CHAPTER 1: TOOLS AND TECHNIQUES

This chapter provides a brief description of the tools and techniques that state and local governments are using to protect farmland and ensure the economic viability of agriculture. Some of these methods are used widely. Others are new and experimental. Some of the techniques result in programs that are enacted and administered at the state level; others are used primarily by local governments. It is important to remember that many of the most effective farmland protection programs use both regulatory and incentive-based strategies.

STATE EXECUTIVE ORDERS

REGULATORY TECHNIQUES

Governors of at least 10 states have issued executive orders that document the importance of agriculture and direct state agencies not to engage in or provide funding for projects that would result in farmland conversion. By establishing state policy and creating task forces to investigate farmland conversion, 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 influence the actions of local governments.

State executive orders mirror the federal Farmland Protection Policy Act that was included in the 1981 Farm Bill. The FPPA declares federal programs should be administered "in a manner that, to the extent practicable, will be compatible with state and local government, and private programs and policies to protect farmland."

In theory, executive orders are designed to promote consistent policy on agriculture and farmland protection. The federal government spends billions of dollars on programs to improve the economic viability of agriculture. All states have right-to-farm laws and differential assessment or circuit breaker programs that are intended to support agriculture, and 11 state governments have collectively spent more than $735 million to purchase agricultural conservation easements on farmland. Given the scale of public investment in supporting agriculture, the idea that states should not spend taxpayer dollars to convert productive farmland to non-agricultural use seems like simple common sense.

In reality, however, most state executive orders have not been fully implemented. One exception is Massachusetts' Executive Order 193, which directs state agencies to mitigate the conversion of state-owned agricultural lands and stipulates that state and federal funds may not be used to encourage the conversion of agricultural land if there are feasible alternatives. The state Department of Food and Agriculture recently invoked this provision to prevent a town from acquiring farmland by eminent domain. The town had intended to incorporate the land into an industrial park, but abandoned its plan when it learned that the state would not approve economic development funds for the project. The DFA also has an agreement with the Massachusetts Housing Finance Agency to review the location of proposed projects before the agency commits to funding.

Colorado, Kentucky, Michigan and Ohio used executive orders to create task forces on farmland protection. Michigan's Farmland and Agricultural Development Task Force, for example, was instructed to identify trends, causes and consequences of agricultural land's being converted to non-agricultural uses; describe voluntary methods and incentives for maintaining land for agricultural production; and provide recommendations for enhancing agricultural viability while protecting private property rights[1].

STATE 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. They take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within designated urban growth areas or boundaries (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 a comprehensive plan that is consistent with plans for adjoining areas.

Eleven states have growth management statutes, but only six—Hawaii, Maryland, New Jersey, Oregon, Vermont and Washington—address the issue of farmland conversion. These six laws vary in the controls that they impose on state and local governments and in the extent to which they protect agricultural land from development.

Oregon has one of the nation's strongest growth management laws. Its 1972 Land Conservation and Development Act directed county officials to inventory farmland and designate it for agriculture in their comprehensive plans. County governments were required to enact exclusive agricultural protection zoning and adopt other farmland protection policies. City governments were required to establish UGBs. As a result of this law, every county in the state has implemented APZ, and more than 16 million acres of agricultural land have been protected from development.

Washington's Growth Management Act was adopted in 1990 and strengthened in 1991. GMA requires all counties to designate important agricultural land. They also must adopt regulations to ensure that land uses adjacent to farm and ranch land do not interfere with agricultural operations. Fast-growing counties and their incorporated areas must prepare detailed comprehensive plans that protect natural resource areas. County comprehensive plans must be consistent with the plans of their cities and all adjacent cities and counties. Counties required to plan under the act are also required to designate urban growth areas to accommodate projected urban growth over a 20-year period. In general, urban services may not be extended beyond the boundaries of urban growth areas. These provisions have been an important factor in the growth of county-level farmland protection programs in Washington during the 1990s. At least three counties have enacted or strengthened APZ ordinances since the law was passed. Two counties have created PACE programs.

Oregon and Washington have been most effective in using growth management laws to promote farmland protection at the local level. Hawaii has the oldest growth management law. The statewide land use plan for Hawaii created four zones, one of which is dedicated to agriculture. The agricultural zone includes approximately 2 million acres, but much of this land is used for recreation and open space—only 0.5 million acres are actually in agricultural use. The law does not designate a farmland protection role for local governments.

Vermont has two growth management laws. Act 250, approved in 1970, requires state review of commercial, industrial and residential development projects that meet the act's

criteria. Developers must minimize the loss of primary agricultural soils. In some cases, they may satisfy this requirement by paying a fee. These funds are used to purchase agricultural conservation easements. Act 200, passed in 1988, encouraged local governments to develop comprehensive plans that would guide regional and state government planning and decision-making. According to state officials, this law was designed to facilitate "bottom-up" planning and enhance local control over land use decisions. In practice, however, town governments have complained that the law takes away local authority. Local government opposition to Act 200 planning has thwarted implementation of the law. While Act 200 plans were intended to guide development review decisions under Act 250, this has not happened to date[2].

New Jersey's state development plan is designed to accommodate urban growth by directing it to defined urban areas. It provides a statewide framework that is intended to guide the investment policies of state agencies. County governments participated in the development of the plan but are not required to set policies or make decisions in accordance with the final document.

Maryland's Growth Management Act outlines a set of policies to guide growth. It calls for protection of natural resources, including agricultural land, and for growth to be directed to existing population centers. State projects must be consistent with these policies. Local governments were required to adopt new comprehensive plans and revise their zoning and subdivision ordinances to implement the policies. They were also directed to adopt flexible development regulations and new strategies to promote development in areas intended for growth. The full impact of the Maryland law will not be clear until this process is completed during the late 1990s.

These examples show that growth management laws can be a powerful force to protect agricultural land, as in Oregon; a foundation for the development of local farmland protection programs, as in Washington; or a stimulus for local governments to engage in comprehensive planning, as in Vermont, New Jersey and Maryland.

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. Comprehensive plans provide a rationale for zoning and promote the orderly development of public services.

Creating or revising a comprehensive plan offers communities many opportunities to protect agricultural land. Planners often identify and map important farm and ranch land and set policies to protect the land and promote commercial agriculture. Plans can promote compact urban growth by establishing urban growth boundaries and setting a schedule and rationale for the development of new infrastructure.

Some communities devote a section of their comprehensive plans to agriculture. The agricultural element of the General Plan for Stanislaus County, Calif., has three goals: to strengthen the agricultural sector of the county's economy, to preserve agricultural lands for agricultural use and to protect the natural resources that sustain the agricultural economy. The plan recommends policies to implement the goals, such as permitting farmstands and agricultural service businesses in agricultural zones, and calls on the county to create an agency to develop infrastructure for farms and agricultural business. The document also outlines specific criteria for evaluating amendments to the General Plan that would lead to farmland conversion.

A comprehensive plan can form the foundation of a local farmland protection strategy. For example, Lancaster County, Pa., used its plan as the basis of a local growth management program. The plan identified areas that would be protected for farming, and areas where growth would be encouraged. It included policies designed to conserve natural resources and provide affordable housing and adequate public services. The county worked with its cities and townships to develop UGBs and encouraged local governments to adopt APZ. The Lancaster Agricultural Preserve Board purchases easements on farms that border the UGBs. The board's goal is to establish a ring of protected farms surrounding areas that are subject to APZ. County officials hope this approach will prevent the extension of water and sewer lines into farming areas.

AGRICULTURAL PROTECTION ZONING

Zoning is a form of local government land use control. Zoning ordinances segment counties, cities, townships and towns into areas devoted to specific land uses and establish standards and densities for development.

APZ ordinances stabilize 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 also 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. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farmstands, that enhance farm profitability. Occasionally, farmers in an agricultural zone are required to prepare farm management plans.

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, limits development, but it is generally politically 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.

CLUSTER ZONING

Cluster zoning ordinances allow or require houses to be grouped close 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 they are generally 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 farming. 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.

MITIGATION ORDINANCES AND POLICIES

Mitigation ordinances are a new farmland protection technique. 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. Generally, developers place an agricultural conservation easement on farmland in another part of the city, although mitigation may also be satisfied by paying a fee. While most of the regulatory farmland protection techniques restrict the property rights of farmers, the Davis mitigation ordinance makes developers pay for farmland conversion (see Appendix A, p. 41 for a copy of the ordinance).

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.

INCENTIVE-BASED TECHNIQUES

DIFFERENTIAL ASSESSMENT LAWS

Every state except Michigan has a differential assessment law. These laws improve the economic viability of agriculture by reducing the amount of money farmers are required to pay in local real property taxes. Differential assessment is also known as current use assessment, current use valuation, farm use valuation, use assessment and use value 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 of the programs is borne at the local level.

Differential assessment programs help ensure the economic viability of agriculture. Since high taxes eat up 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.

CIRCUIT BREAKER TAX RELIEF CREDITS

Circuit breaker tax programs offer tax credits to offset farmers' real 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. 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.

In Michigan, landowners who wish to receive circuit breaker credits must sign 10-year restrictive agreements with their local governments that prevent farmland conversion. In Wisconsin, counties and towns must adopt plans and enact zoning to ensure that tax credits are targeted to productive land that will remain in agricultural use. The state's circuit-breaker program has facilitated the adoption of agricultural protection zoning in more than 400 Wisconsin jurisdictions.

RIGHT-TO-FARM LAWS

State right-to-farm laws are intended to protect farmers and ranchers from nuisance lawsuits. Every state in the nation has at least one right-to-farm law. 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. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

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

Local governments around the nation are enacting their own right-to-farm laws to strengthen and clarify weak language in state laws. Local right-to-farm laws are most widespread in California, where the state farm bureau developed and distributed a model right-to-farm ordinance during the 1980s.

A local right-to-farm ordinance 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. Local ordinances help educate residents about the needs of commercial agriculture and reassure farmers that their communities support them.

CONSERVATION EASEMENTS

Conservation easements limit land to specific uses and thus protect it from development. These voluntary legal agreements are created between private landowners (grantors) and qualified land trusts, conservation organizations or government agencies (grantees). Grantors may receive federal tax benefits as a result of donating easements[3]. Grantees are responsible for monitoring the land and enforcing the terms of the easements.

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.

Every state in the nation has 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 state 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, 21 states have adopted conservation easement-enabling legislation based on this model and 23 states have drafted and enacted their own conservation easement-enabling laws. In Pennsylvania, conservation easements are authorized by common law. Alabama, Oklahoma and Wyoming do not have separate provisions of state law authorizing the conveyance of conservation easements, but state agencies are given the power to hold title to easements in their authorizing legislation[4].

* There are no income tax deductions for term easements.

Agricultural Conservation Easements

Agricultural conservation easements are designed specifically to protect farmland. Grantors retain the right to use their land for farming 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. Farmers also remain eligible for any state or federal farm program for which they qualified before entering into the conservation agreement.

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.

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT PROGRAMS

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. Landowners 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.

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 nonprofit organizations. Finally, some local governments have created their own 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.

Both state and local PACE programs are very popular with farmers, and funding for these programs has never been sufficient to meet the demand to sell easements. In 1996, the federal government approved limited funding for state and local PACE programs as part of the

Federal Agricultural Improvement and Reform Act. To qualify, state and local governments must demonstrate a commitment to farmland protection and appropriate matching funds.

TRANSFER OF DEVELOPMENT RIGHTS

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 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. TDR is known as transfer of development credits in California and in some regions of New Jersey.

TDR is used by counties, cities, towns and townships. Two regional TDR programs for farmland protection were developed to protect New Jersey's Pinelands and the pine barrens of Long Island, N.Y. TDR programs are distinct from PACE programs because they involve the private market. Most 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, such as New Jersey, have enacted special legislation authorizing local governments to create TDR programs. Other states, notably Virginia, have consistently refused to give local governments such authorization. Counties and towns have created TDR programs without specific state authorizing legislation; municipal governments should work with their attorneys to determine whether other provisions of state law allow them to use TDR.

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.

AGRICULTURAL DISTRICT LAWS

Agricultural district laws 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, farmers receive a package of benefits, which varies from state to state. Some agricultural district laws require farmers to sign agreements that prohibit development for the term of enrollment.

Sixteen states have enacted agricultural district laws. Each law provides a unique set of incentives. Common benefits of enrollment include automatic eligibility for differential assessment, protection from eminent domain and municipal annexation, enhanced right-to-farm protection, exemption from special local tax assessments, limits on non-farm development in the district and eligibility for state PACE programs.

In most states with agricultural district programs, farmers who wish to form a district apply directly to their local governments. Local governments review and approve applications, which are then sent to the state for final approval. In some states, local governments must develop plans to protect agriculture and farmland before farmers may apply to create agricultural districts. Virginia and North Carolina have legislation that allows local governments to create their own programs. Minnesota has two agricultural district programs: One is implemented by the state, the other applies only to the Minneapolis-St. Paul metropolitan area.

Agricultural district programs are a unique farmland protection technique because they use a combination of incentives to achieve the same goals as regulatory strategies. Instead of controlling land use, like APZ ordinances, agricultural district laws offer farmers benefits for keeping their land in agriculture. Most agricultural district laws do not require local governments to plan and zone for agriculture, as do comprehensive growth management laws. Rather, they set up an atmosphere where farmers themselves may advocate and become involved with local planning.

In Iowa, for example, the state agricultural district law created county land preservation and use commissions that included farmers, extension agents and representatives from local soil and water conservation districts. The commissions were instructed to inventory agricultural land, natural resources and public infrastructure, and to develop land use plans for unincorporated regions of the counties. The plans were submitted to county boards of supervisors for approval. This provision gave agricultural interests an important role in local planning. In New York, county agricultural and farmland protection boards review and comment on petitions to create agricultural districts. AFPBs may also receive state funds to develop and implement plans to protect farmland and support the agricultural economy. Some county plans have focused on land protection, using techniques such as PACE, while others have emphasized agricultural marketing and the promotion of local farm products.

PROGRAMS TO ENHANCE THE ECONOMIC VIABILITY OF AGRICULTURE AND PROTECT NATURAL RESOURCES

Most farmers say the best way to protect farmland is to keep farming profitable. State and local governments have created a variety of programs to support and enhance the economics of agriculture. Many state agriculture departments sponsor marketing efforts for agricultural products, and promote educational and recreational services provided by farmers. County governments also have developed economic incentive programs. In Napa County, Calif., for example, voters enacted a "winery ordinance" that requires the use of locally grown grapes in wines that are marketed under prestigious Napa County labels. One of New York's AFPBs has produced a video to promote local agriculture; others are working on strategies to improve farm profitability. Cities and towns sponsor farmers' markets that give growers direct access to large numbers of potential customers. They also promote roadside stands and pick-your-own operations by distributing maps and putting up roadside signs that let consumers know where these operations are located. Some jurisdictions are developing public commercial kitchen facilities that will serve as incubators for farm-based food processing businesses.

Massachusetts has a unique program that ties economic assistance for farmers to land protection. The state's Farm Viability Project offers farmers help with management, marketing, product research and development, and pollution prevention in exchange for five- or 10-year

covenants prohibiting development. Farmers are eligible for grants of up to $40,000 to implement new business plans, technologies and marketing strategies.

Environmental problems can result in farmland conversion. If water supplies become scarce or polluted, rationing and regulations may increase the cost of farming. Soil erosion reduces agricultural productivity. Public concern about loss of wildlife habitat has pitted farmers and ranchers against environmentalists. Maintaining the natural resource base is a relatively new issue for state and local farmland protection programs. New Jersey has addressed the issue by offering soil and water conservation grants to farmers who enroll in agricultural districts. New York City is buying agricultural conservation easements on farms in its watershed to protect drinking water quality and supporting a nonprofit organization that helps farmers implement agricultural best management practices. There are negotiations under way in California to provide regulatory relief to farmers and ranchers who make good-faith efforts to create and enhance wildlife habitat on their land. Programs that help farmers address environmental challenges are likely to become even more important as competition for land and resources increases.

COMBINING THE TECHNIQUES BUILDS COMPREHENSIVE FARMLAND PROTECTION PROGRAMS

State and local governments have developed farmland protection programs using many different combinations of regulatory and incentive-based techniques. Some of these combinations are so successful they have been widely adopted. Table 1.1, p. 40 shows use of farmland protection techniques by state.

Differential assessment is an important component of any comprehensive farmland protection program. If state or local governments restrict development of farmland by enacting growth management laws or APZ ordinances, it is only fair that the land be assessed at its agricultural value. And if governments spend money to purchase agricultural conservation easements on farmland, it makes sense to protect the public investment by preventing taxes from rising beyond farmers' ability to pay.

Some communities have built comprehensive farmland protection programs by combining APZ with PACE programs. APZ stabilizes the agricultural land base quickly; PACE permanently protects the land from development and demonstrates to farmers that the community is investing in agriculture. Approximately 40 percent of the land area protected by state and local PACE programs is subject to some form of APZ. APZ can be combined with TDR to achieve many of the same purposes.

PACE and TDR also have been used as incentives to encourage enrollment in agricultural district programs. In Maryland, Pennsylvania and Delaware, farmers who want to apply to the state PACE programs must first enroll their land in an agricultural district. Because PACE programs typically have long waiting lists, this provision helps prevent conversion of land while farmers wait to sell a permanent easement. It also helps protect large blocks of land from development.

For more information on farmland protection, contact the Farmland Information Center at http://www.farmlandinfo.org, or call (413) 586-4593.

TABLE 1.1: FARMLAND PROTECTION ACTIVITIES BY STATE

State	Agricultural Districts	Agricultural Protection Zoning	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**	**24**	**4**	**49**	**20**	**50**	**15**

▲ State program
✦ Local program
* A number of local jurisdictions also have enacted right-to-farm ordinances. We do not have a complete inventory.

APPENDIX A: EXCERPTS FROM CITY OF DAVIS, CALIFORNIA ORDINANCE 1823, ESTABLISHING A FARMLAND MITIGATION PROGRAM.

Article III. Farmland Preservation

Section 30-200. Purpose and Findings.

(a) The purpose of this chapter and this article is to implement the agricultural land conservation policies contained in the Davis general plan with a program designed to permanently protect agricultural land located within the Davis planning area for agricultural uses.

(b) The City of Davis City Council finds this chapter and this article are necessary for the following reasons: California is losing farmland at a rapid rate; Yolo and Solano county farmland is of exceptional productive quality; loss of agricultural land is consistently a significant impact under CEQA in development projects; the Davis general plan has policies to preserve farmland; the City of Davis is surrounded by farmland; the Yolo and Solano county general plans clearly include policies to preserve farmland; the continuation of agricultural operations preserves the landscape and environmental resources; loss of farmland to development is irreparable and agriculture is an important component of the city's economy; and losing agricultural land will have a cumulatively negative impact on the economy of the City and the counties of Yolo and Solano.

(c) It is the policy of the City of Davis to work cooperatively with Yolo and Solano Counties to preserve agricultural land within the Davis planning area beyond that deemed necessary for development. It is further the policy of the City of Davis to protect and conserve agricultural land, especially in areas presently farmed or having Class 1, 2, 3 or 4 soils.

(d) The City of Davis City Council finds that some urban uses when contiguous to farmland can affect how an agricultural use can be operated which can lead to the conversion of agricultural land to urban use.

(e) The City Council further finds that by requiring conservation easements for land being converted from an agricultural use and by requiring a 150 foot buffer, the City shall be helping to ensure prime farmland remains an agricultural use.

Section 30-210. Definitions.

(a) Advisory committee. The City of Davis Planning Commission shall serve as the advisory committee.

(b) Agricultural land or farmland. Those land areas of the county and/or city specifically classed and zoned as Agricultural Preserve (A-P), Agricultural Exclusive (A-E), or Agricultural General (A-1), as those zones are defined in the Yolo County Zoning Ordinances; those land areas classed and zoned Exclusive Agriculture (A-40), as defined in the Solano County Zoning Ordinance; and those land areas of the City of Davis specifically classed and zoned as Agricultural (A), Agricultural Planned Development or Urban Reserve where the soil of the land contains Class 1, 2, 3 or 4 soils, as defined by the Soil Conservation Service.

(c) Agricultural mitigation land. Agricultural land encumbered by a farmland deed restriction, a farmland conservation easement or such other farmland conservation mechanism acceptable to the City.

(d) Farmland conservation easement. The granting of an easement over agricultural land for the purpose of restricting its use to agricultural land. The interest granted pursuant to a farmland conservation easement is an interest in land which is less than fee simple.

(e) Qualifying entity. A nonprofit public benefit 501(c)(3) corporation operating in Yolo County or Solano County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The following entities are qualifying entities: Yolo Land Conservation Trust and Solano Farm and Open Space Trust. Other entities may be approved by the City Council from time to time.

Section 20-220. Agricultural Land Mitigation Requirements.

(a) Beginning on November 1, 1995, the City of Davis shall require agricultural mitigation by applicants for zoning changes or any other discretionary entitlement which will change the use of agricultural land to any non-agricultural zone or use.

(b) Agricultural mitigation shall be satisfied by:

(1) Granting a farmland conservation easement, a farmland deed restriction or other farmland conservation mechanism to or for the benefit of the City of Davis and/or a qualifying entity approved by the City of Davis. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes. One time as many acres of agricultural land shall be protected as was changed to a non-agricultural use in order to mitigate the loss of agricultural land; or

(2) In lieu of conserving land as provided above, agricultural mitigation may be satisfied by the payment of a fee based upon a one to one replacement for a farmland conservation easement or farmland deed restriction established by the City Council by resolution or through an enforceable agreement with the developer. The in lieu fee option must be approved by the City Council. The fee shall be equal to or greater than the value of a previous farmland conservation transaction in the planning area plus the estimated cost of legal appraisal and other costs, including staff time, to acquire property for agricultural mitigation. The in lieu fee, paid to the City, shall be used for farmland mitigation purposes, with priority given to lands with prime agricultural soils and habitat value.

(c) The land included within the 100 foot agricultural buffer required by section 30-50(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.

(d) It is the intent of this program to work in a coordinated fashion with the habitat conservation objectives of the Yolo County Habitat Management Program, and, therefore, farmland conservation easement areas may overlap partially or completely with habitat easement areas approved by the State Department of Fish and Game and/or the Yolo County Habitat Management Program. Up to 20% of the farmland conservation easement area may be enhanced for wildlife habitat purposes as per the requirements of the State Department of Fish and Game and/or Yolo County Habitat Management Program; appropriate maintenance, processing or other fees may be required by the habitat program in addition to the requirements set forth herein.

Section 30-230. Comparable Soils and Water Supply.

(a) The agricultural mitigation land shall be comparable in soil quality with the agricultural land whose use is being changed to non-agricultural use.

(b) The agricultural mitigation land shall have adequate water supply to support the historic agricultural use on the land to be converted to nonagricultural use and the water supply on the agricultural mitigation land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation.

Section 30-240. Eligible Lands.

(a) The agricultural mitigation land shall be located within the Davis planning area as shown in the Davis General Plan. The criteria for preferred locations or zones for agricultural mitigation land shall be determined by the Davis City Council after receiving input from the advisory committee, Yolo and Solano counties, Woodland, Dixon, the Davis Open Space Committee, the Natural Resources Commission and Yolo and Solano Farm Bureaus. In making their determination, the following factors shall be considered:

1. The zones shall be compatible with the Davis general plan and the general plans of Yolo and Solano counties.

2. The zones shall include agricultural land similar to the acreage, soil capability and water use sought to be changed to non-agricultural use.

3. The zones shall include comparable soil types to that most likely to be lost due to proposed development.

4. The property is not subject to any easements or physical conditions that would legally or practicably preclude modification of the property's land use to a non-agricultural use.

(b) The advisory committee shall recommend to the City Council acceptance of agricultural mitigation land of twenty (20) acres or more by a qualifying entity and/or the City, except that it may consider accepting smaller parcels if the entire mitigation required for a project is less, or when the agricultural mitigation land is adjacent to larger parcels of agricultural mitigation land already protected. Contiguous parcels shall be preferred.

(c) Land previously encumbered by a conservation easement of any nature or kin is not eligible to qualify as agricultural mitigation land, unless the conservation easement meets the requirements of Section 30-220(f).

Section 30-250. Requirements of Instruments; Duration.

(a) To qualify as an instrument encumbering agricultural mitigation land, all owners of the agricultural mitigation land shall execute the instrument.

(b) The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the agricultural mitigation land.

(c) The instrument shall prohibit any activity which substantially impairs or diminishes the agricultural productivity of the land, as determined by the advisory committee.

(d) The instrument shall protect the existing water rights and retain them with the agricultural mitigation land.

(e) The applicant shall pay an agricultural mitigation fee equal to cover the costs of administering, monitoring and enforcing the instrument in an amount determined by City Council.

(f) The City shall be named a beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualifying entity.

(g) Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the City in perpetuity. Except as provided in subsection (h) of this Section, the qualifying entity or the City shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire.

(h) If judicial proceedings find that the public interests described in Section 30-200 of this chapter can no longer reasonable by fulfilled as to an interest acquired, the interest in the agricultural mitigation land may be extinguished through sale and the proceeds shall be used to acquire interests in other agricultural mitigation land in Yolo and Solano Counties, as approved by the City and provided in this Chapter.

(i) If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City of Davis.

Section 30-260. City of Davis Farmland Conservation Program Advisory Committee.

(a) The Davis Planning Commission shall serve as the Davis Farmland Conservation Advisory Committee.

(b) It shall be the duty and responsibility of the Planning Commission to exercise the following powers:

1. To adopt rules of procedure and bylaws governing the operation of the advisory committee and the conduct of its meetings.

2. To recommend the areas where mitigation zones would be preferred in the Davis planning area.

3. To promote conservation of agricultural land in Yolo and Solano counties by offering information and assistance to landowners and others.

4. To recommend tentative approval of mitigation proposals to City Council.

5. To certify that the agricultural mitigation land meets the requirements of this chapter.

6. Any denial from the advisory committee may be appealed to City Council.

(c) The Natural Resources Commission shall monitor all lands and easements acquired under this Chapter and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. The Natural Resources Commission shall provide advice to the Planning Commission on the establishment of criteria for the location of agricultural mitigation lands.

(d) All actions of the Planning Commission and the Natural Resources Commission shall be subject to the approval of the Davis City Council.

Section 30-270. Annual Report.

Annually, beginning one year after the adoption of this Chapter, the City Planning Director shall provide to the Advisory Committee an annual report delineating the activities undertaken pursuant to the requirements of this Chapter and an assessment of these activities. The report shall list and report on the status of all lands and easements acquired under this Chapter. The Planning Director shall also report to the Natural Resources Commission.

ENDNOTES

1. State of Michigan, Executive Order No. 1994-4 (Michigan Farmland and Agricultural Development Task Force, February 4, 1994).

2. Amy Jestes Llewellyn, agricultural land use planner, Vermont Department of Agriculture, telephone communication with Robin Sherman, May 1997.

3. Landowners who donate permanent conservation easements or sell them at less than fair market value to a qualified agency or nonprofit conservation organization are eligible for federal income tax benefits. Such "bargain sales" and donations of easements are not considered to be taxable gifts. The value of a qualified conservation easement may be deducted to reduce adjusted gross income by as much as 30 percent in the year the easement is donated or sold, and for five subsequent years, until the full value of the easement is written off. This provision can result in substantial savings of federal and often state income taxes that partially offset the drop in property value caused by recording the easement. Bargain sales of easements allow state and local PACE programs to protect farmland at a significant discount.

4. Stefan Nagel, *State Conservation Easement Legislation* (Washington, D.C.: National Trust for Historic Preservation, 1995).

LITERATURE CITED

Nagel, Stefan. *State Conservation Easement Legislation.* Washington, D.C.: National Trust for Historic Preservation. 1995.