, states have expanded their agricultural tax programs. Michigan adopted a special tax rate for farmland as part of its comprehensive property tax reform legislation in 1994. Wisconsin created a differential assessment program to supplement its circuit breaker program in 1995, and New York supplemented its differential assessment program with a circuit breaker program in 1996.

### FUNCTIONS & PURPOSES

Differential assessment laws and circuit breaker tax relief programs have three purposes: to help farmers stay in business by reducing their real property taxes; to treat farmers fairly by taxing farmland based on its value for agriculture, rather than at fair market value as if it were the site of a housing development; and to protect farmland by easing the financial pressures that force some farmers to sell their land for development.

As agricultural land is developed, property values rise. As new residents and businesses move to rural areas, local governments often raise property tax rates to support increased demand for public services. Tax rates that are based on the value of agricultural land for residential or commercial development do not reflect the current use of the land, nor farmers’ ability to pay. Increasing property values and the corresponding rise in taxes can reduce farm profitability.

High land values also make it more difficult for farmers to increase profits by expanding their operations. The combination of expensive real estate and high taxes creates strong economic incentives for farmers to stop farming and sell land for development. Differential assessment and circuit breaker programs help ensure that farmers who want to continue farming will not be forced to sell land just to pay their tax bills.

Differential assessment and circuit breaker programs also help correct inequities inherent in local property tax systems. Property taxes are assessed on a per-acre basis, and farmers are



## DIFFERENTIAL ASSESSMENT AND CIRCUIT BREAKER TAX PROGRAMS

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often the largest landowners in rural community's. The amount of land a farm family owns, however, does not reflect the cost of services they receive from local government. Studies show that farmland owners pay more in taxes than the value of the public services they receive from local governments, while homeowners receive more services than their taxes pay for.

### BENEFITS

- Agricultural tax programs help farmers stay in business by lowering their expenses.
- Agricultural tax programs help correct inequities in the tax system.

### DRAWBACKS

- Agricultural tax programs do not ensure longterm protection of farmland.
- Differential assessment programs often provide a subsidy to real estate speculators, who are keeping their land in agriculture pending development.

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# FACT SHEET

## AGRICULTURAL

## PROTECTION

## ZONING



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### DESCRIPTION

Agricultural protection zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. APZ designates areas where farming is the desired land use, generally on the basis of soil quality as well as a variety of locational factors. Other land uses are discouraged. APZ ordinances vary in what activities are permitted in agricultural zones. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming. The density of residential development is limited by APZ. Maximum densities range from one dwelling per 20 acres in the eastern United States to one residence per 640 acres in the West.

In practice, the specific areas designated by APZ are generally called agricultural districts. In the context of farmland protection, however, these zoning districts, which are imposed by local ordinances, are easily confused with voluntary agricultural districts created by farmers under statutes in 16 states. To avoid confusion, American Farmland Trust refers to the mandatory agricultural areas as agricultural protection zones, and the voluntary areas as agricultural districts.

APZ ordinances contain provisions that establish procedures for delineating agricultural zones and defining the land unit to which regulations apply. They specify allowable residential densities and permitted uses, and sometimes include site design and review guidelines. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farm stands, that enhance farm profitability. Occasionally, farmers in an agricultural protection zone are required to prepare conservation or farm management plans.

The definition of APZ varies with jurisdiction and by region of the country. A minimum lot size of 20 acres, combined with other restrictions, may be sufficient to reduce development pressures in areas where land is very expensive and

farming operations are relatively intensive. Several county APZ ordinances in Maryland permit a maximum density of one unit per 20 acres. In areas where land is less expensive and extensive farming operations such as ranches predominate, much lower densities may be required to prevent fragmentation of the land base. In Wyoming and Colorado, counties are not permitted to control subdivision of lots that are larger than 35 acres. The 35-acre provision has led to the creation of hundreds of 35-acre "ranchettes" in both states, fragmenting ranches into parcels that are too small for successful commercial ranching.

Many towns and counties have agricultural/residential zoning that allows construction of houses on lots of one to five acres. Although these zoning ordinances permit farming, their function is more to limit the pace and density of development than to protect commercial agriculture. In fact, such ordinances often hasten the decline of agriculture by allowing residences to consume far more land than necessary. AFT defines APZ as ordinances that allow no more than one house for every 20 acres, support agricultural land uses and significantly restrict non-farm land uses.

### HISTORY

The courts first validated zoning as a legitimate exercise of police power in the 1920s, giving local governments broad authority to regulate local land use. Rural counties in California, Pennsylvania and Washington began using zoning to protect agricultural land from development during the mid-1970s. In 1981, the National Agricultural Lands Study reported 270 counties with agricultural zoning. In 1995, an informal AFT survey found nearly 700 jurisdictions in 24 states with some form of APZ.

### FUNCTIONS & PURPOSES

APZ helps towns and counties reserve their most productive soils for agriculture. It stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development,

## AGRICULTURAL PROTECTION ZONING

*For additional information on agricultural protection zoning and other farmland protection programs, the Farmland Information Center offers publications, an on-line library and technical assistance. To order **Agricultural Protection Zoning: What Works**, a 34-page comprehensive technical report (\$14.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.*

thus reducing conflicts between farmers and their non-farming neighbors. Communities also use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land and farms allows the retention of an agricultural infrastructure and support services, such as equipment dealers and repair facilities, feed mills, fertilizer and pesticide suppliers, veterinarians, spraying and seeding contractors, food processors and specialized financial services. All of these agricultural businesses need their farm customers to stay profitable.

APZ can also limit land speculation, which drives up the fair market value of farm and ranch land. By restricting the development potential of large properties, APZ is intended to keep land affordable to farmers. A strong ordinance can demonstrate to farmers that the town or county sees agriculture as a long-term, economically viable activity, instead of an interim land use.

Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

### BENEFITS

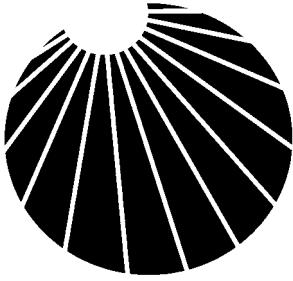
- APZ is an inexpensive way to protect large areas of agricultural land.
- By separating farms from non-agricultural land uses, APZ reduces the likelihood of conflicts between farmers and non-farming neighbors.
- APZ helps prevent suburban sprawl and reduces infrastructure costs.
- Compared to purchase of conservation easement and transfer of development rights programs, APZ can be implemented relatively quickly.
- APZ is easy to explain to the public because most landowners are familiar with zoning.

- APZ is flexible. If economic conditions change, the zoning can be modified as necessary.

### DRAWBACKS

- APZ is not permanent. Changes in APZ ordinances can open up large areas of agricultural land for development.
- APZ can reduce land values, which decreases farmers' equity in land. For this reason, farmers sometimes oppose APZ, making it difficult to enact.
- APZ may be difficult to monitor and enforce on a day-to-day basis.
- County APZ ordinances do not protect agricultural land against annexation by municipalities.

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).



FARMLAND  
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# FACT SHEET

## COST OF COMMUNITY SERVICES STUDIES



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### DESCRIPTION

Cost of Community Services (COCS) studies are a case study approach used to determine the fiscal contribution of existing local land uses. A subset of the much larger field of fiscal analysis, COCS studies have emerged as an inexpensive and reliable tool to measure direct fiscal relationships. Their particular niche is to evaluate working and open lands on equal ground with residential, commercial and industrial land uses.

COCS studies are a snapshot in time of costs versus revenues for each type of land use. They do not predict future costs or revenues or the impact of future growth. They do provide a baseline of current information to help local officials and citizens make informed land use and policy decisions.

### METHODOLOGY

In a COCS study, researchers organize financial records to assign the cost of municipal services to working and open lands, as well as to residential, commercial and industrial development. Researchers meet with local sponsors to define the scope of the project and identify land use categories to study. For example, working lands may include farm, forest and/or ranch lands. Residential development includes all housing, including rentals, but if there is a migrant agricultural work force, temporary housing for these workers would be considered part of agricultural land use. Often in rural communities, commercial and industrial land uses are combined. COCS studies findings are displayed as a set of ratios that compare annual revenues to annual expenditures for a community's unique mix of land uses.

COCS studies involve three basic steps:

1. Collect data on local revenues and expenditures.
2. Group revenues and expenditures and allocate them to the community's major land use categories.
3. Analyze the data and calculate revenue-to-expenditure ratios for each land use category.

The process is straightforward, but ensuring reliable figures requires local oversight. The most complicated task is interpreting existing records to reflect COCS land use categories. Allocating revenues and expenses requires a significant amount of research, including extensive interviews with financial officers and public administrators.

### HISTORY

Communities often evaluate the impact of growth on local budgets by conducting or commissioning fiscal impact analyses. Fiscal impact studies project public costs and revenues from different land development patterns. They generally show that residential development is a net fiscal loss for communities and recommend commercial and industrial development as a strategy to balance local budgets.

Rural towns and counties that would benefit from fiscal impact analysis may not have the expertise or resources to conduct a study. Also, fiscal impact analyses rarely consider the contribution of working and other open lands, which is very important to rural economies.

American Farmland Trust (AFT) developed COCS studies in the mid-1980s to provide communities with a straightforward and inexpensive way to measure the contribution of agricultural lands to the local tax base. Since then, COCS studies have been conducted in at least 128 communities in the United States.

### FUNCTIONS & PURPOSES

Communities pay a high price for unplanned growth. Scattered development frequently causes traffic congestion, air and water pollution, loss of open space and increased demand for costly public services. This is why it is important for citizens and local leaders to understand the relationships between residential and commercial growth, agricultural land use, conservation and their community's bottom line.

## COST OF COMMUNITY SERVICES STUDIES

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)

(800) 370-4879

COCS studies help address three claims that are commonly made in rural or suburban communities facing growth pressures:

1. Open lands—including productive farms and forests—are an interim land use that should be developed to their “highest and best use.”
2. Agricultural land gets an unfair tax break when it is assessed at its current use value for farming or ranching instead of at its potential use value for residential or commercial development.
3. Residential development will lower property taxes by increasing the tax base.

While it is true that an acre of land with a new house generates more total revenue than an acre of hay or corn, this tells us little about a community's bottom line. In areas where agriculture or forestry are major industries, it is especially important to consider the real property tax contribution of privately owned working lands. Working and other open lands may generate less revenue than residential, commercial or industrial properties, but they require little public infrastructure and few services.

COCS studies conducted over the last 20 years show working lands generate more public revenues than they receive back in public services. Their impact on community coffers is similar to that of other commercial and industrial land uses. On average, because residential land uses

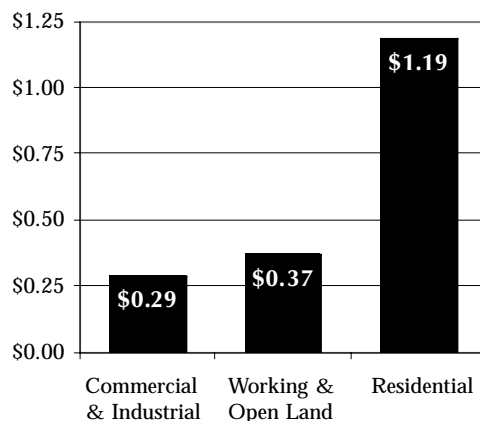
do not cover their costs, they must be subsidized by other community land uses. Converting agricultural land to residential land use should not be seen as a way to balance local budgets.

The findings of COCS studies are consistent with those of conventional fiscal impact analyses, which document the high cost of residential development and recommend commercial and industrial development to help balance local budgets. What is unique about COCS studies is that they show that agricultural land is similar to other commercial and industrial uses. In every community studied, farmland has generated a fiscal surplus to help offset the shortfall created by residential demand for public services. This is true even when the land is assessed at its current, agricultural use. However as more communities invest in agriculture this tendency may change. For example, if a community establishes a purchase of agricultural conservation easement program, working and open lands may generate a net negative.

Communities need reliable information to help them see the full picture of their land uses. COCS studies are an inexpensive way to evaluate the net contribution of working and open lands. They can help local leaders discard the notion that natural resources must be converted to other uses to ensure fiscal stability. They also dispel the myths that residential development leads to lower taxes, that differential assessment programs give landowners an “unfair” tax break and that farmland is an interim land use just waiting around for development.

One type of land use is not intrinsically better than another, and COCS studies are not meant to judge the overall public good or long-term merits of any land use or taxing structure. It is up to communities to balance goals such as maintaining affordable housing, creating jobs and conserving land. With good planning, these goals can complement rather than compete with each other. COCS studies give communities another tool to make decisions about their futures.

**Median COCS Results**



*Median cost per dollar of revenue raised to provide public services to different land uses.*

## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Colorado</b>				
Custer County	1 : 1.16	1 : 0.71	1 : 0.54	Haggerty, 2000
Sagauche County	1 : 1.17	1 : 0.53	1 : 0.35	Dirt, Inc., 2001
<b>Connecticut</b>				
Bolton	1 : 1.05	1 : 0.23	1 : 0.50	Geisler, 1998
Durham	1 : 1.07	1 : 0.27	1 : 0.23	Southern New England Forest Consortium, 1995
Farmington	1 : 1.33	1 : 0.32	1 : 0.31	Southern New England Forest Consortium, 1995
Hebron	1 : 1.06	1 : 0.47	1 : 0.43	American Farmland Trust, 1986
Litchfield	1 : 1.11	1 : 0.34	1 : 0.34	Southern New England Forest Consortium, 1995
Pomfret	1 : 1.06	1 : 0.27	1 : 0.86	Southern New England Forest Consortium, 1995
<b>Florida</b>				
Leon County	1 : 1.39	1 : 0.36	1 : 0.42	Dorfman, 2004
<b>Georgia</b>				
Appling County	1 : 2.27	1 : 0.17	1 : 0.35	Dorfman, 2004
Athens-Clarke County	1 : 1.39	1 : 0.41	1 : 2.04	Dorfman, 2004
Brooks County	1 : 1.56	1 : 0.42	1 : 0.39	Dorfman, 2004
Carroll County	1 : 1.29	1 : 0.37	1 : 0.55	Dorfman and Black, 2002
Cherokee County	1 : 1.59	1 : 0.12	1 : 0.20	Dorfman, 2004
Colquitt County	1 : 1.28	1 : 0.45	1 : 0.80	Dorfman, 2004
Dooly County	1 : 2.04	1 : 0.50	1 : 0.27	Dorfman, 2004
Grady County	1 : 1.72	1 : 0.10	1 : 0.38	Dorfman, 2003
Hall County	1 : 1.25	1 : 0.66	1 : 0.22	Dorfman, 2004
Jones County	1 : 1.23	1 : 0.65	1 : 0.35	Dorfman, 2004
Miller County	1 : 1.54	1 : 0.52	1 : 0.53	Dorfman, 2004
Mitchell County	1 : 1.39	1 : 0.46	1 : 0.60	Dorfman, 2004
Thomas County	1 : 1.64	1 : 0.38	1 : 0.67	Dorfman, 2003
Union County	1 : 1.13	1 : 0.43	1 : 0.72	Dorfman and Lavigno, 2006
<b>Idaho</b>				
Canyon County	1 : 1.08	1 : 0.79	1 : 0.54	Hartmans and Meyer, 1997
Cassia County	1 : 1.19	1 : 0.87	1 : 0.41	Hartmans and Meyer, 1997
<b>Kentucky</b>				
Campbell County	1 : 1.21	1 : 0.30	1 : 0.38	American Farmland Trust, 2005
Kenton County	1 : 1.19	1 : 0.19	1 : 0.51	American Farmland Trust, 2005
Lexington-Fayette County	1 : 1.64	1 : 0.22	1 : 0.93	American Farmland Trust, 1999
Oldham County	1 : 1.05	1 : 0.29	1 : 0.44	American Farmland Trust, 2003
Shelby County	1 : 1.21	1 : 0.24	1 : 0.41	American Farmland Trust, 2005
<b>Maine</b>				
Bethel	1 : 1.29	1 : 0.59	1 : 0.06	Good, 1994
<b>Maryland</b>				
Carroll County	1 : 1.15	1 : 0.48	1 : 0.45	Carroll County Dept. of Management & Budget, 1994
Cecil County	1 : 1.17	1 : 0.34	1 : 0.66	American Farmland Trust, 2001
Cecil County	1 : 1.12	1 : 0.28	1 : 0.37	Cecil County Office of Economic Development, 1994

## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
Frederick County	1 : 1.14	1 : 0.50	1 : 0.53	American Farmland Trust, 1997
Harford County	1 : 1.11	1 : 0.40	1 : 0.91	American Farmland Trust, 2003
Kent County	1 : 1.05	1 : 0.64	1 : 0.42	American Farmland Trust, 2002
Wicomico County	1 : 1.21	1 : 0.33	1 : 0.96	American Farmland Trust, 2001
<b>Massachusetts</b>				
Agawam	1 : 1.05	1 : 0.44	1 : 0.31	American Farmland Trust, 1992
Becket	1 : 1.02	1 : 0.83	1 : 0.72	Southern New England Forest Consortium, 1995
Deerfield	1 : 1.16	1 : 0.38	1 : 0.29	American Farmland Trust, 1992
Franklin	1 : 1.02	1 : 0.58	1 : 0.40	Southern New England Forest Consortium, 1995
Gill	1 : 1.15	1 : 0.43	1 : 0.38	American Farmland Trust, 1992
Leverett	1 : 1.15	1 : 0.29	1 : 0.25	Southern New England Forest Consortium, 1995
Middleboro	1 : 1.08	1 : 0.47	1 : 0.70	American Farmland Trust, 2001
Southborough	1 : 1.03	1 : 0.26	1 : 0.45	Adams and Hines, 1997
Westford	1 : 1.15	1 : 0.53	1 : 0.39	Southern New England Forest Consortium, 1995
Williamstown	1 : 1.11	1 : 0.34	1 : 0.40	Hazler et al., 1992
<b>Michigan</b>				
Marshall Twp., Calhoun County	1 : 1.47	1 : 0.20	1 : 0.27	American Farmland Trust, 2001
Newton Twp., Calhoun County	1 : 1.20	1 : 0.25	1 : 0.24	American Farmland Trust, 2001
Scio Twp., Washtenaw County	1 : 1.40	1 : 0.28	1 : 0.62	University of Michigan, 1994
<b>Minnesota</b>				
Farmington	1 : 1.02	1 : 0.79	1 : 0.77	American Farmland Trust, 1994
Lake Elmo	1 : 1.07	1 : 0.20	1 : 0.27	American Farmland Trust, 1994
Independence	1 : 1.03	1 : 0.19	1 : 0.47	American Farmland Trust, 1994
<b>Montana</b>				
Carbon County	1 : 1.60	1 : 0.21	1 : 0.34	Prinzing, 1997
Gallatin County	1 : 1.45	1 : 0.16	1 : 0.25	Haggerty, 1996
Flathead County	1 : 1.23	1 : 0.26	1 : 0.34	Citizens for a Better Flathead, 1999
<b>New Hampshire</b>				
Deerfield	1 : 1.15	1 : 0.22	1 : 0.35	Auger, 1994
Dover	1 : 1.15	1 : 0.63	1 : 0.94	Kingsley, et al., 1993
Exeter	1 : 1.07	1 : 0.40	1 : 0.82	Niebling, 1997
Fremont	1 : 1.04	1 : 0.94	1 : 0.36	Auger, 1994
Groton	1 : 1.01	1 : 0.12	1 : 0.88	New Hampshire Wildlife Federation, 2001
Stratham	1 : 1.15	1 : 0.19	1 : 0.40	Auger, 1994
Lyme	1 : 1.05	1 : 0.28	1 : 0.23	Pickard, 2000
<b>New Jersey</b>				
Freehold Township	1 : 1.51	1 : 0.17	1 : 0.33	American Farmland Trust, 1998
Holmdel Township	1 : 1.38	1 : 0.21	1 : 0.66	American Farmland Trust, 1998
Middletown Township	1 : 1.14	1 : 0.34	1 : 0.36	American Farmland Trust, 1998
Upper Freehold Township	1 : 1.18	1 : 0.20	1 : 0.35	American Farmland Trust, 1998
Wall Township	1 : 1.28	1 : 0.30	1 : 0.54	American Farmland Trust, 1998

## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

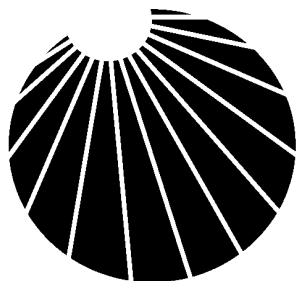
Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>New York</b>				
Amenia	1 : 1.23	1 : 0.25	1 : 0.17	Bucknall, 1989
Beekman	1 : 1.12	1 : 0.18	1 : 0.48	American Farmland Trust, 1989
Dix	1 : 1.51	1 : 0.27	1 : 0.31	Schuyler County League of Women Voters, 1993
Farmington	1 : 1.22	1 : 0.27	1 : 0.72	Kinsman et al., 1991
Fishkill	1 : 1.23	1 : 0.31	1 : 0.74	Bucknall, 1989
Hector	1 : 1.30	1 : 0.15	1 : 0.28	Schuyler County League of Women Voters, 1993
Kinderhook	1 : 1.05	1 : 0.21	1 : 0.17	Concerned Citizens of Kinderhook, 1996
Montour	1 : 1.50	1 : 0.28	1 : 0.29	Schuyler County League of Women Voters, 1992
Northeast	1 : 1.36	1 : 0.29	1 : 0.21	American Farmland Trust, 1989
Reading	1 : 1.88	1 : 0.26	1 : 0.32	Schuyler County League of Women Voters, 1992
Red Hook	1 : 1.11	1 : 0.20	1 : 0.22	Bucknall, 1989
<b>North Carolina</b>				
Alamance County	1 : 1.46	1 : 0.23	1 : 0.59	Renkow, 2006
Chatham County	1 : 1.14	1 : 0.33	1 : 0.58	Renkow, 2007
Orange County	1 : 1.31	1 : 0.24	1 : 0.72	Renkow, 2006
Union County	1 : 1.30	1 : 0.41	1 : 0.24	Dorfman, 2004
Wake County	1 : 1.54	1 : 0.18	1 : 0.49	Renkow, 2001
<b>Ohio</b>				
Butler County	1 : 1.12	1 : 0.45	1 : 0.49	American Farmland Trust, 2003
Clark County	1 : 1.11	1 : 0.38	1 : 0.30	American Farmland Trust, 2003
Knox County	1 : 1.05	1 : 0.38	1 : 0.29	American Farmland Trust, 2003
Madison Village, Lake County	1 : 1.67	1 : 0.20	1 : 0.38	American Farmland Trust, 1993
Madison Twp., Lake County	1 : 1.40	1 : 0.25	1 : 0.30	American Farmland Trust, 1993
Shalersville Township	1 : 1.58	1 : 0.17	1 : 0.31	Portage County Regional Planning Commission, 1997
<b>Pennsylvania</b>				
Allegheny Twp., Westmoreland County	1 : 1.06	1 : 0.14	1 : 0.13	Kelsey, 1997
Bedminster Twp., Bucks County	1 : 1.12	1 : 0.05	1 : 0.04	Kelsey, 1997
Bethel Twp., Lebanon County	1 : 1.08	1 : 0.17	1 : 0.06	Kelsey, 1992
Bingham Twp., Potter County	1 : 1.56	1 : 0.16	1 : 0.15	Kelsey, 1994
Buckingham Twp., Bucks County	1 : 1.04	1 : 0.15	1 : 0.08	Kelsey, 1996
Carroll Twp., Perry County	1 : 1.03	1 : 0.06	1 : 0.02	Kelsey, 1992
Hopewell Twp., York County	1 : 1.27	1 : 0.32	1 : 0.59	The South Central Assembly for Effective Governance, 2002
Maiden Creek Twp., Berks County	1 : 1.28	1 : 0.11	1 : 0.06	Kelsey, 1998
Richmond Twp., Berks County	1 : 1.24	1 : 0.09	1 : 0.04	Kelsey, 1998
Shrewsbury Twp., York County	1 : 1.22	1 : 0.15	1 : 0.17	The South Central Assembly for Effective Governance, 2002
Stewardson Twp., Potter County	1 : 2.11	1 : 0.23	1 : 0.31	Kelsey, 1994
Straban Twp., Adams County	1 : 1.10	1 : 0.16	1 : 0.06	Kelsey, 1992
Sweden Twp., Potter County	1 : 1.38	1 : 0.07	1 : 0.08	Kelsey, 1994
<b>Rhode Island</b>				
Hopkinton	1 : 1.08	1 : 0.31	1 : 0.31	Southern New England Forest Consortium, 1995
Little Compton	1 : 1.05	1 : 0.56	1 : 0.37	Southern New England Forest Consortium, 1995
West Greenwich	1 : 1.46	1 : 0.40	1 : 0.46	Southern New England Forest Consortium, 1995



## SUMMARY OF COST OF COMMUNITY SERVICES STUDIES, REVENUE-TO-EXPENDITURE RATIOS IN DOLLARS

Community	Residential including farm houses	Commercial & Industrial	Working & Open Land	Source
<b>Tennessee</b>				
Blount County	1 : 1.23	1 : 0.25	1 : 0.41	American Farmland Trust, 2006
Robertson County	1 : 1.13	1 : 0.22	1 : 0.26	American Farmland Trust, 2006
Tipton County	1 : 1.07	1 : 0.32	1 : 0.57	American Farmland Trust, 2006
<b>Texas</b>				
Bandera County	1 : 1.10	1 : 0.26	1 : 0.26	American Farmland Trust, 2002
Bexar County	1 : 1.15	1 : 0.20	1 : 0.18	American Farmland Trust, 2004
Hays County	1 : 1.26	1 : 0.30	1 : 0.33	American Farmland Trust, 2000
<b>Utah</b>				
Cache County	1 : 1.27	1 : 0.25	1 : 0.57	Snyder and Ferguson, 1994
Sevier County	1 : 1.11	1 : 0.31	1 : 0.99	Snyder and Ferguson, 1994
Utah County	1 : 1.23	1 : 0.26	1 : 0.82	Snyder and Ferguson, 1994
<b>Virginia</b>				
Augusta County	1 : 1.22	1 : 0.20	1 : 0.80	Valley Conservation Council, 1997
Bedford County	1 : 1.07	1 : 0.40	1 : 0.25	American Farmland Trust, 2005
Clarke County	1 : 1.26	1 : 0.21	1 : 0.15	Piedmont Environmental Council, 1994
Culpepper County	1 : 1.22	1 : 0.41	1 : 0.32	American Farmland Trust, 2003
Frederick County	1 : 1.19	1 : 0.23	1 : 0.33	American Farmland Trust, 2003
Northampton County	1 : 1.13	1 : 0.97	1 : 0.23	American Farmland Trust, 1999
<b>Washington</b>				
Okanogan County	1 : 1.06	1 : 0.59	1 : 0.56	American Farmland Trust, 2007
Skagit County	1 : 1.25	1 : 0.30	1 : 0.51	American Farmland Trust, 1999
<b>Wisconsin</b>				
Dunn	1 : 1.06	1 : 0.29	1 : 0.18	Town of Dunn, 1994
Dunn	1 : 1.02	1 : 0.55	1 : 0.15	Wisconsin Land Use Research Program, 1999
Perry	1 : 1.20	1 : 1.04	1 : 0.41	Wisconsin Land Use Research Program, 1999
Westport	1 : 1.11	1 : 0.31	1 : 0.13	Wisconsin Land Use Research Program, 1999

**Note:** Some studies break out land uses into more than three distinct categories. For these studies, AFT requested data from the researcher and recalculated the final ratios for the land use categories listed in this table. The Okanogan County, Wash., study is unique in that it analyzed the fiscal contribution of tax-exempt state, federal and tribal lands.



## FARMLAND INFORMATION CENTER

# FACT SHEET

## FARM TRANSFER AND ESTATE PLANNING



American Farmland Trust

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### DESCRIPTION

Estate planning should lay a framework for a smooth transition of farm or ranch ownership and management. It can provide for the needs of all family members, even those who leave the operation. It can help reduce high inheritance taxes on land made more valuable by inflation and non-farm development pressure. And proper estate planning can address the settlement problems that arise because land is not a liquid asset.

An estate plan is more than a will. A will is an important part of the plan because it names heirs, nominates an executor and appoints guardians for dependents. But a will alone cannot guarantee a secure future for the farm family, land or business.

A good estate plan should accomplish at least four goals:

- Transfer ownership and management of the agricultural operation, land and other assets;
- Avoid unnecessary transfer taxes (income, gift and estate);
- Ensure financial security and peace of mind for all generations; and
- Develop the next generation's management capacity.

Laws, especially tax laws, change. Two important elements of estate planning are to set goals and then to revisit them over time as families, finances, priorities and laws change. As part of this goal-setting process, landowners must take inventory of their assets and be sure they fully understand who owns what and how titles to the property are held.

### BASIC TECHNIQUES

Farmers and ranchers should complete a will and keep it updated. A living will, health care proxy and the designation of power of attorney are important ways to ensure that the family

will be able to make decisions if the landowner becomes seriously injured or terminally ill. The estate planning process is a good opportunity to resolve business operation and management issues and to transfer assets. For tax and other reasons, it makes sense to start transferring operating assets as soon as both generations are comfortable with the commitment.

The estate planning and farm transfer process is also a good time for landowners to evaluate their present business arrangements and decide whether those arrangements meet their current needs and help achieve their goals. They should choose the most appropriate form of business organization, whether it is a sole proprietorship, partnership or corporation. Written agreements are essential.

### TRANSFER AND TAX REDUCTION STRATEGIES

- Agricultural conservation easements can permanently protect farmland from non-farm development and significantly reduce transfer taxes in cases where the market value of the land is much greater than its restricted value.
- Annual gifts of assets can help transfer the business and reduce transfer taxes.
- Buy/sell agreements can ensure an orderly transfer of the farm business.
- Life insurance can be used to fund buy/sell agreements, establish trusts, provide for non-farming heirs or pay estate taxes.
- Limited partnerships or corporations can allow separation of management and ownership of the business, if desired.
- Long-term care insurance can protect family assets from being used to pay for nursing home costs.
- Minority discounts can substantially reduce transfer tax liability when minority interests of family farm businesses are transferred.

## FARM TRANSFER AND ESTATE PLANNING

For additional information on farmland protection and stewardship contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

[www.farmlandinfo.org](http://www.farmlandinfo.org)  
(800) 370-4879

- Purchase of agricultural conservation easements (also known as purchase of development rights) programs can protect farmland, reduce taxes and provide cash for retirement and estate planning needs.
- Transferring management responsibility and asset ownership gradually can provide a smooth transition for the agricultural operation from one generation to the next.
- Trusts can provide financial security for surviving spouses, children and grandchildren.

### ISSUES AND OPTIONS

Liquid assets—cash and cash equivalents—are important to settling farm and ranch estates. Having cash allows farm families to pay expenses and medical bills without selling land or farm equipment. Liquid assets also may be used to divide an estate fairly among heirs.

It is important to remember that an equitable settlement does not necessarily mean creating equal shares of a farm or ranch estate, because the children who are involved in a family agricultural enterprise have generally contributed a substantial amount of their time, energy and resources to make the business succeed. These children may have substantial “sweat equity” in the operation they inherit.

Balancing commercial and conservation goals in farm estate planning also is challenging, because farms are businesses. However, with careful planning, farmers and ranchers can take advantage of conservation options that protect land without unduly restricting agricultural enterprises. These conservation options should be integrated into estate plans to ensure long-term protection of both land and farming operations.

Successful farm transfer and estate planning require a team effort—including family, financial, farm management, tax and legal expertise. Because plans must be tailored to individual circumstances, they must be designed to meet a variety of unique situations.

Landowners must be sure to talk to their families and find the professional legal and financial assistance they need to accomplish their goals.

### ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

The Economic Growth and Tax Relief Reconciliation Act of 2001 contains several provisions that affect farmland conservation and farm estate planning and transfer, including:

- A dramatic increase in the estate tax exclusion: \$2 million in 2008 and \$3.5 million in 2009;
- Repeal of estate tax in 2010;
- A reduction of highest tax brackets;
- Modified carryover basis in 2010;
- Removal of geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code; and
- A sunset provision.

### JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003

The Jobs and Growth Tax Relief Reconciliation Act of 2003 also contains provisions that will affect farm estate planning, including:

- Lower capital gains from 20 to 15 percent (and from 10 to 5 percent for lower bracket taxpayers); and
- Reduction of taxes on dividends to match capital gains tax rates.

These tax law changes have provided significant estate and income tax reductions as well as some additional uncertainty for estate tax planning and farm transfer. Farm and ranch owners should contact their advisors to determine how those changes will affect their planning efforts.



## **Washington Future of Farming Project**

### **Discussion Paper on the Impact of Environmental Regulation on Washington Agriculture: Challenges and Opportunities**

#### **1. Background:**

Among the issues confronting the future of Washington farmers and ranchers is the ever-intensifying pressure for increased environmental performance on agricultural lands. This concern was recognized by the original 1988 Washington Department of Agriculture (WSDA) AG 2000 study which, at that time, recommended that the agriculture industry should:

- a. Establish multi-interest coalitions on natural resource use policies,
- b. Develop increased efficiency in natural resource use, and
- c. Increase public and industry education about agriculture and the environment.

In recent meetings with the current WSDA “Future of Farming” project, the original AG 2000 team recognized the progress that has been made, but also acknowledged that “this area needs more effort.” This sentiment is mirrored by input that has already been received from today’s farmers by the Future of Farming project. There are strong concerns within agriculture about the future of environmental regulation. Producers feel that they are increasingly carrying the cost of environmental conservation to the detriment to their business.

To aid the discussion of these issues, this paper attempts to describe the nature and causes of the challenges we face. At the same time, it also hopes to identify real opportunities to address environmental issues in ways that will ensure and hopefully enhance the future economic viability of agriculture.

## **2. The social framework and the challenges of environmental regulation:**

The Pacific Northwest is a modern American economic miracle driven by a flourishing international marketplace – in which agriculture is a critical component part. The population here is expected to grow by perhaps 5 times over the next century.<sup>1</sup> Yet our region is also laced with a vulnerable network of streams and rivers – especially in those parts of Western Washington where we expect the most rapid growth. Many of these waters are already listed as polluted under section 303(d) of the Clean Water Act.<sup>2</sup> And the environmental sensitivity of our region is also highlighted by several local endangered species listings, including several species of Pacific Salmon.

As the Northwest's dramatic growth continues, the environmental impacts of our increasing population will inevitably worsen. It seems likely that it will be impossible to fully address them in the urban centers themselves. For the most part, urban-designated areas are not friendly to the environment and the cost of making serious environmental improvements there is comparatively prohibitive. Conversely, there is little more to gain on our public lands – these lands are already managed mostly in their natural state. In both cases, some improvements are probably possible, but overall, we will need to look elsewhere if we are to make up for our anticipated losses in the years to come.<sup>3</sup>

Roughly half of the private land base in Washington is currently in active agriculture.<sup>4</sup> And that percentage is much larger, if we ignore those lands already in urban or suburban development. In large part, therefore, our State's environmental future seems inextricably linked to the future of our private rural lands. Add to this the likelihood that the vast majority of those expected millions of new residents (and voters) will doubtless reside in urban areas, and will probably have little understanding of the needs of agriculture. In the years to come, our farms will clearly experience intensifying pressure as the rest of society must increasingly mitigate for the impacts of urban expansion, economic prosperity, a rising standard of living, population growth, and urban development.

Some of this pressure will, of course, focus on compliance with existing law. But much of it – perhaps most – will also reflect efforts by a growing society to make up for its own increasing impacts in what society is likely to see as the least costly and least troublesome way. For some, this seems likely to translate into calls for increased regulation of agriculture. There is the very real possibility that such regulation, by visiting higher costs on an already struggling industry, may accelerate driving farmers off the land and land out of agriculture. That this may seem unfair may not be an adequate defense.

Solving a growing urban society's environmental problems, however, is not so simple as merely intensifying regulation of agriculture or driving farmers off the land. The environmental enhancements we will need if we are to fix the environment step well beyond what can be done with prohibitory regulation. Voluntary financial conservation incentives, on the other hand, can enlist the

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<sup>1</sup> Robert T. Lackey, *A salmon-centric view of the 21<sup>st</sup> century in the western United States*, Renewable Resources Journal, Autumn 2003, at p. 14.

<sup>2</sup> Section 303(d) of the Clean Water Act, <http://www.epa.gov/waterscience/standards/rules/303.htm>

<sup>3</sup> One possible exception may be wetland replacement where banking or other replacement activities may be possible on public lands.

<sup>4</sup> USDA Farms and Land in Farms and Livestock Operations 2007 (February 2008), p.9-13, [http://usda.mannlib.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-01-2008\\_revision.pdf](http://usda.mannlib.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-01-2008_revision.pdf).

willing, even enthusiastic participation of landowners in making the needed positive improvements to the environment. In contrast, regulation is usually limited to preventing further damage.

Moreover, it is in nobody's interest to drive farmers off the land. The official NOAA Fisheries Puget Sound Salmon Recovery Plan completed by Shared Strategy for Puget Sound specifically concluded that saving our region's farms (and keeping them economically viable) is essential to maintaining the open undeveloped landscapes necessary for salmon recovery.<sup>5</sup> Similarly, the recent 50-year Cascade Agenda for Puget Sound found the same thing – that we must save our farms if we are to save the environment.<sup>6</sup> So, it would appear that we must save our farms and improve the environmental qualities they provide. Both are vital to the survival of countless species as well as to the health, economy, and quality of life in the Pacific Northwest.

There seems to be little hope that Washington's Growth Management Law<sup>7</sup> can prevent the fragmentation of our land base. The current average Washington farm is 458 acres.<sup>8</sup> Yet the largest current agricultural zoning in our State is only 40 acres. Much of that acreage is already grandfathered in at parcel sizes of 20, 10, or even 5 acres. There is no (and is not likely to be any) requirement that farm zoned land actually be owned or operated by farmers. And much of our current 15.1 million acres of Washington agriculture is actually conducted on lands that are not zoned explicitly for agriculture. Moreover, some 75% of the land now in active agriculture in Washington has a current fair market value that exceeds its value as a productive asset for an agriculture business. So, should these farms go out of business, the land they sell is, in most cases, likely to sell to a non-farmer, will probably be fragmented up to whatever parcel sizes current zoning will allow, and is almost certain to be put to more intensive, less environmentally friendly uses.

Clearly, if the public comes to think about it, they should understand the counter-productive impact of over-regulation of agriculture. But will they? Creating that public understanding should, therefore, be a major agricultural public policy objective in the years to come.

### **3. Opportunities for the future:**

Fortunately, agricultural lands offer a huge opportunity to improve the environment and correct for societal environmental degradation – without diminishing their economic viability for traditional farming. In fact much, perhaps most of what farmers already do and can do by way of environmental conservation actually also increases the productivity of the farm/ranch business.<sup>9</sup> Whether it is planting and growing trees or other native vegetation, managing for the protection of water quality, minimizing floods, recharging aquifers, assuring the survival of animals, sequestering carbon, or simply preserving a productive open landscape, our farmers are the ultimate skilled professionals. Much of this is already done by farmers every day – for free. Our best opportunities arise in our taking advantage of that fact. The following are a few, selected opportunities to do that.

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<sup>5</sup> Puget Sound Salmon Recovery Plan, adopted by NOAA Fisheries January 19, 2007, Proposal for Prosperity of Farming and Salmon, p.411. [http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/upload/Ch6\\_Hab\\_Farm.pdf](http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/upload/Ch6_Hab_Farm.pdf).

<sup>6</sup> Cascade Land Conservancy's Cascade Agenda, Ch. 3, pp. 1-14, The Communities that Define Us: Our Agricultural Lands. <http://www.cascadeagenda.com/picturing-the-cascade-agenda/the-cascade-agenda/the-report>

<sup>7</sup> Washington Growth Management Act, RCW Ch. 36.70A, <http://apps.leg.wa.gov/Rcw/default.aspx?Cite=36.70A>.

<sup>8</sup> USDA Farms and Land in Farms and Livestock Operations 2007 (February 2008), p.5, [http://usda.mannlib.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-01-2008\\_revision.pdf](http://usda.mannlib.cornell.edu/usda/current/FarmLandIn/FarmLandIn-02-01-2008_revision.pdf)

<sup>9</sup> The NRCS Electronic Field Office Technical Guide describes several hundred Best Management Practices. <http://www.nrcs.usda.gov/Technical/efotg/>. Most of these provide benefits BOTH to the farm and for conservation.

### **A. Improving the credibility and fundability of conservation incentives:**

The current best alternative to environmental regulation is a suite of voluntary financial conservation incentives programs funded mostly by governments at various levels. While there are many discrete programs, the overall level of funding has been typically quite limited – especially given the magnitude of the problem. Because these programs are publicly funded out of scarce taxpayer resources, their level of funding depends heavily upon their credibility with policymakers and their effectiveness in addressing important, identifiable social problems.

In a setting where the problems are massive and the funding is minimal, credibly and seriously dealing with those problems clearly depends upon being able to target the limited funds to specific physical locations or to particular areas of need. To do that with voluntary incentive programs requires that a substantial percentage of the landowners in that target location or who can address that particular need will wish to participate. This can only occur if the program is in a position to offer sufficient funding to make participation truly attractive to most of them. So, until funding increases to a level that makes this possible, incentives programs face a “Catch 22:” If they are to receive more funding, they must be credible with policymakers and the public. To be credible, they must have more funding.

Given current funding levels, NRCS and other incentive agencies have fallen back on heavy reliance upon the good will and contributions of public-spirited landowners willing to invest their own money and for whom only a small cost-share from the public is needed. This does extend scarce public money, but it also tends to spread the environmental benefits of current spending very broadly across the landscape and only rarely does it produce the targeted outcomes so needed to clearly demonstrate credibility and effectiveness.<sup>10</sup>

Conservation incentives do, however, have clear strengths for environmental improvement, if we are willing to take advantage of them. Examples taken from AFT’s Report<sup>11</sup> on the recent “Conservation Incentives Project” include:

- **Cost:** Incentives offer significant cost advantages:
  - Incentives have the advantage that we know how much they cost (with regulation, for example, social costs may often be hidden). So, when we use incentives, we are actually in a position to attempt a measure of public cost effectiveness and to look for ways to improve it.<sup>12</sup>
  - Because they are administered on a case-by-case basis, incentives result in costs being incurred at only those sites where improvements are actually needed and have been deemed beneficial (rather than throughout a community, activity, area, or regulated industry). Unwarranted public and social costs can be avoided simply by approving only those specific projects where the public benefits are worth the social cost.

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<sup>10</sup> Report of Evergreen Funding Consultants to Washington Biodiversity Council on “*Conservation Incentive Programs in Washington State: Trends, Gaps, and Opportunities*.”

[http://www.biodiversitypartners.org/state/wa/biodiversity\\_report.pdf](http://www.biodiversitypartners.org/state/wa/biodiversity_report.pdf)

<sup>11</sup> “*Washington Conservation Incentives Project: Report to the Puget Sound Action Team*,” American Farmland Trust, May 2007. <http://www.farmland.org/programs/states/wa/CreatingStrongerIncentives.asp>.

<sup>12</sup> *Incentives for Biodiversity Conservation: An Ecological and Economic Assessment*, Casey, Vickerman, Hummon, Taylor (Defenders of Wildlife, 2006) p. 8.

- Disruption of private economic activity is minimized with incentives. Because they are only used when the landowner is a willing and active participant, the actions resulting from incentives are usually well-adapted to the site-specific needs of the particular property involved and tend to avoid unnecessary economic side-effects.
- Incentives can save expense. Because the landowner is an active participant, often projects can be done in a way that provides environmental value to society, while at the same time often producing site improvements that are economically beneficial to the landowner.<sup>13</sup> Landowners then share the cost of such projects thus reducing the expense for the public.
- Individual and community synergy and support: Incentives have the capacity to enlist willing, even enthusiastic landowner participation in achieving social objectives rather than tending to incite potential opposition. They can generate positive interactive social pressure in a community and strengthen shared community values thus creating synergy that will enhance participation in and the effectiveness of the programs. Some of the most striking examples of successful environmental restoration on private lands are in situations where the availability of incentives brought about a broad shift in local community consensus and resulted in the active, positive participation of many local landowners.
- Opportunities for affirmative restoration: Many of our society's environmental goals require complex, positive activities and physical improvements in conditions on the land. Incentives have the advantage that they can bring such changes about. Such positive environmental restoration would be difficult or impossible to achieve solely with prohibitory regulation. Because the landowner is an active, willing participant, these improvements can be accomplished in a site-specific way that is not only consistent with the landowner's own needs for the property, but is also more likely to achieve the desired social result.<sup>14</sup>
- Encouraging socially-beneficial landscapes: Strong incentive programs can have the positive effect of helping farm and forest landowners remain in business and helping them keep their land in well-managed natural resource uses and out of landscape-fragmenting development. This can help society preserve the large-parcel, open, mostly natural and undeveloped private landscapes that are so necessary for the environment and for wildlife habitat.<sup>15</sup> One unintended consequence of the use of regulation can be to heighten costs of doing business to a point where these lands fall to development and to other more intensive and less environmentally friendly uses.
- Fairness: Of course there are social responsibilities that everyone should comply with. But there are also circumstances when public compensation should be paid. For example, many people feel that expensive environmental restoration on private lands for mostly public purposes should be mostly paid for by the public.<sup>16</sup> Incentives are a tool that allows us to find the appropriate balance of fairness as a minority of pressured private owners of a

<sup>13</sup> This is the specific mission of the Pioneers in Conservation salmon recovery grants program initially developed for Shared Strategy for Puget Sound and currently funded through the Washington State Conservation Commission and the National Fish and Wildlife Foundation.

<sup>14</sup> Ibid note 11, p. 13-15.

<sup>15</sup> See Puget Sound Salmon Recovery Plan adopted by NOAA Fisheries, Chapter 6, Habitat, p. 413.

<http://www.sharesalmonstrategy.org/plan/docs/ch6/CHAPTER6habitat.pdf>.

<sup>16</sup> Ibid note 11, at. p. 14.



diminishing resource of open lands is increasingly expected to help mitigate for impacts potentially caused elsewhere in a rapidly growing society.

Our first opportunity, therefore, would seem to lie in our own recognition, within agriculture, of the power of incentives to change the world. Since incentives, at least over the long-term, would often seem to be a highly desirable alternative to future regulation, this would seem to be a “slam-dunk.” Strong, faithful, committed support, by the mainstream Washington agriculture industry, for increases in public funding for incentives at all levels of government is essential. Without it, incentives seem likely to continue to limp along at current inadequate levels, while environmental need and public pressure builds and the regulatory threat grows.

### **B. Enlisting the power of agriculture and a new marketplace:**

Even with strong agriculture industry support, even if the public and policy community come to appreciate their advantages, and even if their credibility builds, government-funded conservation incentives will always be limited by the eternal struggle over public money. Where else might money be found to provide farmers fair value for the environmental services they provide and thus help make farming a more profitable enterprise?

Ironically, the answer lies in a problem shared by both farmers and environmentalists, namely: Environmental services seem to have no “value.”

From the environmentalist perspective, a key reason our society is destroying the environment is that we can get away with it. If, in the course of its activities, a business enterprise destroys wildlife habitat, pollutes the water, or fouls the air, there may be no economic consequence for that – or, conversely, no economic benefit to either preventing it or to actually improving conditions to enhance the environment. When their products or services sell, the price of those products do not include the cost, to all of society or to our future, of the environmental impacts resulting from their production. Simply put, environmental services have no “price.” So they are not produced in the market system. Thus, for environmentalist, regulation may be seen as the only fallback.

From a farmer’s perspective, facing fierce global competition in the farm products marketplace is challenge enough. Also providing environmental services that no-one will pay for is clearly icing on the cake. Certainly all farmers need to be socially responsible. But farmers resist when society looks to our farms to bear the cost of solutions to environmental problems that seem to be created by the broader public – not by farmers themselves. So the problem for farmers is much like the problem for environmentalists, namely: Environmental services seem to have no established, commonly understood dollar value. Not only is there no price to be paid for ignoring them, there is also no clear value to providing them. If there were, farmers might be a good deal happier to produce them.

What both farmers and environmentalists need is for environmental services to acquire a recognized, undeniable price or value. Academic studies of cost impacts or of people’s hypothetical willingness to pay will not suffice.<sup>17</sup> What we need are economic institutions that establish that price the way other prices are established – through supply and demand. What we need are “conservation,” “environmental,” or “ecosystem” services markets through which suppliers of these services (like

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<sup>17</sup> See generally: “Natures Services: Societal Dependence on Natural Ecosystems,” Ed. by Gretchen Daily (Island Press, 1997).

farmers) can sell them to those who need them (like developers). Once everyone recognizes and accepts that environmental services have a set value or price, two things will necessarily result:

- 1) It will be much more difficult for regular markets for products or services to ignore or “externalize” them (as economists say). They will, hence, be more likely to be protected.
- 2) It will be much more difficult for society to shift the costs of making up for society-wide environmental impacts onto the shoulders of farm and ranch operators through regulation since the real economic impact of doing that will be clear and the inherent unfairness patently obvious. Society will, instead, increasingly rely upon a stronger and stronger marketplace to address its environmental issues.

There are several financial “drivers” that seem quite capable of making such a marketplace happen. Among them:

- **Environmental mitigation:** Some \$350 million is spent annually on environmental mitigation for Public Transportation projects in Western Washington alone – mostly on replacing wetlands. But the studies indicate that we are, at the very best, only achieving perhaps 50% replacement of lost environmental values. There is obviously huge room for improvement, and considerable funding. It seems likely that, for at least some of this need, farmers could do a better job.
- **Water quality credit trading:** As local public utilities and private industries gear up to live within tightly limited Federally-required Total Maximum Daily Loads (TMDL’s) on local waters, they are increasingly seeking less expensive alternatives to costly investments in complex water-quality infrastructure. Using standard best management practices, local farms could often to do the job much less expensively and with a much better result.
- **Salmon recovery:** As implementation proceeds on the region’s many federally required salmon recovery plans now in place or coming to completion, there is intense pressure to find places where significant positive improvements in habitat might be secured. This necessarily requires a new look at conservation incentives for buffers, riparian restoration, and surface and ground water quality protection. Some of these might be expected to take land out of agriculture, but most need not – if we create markets that seek efficiencies by targeting changes that respect the economic value of existing agriculture. A market for environmental services provided by the agriculture community will create this.
- **Other conservation incentives:** As indicated above, government already spends significant sums on conservation incentives for private landowners. But the system is poorly designed to assure either guaranteed and measurable results or strategic, cost-effective spending. If we create markets for environmental services, funding for incentives programs will increase and necessarily become more strategic. These programs will clearly demonstrate their worth. And their enhanced credibility should lead to greater public spending.

The agriculture community is understandably reticent to welcome new environmental initiatives – their experience with these issues has generally been regulatory and often costly for them. But there are many examples that decisively illustrate the willingness, creativity, and enthusiasm of farmers to help if they are properly approached, given a voice in developing programs, treated with fairness, and reasonably compensated for their efforts. Working with farmers and tapping into that creative capacity is, thus, a critical keystone for saving the Northwest environment and for saving agriculture.

Creating such a market system will require changes in our current regulatory structures. But there is motivation to make those changes since the current system is working rather poorly.<sup>18</sup> The general concept of ecosystem services markets is not particularly new – but actually designing institutions and regulations that make them work is. These discussions are occurring now.<sup>19</sup> Active, thoughtful participation by the mainstream agriculture industry will be critical to success. Many of the technical problems to creating these markets have already been overcome. But there remain legitimate concerns and barriers to participation by agriculture – we need to identify those barriers and brainstorm solutions that will make it possible for farmers to participate successfully. We also will need to address potential threats (such as potential for loss of farmland from agriculture) if the agriculture industry is to support such markets.

The Conservation Markets bill (SB 6805), that passed the 2008 Legislative Session, provides an opportunity to study and explore the possibilities for environmental services markets. The study portion of the work is targeted for completion by December 1, 2008, with one or more potential pilot projects to follow. This legislation provides an immediate and specific opportunity for agriculture leaders to become involved and to help guide the future of such a marketplace.

### **C. Educating the public about agriculture and the environment**

The need, expressed during the 1988 AG 2000 study, to educate the broad public about agriculture and the environment is yet greater today and will clearly increase in the years ahead. The irony is that, of all our major industries, agriculture is unquestionably the most environmentally friendly. Yet an ever-expanding urban public is increasingly ignorant about us and about what we do.

Agriculture is roughly tied for first with aerospace as the top industry in the State of Washington. But, unlike the large, monolithic companies found in most major industries, agriculture is highly fragmented, composed instead of many small, independent producers and with little access to the large sums of money needed for broad public information campaigns. The current television advertisements for the Boeing Company are a good example of how most other industries go about shaping public opinion. And the recent (past 8-10 years) public information campaign by the Washington Forest Protection Association (which represents the large corporate timber industry) demonstrates how such campaigns can dramatically and favorably shift public opinion about a natural resource industry. Agriculture does, of course, engage in outreach – some of it very effective. Ag in the classroom is an example. As is the Heart of Washington effort. And as is the daily work of many direct market farmers. But these kinds of efforts do not reach the scale of the massive problem of public apathy we truly face and they do not target public ignorance about agriculture and the environment in particular.

One of the tools already available to agriculture is the commodity commission.<sup>20</sup> Among the legally legitimate purposes for such commissions is marketing – which is not so far different from public education. For several years there has been a proposal that Washington agriculture should form a statewide commodity commission that would represent ALL our farms and ranches in educating the public about agriculture and the environment. It could, perhaps, be called something like the

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<sup>18</sup> Recent studies, for example, of wetland mitigation indicate that, at best, we may be replacing only perhaps 50% of the lost values – falling far short of “no net loss” of wetlands.

<sup>19</sup> In the fall-winter of 2008, American Farmland Trust will be conducting an Agriculture Industry Workshop and Listening Session to take input from leaders in Agriculture. Additional input will be taken through a study funded through SB 6805 adopted in the 2008 Washington Legislative Session.

<sup>20</sup> See the two Washington Agricultural Commodity Commission laws – RCW Ch 15.65 and 15.66.

“Washington Agricultural Products Commission.” It could be funded by a tiny percentage of farm revenues (measured in different ways for different commodities). Just for scale, 0.5% of Washington’s \$5.3 billion in agricultural sales (2002 numbers)<sup>21</sup> would produce over \$2.5 million in revenue annually for such a commodity commission.

Suppose half, or \$1.25 million of this sum was spent, annually, on assistance for farmers and ranchers to do best management practices on their land. And suppose the other \$1.25 million was spent annually on a continuing television and public outreach campaign that would, over the span of several years, educate the public about what farmers and ranchers actually do to help the environment.

Picture, for example, a 30-second television advertisement featuring a cattleman, sitting on a horse on a hillside above a stream far below. “My cattle,” he says, “used to water in that stream down there. But now we pump the water to various places across this hillside. The animals are spread out across the land, they stay away from the stream, they’re better fed, and that stream is fresh and clean.” The camera pans across the hillside and along the stream. “I’m proud my cattle are Grown in Washington with Respect for the Environment.”

Or picture a wheat farmer, standing in his fields on a hill in the Palouse. “Here in wheat country,” he says, “there are lots of places on steep hillsides, along field borders, and on rocky ground where planting a crop really doesn’t make sense. Instead, we grow native plants in those places to provide habitat for birds and wildlife that migrate through here. The birds eat rodents and pests, so it works for everyone.” The camera pans across the fields. “I’m proud my wheat is Grown in Washington with Respect for the Environment.”

Or picture a Western Washington row-crop farmer kneeling down to pull up and show the camera a beautiful carrot. “I love farming,” he says. Then he gestures with his hand out across his field to a row of suburban homes in the distance. “I guess I could make a lot of money if I sold out to a developer and let them build houses on this irreplaceable soil. But I’m not going to do that. As long as I can keep farming this land, it’s going to be better for me and for those folks over there as well. It makes me feel good that these carrots are Grown in Washington with Respect for the Environment.”

Imagine this kind of thing going on year after year. There could be spots dealing with IPM in the apple industry, with water conservation in irrigated row crops. We could touch on salmon recovery, large mammal migration, water quality, aquifer recharge, flood water detention, carbon sequestration, “open space,” and the full host of environmental contributions made by agriculture to society. Farmers and commodity groups would take pride in participating. The public would come to love the tidbits of educational content. The cost-share component of the Commission’s program could demonstrate how the agriculture industry is serious enough that it even taxes itself to protect the environment. But spending in the range of \$1+ million annually on public information in the Washington media market would be about the appropriate sum needed to have substantial impact over time.

Legally and technically, this would be “marketing” and would be perfectly legitimate for a commodity commission. But just as the Boeing Company has little expectation of actually selling airplanes to Seattleites with its current local Puget Sound area TV ads, the real purpose of our effort

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<sup>21</sup> 2002 Census of Agriculture – State highlights -  
<http://www.nass.usda.gov/census/census02/volume1/wa/index1.htm>.

would be to build broad public support for Washington agriculture and to educate the public about the ways farmers and ranchers are good for the environment. When the Washington Forest Protection Association produced all its educational TV programs on how the large timber companies protect the environment, they were not trying to sell timber, either. The function of such an effort by us would not be to sell product, but to shift the public and political climate to one more favorable for the agriculture industry.

Such a campaign could, given a few years of work, have dramatic impact in shifting public perceptions of agriculture.

#### **4. Conclusions:**

The key concerns about farming and the environment raised 20 years ago in the AG 2000 study seem as grave today as they did then. Unless something is done, the future of environmental regulation does not look bright for our farmers and ranchers. And the three areas of work the AG 2000 team recommended to address the problem also seems as appropriate today as they did then:

- 1) Establishing multi-interest coalitions on natural resource use policies is still critically important. Just one clear and recent example of the power in such coalitions is the ease with which the Conservation Markets bill (SB 6805) passed the 2008 legislature. This happened, almost certainly, because the bill had such a broad coalition of mainstream agriculture and environmental groups supporting it. Properly managed, each of the opportunities discussed above could enlist that kind of broad coalition in its support.
- 2) Developing increased efficiency in natural resource use, will require that we find ways to fund conservation incentives that will help our farmers do that. The above proposals are designed to target that opportunity, rather than leave it to regulators to compel farmer actions at agriculture's expense.
- 3) Increasing public and industry education about agriculture and the environment is still quite clearly essential. To make such an effort effective given our massive current and projected future population, we must, somehow, get over the hurdles created by our fragmented industry and undertake a well-funded, long-lasting, unified, professional, message-driven media and public education campaign.

The environmental regulatory threats we face are grave. But those challenges do translate into opportunities that, if seized, could produce a viable and successful agriculture industry in the years to come.

Respectfully submitted

Don Stuart  
American Farmland Trust  
Pacific Northwest States Office

## **Keeping Farmland Available for Klickitat County Agriculture:**

### **Klickitat County public meetings process - Rough notes of discussion**

On October 21, 22, and 23, and again on November 18, 19, and 20, public meetings were conducted in Centerville, White Salmon, and Bickleton to take community input and hear public reactions on issues and concerns relating to the future of agriculture and of agricultural lands and on potential solutions and actions that might help alleviate these concerns. The first three meetings focused on the issues and concerns. The second three sought to identify actions and solutions. The following is a summary of the public comments/discussion at these meetings.

### **Centerville**

#### **October 21, 2008**

##### 20-year vision for agriculture in Klickitat County:

- Rural character of Klickitat County is maintained
- Agriculture is healthy and strong
- Agriculture is redefined and supported as might be needed to allow it to adapt to future changes
- Some CRP lands are returned to productive agriculture
- We see a more diverse agriculture industry

##### Issues, concerns, barriers to achieving vision:

- Overdevelopment and pressure for development
- People are increasingly going to want to move here
- Zoning law splits land up in unnatural ways
- Personal property tax and tax on improvements to land is increasing the burden of farm businesses
- The productive capacity of the land has to be the number one criteria for whether it is used for agriculture or used for development
- Residential development competes with agriculture for water
- The land (and available water) must be able to support the proposed residential use
- Availability of water is a huge key concern for the future of agriculture
- Zoning law imposes arbitrary lot sizes without regard to the land's capacity to support any particular use
- "In perpetuity" is hard to plan for
- Farmers don't have control of their markets and prices so they need to be able to be flexible in their use of their land

### Ideas and Solutions:

- Limit regulation – no new regulations
- Let the market control what happens to the land
- Permit only the buying and selling of “house potential” properties – if a lot doesn’t have real potential to support a residence, don’t permit its subdivision and sale – esp. with regard to water availability
- Need to use a new “land capacity” criteria for which properties can be subdivided and how large or small they need to be before lots and/or sold for residential use
- When good farmland enters the UGB – need still to find ways to keep it in agriculture
- Need educational programs for farmers
- Need public education about agriculture
- Could provide energy audits for farms that would help farmers save on energy
- Could provide support for energy conservation in agriculture
- Developers/subdividers should be required to provide and pay for water, sewer, roads, and other actual costs of development rather than just subdividing and selling.
- Need to make sure agriculture is profitable, farmers are making money.
- Lots closer to town should be smaller, and then gradually be larger as the distance from town increases.
- Need market incentives to keep farmland in use for agriculture
- Many farmers are uncomfortable with perpetual easements – need some kind of long-term lease of development rights to slow the conversion of farmland
- Find a way to pay farmers to keep their land in agricultural use
- Find out how farmers are currently marketing their products and then figure out how to improve and support their marketing
- Produce and consume locally.
- Could consider a USDA-approved local mobile slaughtering unit for local sales of local livestock
- May be a place for a local cooperative grain mill. There is an idle flour mill currently in The Dalles

## **November 18, 2008**

### Local actions that could support agricultural lands in Klickitat County:

- Regulations:
  - Regulations are an issue for farmers, but there does not seem to be a great deal of regulatory pressure coming from Klickitat County at the county level.
  - Permitting for farm structures is not generally difficult in Klickitat County, but it might be helpful if the requirements and process were clarified for farmers and better understood by them
  - There also does not seem to be a great deal of concern about condemnation (by the County) or about County land acquisitions.
- Taxation:
  - Personal property taxes are complex and difficult to fully and fairly comply with. They need to be simplified. When an item of personal household property is used in

- any way in the farm business (what is the line here?) it becomes taxable as a business personal property item. This is difficult to comply with.
- The Current Use tax program requires that 80% of the property be used in agriculture – this is often difficult to comply with when the topography makes that impractical. It might be better for the public interest not to be pressuring farmers and ranchers to use some of this unproductive land in any case.
  - Would like to see the County active and involved at the State level in helping shape State Current Use Tax laws and personal property tax laws that would be more friendly to local farmers.
  - Do need to better educate/inform farmers/landowners on their opportunities and responsibilities with respect to current use and personal property tax issues.
  - There seem to be a number of exemptions about which most farmers may not be aware. There needs to be education about these issues for farmers.
- Zoning and land use regulation:
    - The County's widespread use of 20 acre parcel size fragments up the land base into sizes usually (but not always) too small for agriculture. This will be somewhat different east to west – depends on one's definition of a farm.
    - Need to protect landowner property rights and property values.
    - Cluster zoning seems like a useful tool – although there is some concern about creating large clustered groups of residential properties.
    - It seems unlikely that a density bonus would be allowed in exchange for clustering.
    - Right to farm laws may not be sufficient to truly help once non-farm neighbors take up residence.
    - The current cluster process isn't used because:
      - It is too slow, uncertain, and expensive
      - Landowner can avoid the current use tax payback/penalties with 20-acre parcels – if clustered, must pay back the taxes at least on the land that is clustered
      - Simple short plat can avoid requirements for water right by Dept of Ecology.
  - Purchase of development rights (PDR):
    - Some landowners are uneasy with the idea of perpetual easements – but would be OK with some time-limited or lease arrangements.
    - There are no local matching funds at the county level for this program, but State and Federal funding can match each other to make it work.
    - There needs to be a County strategy, approach, or process for prioritizing properties that would be eligible for PDR. This can, for example, help to group acquisitions together and avoid isolated parcels being acquired that don't support each other.
    - This could be a role for an agriculture advisory commission.
    - There does not seem to be much interest in or possibility of using transfer of development rights (TDR) in Klickitat County.
  - Public Education:
    - There needs to be better methods of communication between agriculture and non-agriculture residents
    - The County fair represents an opportunity to strengthen communication
    - Also need to provide support for programs that help educate/inform farmers as to issues affecting agriculture.



- Public education is a high priority
- Economic development and agriculture profitability:
  - Need stronger agriculture participation in and on the local economic development council. Agriculture needs to be taken into account as key industry in the County.
  - Need to develop a strategic plan for agricultural economic development in Klickitat County – could work with the Economic Development Office to accomplish this.
  - There may be some opportunities for cooperative ventures locally.
  - Need a local USDA approved livestock slaughtering facility – maybe one of the mobile slaughtering facilities would work in this region (both sides of the River).
  - Farmers need training in small acreage farming and on a variety of other issues
  - Should adopt a policy that allows/encourages schools (and other public institutions) to prioritize their food acquisitions from local producers.
  - Could the County help strengthen access to capital/lending by local farmers?
  - County support is needed to encourage additional income sources from the land that are consistent with agriculture – wind power and natural gas leases?
  - Economic development issues are a high priority for this area.
- Water:
  - Most of the water issues seem to be controlled at other levels of government
  - Many Klickitat County residents believe there is more water available than we are allowed to use.
  - Agriculture is driven by the availability of water. The conversion of agricultural lands to non-ag uses is steadily reducing the water that will be available for agriculture.
  - There needs to be a way to allow farmers who have been on long waiting-lists for water rights to temporarily lease water rights from that water set aside and being currently held for the aluminum plant that is no longer in operation.
  - For many of the water issues in the County, it would be very helpful if there was a thorough and credible study available that documents the availability of water. This would help Klickitat County plan and help County residents make their case for access to water, if it is there.
  - Water is a high priority for agriculture.
- Agriculture Advisory Commission/Committee
  - It might be useful to have such a group, appointed by the County Commission, specifically for the purpose of advising the Commission on issues that come up that affect agriculture and to develop local plans for the future of agriculture.
- Right to farm:
  - Klickitat County has a relatively good RTF law currently.
  - We might require buyers in an ag area to sign a document at closing that acknowledges their acceptance of RTF issues or waives nuisance claim rights – is this legal
  - We need strong public education about RTF
  - Whitman County seems to have a strong RTF law.
  - The County should make another careful review of our RTF ordinance to see if there are ways it could be strengthened consistent with State law. We could clarify the definitions and balance the needs that it addresses.
- Farm transition:

- Transition of land from selling farmer to a new farmer is an important issue
- Farmers need retirement planning and estate planning help
- Farm businesses need to have a business plan for transition to new owner – even within the same family
- Farm transition issues are tied to economic development issues – we need to help these farm businesses stay healthy even when they (and the land) are sold.

## **White Salmon**

**October 22, 2008**

### 20-year vision for agriculture in Klickitat County:

- The expansion from trout lake up to surrounding areas like Glenwood is slowed
- Agriculture is integrated into an overall economic development plan for the County
- The industry is engaged in cooperative marketing of local Klickitat County agricultural production
- Agriculture is a more profitable industry than it is now
- Buyers of properties are better educated to the surrounding land uses when they buy and make better choices regarding the placement of houses, roads, etc.

### Issues, concerns, barriers to achieving vision:

- Development pressure from areas like Trout Lake is increasingly affecting broader area – e.g. up toward Glenwood.
- The potential exists for pretty much all of Klickitat County to end up subdivided into 20-acre parcels
- Fuel prices and feed costs increasing – profitability is weak
- Owners of many non-farm (or marginal farm) properties are trying to stay in current use and are looking to surrounding farmers to farm their land – but often the land is broken up with a house right in the center of a 20-acre parcel – makes it difficult to use for agriculture. Need to be educated about this or to facilitate or provide incentives for different practices
- Water is a huge limiting factor for farms – exempt wells increase the competition for water
- 20-acre parcel size uses up huge amounts of land for non-farm uses. Worst possible scenario
- Need to have the opportunity to sell only smaller parcels
- The farm's land is most farmers' insurance policy – if you break a leg, you can sell a parcel of land to cover the health care costs. Need to have the chance to do this.
- There is a current cluster ordinance, but it requires commission action, so it is more involved and difficult to do than just to sell 20-acre parcels which is permitted automatically. So most people just sell the 20s. Recent sales of 20s have brought \$175,000 each
- Current ordinance really doesn't provide any incentive to cluster
- Economic Development funding requires the creation of a junior tax district – not something that usually works for most agricultural issues.
- There is a good deal of land sprinkled around the County in State, Federal, and Tribal Ownership. This complicates the task of finding well organized, area-based solutions that

take into account appropriate land management and the desires of local landowners. It is also difficult to deal with State, Federal, and Tribal owners

- Developers make all the real profit from development – farmers need to be partnered in the development so they participate in these profits rather than just selling and then standing by and watching it happen.
- Need to find a balance between the pressures and impacts of tourism and the economic development benefits of tourism.
- Need to find ways to avoid incompatible uses – Right to Farm?
- Current zoning makes the assumption that 20-acre parcel is a farm parcel when, in fact, they usually are not. By virtue of being 20-acres, most of these parcels easily qualify for open-space taxation. (Fiscal impact for county.)
- The eligibility of 20-acre parcels for current use taxation is another motivation/incentive for large subdivisions NOT to cluster. If they cluster, they have to take the land OUT of current use and have to pay back taxes and penalties. If they sell 20s, the assumption is that the land remains in current use.
- Some larger farms end up purchased by inexperienced farmers or non-farmers

#### Ideas and Solutions:

- Increased organic production creates new opportunities for agriculture
- Improved education for buyers as to the surrounding land uses and as to the appropriate placement of houses, roads, etc.
- Improve the profitability of agriculture
- Cooperative marketing of agricultural products from Klickitat County
- Integration of agriculture into economic development planning
- Need to empower community council work on these problems
- Educate property buyers re placement of houses and roads or provide incentives
- Identify where farms should be and where housing should be and allow subdivision and permitting accordingly
- Allow the sale of smaller parcels so there is less land used up in 20-acre housing
- Change eligibility for current use exemption to encourage clustering.
- Simplify cluster ordinance and provide incentives to cluster.
- The existing water lease set-aside agreement for water from the aluminum plan should be made available for use by farmers who have applied and been on the list and waiting for long periods for water rights
- Need economic development planning to: 1) Help guide and advise local farmers in their business investments and, 2) Help guide other land use and economic development plans and activities in the community
- Need a farmer processing plant for grains. Also livestock slaughtering
- Need strong “Heart of Washington” support
- Need local, Klickitat County branding
- Need more support to marketing local agricultural products
- Cooperative marketing would help
- Need better planning in road design so adjacent roads do not interfere with agriculture

- Should have some kind of health insurance and retirement programs provided for farmers – as it is they are largely on their own
- Need to repeal the estate tax or provide an exemption for agricultural lands – this results in land having to be sold to pay these taxes
- Need to create a tourism based on agriculture
- Need to be able to treat the entire farm as a parcel – think of the parcel size as the size needed to sustain a family farm given the area, climate, and productive type and capacity of the land. Need to think of preserving farms, not parcels
- Need consumer education concerning the environmental, local, and other impacts of different types of products, different types of agriculture, and the locale of their production
- Need to find a way to use the current use tax as an incentive to cluster, rather than as it works now where it is the reverse (an incentive NOT to cluster).
- Landowners should be able and allowed to use their water right in water crossing their property to generate electric power and to sell it back into the grid.
- Need a program of farmer health insurance, retirement programs, and retirement planning
- Keep it local – strong support for local agriculture

## **November 19, 2008**

### Local actions that could support agricultural lands in Klickitat County:

- Regulations:
  - While the County itself does not condemn or acquire that much land, it may play a role in acquisitions by other governments (State, Federal?) and to the extent that it does, the County should have a policy that recognizes the value of farmland and provides some priority to its protection.
  - County regulations are mostly not a problem.
- Taxation:
  - There is a need for clarity and better broad understanding of the current use program rules so those who should be in the program can be and those who should not are not.
  - There is a mix of views on the importance of current use taxation to the success and sustainability of agriculture – but there is general support for the program
  - 20 acre parcel owners are typically not truly in agriculture but they often lease their land to a producer as a means of keeping the lower tax rate. This is of value to the producers who lease the land – so it shouldn't be seen as an unfair advantage for the landowner.
  - The program does need to be fair and true to its purpose of preserving agriculture if it is to retain its credibility and to survive politically in the future.
- Zoning and land use regulation:
  - Landowners are concerned about having their land designated as being of “long-term commercial significance” because they worry that this will, at some point in the future, mean that they won't be allowed to sell it for other uses, even though they can't make it pay for agriculture.
  - We should look hard for ways to improve the cluster zoning process to make it easier and to provide incentives for its use.

- We need to identify, map, and classify agricultural and forest lands and prioritize them so we can apply additional incentives for protection of those that are most important to protect.
- Purchase of development rights (PDR):
  - PDR is an important tool that needs to be in the toolbox and an option for local farmers
  - We will need to have a way to prioritize the lands that get protected by this means.
  - There is probably no real use for transfer of development rights (TDR) in Klickitat County.
- Public Education:
  - Agriculture industry needs help in getting information out to the non-farm public
  - This is a high priority for agriculture.
  - Need County support for any means that might be available to communicate about agriculture.
- Economic development and agriculture profitability:
  - Agriculture should be represented in economic development council and the industry should be included in economic development planning
  - Need economic development strategic plan for local agriculture. Such a plan can:
    - Identify possible areas where the government can help make it easier for farmers to survive and their land stay in agriculture
    - Identify trends and possibilities that can help farmers plan for their own operation's future and farm-related support businesses to make good choices.
    - Identify possible ways farmers and farm groups might work cooperatively in the private sector to fill emerging needs of agriculture.
  - Should facilitate opportunities for cooperative support businesses. One example might be a coop winery for the wine grape industry
  - There is a need for a slaughtering facility – but this can require compromises – not everyone wants a slaughtering facility next door.
  - There might be possibilities for a mobile slaughtering facility in the Gorge area.
  - There should be possibilities for local branding and labeling, for sales locally and for sales out of county as well.
- Water:
  - We need a stronger understanding of the uses and availability of water throughout Klickitat County and a credible study of this. Need to support the WRIA and hydrologic study now going on. Landowners need to be supportive and involved in the well monitoring required. This problem is more comprehensive than just one limited area – the study may need to be expanded.
  - Should be ways to support water banking/storage in the area.
  - Need to protect water recharge areas – including the protection of farmlands.
  - The County should be active at the State level in advocating for solutions to the water issue.
- Agriculture Advisory Commission/Committee
  - If the County has no agriculture program, there may be little need for an Agriculture Advisory Commission. But if there is a significant County effort in any of these areas we're discussing, an agriculture advisory group could be important.

- The Ag Commission could include representation that is broader than just farmers – but this is an issue that needs to be evaluated. The group would need to have a clear and somewhat narrow focus on issues related to the future of agriculture and agricultural lands.
- Right to farm:
  - Some of the suggestions seem useful, but are they legal? We need a legal opinion on what is possible. County should investigate stronger RTF law and do it if possible and legal.
- Farm transition:
  - Help for farmers with farm transition is an important need
  - Could support any of the existing programs (DNR, Conservation District, FarmLink, etc.))
- Other:
  - This study and whatever plan results from it should apply to both farm and forest lands
  - Need to evaluate some of the ideas represented in the existing plans/proposals that have been offered in the community (e.g. Jake Anderson proposal, Trout Lake cluster proposal, etc.). There are a number of good ideas contained in these proposals

## **Bickleton**

**October 23, 2008**

### 20-year vision for agriculture in Klickitat County:

- Want to see a diverse agriculture industry with uses appropriate to the varied climates and land types in Klickitat County
- Agriculture will be likely to need larger and larger acreages, rather than smaller, in the years to come – needs to be possible
- Want to see a future with farms that are large enough and profitable enough to support family farming – ideally without the necessity of outside income
- Would like agriculture to remain more or less as it is now, with farm sizes at least as large as they are now and would like agriculture to be sufficiently profitable to make that possible
- Need our farms to be able to grow, but try to make it so they are not forced to do so
- 

### Issues, concerns, barriers to achieving vision:

- Farmers need large, 2,000 acre plus farms to make a living
- The trend is for the number of acres required to increase (20 years ago, 500 acres was typical – today it is closer to 2,000 acres)
- The American farmer's competitive advantage in the global market is to be capital intensive, with investments in expensive equipment allowing farming on large acreages with minimum labor cost – makes these large parcels necessary for internationally competitive agriculture
- Water is a big limiting issue
- Inheritance taxes contribute to breaking up the land

- CRP has been an important aid to many farms – there are mixed feeling about whether it is a net good or bad
- Seeing some 20 acre parcel sales. More of the pressure for this is in the Western part of the County
- Sales of 20 acre parcels that end up used for residential or recreation skirt the rules and use up a lot of land unnecessarily
- The possibilities for crop diversity in some areas is limited – need to assure that land is available for the crops that can be produced
- 

#### Ideas and Solutions:

- Should consider having 3 sizes/types of agricultural zoning for East, Central, & West
- Should provide a reliable source of access to capital for agriculture investment
- Should have exemption for agricultural lands from Estate Taxes
- Wind is an option – not perfect, but can be useful in helping provide a mix of income sources that keeps agriculture profitable. Need to find further/additional ways to use wind energy
- Need local processing and finishing
- Should look for other examples (like wind) in which farm landowners can use the natural characteristics of their land to generate natural resource income
- Additional and new natural resource income activities will typically require their own infrastructure – e.g. for wind, there are the service employees who need local housing. Need an integrated community support system to make these kinds of things work well.
- One option (of the type mentioned above) might be green payments or ecosystem services markets.

### **November 20, 2008**

#### Local actions that could support agricultural lands in Klickitat County:

- Regulations:
  - Regulations at the County level are not an issue.
- Taxation:
  - Need the County to support the independence of the local County Assessor to use local discretion in applying the law.
  - There is a need for clarity and certainty in eligibility for current use tax law – program needs to be fair and predictable
  - The 80% rule is difficult or impossible to comply with in many cases, and it drives landowners to use land in agriculture which may not, in some instances, be the best thing for that part of the land.
- Zoning and land use regulation:
  - The current zoning code was adopted in 1979 and has not been looked at often enough – needs to be adapted to modern needs. Need to take another look.
  - Lands are currently being looked at for inclusion as agricultural lands of long-term commercial significance – this makes landowners nervous that they might loose the chance to sell or subdivide if included.

- Cluster zoning represents one of the few, best opportunities to help agriculture without prejudicing property rights. This and PDR seem like the two most direct and useful tools.
- Purchase of development rights (PDR):
  - The group supports PDR as a tool to be used in the toolbox and supports the County being involved. But there is concern for government “creep.” Want to see the county’s role limited, at least initially.
  - PDR seems like a good idea, but it needs to be farmer driven.
  - There does not appear to be a role for TDR in this County.
- Public Education:
  - This is an important need – farmers must get the word out about their needs and the importance of their role and of the value of what they provide – food and otherwise.
  - One way to get the word out to new buyers about agriculture is through realtors. But there is also concern that realtors will deliver the wrong message – especially about right to farm issues.
- Economic development and agriculture profitability:
  - This is a key, priority need – whatever the County can do to help will be useful.
  - Should be representation for agriculture on economic development issues.
  - Wind energy and the additional revenue it provides are important for agriculture. Need to be looking for other types of similar land use resources that can live successfully alongside farming as revenue streams.
- Water:
  - Need credible information about the availability of water – but there is also worry that such an assessment could go the other way and the result could not be to our liking.
  - The Columbia River Initiative does involve increased storage, but there may not be much in that for Klickitat County. Should be looking for storage possibilities.
  - Farmers should have access (even if temporary) to water that is now being held for the closed aluminum plant.
  - Water is a critical, priority issue.
- Agriculture Advisory Commission/Committee
  - This group was generally OK with the idea of creating such an advisory committee, but there was concern expressed about government creep and about too much County staff time being devoted to staff support.
- Right to farm:
  - A strong right to farm law is important – so if there are opportunities to improve it, the County should look at those opportunities.
  - It is important that the county law be consistent with the State law.
  - And in doing any rewrite, need to not undermine or weaken the existing law, which is a pretty good one.
- Farm transition:
  - The County could help, here, by supporting education and information programs, but should not be involved in any direct way with these transitions.



## Keeping Farmland Available for Klickitat County Agriculture: Topical Summary of Public Comments

On October 21, 22, and 23, and again on November 18, 19, and 20, public meetings were conducted at local Grange Halls in three locations in Klickitat County, WA: Centerville, White Salmon, and Bickleton. The purpose of these six meetings was to take community input and hear public reactions the future of agriculture and of agricultural lands.

At our first three meetings, public participants were asked to express their views on three general subjects, but with an emphasis on the first two of the following:

1. What is your 20 year vision for the future of agriculture in Klickitat County?
2. What issues, problems, concerns or barriers stand in the way of achieving that vision?
3. What ideas, solutions, or opportunities might help overcome those barriers?

At the second series of three meetings, we continued to identify issues and concerns, but focused our attention on the third of the above three questions and tried to identify actions that could be taken, especially at the local level, that could help us solve the problems and achieve our vision for the future of agriculture.

The below list summarizes the public comments from all of these six meetings as well as comments received by phone and through direct conversation from people who were unable to attend and participate in the meetings themselves. It attempts to break all of these comments and ideas down by general subject matter for convenience in understanding them.

### **20-year vision for agriculture in Klickitat County:**

- Land use and community character
  - Rural character of Klickitat County is maintained
  - The expansion from trout lake up to surrounding areas like Glenwood is slowed
  - Buyers of properties are better educated to the surrounding land uses when they by and make better choices regarding the placement of houses, roads, etc.
- Profitability of agriculture
  - Agriculture is healthy and strong
  - Some CRP lands are returned to productive agriculture
  - Agriculture is integrated into an overall economic development plan for the County
  - Agriculture is a more profitable industry than it is now
  - Agriculture will be likely to need larger and larger acreages, rather than smaller, in the years to come – needs to be possible
  - The industry is engaged in cooperative marketing of local Klickitat County agricultural production

- Continuation of family farming
  - Want to see a future with farms that are large enough and profitable enough to support family farming – ideally without the necessity of outside income
  - Would like agriculture to remain more or less as it is now, with farm sizes at least as large as they are now and would like agriculture to be sufficiently profitable to make that possible
  - Need our farms to be able to grow, but try to make it so they are not forced to do so
- Diversity of agriculture
  - Agriculture is redefined and supported as might be needed to allow it to adapt to future changes
  - We see a more diverse agriculture industry
  - Want to see a diverse agriculture industry with uses appropriate to the varied climates and land types in Klickitat County

### **Issues, concerns, barriers:**

- Rate and pressure for development
  - Overdevelopment and pressure for development too great
  - People are increasingly going to want to move here because it is so desirable
  - Development pressure from areas like Trout Lake is increasingly affecting broader area – e.g. up toward Glenwood.
  - Need to find a balance between the pressures and impacts of tourism and the economic development benefits of tourism.
  - Seeing a number of 20 acre parcel sales. More of the pressure for this is in the Western part of the County, but some to the east as well.
- Taxes
  - Personal property tax and tax on improvements to land is increasing the burdens on farm businesses
  - The eligibility of 20-acre parcels for current use taxation is another motivation/incentive for large subdivisions NOT to cluster. If they cluster, they have to take the land OUT of current use and have to pay back taxes and penalties. If they sell 20s, the assumption is that the land remains in current use.
  - Inheritance taxes contribute to breaking up the land
- Water
  - Availability of water is a huge key concern for the future of agriculture
  - Residential development competes with agriculture for water
  - The land (and available water) must be able to support the proposed residential use
  - Water is a huge limiting factor for farms – exempt wells increase the competition for water
  - Water is a big limiting issue
- Zoning & land use regulation
  - Zoning law splits land up in unnatural ways
  - The productive capacity of the land has to be the number one criteria for whether it is used for agriculture or used for development
  - Zoning law imposes arbitrary lot sizes without regard to the land's capacity to support any particular use

- “In perpetuity” is hard to plan for
- With the current system, the potential exists for pretty much all of Klickitat County to end up subdivided into 20-acre parcels
- 20-acre parcel size uses up huge amounts of land for non-farm uses. Worst possible scenario
- 20-acre zoning in at least some agricultural areas needs to be increased to 80 or 160 acres.
- Need to have the opportunity to sell only smaller parcels
- There is a current cluster ordinance, but it requires commission action, so it is more involved and difficult to do than just to sell 20-acre parcels which is permitted automatically. So most people just sell the 20s. Recent sales of 20s have brought \$175,000 each
- Current ordinance really doesn’t provide any incentive to cluster
- There is a good deal of land sprinkled around the County in State, Federal, and Tribal Ownership. This complicates the task of finding well organized, area-based solutions that take into account appropriate land management and the desires of local landowners. It is also difficult to deal with State, Federal, and Tribal owners
- Current zoning makes the assumption that 20-acre parcel is a farm parcel when, in fact, they usually are not. By virtue of being 20-acres, most of these parcels easily qualify for open-space taxation. (Fiscal impact for county.)
- Need to find ways to avoid incompatible uses – Right to Farm?
- Sales of 20 acre parcels that end up used for residential or recreation skirt the rules and use up a lot of land unnecessarily
- Land use and farm business needs
  - Farmers don’t have control of their markets and prices so they need to be able to be flexible in their use of their land
  - The farm’s land is most farmers’ insurance policy – if you break a leg, you can sell a parcel of land to cover the health care costs. Need to have the chance to do this.
  - Developers make all the real profit from development – farmers need to be partnered in the development so they participate in these profits rather than just selling and then standing by and watching it happen.
  - Farmers need large, 2,000 acre plus farms to make a living
  - The trend is for the number of acres required to increase (20 years ago, 500 acres was typical – today it is closer to 2,000 acres)
  - The American farmer’s competitive advantage in the global market is to be capital intensive, with investments in expensive equipment allowing farming on large acreages with minimum labor cost – makes these large parcels necessary for internationally competitive agriculture
  - The possibilities for crop diversity in some areas is limited – need to assure that land is available for the crops that can be produced
  - CRP has been an important aid to many farms – there are mixed feeling about whether it is a net good or bad
- Profitability and economic development for agriculture
  - Fuel prices and feed costs increasing – profitability is weak
  - Economic Development funding requires the creation of a junior tax district – not something that usually works for most agricultural issues.

- Public ignorance and education
  - Owners of many non-farm (or marginal farm) properties are trying to stay in current use and are looking to surrounding farmers to farm their land – but often the land is broken up with a house right in the center of a 20-acre parcel – makes it difficult to use for agriculture. Need to be educated about this or to facilitate or provide incentives for different practices
  - Some larger farms end up purchased by inexperienced farmers or non-farmers
- Forest lands:
  - Protection of commercial forest lands and the success of forest businesses also needs to be a priority of this effort

### **Ideas and solutions for overcoming barriers and achieving vision:**

- Limit regulation and free up markets
  - We need to limit regulation – no new regulations
  - Let the market control what happens to the land
  - Regulations are an issue for farmers, but there does not seem to be a great deal of regulatory pressure coming from Klickitat County at the county level.
  - Permitting for farm structures is not generally difficult in Klickitat County, but it might be helpful if the requirements and process were clarified for farmers and better understood by them
  - There also does not seem to be a great deal of concern about condemnation (by the County) or about County land acquisitions.
  - While the County itself does not condemn or acquire that much land, it may play a role in acquisitions by other governments (State, Federal?) and to the extent that it does, the County should have a policy that recognizes the value of farmland and provides some priority to its protection.
- Taxes
  - Need to repeal the estate tax or provide an exemption for agricultural lands – this results in land having to be sold to pay these taxes
  - Need to find a way to use the current use tax as an incentive to cluster, rather than as it works now where it is the reverse (an incentive NOT to cluster).
  - Should have exemption for agricultural lands from Estate Taxes
  - Personal property taxes are complex and difficult to fully and fairly comply with. They need to be simplified. When an item of personal household property is used in any way in the farm business (what is the line here?) it becomes taxable as a business personal property item. This is difficult to comply with.
  - The Current Use tax program requires that 80% of the property be used in agriculture – this is often difficult to comply with when the topography makes that impractical. It might be better for the public interest not to be pressuring farmers and ranchers to use some of this unproductive land in any case.
  - Would like to see the County active and involved at the State level in helping shape State Current Use Tax laws and personal property tax laws that would be more friendly to local farmers.
  - Do need to better educate/inform farmers/landowners on their opportunities and responsibilities with respect to current use and personal property tax issues.

- There seem to be a number of exemptions about which most farmers may not be aware. There needs to be education about these issues for farmers.
- There is a need for clarity and better broad understanding of the current use program rules so those who should be in the program can be and those who should not are not.
- There is a mix of views on the importance of current use taxation to the success and sustainability of agriculture – but there is general support for the program
- 20 acre parcel owners are typically not truly in agriculture but they often lease their land to a producer as a means of keeping the lower tax rate. This is of value to the producers who lease the land – so it shouldn't be seen as an unfair advantage for the landowner.
- The program does need to be fair and true to its purpose of preserving agriculture if it is to retain its credibility and to survive politically in the future.
- Need the County to support the independence of the local County Assessor to use local discretion in applying the law.
- Changes to zoning & land use requirements
  - Permit only the buying and selling of “house potential” properties – if a lot doesn't have real potential to support a residence. Don't permit subdivision and sale unless, for example, there is some reasonable likelihood of water availability
  - Need to use a new “land capacity” criteria for which properties can be subdivided and how large or small they need to be before lots and/or sold for residential use
  - Developers/sub-dividers should be required to provide and pay for water, sewer, roads, and other actual costs of development rather than just subdividing and selling.
  - Lots closer to town should be smaller, and then gradually be larger as the distance from town increases.
  - Identify where farms should be and where housing should be and allow subdivision and permitting accordingly
  - Allow the sale of smaller parcels so there is less land used up in 20-acre housing
  - Change eligibility for current use exemption to encourage clustering. Simplify cluster ordinance and provide incentives to cluster.
  - Need to be able to treat the entire farm as a parcel – think of the parcel size as the size needed to sustain a family farm given the area, climate, and productive type and capacity of the land. Need to think of preserving farms, not parcels
  - Need better planning in road design so adjacent roads do not interfere with agriculture
  - Should consider having 3 sizes/types of agricultural zoning for East, Central, & West
  - The County's widespread use of 20 acre parcel size fragments up the land base into sizes usually (but not always) too small for agriculture. This will be somewhat different east to west – depends on one's definition of a farm.
  - Need to protect landowner property rights and property values.
  - Cluster zoning seems like a useful tool – although there is some concern about creating large clustered groups of residential properties.
  - It seems unlikely that a density bonus would be allowed in exchange for clustering.
  - Right to farm laws may not be sufficient to truly help once non-farm neighbors take up residence.
  - The current cluster process isn't used because:
    - It is too slow, uncertain, and expensive

- Landowner can avoid the current use tax payback/penalties with 20-acre parcels – if clustered, must pay back the taxes at least on the land that is clustered
  - Simple short plat can avoid requirements for water right by Dept of Ecology.
- We should look hard for ways to improve the cluster zoning process to make it easier and to provide incentives for its use.
- Cluster zoning represents one of the few, best opportunities to help agriculture without prejudicing property rights. This and PDR seem like the two most direct and useful tools.
- We need to identify, map, and classify agricultural and forest lands and prioritize them so we can apply additional incentives for protection of those that are most important to protect.
- The current zoning code was adopted in 1979 and has not been looked at often enough – needs to be adapted to modern needs. Need to take another look.
- Lands are currently being looked at for inclusion as agricultural lands of long-term commercial significance – this makes landowners nervous that they might lose the chance to sell or subdivide if included.
- Landowners are concerned about having their land designated as being of “long-term commercial significance” because they worry that this will, at some point in the future, mean that they won’t be allowed to sell it for other uses, even though they can’t make it pay for agriculture.
- Purchase of development rights (PDR):
  - Some landowners are uneasy with the idea of perpetual easements – but would be OK with some time-limited or lease arrangements.
  - There are no local matching funds at the county level for this program, but State and Federal funding can match each other to make it work.
  - There needs to be a County strategy, approach, or process for prioritizing properties that would be eligible for PDR. This can, for example, help to group acquisitions together and avoid isolated parcels being acquired that don’t support each other.
  - This could be a role for an agriculture advisory commission.
  - There does not seem to be much interest in or possibility of using transfer of development rights (TDR) in Klickitat County.
  - PDR is an important tool that needs to be in the toolbox and an option for local farmers. This and clustering seem to be the most immediately workable tools.
  - We will need to have a way to prioritize the lands that get protected by this means.
  - There is probably no real use for transfer of development rights (TDR) in Klickitat County.
  - The group supports PDR as a tool to be used in the toolbox and supports the County being involved. But there is concern for government “creep.” Want to see the county’s role limited, at least initially.
  - PDR seems like a good idea, but it needs to be farmer driven.
- Other non-regulatory land use protections
  - When good farmland enters the UGB – need still to find ways to keep it in agriculture
  - Find a way to pay farmers to keep their land in agricultural use
  - Need market incentives to keep farmland in use for agriculture
- Public, landowner, and farmer education & technical assistance

- Need educational programs for farmers
- Need public education about agriculture
- Could provide energy audits for farms that would help farmers save on energy
- Improved education for buyers as to the surrounding land uses and as to the appropriate placement of houses, roads, etc.
- Educate property buyers re placement of houses and roads or provide incentives
- Need consumer education concerning the environmental, local, and other impacts of different types of products, different types of agriculture, and the locale of their production
- There needs to be better methods of communication between agriculture and non-agriculture residents
- The County Fair represents an opportunity to strengthen communication
- Also need to provide support for programs that help educate/inform farmers as to issues affecting agriculture.
- Public education is a high priority
- Agriculture industry needs help in getting information out to the non-farm public
- Need County support for any means that might be available to communicate about agriculture.
- This is an important need – farmers must get the word out about their needs and the importance of their role and of the value of what they provide – food and otherwise.
- One way to get the word out to new buyers about agriculture is through realtors. But there is also concern that realtors will deliver the wrong message – especially about right to farm issues.
- Supplement farm incomes with other land use revenue
  - Could provide support for energy conservation in agriculture
  - Enhance opportunities for wind energy
  - Seek other possibilities for non-agricultural land use incomes
  - Wind is an option – not perfect, but can be useful in helping provide a mix of income sources that keeps agriculture profitable. Need to find further/additional ways to use wind energy
  - Additional and new natural resource income activities will typically require their own infrastructure – e.g. for wind, there are the service employees who need local housing. Need an integrated community support system to make these kinds of things work well.
  - One option (of the type mentioned above) might be green payments or ecosystem services markets.
  - Wind energy and the additional revenue it provides are important for agriculture. Need to be looking for other types of similar land use resources that can live successfully alongside farming as revenue streams.
- Improve agriculture profitability – economic development
  - Improve the profitability of agriculture and the land will stay in ag use
  - Need to make sure agriculture is profitable, farmers are making money
  - Find out how farmers are currently marketing their products and then figure out how to improve and support their marketing
  - Produce and consume locally.

- Could consider a USDA-approved local mobile slaughtering unit for local sales of local livestock
- May be a place for a local cooperative grain mill. There is an idle flour mill currently in The Dalles
- Increased organic production creates new opportunities for agriculture
- Cooperative marketing of agricultural products from Klickitat County
- Integration of agriculture into economic development planning
- Need economic development planning to: 1) Help guide and advise local farmers in their business investments and, 2) Help guide other land use and economic development plans and activities in the community
- Need a farmer processing plant for grains. Also livestock slaughtering
- Need strong “Heart of Washington” support
- Need local, Klickitat County branding
- Need more support to marketing local agricultural products
- Cooperative marketing would help
- Need to create a tourism based on agriculture
- Keep it local – strong support for local agriculture
- Need local processing and finishing
- Need stronger agriculture participation in and on the local economic development council. Agriculture needs to be taken into account as key industry in the County.
- Need to develop a strategic plan for agricultural economic development in Klickitat County – could work with the Economic Development Office to accomplish this.
- There may be some opportunities for cooperative ventures locally.
- Need a local USDA approved livestock slaughtering facility – maybe one of the mobile slaughtering facilities would work in this region (both sides of the River).
- Farmers need training in small acreage farming and on a variety of other issues
- Should adopt a policy that allows/encourages schools (and other public institutions) to prioritize their food acquisitions from local producers.
- Could the County help strengthen access to capital/lending by local farmers?
- County support is needed to encourage additional income sources from the land that are consistent with agriculture – wind power and natural gas leases?
- Economic development issues are a high priority for this area.
- Need economic development strategic plan for local agriculture. Such a plan can:
  - Identify possible areas where the government can help make it easier for farmers to survive and their land stay in agriculture
  - Identify trends and possibilities that can help farmers plan for their own operation’s future and farm-related support businesses to make good choices.
  - Identify possible ways farmers and farm groups might work cooperatively in the private sector to fill emerging needs of agriculture.
- Should facilitate opportunities for cooperative support businesses. One example might be a coop winery for the wine grape industry
- There is a need for a slaughtering facility – but this can require compromises – not everyone wants a slaughtering facility next door.
- There might be possibilities for a mobile slaughtering facility in the Gorge area.
- There should be possibilities for local branding and labeling, for sales locally and for sales out of county as well.



- Non-market support for agriculture
  - Should have some kind of health insurance and retirement programs provided for farmers – as it is they are largely on their own
  - Need a program of farmer health insurance, retirement programs, and retirement planning
  - Should provide a reliable source of access to capital for agriculture investment
- Community processes
  - It might be useful to have an Agriculture Advisory Commission/Committee appointed by the County Commission, specifically for the purpose of advising the Commission on issues that come up that affect agriculture and to develop local plans for the future of agriculture.
  - Need to empower community council work on these problems
  - If the County has no agriculture program, there may be little need for an Agriculture Advisory Commission. But if there is a significant County effort in any of these areas we're discussing, an agriculture advisory group could be important.
  - An Ag Commission could include representation that is broader than just farmers – but this is an issue that needs to be evaluated. The group would need to have a clear and somewhat narrow focus on issues related to the future of agriculture and agricultural lands.
  - While it seems generally OK to have an advisory committee, there is a concern about government creep and about too much County staff time being devoted to staff support.
- Water
  - The existing water set-aside agreement for water from the aluminum plant should be made available for use by farmers who have applied and been on the list and waiting for long periods for water rights
  - Landowners should be able and allowed to use their water right in water crossing their property to generate electric power and to use it in their operations and/or sell it back into the grid.
  - Most of the water issues seem to be controlled at other levels of government
  - Many Klickitat County residents believe there is more water available than we are allowed to use.
  - Agriculture is driven by the availability of water. The conversion of agricultural lands to non-ag uses is steadily reducing the water that will be available for agriculture.
  - For many of the water issues in the County, it would be very helpful if there was a thorough and credible study available that documents the availability of water. This would help Klickitat County plan and help County residents make their case for access to water, if it is there.
  - Need to support the WRIA and hydrologic study now going on. Landowners need to be supportive and involved in the well monitoring required. This problem is more comprehensive than just one limited area – the study may need to be expanded.
  - Should be ways to support water banking/storage in the area.
  - Need to protect water recharge areas – including the protection of farmlands.
  - The County should be active at the State level in advocating for solutions to the water issue.

- The Columbia River Initiative does involve increased storage, but there may not be much in that for Klickitat County. Should be looking for storage possibilities.
- Farmers should have access (even if temporary) to water that is now being held for the closed aluminum plant.
- Water is a critical, priority issue.
- Right to farm:
  - We might require buyers in an ag area to sign a document at closing that acknowledges their acceptance of RTF issues or waives nuisance claim rights – is this legal
  - We need strong public education about RTF
  - Whitman County seems to have a strong RTF law.
  - The County should make another careful review of our RTF ordinance to see if there are ways it could be strengthened consistent with State law. We could clarify the definitions and balance the needs that it addresses.
  - Some of the suggestions seem useful, but are they legal? We need a legal opinion on what is possible. County should investigate stronger RTF law and do it if possible and legal.
  - A strong right to farm law is important – so if there are opportunities to improve it, the County should look at those opportunities.
  - It is important that the county law be consistent with the State law.
  - Klickitat County has a relatively good RTF law currently.
  - In doing any rewrite, need to not undermine or weaken the existing law, which is a pretty good one.
- Farm transition:
  - Transition of land from selling farmer to a new farmer is an important issue
  - Farmers need retirement planning and estate planning help
  - Farm businesses need to have a business plan for transition to new owner – even within the same family
  - Farm transition issues are tied to economic development issues – we need to help these farm businesses stay healthy even when they (and the land) are sold.
  - Help for farmers with farm transition is an important need
  - Could support any of the existing programs (DNR, Conservation District, FarmLink, etc.))
  - The County could help, here, by supporting education and information programs, but should not be involved in any direct way with these transitions.
- Other issues and outstanding proposals from community
  - This study and whatever plan results from it should apply to both farm and forest lands
  - *Trout Lake Cluster/Extensive Agriculture Zone:* Encourage voluntary clustering on parent parcels of 40 acres and above by allowing non-farm lots of 1-2 acres on the least farmable land while preserving at least 75% of total acreage from further subdivision by permanent covenant.
  - *Farmland Preservation Zone (Jake Anderson proposal):* Create incentives for farmers to use only non-productive lands in development for non-farm purpose, to cluster development, and to slow the rate of development. To accomplish this, create a voluntary participation Ag Preservation Zone which: allows increased density for

farmers who wish to participate but creates a schedule that slows the rate of allowed development over time; requires least productive lands to be developed first; allows for further accessory uses; and, provides for county grants for costs of application and for payment of back-taxes required under current use program.

- Need to evaluate some of the ideas represented in the existing plans/proposals that have been offered in the community (e.g. Jake Anderson proposal, Trout Lake cluster proposal, etc.). There are a number of good ideas contained in these proposals

Dated: 12/5/08



**Klickitat County**

# **Protecting Agriculture and Agricultural Lands in Klickitat County**

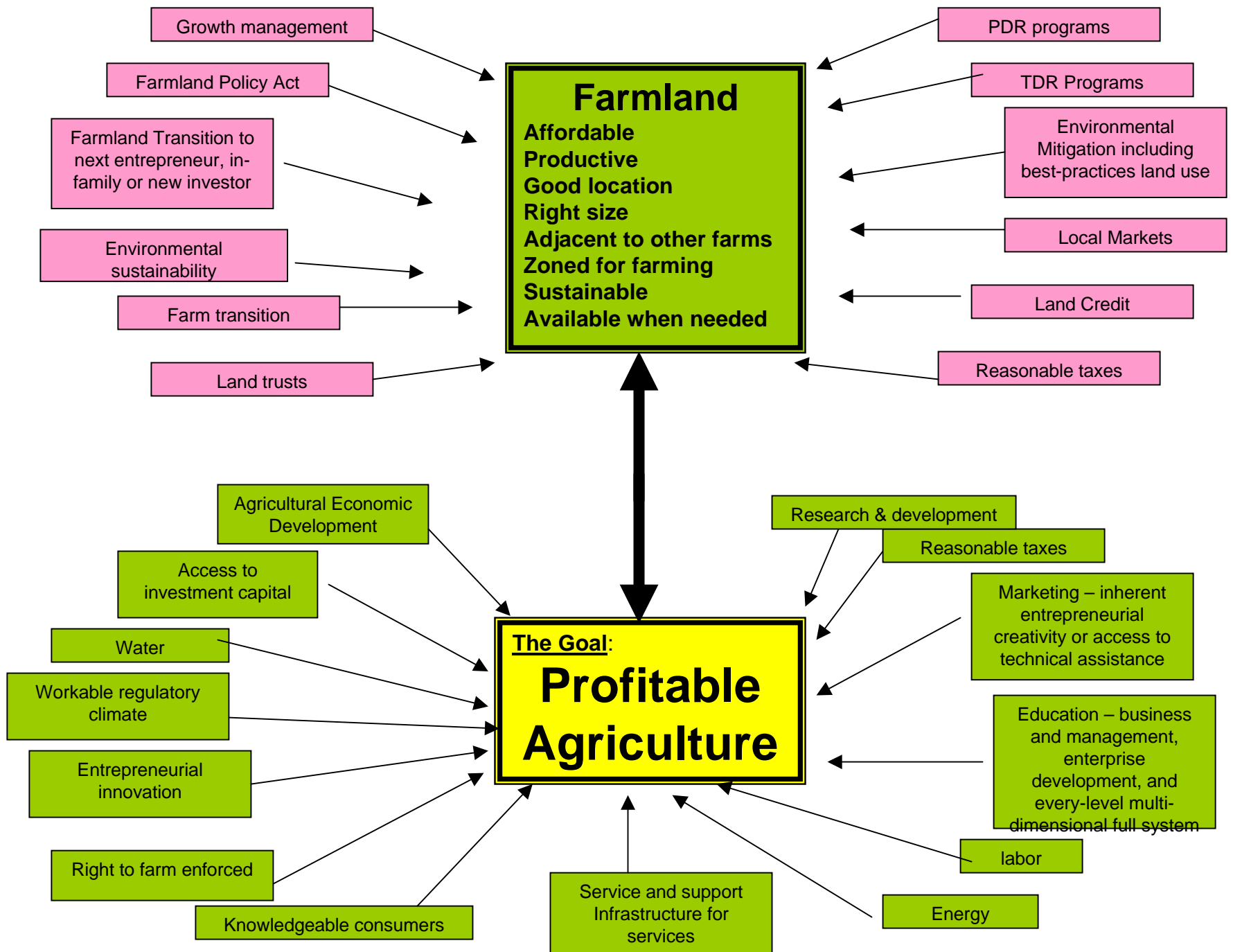
**Don Stuart**

**Pacific Northwest States Office  
American Farmland Trust**

# What are these meetings about?

- Concerns about the fragmentation of the agricultural land base in Klickitat County
- Concerns about the rising cost of agricultural land
- Increase in non-farm population – inconsistent uses
- Struggles of agricultural businesses to survive
- Importance of agriculture to the local economy
- Importance of agriculture to the local environment

**What can be done to better support agriculture and to preserve agricultural lands in Klickitat County?**



# Zoning

- Large parcel zoning
- Identification of specific areas for agriculture
- Cluster zoning
- Etc. . . .

# Purchase of Development Rights

- Voluntary program
- Purchase at market value (difference between Ag & Market value)
- Owner made whole – reinvests as needed
- Availability of State and Federal programs



# Transfer of Development Rights

- Same result for landowner as purchase
- Must have a “receiving” area – depends on rigorous zoning (Pierce County Example)
- Could match State and Federal funds

# Donated Agricultural Easements

- Define agricultural conservation easement
- Work with local land trusts
- Charitable contribution with tax deductions
- Expenses associated with transaction

# Right to farm laws

- Common law nuisance claims
- Effect of inconsistent land uses
- Constitutional limits
- Some solutions:
  - Notification of buyers
  - Waiver by buyers

# Local Market Demand and Economic Development

- Local markets supporting local lands
  - Green demand
  - Local connections
  - Local marketing
- Economic development
  - Planning for agriculture
  - Local community support

# Current Use Taxation

- Describe program – not all farmers use
- Two impacts:
  - Reduce farmer expenses
  - Slow conversion to development
- Discretion with local Auditor
- Fiscal impact on local community
- Cost of Community Services

# Environmental Sustainability

- Regulatory exposure
- Conservation incentives programs
- Conservation (ecosystem) markets
- Green markets

# Assistance with farm transition

- Estate planning
- Farm business planning
- Farm-Link programs
  - Listings of farmers selling
  - Listings of interested buyers
  - Mentoring programs
  - Education programs

# Credit for Land

- Rising land values and costs
- Effect of “business loan” principles
  - “Security loans” vs. “business loans”
- Federally guaranteed – effect on interest
- Impact of current economic crisis – less credit available



# Limiting impacts of Government

- Need in Cattle industry
- Actions of public institutions
- Environmental mitigation on farmland
- Farmland Protection Policy legislation

# Access to Public Lands

- Need in cattle industry
- Impact of recreational properties ringing public lands
- Coordinated Resource Management

# Agricultural Districts

- Designated area for exclusive agriculture
- Voluntary entry
- Incentives offered can vary
- Requirements of landowners also may vary
- Hybrid possibilities

- What is your vision for agriculture and agricultural lands in Klickitat County 20 years from today?
- What barriers, problems, or issues seem likely to prevent that vision from happening?
- What actions could we, here, locally take today that would help make that vision a reality?

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**Klickitat County**

# **Protecting Agriculture and Agricultural Lands in Klickitat County**

**Don Stuart**

**Pacific Northwest States Office  
American Farmland Trust**

## **20-year vision:**

**We** retain a rural landscape with a profitable, diverse, and sustainable agriculture industry engaged mostly in family farming operations suitable to the varied landscapes in Klickitat County.

## **Barriers & concerns:**

- **Rate and pressure for development – cost of land**
- **High taxes**
- **Lack of water**
- **Flaws in current land use regulations**
- **Inconsistency between land use laws and the business needs of agriculture**
- **Lack of profitability in agriculture**
- **Public ignorance of agriculture neighbors**
- **Regulation & property rights**



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# Action Items – What can we do in Klickitat County?

- Limiting regulation and reducing impact of govt.
- Reducing tax impacts
- Improvements in zoning code
- Purchase of development rights
- Transfer of development rights
- Public education
- Economic development and farm profitability
- Improved access to and sharing of water
- Agriculture Advisory Commission
- Right to Farm improvements
- Farm transition
- Outstanding proposals:
  - Trout Lake community proposal
  - Farmland Preservation zone



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# Limiting regulation & reducing the impact of government

## Questions for discussion:

- Increase availability of conservation incentives (CD assessment?)
- Public process for comprehensive review of regulations
- Condemnation policy
- Public acquisitions policy
- Permitting requirements for farm structures
- Landowner assistance with regulatory issues
- Other?



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# Reducing Tax Impacts

## Questions for discussion:

- Encourage participation in current use program
- Improve current use eligibility policy and process
- Establish current use advisory committee
- Identify other exemptions (e.g. conservation improvements) and provide education to farm community
- Other?



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# Improve zoning code

## Questions for discussion:

- Facilitate cluster zoning – incentives
  - Density bonus?
  - Remove current use tax disincentive?
  - Grants for costs & back taxes?
- Consideration of land capacity for use
- Increased density near cities
- TDR program
- Other?



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# Purchase of development rights

## Questions for discussion:

- Facilitate use of current PDR programs (state and federal)
- Encourage participation by landowners
- County funding contribution
- Identification of priority lands
- Other?



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# Transfer of development rights

## Questions for discussion:

- Identification of sending and receiving areas
- Will it work in Klickitat County
- Other?



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# Public education about agriculture

## Questions for discussion:

- Assemble new information about agriculture in Klickitat Co.
  - Cost of Community Services
  - Economic profile and impacts of agriculture industry
  - Land use profile of agriculture
- Support Ag in the Classroom
- Code of the West
- Farmer education programs (CD assessment?)
- Fairs, harvest celebrations, etc.
- Other?



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# Economic development and farm & ranch profitability

## Questions for discussion:

- Economic Development Council participation for Ag
- Economic development strategic planning for Ag
- Local markets (local institutional buying, farmers markets, local branding, etc.)
- Cooperative processing, marketing, etc.?
- Facilitate direct sales (farm stands, signage, off farm sales, etc.)
- Ancillary income sources (wind, gas, conservation markets?)
- Other?



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# Access to and sharing of water

## Questions for discussion:

- Aluminum plant water made available for farmers with long-standing applications
- Water-based decisions on subdivision of land
- Other?



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# Agriculture Advisory Commission

## Questions for discussion:

- Advisory body to Commission and County government
- Could fill role of working with Assessor's Office
- Part time FTE for staff support (could also be a public contact for county on Ag issues)
- Identify new needs and actions to support Ag
- Other?



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# Right to Farm law improvements

## Questions for discussion:

- Notice signed by buyers at closing – filed of record
- Waiver of common law rights to nuisance claim
- Annual reminder to residential landowners
- Other?



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# Farm Transition

## Questions for discussion:

- Use of existing programs with:
  - Dept. of Natural Resources
  - Office of Farmland Preservation
  - Washington FarmLink
- Actions by government to facilitate transitions
- Other?



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# Outstanding proposals

## Questions for discussion:

- Trout Lake community proposal
- Farmland Preservation Zone proposal
- Other?



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*TEXT REVISED JULY 25 2008*

## **Section 2.32 Farmland Preservation Zone**

- 3.32:1 Purpose
- 3.32:2 Definitions
- 3.32:3 Principle Uses Permitted Outright
- 3.32:4 Accessory Uses Permitted
- 3.32:5 Conditional Uses
- 3.32:6 Temporary Uses
- 3.32:7 Density Provisions
- 3.32:8 Sighting Criteria
- 3.32:9 Subdivisions
- 3.32:10 Parking Space Required
- 3.32:11 Signs
- 3.32:12 Other Standards

### **3.32:1 Purpose**

The purpose of the Farmland Preservation Zone is to provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and operations as the primary use of the zone. Nonfarm development is secondary in nature and will be governed under this zoning provision.

### **3.32:2 Definitions**

1. Farm-
  - a. A parcel or parcels of land and total 20 acres or more that are under one ownership
  - b. Devoted primarily to the production of livestock or agricultural commodities for commercial purposes
  - c. Or lands less than 20 acres but meet the criteria for the definition of a farm under RCW 84.34.020
2. Productive and/or irrigated agricultural lands- Productive farmlands are those lands used for intensive agricultural operations within the last five years- (Ex. hay & wheat crops, orchards, row crops, commercial horticultural operations, all irrigated land, etc. (excluding grazing lands)
3. Farmer- legal owner of the lands which meet the criteria under RCW 84.34.020
4. Conformance form- The Form to be created by the Administrator which shall clearly state if the applicant for a long or short plat has succeeded in proposing development on non productive agricultural lands
5. County Legislative Authority- refers to the Board of County Commissioners

6. Timber land- lands of 5 or more acres that are contiguous and are devoted primarily to the growth and harvest of timber for commercial purposes
7. Unit- is equal to one buildable lot that is to be separated from the farm, the unit shall be a bona fide parcel recognized by the county

### **3.32:3 Principle Uses Permitted Outright**

1. Agriculture- All land use, activities, operations, buildings, structures and other facilities necessary for agriculture, dairying, grazing, horticulture, and the growing and harvesting of all agricultural crops and timber.
2. Agricultural processing facilities.
3. Family day care provider; provided that no conversion of agricultural land is allowed.
4. On-site commercial and/or industrial activity directly serving agricultural operations including the preparation and storage of farm products.
5. Water diversion and storage structures and impoundments related to resource management.
6. Dwellings: Single family dwellings including, but not limited, to mobile homes and seasonal homes.
7. Residence for caretaker, owner, or operator.
8. Home occupation.
9. Conservation Easements & Habitat Easements.
10. Habitat enhancement and/or restoration projects.
11. Forest practices and associated management activities of any forest crop, including but not limited to, timber harvest, harvesting of forest resources (mushrooms, bear grass, boughs, berries, etc), Christmas trees, and nursery stock.
12. Expansion of an existing major or minor utility or public use including development of roads, railroads, canals, ditches, utility services, service and residential structures, mobile and stationary equipment, facilities and structures; provided, that the expansion is designed to utilize the minimum amount of productive farm land

#### **3.32:4 Accessory Uses Permitted**

1. Uses customarily incidental to a principal use permitted outright, such as private garages or parking areas, conservatories for plants and flowers, including any business, trade or industry, and utilities and utility infrastructure needed to support the agricultural use.
2. Buildings that fall within the (Klickitat County Code section 3.2)- Farm dwelling not subject to lot provisions.
3. All structures and buildings that fall within the Agricultural Building Permit.
4. The renting of rooms by the resident owner for lodging purposes only and for the accommodation of not more than two (2) roomers in a dwelling unit.
5. Residences provided for farm laborers, not to exceed three (3) dwelling units.
6. Utilities and utility infrastructure needed to support a principal use authorized in the energy overlay zone.
7. The accessory exceptions for the Farmland Preservation Zone which may be authorized by the Board of Adjustment include only those customarily incidental to conditional exceptions allowed.

#### **3.32:5 Conditional Uses**

1. Public, private and parochial schools and supporting dormitory facilities.
2. Churches and other charitable organizations.
3. Fire stations.
4. Railroad rights-of-way, but not yards or other similar facilities.
5. Franchised and public utility and communication facilities such as branch telephone, exchanges, static transformers, booster stations, pumping stations; where there is no other viable parcel or non-resource designated land to serve the affected area.
6. Cemeteries, mausoleums, crematoriums
7. Quarries, mines, sand and gravel pits
8. Airports



9. Park, playground, golf courses, country clubs, gun club, riding academies and stables, camping clubs, recreation and conservation clubs, private clubs, lodges, convents or community center so long as no productive or irrigated farmland is converted.
10. Migrant labor and farm-hand housing and facilities of more than three (3) dwellings.
11. Natural resource research and training facility.
12. Trails and primary and secondary trailheads.
13. Communication towers; Personal wireless services towers.
14. Agricultural slaughtering facilities.
15. Public uses related to the provision of emergency services where there is no other viable parcel or non-resource designated land to serve the affected area.
16. Any other uses judged by the Board of Adjustment to be consistent with the purposes and intent of this chapter and to be no more detrimental to the adjacent properties than, and of the same type and character as, the above listed uses.

#### **3.32:6 Temporary Uses**

1. Temporary asphalt/concrete batching per (Klickitat County Code section 5.1).
2. Temporary use of a mobile home per (Klickitat County Code section 3.7).
3. Temporary signs in connection with political and civic campaigns, provided that such signs are removed within 15 days following the conclusion of the campaign.
4. Temporary signs identifying proposed or existing construction.
5. Festivals, fairs, charity or promotional events in connection with the principle farming activities.

### **3.32:7 Density Provisions**

1. Maximum number of dwelling structures for permanent living per lot: 1
1. The minimum lot size shall be 2 acres, If Public Water and/or sewer is available the minimum lot size shall be that necessary for the protection of public health, as determined by the Planning Director and the District Health Officer.
2. The maximum lot size shall be 5 acres
  - a. Exempt- when a 20 acre parcel is divided there may be one lot larger than 5 acres.
    - i. It is to be encouraged by the planning department to keep the productive agricultural lands within the largest lot created.
3. No buildable lot shall be created which has a depth to width ration of greater than four-to-one.
4. Minimum yard requirements: Front, side and rear yards, twenty-five (25) feet.
5. Maximum building height: Not to exceed 40 feet.
6. Height Exemptions. Flagpoles, ham radio antennas, church steeples and fire towers. barns, granaries, or other crop storage facilities.

### **3.32:8 Sighting Criteria-**

In addition to the density provisions described in subsection 3.32:7 of this section, new non-agricultural structures shall be required to comply with the following provisions:

1. When subdividing or short platting parcels within the Farmland Preservation zone, lot configuration and access shall be designed to minimize conflicts with adjoining farm, timber lands, and mineral extraction operations.
2. Short plat sighting is encouraged away from productive and/or irrigated Agricultural lands
  - a. Sighting on non productive agricultural lands shall result in a 1 unit development bonus (see Section 3.32:9 Subdivisions- subdivision bonus).
3. Clustering of new parcels is encouraged to limit new road & infrastructure development.
4. Shared sewer & septic facilities are also encouraged within this zone.

### 3.32:9 Subdivisions-

The farmland preservation zone is intended to protect the productive Agricultural lands and to develop only the lands which are not in current agricultural & timber lands. Retaining the landowner's rights to develop is essential to maintaining the economic sustainability of the farm. The goal is to retain those rights with the least amount of impacts on the farming operation.

1. Divisions and the development schedule of land will be as follows;
  - a. On a farm of over 5000 acres- 3 units shall be capable of being divided from the farm per year.
  - b. On a farm of over 2000 acres and less than 5000 acres- 2 units shall be capable of being divided from the farm per year.
  - c. On a farm of over 1000 acres and less than 2000 acres- 2 units shall be capable of being divided from the farm once every 2 years.
  - d. On a farm of over 300 acres and less than 1000 acres- 1 unit shall be capable of being divided from the farm once every 2 years.
  - e. On a farm of over 80 acres and less than 300 acres- 1 unit shall be capable of being divided from the farm once every 4 years.
  - f. On a farm of over 20 acres and less than 80 acres- one unit shall be capable of being divided from the farm once every 8 years.
  - g. On a farm or parcel of 20 acres or less- One division of land will be allowed, resulting in no more than 4 total lots. No subdivision bonus shall be granted on lots of 20 acres or less.
    - i. Lots will be divided based on a 5 acre minimum per lot though the lots created may actually be 2 acres (Ex. a 15 acre parcel may be broken up into 3 lots. With two, 2 acre lots and one 11 acre lot. The Division will be recorded on the titles of the lots to not be allowed for further development).
2. All subdivisions of land shall go through the Klickitat County Subdivision and Short Plat Ordinance # 122082
  - a. Exemption from (section 8.80 Resubdivision)-
    - i. Resubdivision is covered within this section and shall be the prevailing ordinance.
  - b. Subdivision and Short Plat Ordinance section 3.02-shall not apply to this zone. Divisions of 80 acres or more shall not be allowed.
  - c. One long plat application may be submitted once every 40 years.
    - i. The maximum number of new lots created through the long plat application shall be equal to the number of units available in the development schedule for that farm for 10 years (Ex. on a 1000 acre farm the maximum number of new lots created through the long plat would be 10).
    - ii. No long plat application may site new lots on productive and/or irrigated Agricultural lands.

- iii. The long plat application shall conform to sections within this zone as well as the Klickitat County Subdivision and Short Plat Ordinance #122082 Section 7.
  - iv. Along with the Long Plat application, a letter from the applicant to the planning department stating why the short plat development schedule would make the project uneconomical and cause a significant financial long term burden on the farm is required. The letter will be submitted to the Planning Commissioners during their deliberations of the Long Plat.
- 3. Development Schedule- It is the goal of this zone to develop only non productive agricultural and timber lands. The development schedule above is to allow the slow gradual development of the area and act to diversify the farms product and income mix.
  - a. If a farmer misses a development cycle, he/she may at the next development cycle make up one previous cycle. (Ex. if a 1000 acre farm misses their 2 year development schedule after 4 years they may split off up to 4 lots with 2 bonus lots. If they wait 6 years they will still only be allowed 4 lots with 2 bonus lots).
  - b. If a long plat division is granted the short plat development schedule shall not be allowed until the # of lots in the long plat has been exhausted through the schedule.
  - c. No more than 20% of the farm may be developed through this zone and the development schedule.
- 4. Subdivision Bonus- On all lands being divided greater than 20 acres, if all of the lots created are outside of the productive and/or irrigated Agricultural lands a unit bonus of 1 unit shall be rewarded for that division cycle.
  - a. During the Short plat application process the planning director will write a conformance form to be submitted to the Applicant and Treasurer's Office in regards of the unit reward bonus, This letter may be used by the applicant and planning director for the verification of the lots being created on non-productive agricultural lands.

### **3.32:10 Parking Space Required**

- 1. At least one permanently maintained off-street parking or a private garage for one car shall be on the same lot as a dwelling or be attached thereto or made a part of the building. Adequate parking shall be provided for accessory or conditional uses and may be established by the Board of Adjustment

### **3.32:11 Signs**

- 1. Non-flashing residential name plates not exceeding 64 square inches bearing only the name and address of the occupant; non-flashing bulletin boards or signs not exceeding 30 square feet for quasi-public institutional or other buildings.

### 3.32:12 Other Standards

1. When lands are removed from a conservation program, (Ex. CRP Conservation Reserve Program) those lands are deemed non-productive agricultural lands for the purposes of this zone until they are returned to productive Agricultural use or reenrolled in the conservation program or a program of the same nature.
2. If any Federal, State, or local laws, ordinances, policies or rules are passed that prohibit development on the non productive Agricultural lands within this zone, the unit bonus shall be awarded to the productive Agricultural lands. The applicant shall submit a formal request to the Planning Director stating how the changes in the laws, ordinances, policies & or rules have eliminated the farmers development rights on those areas where development is encouraged within this zone. The Planning director shall write findings of fact and submit those findings to the Planning Commission who shall make a recommendation to the County Commissioners to award the unit development on productive Agricultural lands.
3. If any Federal, State, or Local laws, ordinances, policies, or rules are passed that prohibit or severely limit the principle uses permitted outright in this zone, this zone shall, at the cost to the county be opened up by the County Legislative Authority for the purpose of a Comprehensive Plan Amendment to make the zone comply with the new uses now available on these lands created by the law, ordinance, policy, or rule.
4. At the time lands are included into the Farmland Preservation Zone, any current nonconforming use shall be expressly allowed. At the time of inclusion in the zone the farmer in which the non-conforming use is present shall send a formal letter to the Planning Director stating the non-conforming use and how long the use has been present on the lands. The planning director shall keep a record of the letter in case complaints are filed against the non conforming use in the future. The non-conforming use shall be granted all of the privileges of this zone including but not limited to, Permitted Outright Uses, Accessory Uses, as well as Temporary uses.
5. This zone shall create no precedent for surrounding lands included in other zones. If 2 acres lots are allowed in this zone and those lots boarder another zone, this zone shall not create precedence for the rezone of the neighboring lands to 2 acre zoning.
6. In order to amend the text of the Farmland Preservation Zone, either through individual legislative action or the action of the County Legislative Authority, The proposed amendment must be ratified by 80% of the Farms within the zone. Each Farmer will have one vote, the amendments and voting ballot shall be sent out to all farmers within the zone by the planning director. The farmers will have 2 weeks (14 Days) to return their ballot to the planning department. Not returning the ballot will qualify as a yes vote. 80% of the farmers must ratify the proposed amendment before the amendment shall be presented to the Planning Commission. The Planning Director will during his report to the Planning and County Commissioners, state how many farms voted in favor of the amendment as well as how many voted to oppose it.

7. This zone severely limits the market value upon the lands within it. For that reason this zone shall be of a strictly voluntary basis. For lands to be included within this zone the Farmer must submit a letter to the planning director and County Legislative Authority authorizing his/her farm to be included within this zone.
  - a. Farmers are encouraged to apply for this zone through the Comprehensive Plan Amendment Process for changing the zoning map (also known as a rezone).
  - b. Farmers may also apply through the Sub-Area Comprehensive Plan Update Process. For this Zone to be placed over the farmers lands, the farmer will still be required to submit a letter to planning director.
  - c. No parcel, parcels, or farm may be included within the zone without the expressed permission of the owner of those lands.
  - d. The planning director and County Legislative Authority shall be tasked with ensuring that the lands to be included within this zone have been given the express permission of the owner of those lands.

**DRAFT -- CLUSTER ZONE**

- 1.2 Trout Lake Cluster/Extensive Agriculture (CEA)
- 1.3 Purpose: The purpose of the CEA zone is to: encourage the continued practice of farming on lands best suited for agriculture while allowing agricultural operators flexibility for development of clustered non-farm residential development that does not exceed the allowed overall density; and to prevent or minimize conflicts between common agricultural practices and various non-farm uses.
- 1.4 Principal uses permitted outright:
- farm use
  - single family dwellings and other buildings customarily provided in conjunction with a farm use
  - non-farm single-family dwellings on lots created per clustering provisions below, and on legally created non-conforming lots
  - home occupation
  - commercial or industrial activity directly serving agricultural operations including the preparation and storage of farm products
- 1.5 Conditional uses:
- public and private school
  - church
  - golf course
  - park, playground, or community center owned and operated by a governmental agency or non-profit agency
  - migrant labor and farm-hand housing
  - quarries, mines and sand/gravel pits
  - any other uses judged by the Board of Adjustment to be consistent with the purpose and intent of this chapter and to be no more detrimental to the adjacent property than, and of the same type and character as, the above listed uses
- 1.6 Development provisions
- maximum density of farm and non-farm dwellings is one single family dwelling unit per twenty (20) acres
  - minimum lot size for creation of farm dwelling parcels shall be twenty (20) acres
  - minimum front yard and yard depths: twenty (20) feet (75 feet)
  - minimum side yard depth: five (5) feet ( 75 feet)
  - minimum average lot width: one hundred (100) feet (200 feet)
- 1.7 Cluster development standards -- Parcels for non-farm dwelling units may be

created per the following requirements:

- A minimum of forty (40) acres is required in order for a “parent lot” to be eligible for clustered land development (e.g. one non-farm dwelling lot on two acres and one farm dwelling lot of thirty-eight (38) acres).
- At least ninety percent (90%) of farmable acreage or 75 % of total acreage of the acreage of the parent lot shall be preserved as the “farm dwelling lot” and remaining acreage shall be designated as “non-farm dwelling lots.”
- The overall density of farm and non-farm lots created within the parent lot shall not be exceeded.
- Minimum lot size of non-farm use lots being created shall be one (1) acre; maximum lot size shall be two (2) acres. (5) acres.
- The non-farm dwelling lots shall be situated so as to minimize interference with farm operation on the farm dwelling lot.
- The non-farm dwelling lots should be located on a part of the parent lot that is least essential to farm operations in terms of productivity of soils, delivery of water and operation of irrigations systems topography, relation to access roads, proximity to farm operations and any other factors that may conflict with the operation of the farm unit or detract from the open character of the land.
- The owner of the parent lot shall be required to file with the County a perpetual, non-revocable covenant that shall run with the land and future changes in ownership that prohibits further division of the farm dwelling lot.
- The non-farm dwelling units should be placed to minimize impacts on wild life.

1.8 Procedure: A short plat or long subdivision shall be submitted accompanied by a development plan showing proposed property divisions and location of new buildings and roads or other permanent structures. the plan shall include USDA NRCS soil map, a ten year history of how the parcel has been used, all existing structures and their uses, water rights and a detailed description of how the irrigation system has been operating. The plan shall include an analysis of the impact of the proposal on the remaining farming parcel

The director of planning shall determine the appropriateness of the proposal and may require addition information to be submitted. The director of planning should be encouraged to request input from affected community council and may require a public hearing and require notice to surrounding land owners.

1.8 Accessory uses permitted

1.9 Parking space required

1.10 Signs