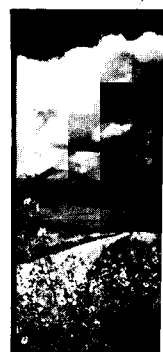
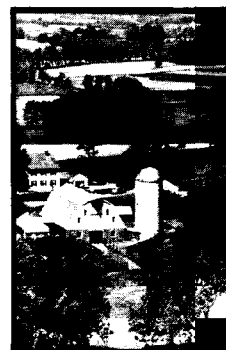
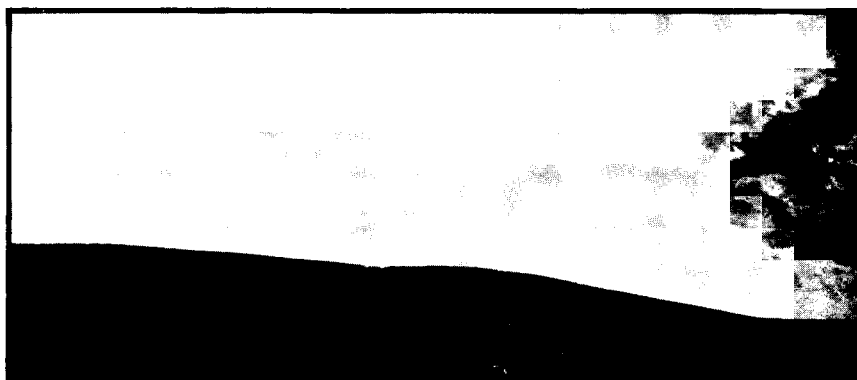




National Agricultural Lands Study

Executive Summary
The Protection of Farmland







National Agricultural Lands Study

*I have not fully
understood the
importance of the
National Agricultural Lands
Study.*

Robert

Executive Summary

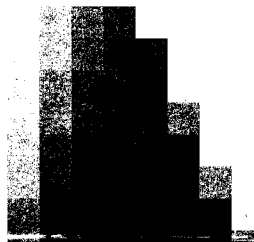
The Protection of Farmland

A Reference Guidebook for
State and Local Governments

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and
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Lisa Rosenberger
Authors

A Report to the
National Agricultural Lands Study
from the
Regional Science Research Institute
Amherst, Massachusetts

December 1980



Visualize a strip of land half a mile wide stretching from New York to California. That is one million acres—the amount of important farmland converted to other uses and irreversibly lost to agriculture every year in the United States.

In addition to this important farmland loss, we are permanently losing another two million acres of less valuable, nevertheless highly productive agricultural lands to non-agricultural uses each year. *The total annual loss of agricultural lands is a staggering three million acres, or twelve square miles per day.*

Throughout the nation concern is mounting. In every state, citizens are seeking ways to stop the loss of our irreplaceable agricultural acres.

The National Agricultural Lands Study presents this guidebook to farmers, ranchers and farm organizations; to state and local governments; to business, civic and environmental groups; to religious and educational institutions—to *all* citizens who seek practical guidance in ways to halt the loss of agricultural lands.



A special tribute is due to the researchers and authors of this book. We express our warmest thanks and our gratitude to Robert E. Coughlin, Vice President, Regional Science Research Institute, Amherst, Massachusetts; John C. Keene, Associate Professor of City and Regional Planning, University of Pennsylvania; J. Dixon Esseks, Associate Professor of Political Science, Center for Governmental Studies, Northern Illinois University; William Toner, University Professor, Governor's University, Illinois, and Lisa Rosenberger, Senior Research Associate, Regional Science Research Institute.

The efforts of these five people have extended far beyond the boundaries of perfunctory professionalism. This guidebook is the first of its kind in our nation's history, and the authors have tackled the task with zeal and with caring.

We regard the guidebook as the National Agricultural Lands Study's proudest achievement and anticipate its wide use throughout the nation for many years to come.

A handwritten signature in black ink, reading "Robert J. Gray". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Robert J. Gray
Executive Director
National Agricultural
Lands Study

FOREWORD

The Guidebook was prepared under contract with the National Agricultural Lands Study by the Regional Science Research Institute in Philadelphia, Pennsylvania. The Institute would like to acknowledge the research and editorial contributions of Robert B. McCallister, J. Scott McDonald, James D. Riggle, John Rzymiski, Martha Salzmann, Daniel Scanlon, Michael Segalla, Michael Toner, and Kit Wallace. Ernest Leonardo prepared the graphic illustrations. Laura Kessler, Karen Lytwyn, Kim McCauley, Brenda Nathesius, and Sue Wrone typed drafts and Nina E. Coughlin, Jacqueline Harmon, and Evelyn Mayo typed numerous drafts and the final report.

The authors wish to acknowledge the thoughtful and constructive suggestions of the members of the User Group and the National Agricultural Lands Study Contract Monitoring Team and staff.

We want to express especially our appreciation to Robert Gray, the director of the National Agricultural Lands Study. We have rarely had the pleasure of working with a person with such foresight, vigor, and good humor. He gave us unflagging support throughout the study.

This study would have been impossible without the cooperation of hundreds of state and local officials and private citizens. We were well received everywhere. The enthusiasm and commitment of officials to their farmland protection programs is testimony to the importance of those programs. Many officials spent hours writing to us and talking with us on

the telephone, and in person. We wish to express our deepest gratitude to them.

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PREFACE

The intent of the Guidebook is to provide a reference guide to programs which are being used to protect agricultural land—to identify their elements, document the experience which state and local governments have had with them, identify their intended and unintended effects, note their fiscal and political costs, and comment on their long- and short-run effectiveness. The information and analysis in the Guidebook are intended to help officials to take advantage of lessons learned elsewhere so that they can design an effective program that is adapted to their own conditions and objectives.

The first chapter of the Guidebook consists of the executive summary. The second chapter provides an introduction that discusses the problem of the loss of agricultural land, the processes through which agricultural areas are weakened and destroyed by urbanization, and the inventory of programs that have been used to prevent the loss. The main body of the Guidebook begins with three chapters on individual programs of incentives (Chapters 3, 4, and 5), followed by three chapters on individual programs of control over land use (Chapters 6, 7, and 8). The combination of these individual programs into more fully integrated programs involving more than one level of government, is discussed in Chapter 9, which is concerned with metropolitan area programs, and Chapter 10, which treats state programs. The Guidebook closes with a chapter on legal and constitutional issues that apply to all pro-

grams and a chapter presenting general conclusions and recommendations.

The analysis of the Guidebook draws on many reports and articles, but is based primarily on some 18 case studies and the inventory of programs that were prepared as an integral part of this study.

The 18 case studies consist of the following:

1. Virginia Agricultural Districting Program
2. New York Agricultural Districting Program.
3. Stanislaus County, Cal.: Agricultural Zoning.
4. Weld County, Colo.: Agricultural Zoning.
5. Marion County, Ore.: Agricultural Zoning
6. Black Hawk County, Iowa: Agricultural Zoning.
7. West Hempfield Township, Pa.: Agricultural Zoning
8. Brooklyn Park Township, Minn.: Agricultural Zoning.
9. Walworth County, Wis.: Agricultural Zoning.
10. Tulare County, Cal.: Agricultural Zoning.
11. Sioux Falls, S.D.: Agricultural Zoning.
12. Suffolk County, N.Y.: Purchase of Development Rights.
13. Buckingham Township, Pa.: Transfer of Development Rights.

-
-
14. Twin Cities, Minn.: Metropolitan Growth Management.
 15. Maryland: State Program.
 16. Oregon: State Program
 17. Wisconsin: State Program.
 18. Coping with Public Agencies:
The Taking of Farmland for
Public Facilities.

The case studies and the inventory
are being published in separate volumes:

An Inventory of State and Local Pro-
grams to Protect Farmland

Case Studies on State and Local Pro-
grams to Protect Farmland

Both volumes are available from the
National Agricultural Lands Study.

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One: LOSS OF VALUABLE AGRICULTURAL LAND: THE PROBLEM AND ITS CAUSES

A. From 1967 to 1975, Three Million Acres of Agricultural Land were Lost Each Year

Over the last three decades, millions of acres of agricultural land have been lost as America's suburbs grew, the interstate highway system and innumerable water resource development projects were completed and extensive surface mineral deposits were tapped. In fact, in the eight-year period from 1967 to 1975, some 23.4 million acres were converted to urban, transportation, water resource development, and other non-farm uses.

Citizens across the country and their representatives at all levels of government have shared rapidly deepening concerns over the adverse effects of this loss of agricultural land. Some feared the decline of the rural way of life, as carefully tended fields become carefully mowed lawns. Others emphasized the economic disruption that accompanies the decline of agriculture in an area. Still others were apprehensive that continued loss of farmland would lead to reduced production that, in turn, would have grave impacts on the nation's ability both to feed itself and to make significant foreign sales that earn foreign exchange. Still others pointed out that using poorer, more remote land that requires irrigation or more fertilizer increases the consumption of energy by the farming sector.

Underlying these concerns is the realization that good farmland is a finite resource which is necessary for survival. The importance of protecting the land resource has become increasingly evident because of continually growing populations which must be fed both in the United States and throughout the world, the constantly increasing price of oil on which U.S. agricultural technology is based, and uncertainty about the likelihood of major additional increases in agricultural productivity. Many realize that the nation could seriously reduce its long-run options by under-assessing the seriousness of the loss of farmland.

These concerns led to action. County after county, state after state, and Congress have taken significant steps aimed at protecting farming and reducing the rate of conversion of farmland. This Guidebook presents the story of these efforts and shows what governments can do to achieve this goal.

B. The Reasons Why Agricultural Land Is Converted to Non-Farm Uses

The conversion of agricultural land is a complex process, often taking place over a period of fifteen or twenty years. It involves such factors as farm profitability, urban growth pressures, land values, personal decisions about work and retirement, community expectations, taxes and government programs, incentives, and regulations. Urban growth pressure can

be compared to a great flood, moving out slowly into the countryside raising land values as it goes. Investors begin buying land for its development potential. New farmers cannot afford to buy farms. Old farmers are less and less able to increase their holdings. At some point, the process becomes irreversible, and farm after farm is subdivided and developed.

Communities that wish to protect their agricultural lands must start early in the process to change the expectations of farmers, investors, and developers. The communities must convince owners that they will allow development only in urban or suburban areas. In effect, they must build levees which protect farmland against the flood of urban growth pressure.



*T*_{wo}: THE RESPONSE: AN OVERVIEW

State and local governments have adopted a remarkable variety of programs whose objective is to reduce the rate of

conversion of farmland. The most important are defined in Table 1 and their numbers are summarized in Table 2.

Table 1. Short Definitions

Comprehensive Planning—A process leading to adoption of a set of policies regarding land use, transportation, housing, public facilities, and economic and social issues. It may include a land use plan designating particular uses and a program for providing transportation, sewers, and other public facilities. In most states the plan in itself is not legally binding on governments or individuals, but a few states require that zoning and major public facility plans be consistent with comprehensive plans.

Agricultural Zoning—A legally binding designation of the uses to which land may be put, including the type, amount, and location of development. Agricultural zoning restricts uses to agriculture and related uses such as a farmstead. Often a large minimum lot size (20–160 acres) is stipulated in an agricultural zone.

Agricultural Districting—The designation of specific tracts for long-term agricultural uses, usually coupled with benefits and assurances which improve the conditions for farming. Generally no legally binding controls are imposed on land use.

Purchase of Development Rights—Purchase of the right to develop from owners of specific parcels, leaving the owner all other rights of ownership. The price of the rights is the diminution in the market value of the land as a result of the removal of the development rights. The remaining value of the land is the “farm use” value.

Purchase and Resale or Lease with Restrictions—Purchase of land, imposition of restrictions on use and development, and resale at market price. End result is equivalent to purchase of development rights.

Transfer of Development Rights—Development rights on land in a designated preservation area may be purchased by a developer and transferred to a designated development area where the equivalent amount of additional development can be constructed.

Differential Assessment—Assessment for property tax purposes based on the farm use value of the land rather than on its market value. There are three major types of differential assessment: pure preferential assessment with full abatement, deferred taxation with partial or with no abatement, and restrictive agreement, under which a farmland owner contracts to maintain his land in farm uses in return for a lower assessment.

Development Permit System—Requirement that a special permit be obtained for development from designated state or regional agency. Permit is in addition to normal local zoning and building permits.

Right to Farm—Legislation stating that local ordinances cannot be enacted which restrict normal farming practices unless they endanger public health or safety, and providing farmers with some protection against private nuisance lawsuits.

Table 2.
Numbers of Existing Programs to Protect Agricultural Land

Type of Program	State	County	Municipality	Total
Differential Assessment for Property Tax				
Preferential Assessment	17			17
Deferred Taxation	28			28
Restrictive Agreement	2			2
Income Tax Credits	2			2
Farm Use Valuation for Death Tax				
Use IRC rules	16			16
Use rules similar to IRC	8			8
Special rules	5			5
Capital Gains Tax on Land Sales	1			1
Agricultural Districts	6			6
Right to Farm Legislation	16			16
Agricultural Zoning	1	104	166	271
Purchase of Development Rights	4	4	1	9
Transfer of Development Rights		2	10	12
Development Permits	2			2
Integrated Programs	7*	3*		10

*We lack a clear definition of the numbers of elements and interrelationships necessary to define an integrated program. Depending on the definition adopted, one could include many more than the seven state and three sub-state programs listed in this table and discussed in Chapters 9 and 10 of the Guidebook.

A. The Programs

1. Incentives: Tax Relief

Legislators have long understood that the capacity to earn a reasonable living from farming is the most important determinant in a farmer's decision whether or not to keep farming. Since taxes constitute a significant cost to farmers and are under government control, it is not surprising that legislatures often turned first to tax relief as a tool for protecting farmland. They enacted laws which reshape the impact on farmers of the real property and death taxes and, in two instances, state income taxes.

Both the property tax and inheritance or estate taxes are *ad valorem* taxes and are imposed on the assessed or appraised value of property. The problem with farmland is that it often has two values: one, its agricultural use value and the other, its value as a site for residential, commercial, or industrial development. This is referred to as its fair market value. In many farming areas, especially those near large cities, the fair market value of agricultural land is much greater than agricultural use value because developers are able to make a reasonable profit from their development even if they pay high prices for the land.

Many farmers have found that their real property taxes were going up because of the rising fair market value of their land and the increased fiscal burdens

which go along with suburbanization. Some farm estates have had liquidity problems that made it difficult or impossible to pay estate taxes that were measured by the fair market value of the land without selling some or all of the farm. In response to their complaints, tax incentives were enacted. They have two primary purposes: first, to reduce taxes for farmers, and second, as a consequence of that reduction, to lower the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales.

a. Differential Assessment

As of the end of 1980, all states except Georgia and Kansas had laws which seek to reduce the burden of real property taxes on farmers. There are two major kinds: differential assessment laws (which include preferential assessment, deferred taxation and restrictive agreement laws) and circuit breaker tax credit laws.

Seventeen states authorize preferential assessment. Eligible land is assessed for real property tax purposes at its agricultural use value. The effect is to reduce a farmer's taxes.

Twenty eight states have deferred taxation programs. In addition to permitting agricultural use value assessment, they require participating land owners who develop their land for ineligible uses to pay some or all of the taxes that they have been excused from paying. These "roll-back" taxes are usually equal to the

difference between what the tax on fair market value would have been and what the actual tax was for a given number of years. Seven of these states simply impose a "land use change" tax equal to a percentage of either this difference or of the fair market value in the year of development.

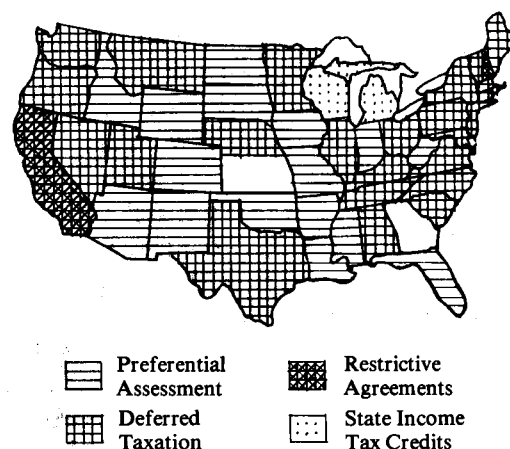
New Hampshire and California have restrictive agreement programs that require an owner to enter into a long-term contract in which he agrees not to develop his land, in exchange for receiving preferential assessment. It is very difficult for landowners in these states to get out of the contracts and develop their land before the end of the contract period. See Figure 1 which shows the program in effect in each state.

These programs clearly provide tax relief for farmers. Preferential assessment is the most effective in this regard, while restrictive agreement programs are the least. The more eligibility requirements there are, the greater the recovery of roll-back taxes, and, the more the farmer is required to restrict his land, the fewer farmers will participate and the lower the tax benefits will be.

b. Property Tax Credits

Michigan and Wisconsin allow a farmer to apply some or all of his local real property taxes as dollar-for-dollar credits against his state income tax. Income tax credit approaches are more directly relevant to alleviating the cost

*Figure 1.
Real Property or State Tax Incentives
for Local Property Tax Purposes*



Alaska and Hawaii have deferred taxation programs.

squeeze that farmers in urbanizing areas find themselves caught in, because they are based on the farmer's net income rather than just one element (property taxes) which affects his net income.

c. Death Tax Benefits for Farmers

In the Tax Reform Act of 1976, Congress enacted major changes in the federal estate tax which made estate tax preferences available to eligible farm estates. Since then, many states have followed suit by enacting similar amendments to their inheritance and estate tax laws. These changes are complicated and technical and can be discussed here only in a general way.

Congress raised the threshold at which estates become liable for estate taxation and increased the marital deduction so that at least 70% of farm estates are exempted from estate tax liability.

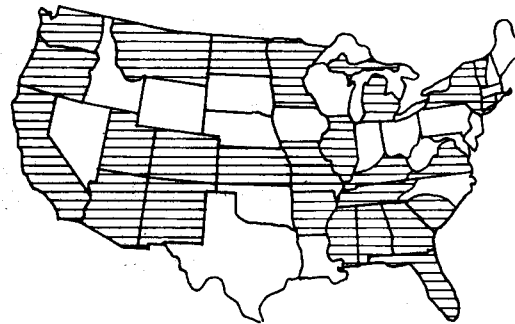
In addition, Congress enacted two new sections of the Internal Revenue Code that benefited qualifying farm estates. The first, Section 2032A, permits agricultural use valuation of eligible farmland that is left to heirs of the deceased. The second, Section 6166, gives executors of eligible farm estates the option of deferring the payment of estate taxes on farm property for five years and then paying them in equal installments over another ten years. These sections have detailed eligibility requirements that limit their availability. They require a payment of the taxes foregone if the heirs cease to farm the property or sell it to a person who is not a family member.

Sections 2032A and 6166 can significantly ease the estate tax burden of farm estates that qualify for and actually elect to use them. Our calculations indicate that a relatively small number will be eligible for and elect these benefits, because of the stringent eligibility and recapture provisions. As a result, they will not reduce total farm estate taxes significantly.

A slim majority of the states have taken steps to make some form of preferential valuation available to farm estates. They are shown in figure 2.

California, Kansas, Michigan, Minnesota, New York, and Wisconsin, have

*Figure 2
Preferential Valuation for State Inheritance and Estate Taxation*



made special Section 6166 deferral procedures available for farm estates.

d. Differential Assessment and Death Tax Benefits: Effectiveness for Reducing the Rate of Conversion of Farmland

For a complex set of reasons which are discussed at length in the Guidebook, these tax incentives, if made available by themselves and not as a part of an integrated program, are largely ineffective in reducing the rate of conversion of farmland.

Despite the above characteristics, differential taxation and death tax benefits are necessary components of a comprehensive agricultural land protection program. First, as a matter of equity, if a program prevents agricultural land from being developed, the owner should only

pay taxes on its agricultural use value. Second, benefits such as these serve as incentives to encourage farmers to participate in integrated farmland protection programs.

2. Incentives: Agricultural Districting

Agricultural districts are legally recognized geographic area whose formation is initiated by one or more farmers and approved by one or more government agencies. The districts, with their benefits and obligations, are created for fixed, but renewable periods of time ranging from four to ten years. In most programs land cannot be included in an Agricultural District without the owner's written permission. Agricultural districting programs are based on the ideas that if farmers are given incentives to join in the voluntary creation of districts of significant size where farming would be the only activity, and if they are protected against many of the factors which might otherwise make it undesirable or unprofitable for them to farm, they will be able to keep their land in agricultural use. The formation of an organization initiated by farmland owners that is dedicated to protecting and promoting farming in a specific geographical area will, it is hoped, strengthen the position of agriculture in the districted area and in the community as a whole.

As of 1980, six states, California (1965), New York (1971), Virginia (1977), Maryland (1977), Illinois (1979), and

Minnesota (1980) had enacted laws based on this idea. Minnesota's Agricultural Preserves Act is unique in that it is in effect only in the Twin Cities Metropolitan Area. The elements of the various programs are shown in Table 3.

Agricultural districts provide a geographical and organizational framework within which certain incentives and safeguards can be made available to farmers. Their effectiveness as a way to reduce the rate of conversion of farmland depends on the particular combination of elements they include. The programs studied vary considerably in this regard, and evaluation is difficult because they are either recently enacted or part of a broader, integrated program. The program with sufficient longevity to permit evaluation is New York's. The evidence indicates that while it has been relatively ineffective in reducing farmland conversion, it has provided rural farmers with an enhanced sense of security and a modest protection against special assessments and eminent domain.

3. Incentives: Right-To-Farm Legislation

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides and other by-products of operating a modern farm. These complaints can take several

Table 3.
Elements of Six Agricultural Districting Programs

Elements	N.Y.	Va.	Ill.	Md.	Calif.	Twin Cities
1. Differential assessment	x	x			x	x
2. Protection from local government ordinances which hinder farming	x	x	x	x		x
3. Limitations on public investments promoting nonfarm development within districts	x	x			x	x
4. Limitations on the acquisition of land within districts by public agencies	x	x			x	x
5. Limitations on special assessments	x	x	x			x
6. State agency regulations and procedures supportive of agriculture within districts	x	x	x			x
7. Limitations on annexations of land in districts by municipalities						x
8. Requirements for sound conservation practices				x		x
9. Limitations on rate of tax increases						x
10. Compensation to local governments for tax losses	x				x	x
11. Zoning adjacent lands so as to reduce conflict		x				
12. Purchase of the development rights to land within districts				x		
13. Limitations on development of districted land with zoning or other restrictions				x	x	x

forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the

local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state

agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time consuming and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws.

At least sixteen states, listed in Table 4, have adopted some form of right-to-farm legislation.

Some of these right-to-farm laws, such as New York's, simply prohibit local governments from enacting laws that unreasonably restrict or regulate farming structures or practices unless they are needed to protect the public health or safety. Others, such as North Carolina's, limit farmers' liability for damages in nuisance lawsuits. Still others, such as Ten-

*Table 4.
States With Right-To-Farm Laws**

Laws Protecting Against Local Government Regulations

Alabama (1980)	New York** (1971)
Delaware (1980)	North Carolina (1979)
Illinois** (1979)	Oregon** (1973)
Kentucky (1980)	Tennessee (1979)
Maryland** (1977)	Virginia** (1977)
Minnesota (Twin Cities)** (1980)	

Laws Protecting Against State Regulations

Tennessee (1979)	Oregon (1973)
------------------	---------------

Laws Protecting Against Private Nuisance Lawsuits

Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)

*Some states provide more than one form of protection.

**The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.

nessee's, exempt farm activities from certain of the state's anti-pollution laws. The laws vary considerably from one state to another. They are, by and large, of recent origin. Many of the questions of interpretation that they raise are still unanswered, and we have little evidence of their effectiveness in achieving their central goal: to protect the farmer against unnecessary and disruptive nuisance actions and government regulations, while at the same time protecting the public health and safety.

4. Land Use Controls: Agricultural Zoning

Agricultural zoning is the most popular and common method used by local governments to prevent the use of agricultural land for non-agricultural purposes. In the last decade at least 270 jurisdictions have turned to it to protect their farmlands (See Figure 3). Many communities also use other tools to complement, sustain, or reinforce the agricultural zone. Agricultural zones are often combined with community plans, urban boundary agreements, or voluntary or mandated state programs that together protect farmland. Thus, agricultural zoning must often be viewed as one part of a larger local program.

a. Types of Agricultural Zoning Ordinances

The most important characteristic of an agricultural zoning ordinance is the ex-

*Figure 3.
Agricultural Zoning*



tent to which it limits the intrusion of new, non-agricultural uses (usually non-farm dwellings) into established agricultural areas. With this in mind, we have divided agricultural zoning ordinances into the following categories:

1. Non-exclusive agricultural zoning ordinances:

- a. large minimum lot size,
- b. fixed area-based allocation combined with a small building lot size,
- c. sliding scale area-based allocation combined with a small building lot size, and
- d. conditional use approval based on multiple, discretionary standards.

2. Exclusive agricultural zoning ordinances.

(1) Non-exclusive Zoning Ordinances

Non-exclusive agricultural zoning ordinances are by far the most popular approach to agricultural land protection. Non-farm dwellings are allowed, but agricultural uses are preferred. In these zones, non-farm dwellings may be permitted conditionally or as of right.

Large lot ordinances require a substantial minimum lot size, ranging from as little as ten acres to as much as 640 acres for one single-family dwelling.

In fixed area-based allocation ordinances, owners are allowed to build one house for each unit of land of a specified area that they own, ranging from one dwelling per ten acres to one per 160 acres. Thus, what have been called "quarter/quarter" zoning ordinances allow an owner to build one dwelling unit for each quarter of a quarter section. No units are allowed for remainders of less than the specified number of acres.

Sliding scale area-based allocation zones also allocate building rights on the basis of ownership of units of land of a given area, but the number of dwellings allocated per acre decreases as farm size increases. The advantage of area-based allocation zones as compared with large lot zones is that they allow dwellings to be built on relatively small lots, typically from one to three acres, clustered on one

part of the farm leaving the rest relatively far removed from potentially conflicting residential uses.

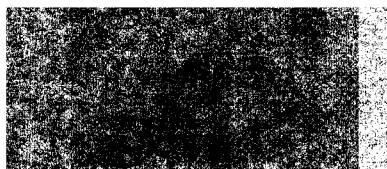
The fourth type of non-exclusive zoning ordinance, the conditional use zone, allows non-farm dwellings as a conditional use if they meet specified criteria based on the compatibility of the proposed dwelling with surrounding agricultural uses. No large minimum lot size requirement is imposed. Conditional use zones can limit non-farm development, and are more consistent with the purpose of the agricultural zoning than are approaches that permit non-farm dwellings as of right.

(2) Exclusive Agricultural Zoning Ordinances

These ordinances share three characteristics. Non-farm dwellings are prohibited. The communities use a performance definition of a farm or farm use rather than defining a farm by a large minimum lot size or area-based allocation. Each request to build a farm dwelling requires individualized review. The primary advantage of exclusive agricultural zoning is that the conflict between residential and farm uses is minimized because non-farm dwellings are prohibited.

b. Effectiveness: The Experience in Ten Communities

In order to see how agricultural zoning works in practice, ten communities were selected for more detailed study on



the basis of length of experience, varied development pressure, varied location, and type of governmental unit. Since their zoning programs do not represent a random sample, the case studies simply suggest what might happen in other communities with similar characteristics of agriculture, development pressure, and political commitment.

The case studies were done of the following jurisdictions, which adopted agricultural zoning ordinances in the year indicated:

<i>Counties</i>	<i>Municipalities</i>
Black Hawk County, Iowa (1973)	Brooklyn Park, Hennepin Co., Minnesota (1974)
DeKalb County, Illinois (1974)	Sioux Falls, Minnehaha Co., South Dakota (1978)
Marion County, Oregon (1971)	West Hempfield, Lancaster Co., Pennsylvania (1978)
Stanislaus County, California (1973)	
Tulare County, California (1975)	
Walworth County, Wisconsin (1974)	
Weld County, Colorado (1973)	

The case study communities adopted agricultural zoning ordinances to deal with one or more of the following three problems. First, farmland was being lost to premature rural subdivisions at increasing rates. Second, these rural subdivisions required increased expenditures for public services and facilities, expenditures which led to increases in local property taxes. Third, farmers and suburban-

ites discovered that rural subdivisions and farm operations often conflict. Farmers felt victimized by vandalism, harassment, and nuisance actions, while suburbanites complained of the smells, dust, noise, and chemicals from nearby farm operations.

The case studies permit several important conclusions to be drawn, although they must be tentative because of the relative novelty of the agricultural zoning efforts and the difficulty of separating out other casual factors such as state farmland protection programs and short-term developments in the economy. First the new non-exclusive agricultural zoning ordinances have greatly decreased permitted residential densities in agricultural zones. Second, most of the communities now view agriculture as a long-term, permanent, land use. Third, since the initial agricultural zoning ordinances were adopted, most communities have revised their approaches so as to strengthen the restrictions on non-farm uses, an indication that local approaches to agricultural zoning are enjoying good political support. Fourth, the record of communities in dealing with proposed rezonings is good. For the most part, good agricultural land is simply not being taken out of agricultural use. Rezonings are granted, but generally only to those lands which are not well-suited to agriculture. Fifth, the important role played by the planning staff in dealing with applicants for rezonings is another indicator of the consistency and coherence of local rezoning decision-making processes. Staff usually

provided an informal evaluation of proposed rezonings using the same criteria applied by decision-makers. Sixth, evidence of changes in the pattern of land speculation suggests that agricultural zoning has been producing the desired effects. In the majority of communities, speculation for non-agricultural purposes shifted from agricultural areas to designated development areas. Seventh, in most cases, local planners and officials felt that the subdivision of agricultural land had greatly decreased, while an increasing proportion of new development was being channeled into designated development areas.

Establishing and applying reasonable criteria governing the division of land in the agricultural area was the most common problem. The majority of the case study communities were faced with two additional problems. First, most of them permitted a variety of rural-oriented or community uses in their most restrictive districts. Second, a majority relied upon a large minimum lot size to protect agricultural land from non-agricultural development. This means that non-farm dwellings could easily be built within the agricultural zone so long as the minimum lot size was maintained. Such practices are likely to generate the frictions and nuisance suits that often result when residential and agricultural uses mix.

Thus, large lot and fixed and sliding

scale area-based allocation ordinances may temporarily deter non-agricultural development in agricultural areas, but in the long run, the validity of these techniques is questionable, unless permitted densities are significantly lowered. The solution to this long-term problem will most probably be found in the stringent administration of either the conditional use approach which requires a case-by-case evaluation of proposed dwellings in the agricultural area or exclusive agricultural zoning premised on a performance definition of a farm dwelling.

5. Land Use Controls: Purchase of Interests in Land

a. Purchase of Development Rights

In certain situations, zoning may not be an appropriate technique for preventing the development of agricultural land. For example, it may prove politically unfeasible to enact an exclusive agricultural zoning ordinance, particularly in locations where development pressure is high and it is evident that the zoning restrictions would deprive landowners of substantial value. In addition, in many jurisdictions, experience has shown that zoning tends to be weakened in order to accommodate strong demands for development.

In response to such concerns, and reflecting a feeling that such uncompensated restrictions on development as are embodied in agricultural zoning are unfair to owners of farmland in rapidly ur-

banizing areas, many policy makers have turned to the idea of acquiring less-than-fee interests in land in order to control its use.

Fee simple ownership (the full ownership) of land may be defined as a set of interests or rights: the right to keep others off the land, the right to sell or bequeath it, the right to use it for farming, forestry, or outdoor recreation, the right to build structures on or beneath it, etc. The right to build on or beneath the land is known as the development right or rights. They are, of course, limited by restrictions embodied in health and building codes and in whatever zoning may exist. The objectives of farmland protection may be served by buying the development rights to farm

property.

Purchase of Development Rights (usually known as PDR) programs have been adopted by the governments shown in Table 6. New Jersey had an experimental program that was terminated before any easements were purchased.

The PDR programs have been successful in attracting landowners who wish to participate. To date, some 10,300 acres have been enrolled in PDR Programs at an average cost of \$1,848 per acre. There has been little emphasis on clustering the land whose development rights have been purchased so as to insure that a critical mass of farmland is protected. To date no enforcement problems have been encountered.

*Table 6.
PDR Programs for Farmland Protection*

Jurisdiction	Year First Funded	Acreage under Easement (ac.)	Total Authorized Funding (\$ Million)
Suffolk Co., N.Y.	1976	3,214	21.0
Maryland	1977	2,400	6.3
Massachusetts	1977	1,349	15.0
Connecticut	1978	2,585	9.0
Howard Co., Md.	1978	0	1.5
Burlington Co., N.J.	1979	810	3.0
King Co., Wash.	1979	0	50.0
New Hampshire	1979	0	3.0
Southampton, N.Y.	1980	0	6.0

b. Ways of Reducing the Cost of Development Rights Programs

While the actual purchase of an interest in land is the most permanent way to prevent its development, it is often also the most expensive. Several techniques have been proposed or tried that are designed to reduce the cost. Maryland's PDR program assigns the highest priority for purchase to those farmers whose offers are the lowest percentage of the theoretical value of the development rights. Other approaches include the right of pre-emption and land banking. The right of pre-emption allows a government to match an open market price and buy agricultural land only when it is actually on the market. Land banking has never been tried in the continental United States, but if found politically acceptable, has the potential for allowing a government to acquire land while its price is low and then locate and program development with a view to agricultural and other long-term resource values.

6. Land Use Controls: Techniques that Rely on Private Initiative

Another set of approaches relies on working with private landowners to retire development rights voluntarily in areas designated for agricultural production. The first technique is transfer of development rights, (TDR), a way of reducing or eliminating the public costs of acquiring development rights by shifting the respon-

sibility for purchasing them from the government to private developers. In the classic mandatory TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district in a systematic manner. However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the development district, who may use these newly acquired development rights to build at higher densities than normally allowed by the zoning. TDR systems are intended to maintain designated land in open uses and compensate the owners of the preserved land for the loss of their right to develop it. To date, only voluntary TDR systems have been used. The owner of open land has the option of either developing at low densities or selling the development rights to his land and then restricting it by covenant to open space use.

Ten municipalities and two counties have adopted TDR systems for the preservation of farmland and other open space. All twelve ordinances permit transfer to non-adjointing properties, a fundamental feature which distinguishes true TDR systems from cluster, planned residential development, or planned unit development systems.

To date only four TDR transactions, including 184 acres, have taken place. If TDR programs are to be useful for protecting farmland, they must be designed to provide the market situations which will enable the developer to realize enough profit from the purchase and transfer of development so that he will find it worthwhile to engage in the TDR process and will offer an attractive price to the farmland owner. This involves not only providing incentives for the landowners to sell their rights and providing density incentives for the developer, but also designating areas under strong development pressure as development districts and assuring the availability of water, sewer, highways, and other facilities necessary for higher density development. It is possible that large metropolitan counties will be successful in implementing TDR programs although townships have generally failed.

The second approach is the donation of development rights in perpetuity. This is made possible by Section 170(h) of the Internal Revenue Code, which permits a landowner to deduct from his income the value of land, or of interests in land, which he donates to a public body or a qualified private non-profit corporation.

A third technique involves the establishment of a private land trust: a private, non-profit, charitable (and tax exempt) entity set up to acquire and manage lands in the public interest. Trusts generally have the confidence of landowners and are able to move faster in acquiring land

than governments can, though they tend to have limited permanent funding capacity. They are able to acquire development rights either by gift or through purchase. In some cases, the land trust may act as an intermediate owner, holding the land for later sale to an appropriate public agency.

Finally, there is the farmland conservancy, proposed (but untried) as a local organization operating within a conservancy district. It would be empowered by state law to buy and sell land or rights in land for the purpose of maintaining important farmland in farm use. The conservancy could acquire land when offered for sale when it believed that the sale would be injurious to the practice of farming in its area. It might resell the land with restrictions on use to an appropriate buyer. The conservancy would have the right to intervene in any sale of land previously designated by the conservancy as important farmland.

7. Integrated Programs of Incentives and Controls: Metropolitan Growth Management Programs

In many parts of the country, the problem of agricultural land protection can be addressed realistically and effectively only by considering its relation to the entire system of land use and development within a given region. In other words, the goal of protecting farmland must be balanced with other competing and supporting interests of the region, such as providing housing and jobs for

current and future residents, protecting environmentally sensitive areas, providing adequate public services and facilities, and keeping fiscal expenditures at a minimum. The need to incorporate agricultural protection into an overall strategy for dealing with growth is especially apparent in metropolitan areas, where there is often intense competition for limited land resources.

The Guidebook examines comprehensive growth management programs for three metropolitan areas: the seven-county Twin Cities region, Minnesota; Lexington-Fayette Urban County, Kentucky; and Metropolitan Dade County, Florida. A coordinated regional approach to growth management can accomplish a variety of mutually complementary objectives, such as minimizing public investment costs and focusing farmland preservation efforts on areas where agriculture is most likely to remain economically viable over the long run. Therefore, ideally, a growth management strategy should consider functional and spatial interrelationships at the regional as well as the local level.

There are too many important aspects of these three programs for them to be adequately summarized here. The basic rationale of each program is to promote an orderly and efficient pattern of urban growth in the metropolitan area, and each recognizes the value of adopting a regional perspective in identifying and implementing certain goals and priorities. In addition, these programs seek not to limit

the total amount of growth in the metropolitan region, either in the short or long run, but rather to guide it into appropriate areas.

The three plans share several specific objectives:

- To coordinate the provision of certain necessary public services and facilities, such as transportation, water, and sewer, so as to maximize efficiency in construction and operation.
- To promote the growth and redevelopment of already urbanized areas.
- To protect environmentally sensitive or unique areas.
- To protect prime farmland and maintain the economic viability of agriculture.

Thus, agricultural protection represents only one of a set of integrated policies designed to achieve the overall goal of rational and efficient metropolitan growth. In general, these objectives are mutually reinforcing when placed in a regional context.

The Twin Cities and Dade County programs are still young and not yet fully implemented, and historical land use data are not available for Lexington-Fayette County. But it is clear that the effectiveness of any program depends largely on the degree of authority that the metropolitan government possesses to implement the growth policy, and the extent to which this authority is exercised. The

most basic tool required is some power to control the location of public facilities, especially sewers. It is also clear, however, that facility siting is often not sufficient to keep development out of agricultural areas, because low density housing that uses septic systems may still spread, taking relatively large amounts of farmland out of production. In order to assure the protection of farmland, facility siting must be combined with other tools, such as zoning and incentive programs.

8. Integrated State Programs of Incentives and Controls

The States have the power to control the uses to which land may be put. In most states, however, most of this power has been delegated to local governments, which make nearly all decisions concerning the planning and regulation of land use.

Local governments have an intimate knowledge of local conditions, needs, and community goals, but this knowledge is often combined with a parochial outlook and the tendency to accommodate the desires and pressures of local landowners rather than to promote the regional welfare and to achieve long-range objectives for the use of the land resource. Most states have provided only tax incentives in order to encourage the retention of agricultural land. A few have retrieved a limited number of specific

powers and have linked incentives to land use controls over agricultural lands.

Without involving local government in any way, state governments can declare it a state policy to protect prime agricultural land and require its own agencies to act consistently with that objective. Illinois and Vermont have issued such an executive order.

In both voluntary and mandatory state programs a variety of incentives and controls are combined. In the voluntary programs, the incentives play the preliminary role of inducing landowners to join the program and accept the restraints on land use. These restraints assure the public that their expenditures for incentives will achieve their long-term purpose of protecting land for agricultural use. Once the restraints on land use are in effect, the continuing incentives act to offset the additional costs caused by nearby urbanization and make it possible for farmers to continue to farm. Thus, the linkage of incentives and controls is equitable for both the public and the participating landowner.

a. Voluntary State Programs

The Guidebook analyzes three voluntary state programs. In California's Williamson Act program, use value assessment is the incentive for individuals to contract not to develop their farmland for ten or more years. In Maryland, the possibility of selling development rights to the state along with right-to-farm protec-

tion are the major inducements for enrolling in an agricultural district and contracting not to subdivide or build for at least five years.

The Wisconsin Farmland Preservation Program, which went into effect in December 1977, provides annual tax credits to farmland owners who contract not to develop their land. Landowners' credits will be continued after 1982 only if their counties adopt agricultural preservation plans or agricultural zoning ordinances. The tax credits available to owners are based on a "circuit breaker" concept that provides a credit against state income tax to the extent that property taxes are deemed excessive in relation to the owner's household income. The state establishes criteria for agricultural zoning districts and works with counties to set standards for defining agricultural land.

By March 1980, 20 counties had adopted an agricultural zoning ordinance, an agricultural preservation plan, or both. Agricultural zoning covered 2,157,000 acres.

Although there was considerable political opposition to the program in the beginning, the program has evolved from a political cost to a political asset. The only issues now related to the program concern possibilities of improving it and increasing its benefits.

Voluntary programs do not require the participation of landowners who are not willing to assume the stipulated obligations. Thus, they tend to generate rela-

tively little political opposition and are relatively easy to enact, particularly if they consist only of tax expenditures. Voluntary programs which require the direct expenditure of public funds are more difficult to enact.

If the controls are too strong and the incentives too weak, participation is likely to be low. Conversely, if attractive incentives are coupled with weak obligations, participation is likely to be high. At the same time, the weakness of the controls is likely to reduce effectiveness. The balance between participation and effectiveness is a delicate one.

The Wisconsin program makes a bold effort to avoid the weaknesses of a voluntary program. By providing tax credits to landowner participants in the first phase, and specifying that the credits will not be paid in the second phase unless the local government adopts exclusive agricultural zoning (or in rural areas at least an agricultural preservation plan), the Wisconsin program is building a constituency favoring the imposition of land use controls. The step from individual contracts to areawide agricultural preservation plans and zoning ordinances not only increases the acreage protected but also reduces the problem of the potential for scattered development. The benefits of the Wisconsin program appear to be sufficient to result in widespread participation, and its costs are no greater than the tax expenditures made by the other states to provide an incentive for farmers to keep farming.

b. Mandatory State Programs

Four mandatory state programs were analyzed. The Vermont program requires that a permit be obtained from the state for certain types of development. The California Coastal Commission program, which is also a development permit program, requires local governments to adopt comprehensive plans and regulatory ordinances which meet criteria of the Commission. The Hawaii program involves zoning directly by the state.

The Oregon program is the most fully-integrated and comprehensive in the country. It requires local planning and zoning consistent with state Goals, which are mandatory statewide planning standards. The Agricultural Goal requires that agricultural lands be preserved and maintained for farm use. All Class I-IV soils (and in eastern Oregon Class V and VI soils in addition) not committed to non-farm use must be zoned for agriculture according to general criteria set by the state. Cities must establish urban growth boundaries, within which new development must be contained and encouraged. Public facilities and services are to be provided at levels suitable for urban uses within urban growth boundaries, but few, if any, public services are to be provided outside the boundaries. Land in farm use zones qualifies for use value assessment for property tax and state inheritance tax purposes, is exempt from

special levies of utility districts, and enjoys right-to-farm protection.

Although relatively few counties and cities have completed comprehensive plans which are in full compliance with the Goals, nearly all counties have been working cooperatively with the state to revise land use plans and zoning ordinances. Sixty-seven percent of the land which is expected to be ultimately zoned agricultural has already been bought under agricultural zoning. In the Willamette Valley, where population pressure is by far the highest, 84 percent of the anticipated ultimate acreage is already in agricultural zoning.

Mandatory programs emphasizing control of land can be enacted if there is a strong consensus on the importance of protecting farmland. They treat all farmland owners uniformly and therefore avoid the central weakness of voluntary programs, that even if nearly all farmland owners join a voluntary program and remove their land from the development market, the remaining farmland may be developed, and, once developed, may result in intrusions which will cause problems for neighboring farmers and weaken the agricultural economy. Their coverage is likely to be much more complete than that of voluntary programs which rely on the initiative of landowners. If local controls are required by a mandatory state program, the burden of responsibility can be more easily borne by state or regional officials, who must treat all areas of the state in an equal manner and who are gen-

erally separated geographically, socially, and economically from individual petitioners for changes in land use.

Weaknesses in mandatory systems may result from the lack of clear legislative intent and strong political resolve to give priority to the protection of agricultural land, lack of clear and strong criteria for granting exceptions from the general requirement to protect agricultural land, and from the relative lack of alternative sites for urban development.

Agreement is relatively easily reached on general principles or criteria which later must be interpreted for each specific case. To reach agreement on a mapped plan with clearly marked and unarguable boundaries between future land uses is much more difficult. Local participation is probably necessary, and the participation may be very time consuming, as specific details are studied and argued.

The Oregon program is most clear in its treatment of farmland as a natural resource to be protected not only to maintain the strength of both the present and future agricultural economy, but also as an open space resource for future generations. The law is explicit that certain types of soils are to be preserved and contains no qualifying language suggesting that profitability or market demand for rural development should be a consideration.

Oregon's legislation and subsequent administrative and case law rulings

have resulted in a specifically stated body of planning policies and procedures. This has relieved the courts of trying to interpret vague provisions in county or city zoning enabling legislation or "public welfare" provisions in state constitutions.

c. The Relationship between State and Local Programs

State programs are the key to agricultural protection for several reasons. A policy statement by the state legislature that agricultural land is a valuable natural economic resource which should be protected can provide a point of reference and an hospitable policy environment for local programs. In doing so, a state policy can make it possible to demonstrate the consistency of a local program with state objectives. It therefore, makes the political and legal defense of local programs easier.

Second, a state program generally requires or enables some local planning to take agricultural land explicitly into account. Very often, once local people have the format for discussing the program of protecting agricultural land, and the resources with which to measure and analyze their land base and develop plans, they will take effective action.

Third, even though a state program may fall far short of being a complete solution to the problem, it can provide a starting point which stimulates positive actions by local government.

Fourth, in the absence of a state pro-

gram, many local jurisdictions because of inertia, lack of leadership, or local political pressures, will not undertake agricul-

tural protection programs. A state program can induce or require them to take action to protect farmland.



Three: LEGAL AND CONSTITUTIONAL ISSUES

A. Agricultural Zoning

There are four major legal pitfalls that an agricultural zoning ordinance must avoid. First, it must be consistent with the state enabling act. Many states limit the powers of local governments to those that are expressly delegated to them by the state legislature. Thus, it is advisable to amend state laws so as to authorize low-density agricultural zoning.

Second, most state laws require that local ordinances be in accordance with a comprehensive plan. Any municipality which is embarking on a farmland protection program should undertake a comprehensive planning study on which the program will be based. This study should analyze trends in agricultural use, the importance of farming to the municipality's economy, and include soil and open space studies, and a review of state and regional policies concerning agriculture and agricultural land protection, as well as an examination of the factors such as projections of housing needs that would be considered in a traditional growth management study. The comprehensive plan should be amended to reflect the findings of these analyses and the new farmland policies.

Third, if an agricultural land regulatory program is properly authorized by enabling legislation and is in accordance with a comprehensive plan, the principal

constitutional hurdle it will have to surmount is the challenge that it constitutes a taking without just compensation. Whether such a program relies on exclusive agricultural zones or very large minimum lot sizes, it will often have the effect of significantly reducing the market value of the land so limited. Many states have framed the issue this way: if a zoning ordinance so restricts the uses to which land can be put that it cannot be used for any reasonably profitable purpose, it constitutes a taking and therefore violates the Fifth Amendment's command that no property shall be taken for public use without just compensation. Recently, in its decision in *Penn Central Transportation Co. v. New York*, the U.S. Supreme Court held that a zoning ordinance is constitutional if it is enacted pursuant to a public program adjusting the benefits and burdens of economic life to promote the common good, even though it reduces sharply the value of real property, especially where it permits the owner to continue to use the property as he has in the past. If a court finds the zoning ordinance constitutes a taking it may enjoin it or, under appropriate circumstances, award damages to the owner for deprivation of his property rights, pursuant to Section 1983 of the U.S. Civil Rights Act.

Fourth, a municipality that seeks to prevent development of its agricultural land without making adequate provisions for all types of housing elsewhere, may run afoul of state anti-exclusionary zoning doctrines. Developed primarily in New

Jersey, Pennsylvania, and New York, these principles require municipalities to take the regional welfare into account in shaping their land development regulations and to make provisions for accommodating their fair share of the regional demand for low and moderate income housing. Other state supreme courts may take similar positions, especially in the Northeast and Midwest where small, often parochial, municipalities have primary responsibility for land development regulations.

B. Tax Incentives

The principal constitutional issue that differential assessment programs raise is whether they violate the clauses found in many state constitutions that require taxes to be imposed uniformly. It has been answered both ways by the courts. At least half of the states have amended their constitutions specifically to permit differential assessment. The provisions of the various differential assessment laws vary widely from one state to the next and present a potentially rich mine for litigation, which is only beginning to be explored.

Because the estate tax incentives are of such recent vintage, there has been virtually no litigation involving them. The most probable major issue, other than statutory interpretation, will be whether or not these preferences violate the state's uniformity clause.

C. Comprehensive Growth Management Programs and Control of Public Water and Sewer Extensions

In the last twenty years many suburban municipalities have come to realize that the problems of guiding new development and protecting agriculturally and environmentally significant areas must be solved together using a comprehensive growth management program. The legal issues arising out of such programs and the use of the power of government to control the provision of water supply, sewerage, transportation, and other infrastructural systems are complex and largely unexplored. Courts in California and New York have upheld programs which either placed a limit on the total number of building permits that would be issued each year, or sought to key approval of subdivisions to the availability of sewers, schools, parks, major roads and firehouses, against attacks that they were not authorized by the enabling act, constituted a taking of property without just compensation, or interfered with the right to travel. Restrictions on water and sewer extensions have been upheld so long as they are temporary, in good faith, and seek to prevent a serious public health problem.

In summary, government officials and citizens concerned with the protection of agricultural land must remember that their primary objective must be to enable

farmers to continue farming by protecting both the attractiveness of farming as a way of life and its profitability. Land development regulations and incentives deal with only a part of the overall problem and must be drafted to meet various legal and constitutional requirements. To increase their chances of success, they should be based on sound enabling legislation, developed through comprehensive

planning and policies which give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.



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Four: RECOMMENDATIONS

A. The Goals of Protecting Farmland and Guiding Urban Growth Are Best Achieved Together Through the Use of a Comprehensive Growth Management System

If a community seriously wants to protect its farmland, it must find a way to deflect development away from productive agricultural land to areas where urban uses are most appropriate. To do this the community may wish to use one of several growth management approaches, combined with several of the techniques discussed in this Guidebook.

B. Farmland Protection Programs Should Be Many Faceted: The Loss of Farmland Is the Result of Many Factors

Some factors, such as rising real property taxes and special assessments for water and sewer lines, reduce the desire and ability of farmers to keep farming. Others, such as high offering prices for farmland lead directly to its sale. Effective programs will address most of the major factors that lead to the conversion of farmland.

C. The States Should Provide the Key to Saving Farmland

States should declare their commitment to protect good agricultural land because it is a vital and irreplaceable resource. These declarations will provide political and legal support for the efforts of local government to protect farmland. To provide stronger programs, states should establish criteria concerning urban growth, the protection of environmentally significant areas, and the protection of agricultural lands which local governments would be required to meet in planning and regulatory land use.

D. It Is Essential to Act Early

The sooner a program for protecting farmland can be started, the better. If a community waits until development pressures become strong, farmers' and developers' expectations will have risen, along with land values, and it will be much more difficult, politically, to get an effective program started.

E. Programs Should Be Based on Accurate Information

Communities need accurate, up-to-date information on natural conditions, the importance of agriculture to their economies, land use and ownership, and future trends of urbanization, in order to develop a farmland protection program that is well-conceived and legally defensible.

F. Advocates of Farmland Pro-

tection Programs Should Make Sure They Have Able, Dedicated Political Leadership

Effective programs must be tailored to local conditions. They often involve unfamiliar concepts and techniques that may be difficult for many farmers to accept. It takes astute, persuasive individuals to provide the leadership needed to design, have enacted, and implement an effective program.

G. Farmland Protection Should Involve More than Land Use Controls

While incentives, land use controls, and comprehensive growth management programs are important for any farmland protection program, other measures are necessary to maintain the economic via-

bility of agriculture. Farmers need adequate credit, suppliers, service businesses, labor, marketing facilities, and storage and processing facilities.

H. Farmland Protection Programs Should Be Designed So that They Are Legally Defensible

Programs should be based on sound enabling legislation, developed through comprehensive planning and policies that give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.



BIBLIOGRAPHY

In the past few years, many excellent reports and studies addressing agricultural land issues have been published. A few of these reports, as well as citations to more comprehensive bibliographies, are here to aid readers in seeking further information.

Overview Reports

American Land Forum, *Land and Food: Preservation of U.S. Farmland*, Washington, D.C.: 1979, 63 p.

Anthran, George, *Vanishing Acres, seven-part series published in Des Moines (Iowa) Register*, July 8 through 15, 1979.

Brown, Lester, R. *The Worldwide Loss of Cropland*. Washington, D.C.: The Worldwatch Institute, 1978, 48 p.

Conservation Foundation, *Long-Range Threats Stalk U.S. Farming*, Washington, D.C., August 1980, 8 p.

Couglin, Robert E. et al, *Saving the Garden: The Preservation of Other Environmentally Valuable Land*. Philadelphia: Regional Science Research Institute, 1977, 341 p.

Fields, Shirley Foster, *Where Have The Farm Lands Gone?*; National Agricultural Lands Study, Washington, D.C., 1980, 24 p.

Thompson, Edward, Jr., *Disappearing Farmlands — A Citizen's Guide to Agricultural Land Preservation*, National Association of Counties Research Foundation, Washington, D.C., 1979, 18 p.

Land Availability and Needs

Dideriksen, Raymond, Allen R. Hidelbaugh and Keith O. Schumude. *Potential Cropland Study*. Washington, D.C.: U.S. Department of Agriculture Soil Conservation Service, 1977, 104 p.

Lee, Linda K. *A Perspective on Cropland Availability*. Washington: U.S. Department of Agriculture Economics, Statistics and Cooperatives Service, 1978, 23 p.

U.S. Department of Agriculture, *Soil and Water Resources Conservation Act: Appraisal 1980*. Review Draft Part I, Washington: 1979.

Zeimetz, Kathryn A. *A Growing Energy: Land for Biomass Farms*. Washington: U.S. Department of Agriculture Economics, Statistics and Cooperatives Service, 1979, 35 p.

State and Local Farmland Protection Programs

Davies, Bob and Joe Belden. *A Survey of State Programs to Preserve Farmland*, Washington, a report to the Council on Environmental Quality and by the N.C.S.L.; 1979, 79 p.

Toner, William. *Saving Farms and Farmlands: A Community Guide*. Chicago: American Society of Planning Officials, 1978, 45 p.

Federal Policy and Programs

Cotner, M.L., *Land Use Policy and Agriculture: A National Perspective*, E.S.C.S., 1976.

Frey H. Thomas, *Major Uses of Land In the United States 1974*. E.S.C.S., 1979.

U.S. Cong. House Committee on Agriculture. *Agricultural Land Retention Act: Report*. 95th Cong. 2nd Sess. Washington: GPO, 1978, 29 p.

U.S. Cong. House Committee on Agriculture. *National Agricultural Policy Act. Hearings*. 95th Cong. 1st Sess., Washington: GPO, 1977, 260 p.

U.S. Library of Congress, *Agricultural Land Retention: An Analysis of the Issue. A Survey of Recent State and Local Farmland Retention Programs, and a Discussion of Proposed Federal legislation*. Washington: Congressional Research Service, 1978, 52 p.

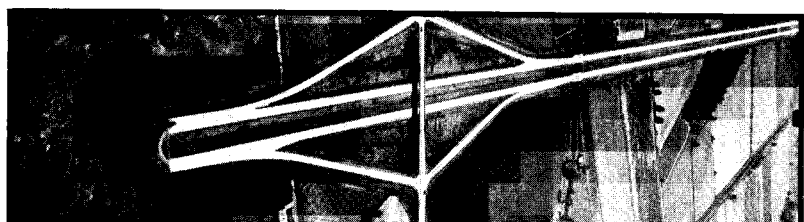
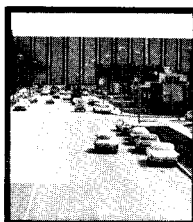
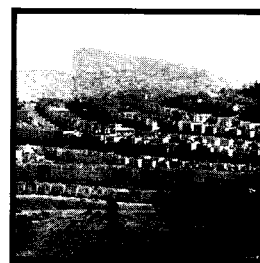
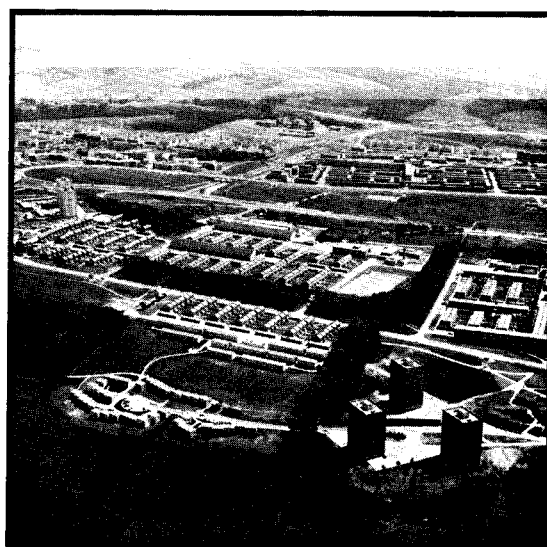
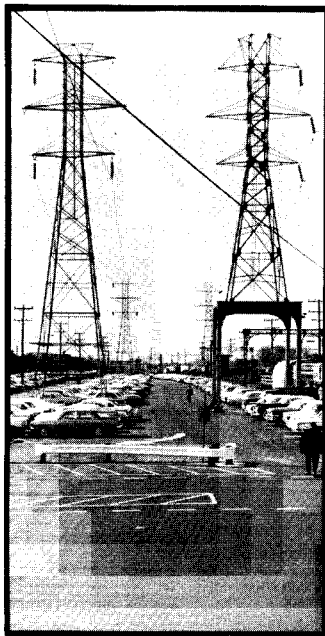
Bibliographies on Agricultural Land Issues

Hess, David. *Bibliography of State Land Resources Planning, 1970-1975* (supplemental edition) indexed by State, topic, year, agency. (Council of Planning Librarians. Exchange bibliography 845-850) Monticello, Illinois: 1975, v. 2.

Bibliography of State Land Resources Planning, 1960-1974 (preliminary edition): indexed by topic, year, state, agency, (Council of Planning Librarians. Exchange bibliography 769-770 and 771 (parts I-III) Council of Planning Librarians. Exchange bibliography 772-773 and 774 (parts I-III). Monticello, Illinois: 1975, v. 6.

London, Alan C., and Wesley D. Seitz, and Clyde W. Forrest, Jr., *The Conversion of Land From Rural to Urban Use*. (Council of Planning Librarians. Exchange bibliography 721) Monticello, Illinois: 1975, 9 p.

U.S. Library of Congress. *Preservation of Agricultural Land: An Annotated Bibliography*. Congressional Research Service. Washington: 1978, 55 p.



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