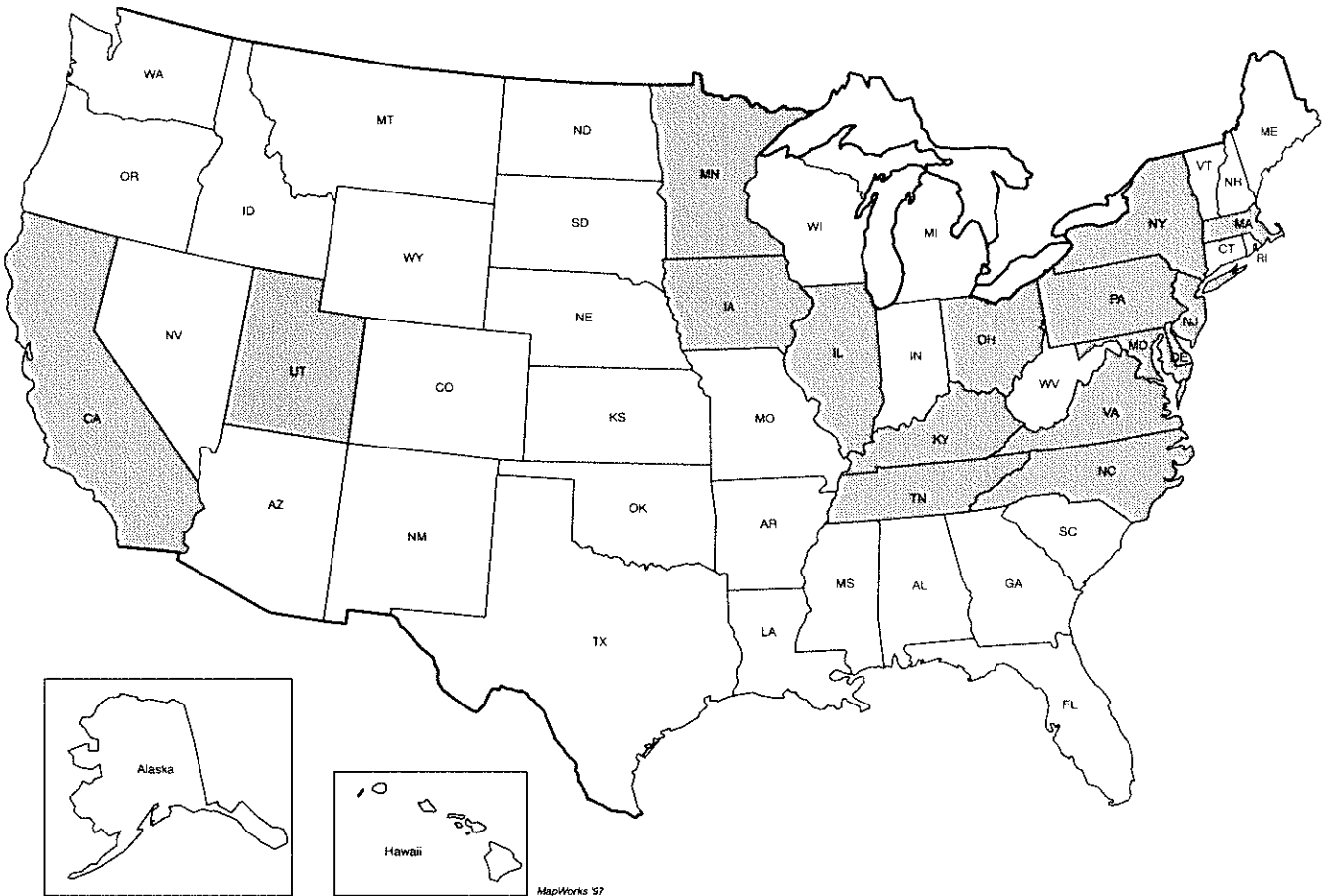


SECTION ONE: FARMLAND PROTECTION TOOLBOX

CHAPTER 7: AGRICULTURAL DISTRICT PROGRAMS

MAP 7.1: STATES WITH AGRICULTURAL DISTRICT PROGRAMS, 1997



Agricultural district programs allow farmers to form special areas where commercial agriculture is encouraged and protected. Programs are authorized by state legislatures and implemented at the local level. Enrollment in agricultural districts is voluntary. In exchange for enrollment, farmers receive a package of benefits which varies from state to state. Agricultural district programs should not be confused with agricultural zoning, which imposes mandatory restrictions on the use of farmland.

BRIEF DESCRIPTION OF
AGRICULTURAL
DISTRICT PROGRAMS

Sixteen states have enacted agricultural district laws. There are a total of eighteen agricultural district laws; Minnesota and Virginia each have two agricultural district programs. Provisions vary widely, but most agricultural district laws are intended to be comprehensive responses to the challenges facing farmers in developing communities. To maintain a land base for agriculture, some agricultural district laws protect farmland from annexation and eminent domain. Many laws also require that state agencies limit construction of infrastructure, such as roads and sewers, in agricultural districts.

FUNCTIONS AND
PURPOSES OF
AGRICULTURAL
DISTRICT PROGRAMS

Agricultural district laws help create a more secure climate for agriculture by preventing local governments from passing laws that restrict farm practices, and by providing enhanced protection from private nuisance lawsuits. To reduce the expense of farming where land values are high, five programs offer automatic eligibility for differential tax assessment to farmers who enroll in agricultural districts. In some states, the laws encourage good local planning by limiting non-farm development in and around agricultural districts. Three states offer eligibility for purchase of agricultural conservation easement programs to ensure that land will continue to be available for agriculture.

By providing farmers with an attractive package of incentives for enrolling their land, agricultural district laws are intended to promote the retention of large blocks of farmland. Table 7.1, p. 198 lists benefits offered by agricultural district programs.

TABLE 7.1: PROVISIONS OF AGRICULTURAL DISTRICT LAWS

PROVISION	PROGRAMS WITH PROVISION	CALIF.	DEL.	ILL.	IOWA
Limitations on use of eminent domain in districts	12	▲			
State agency policies must support farming in districts	10	▲	▲	▲	▲
Local planning requirement	10	▲			▲
Limits on non-farm development in districts	10	▲	▲		
Farmers in districts receive extra right-to-farm protection	10		▲	▲	▲
Limitations on special assessments in districts	8			▲	▲
Limits on public investment for non-farm development in districts	7	▲			
Agricultural impact statement required for public projects in districts	6				▲
Farmers in district are automatically eligible for differential assessment	5	▲	+		
Public utilities exempted from limits on eminent domain	5				
Sound conservation practices required in districts	4				
Limitations on local government's ability to annex land in districts	3				
Farmer in district can recover legal fees if he/she wins nuisance lawsuit	3		▲		▲
Local governments compensated for taxes reduced by differential assessment	3	▲			
Enrollment in district required to be eligible for PACE	3		▲		
Landowners adjacent to districts must sign agricultural nuisance disclaimer	2		▲		
LESA used to define boundaries of district	2		▲		
Mediation required for land use disputes in district	2				▲
Local government has right of first refusal to purchase land in districts	2				
Strong sanctions on withdrawal from districts	2	▲			
Land in districts gets priority in water rights allocation	1				×
Soil and water conservation cost sharing for farmers in districts	1				
Buffer strips required for development adjacent to districts	1		▲		
No rezoning or major subdivisions allowed in districts	1		▲		
Land use controls on adjacent land must consider districts	1				
Limitations on rate of tax increases	1				
Minimum acreage requirement	13	100	200	350	300

- × Provision included in law but never implemented
- ◆ Public hearing required for eminent domain in districts
- + Land enrolled in districts is exempt from all but agricultural property taxes

AGRICULTURAL DISTRICT PROGRAMS

KY.	MD.	MASS.	MINN.-STATE	MINN.-METRO.	N.J.	N.Y.	N.C.	OHIO	PA.	TENN.	UTAH	VA.-STATE	VA.-LOCAL
♦			▲	▲	▲	▲	♦	▲	▲	♦	▲	▲	
▲					▲	▲			▲		▲	▲	
	▲		▲	▲	▲	▲			▲			▲	▲
▲	▲		▲	▲		▲	▲				▲		▲
			▲	▲	▲	▲		▲	▲		▲		
		▲	▲			▲	▲	▲				▲	
			▲	▲	▲	▲		▲				▲	
				▲		▲		▲			▲	▲	
▲				▲				▲	▲			▲	▲
			▲	▲	▲		▲						
▲			▲	▲									
						▲							
				▲		×							
	▲								▲				
							▲					▲	
					▲								
		▲			▲								
			▲										
					▲								
												▲	
				▲									
250	100			40		500		30	250	250		200	20

BENEFITS

BENEFITS AND
DRAWBACKS OF
AGRICULTURAL
DISTRICT PROGRAMS

- Agricultural district programs are very flexible; benefits and restrictions can be tailored to local conditions.
- Agricultural districts help stabilize the land base at low public cost.
- Agricultural districts provide multiple benefits to farmers, including tax relief, protection from local regulation and eligibility for PACE programs. These benefits help support the economics of farming.
- Agricultural districts provide benefits to farmers and protect large blocks of land. This helps create a critical mass of land to keep farming viable.
- Enrollment in agricultural districts is voluntary, making the programs popular with farmers.

DRAWBACKS

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

BRIEF HISTORY OF AGRICULTURAL DISTRICT PROGRAMS

In 1965, California enacted the California Land Conservation Act to preserve agricultural land and open space and promote efficient urban growth patterns. The Williamson Act, as it is commonly known, allows landowners to create “agricultural preserves” by signing renewable 10-year contracts with local governments. Landowners agree to restrict use of property within the preserves to agriculture or open space for the term of the contract. In return, the land is assessed at its agricultural use value¹. Property tax relief is the primary benefit that landowners receive for creating an agricultural preserve, and the Williamson Act is commonly classified as a differential assessment program.

TRENDS IN
AGRICULTURAL
DISTRICT PROGRAMS

New York was the first state to create a comprehensive agricultural district program. Article 25 AA of the New York Agriculture and Markets Law was passed in 1971 at the recommendation of the New York State Commission on the Preservation of Agricultural Land. The act made differential assessment available to New York farmers and contained provisions that have since been incorporated into other agricultural district laws, including protection against unreasonable local regulations, special review of the use of eminent domain and a requirement that state agency policies support the continuation of farming in agricultural districts.

Between 1971 and 1995, 14 states and one region followed the examples set by California and New York. States that have enacted agricultural district laws are shown on the map at the beginning of this chapter. Pennsylvania’s Agricultural Security Area Law, enacted in 1981 and modified since, created one of the nation’s most effective agricultural district programs. The law identifies five purposes for the program:

- (1) Encourage landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use;
- (2) Protect farms from incompatible non-farm use;
- (3) Assure permanent conservation of agricultural land to protect the agricultural economy;
- (4) Provide compensation to landowners for development rights; and
- (5) Leverage state funds for the purchase of agricultural conservation easements and protect the public investment in easements².

Pennsylvania established a foundation for a statewide Purchase of Agricultural Conservation Easement program by making enrollment in an agricultural security area a condition for PACE eligibility³. The PACE program itself was not created for several years. In 1991, Delaware created an agricultural district program modeled on the Pennsylvania program.

Older agricultural district programs continue to evolve. A 1994 amendment to the Williamson Act made it more difficult for local governments to acquire land in agricultural preserves for public use. In 1992, amendments to the New York law reconstituted and strengthened local agricultural advisory committees, added new right-to-farm protections and required local governments to recognize the intent of the agricultural districts law when making local land use decisions. The Agricultural Protection Act (APA) amendments also required property owners with land enrolled in the program to provide the county with information on their farm operations and land.

The New York amendments fundamentally changed both the membership and the function of the state's county agricultural district advisory committees. Until 1992, local agricultural district programs were administered by county planning departments and agricultural district advisory committees. Committee members were drawn mainly from the agricultural community. The primary responsibilities of the advisory committees were to review agricultural districts, both at creation and at eight-year intervals, and advise county legislative bodies and planning boards on proposed districts and modifications.

The APA transformed the old agricultural district advisory committees into Agricultural and Farmland Protection Boards (AFPBs). Membership was expanded to include local government leaders and non-farmers in addition to farmer representatives. Reviewing agricultural districts remains one of the boards' primary responsibilities. Additional responsibilities now include the opportunity to comment on "notices of intent" for proposed public projects to avoid or minimize adverse farm impacts before public dollars are spent or any land is acquired. AFPBs also have the authority to apply for and receive state matching funds to develop and implement county agricultural and farmland protection plans.

ACCOMPLISHMENTS

The extent to which farmers have taken advantage of agricultural district programs varies widely from state to state. Twelve states have active programs; the amount of land enrolled in agricultural districts in these states is displayed in Table 7.2, p. 203. Although Ohio has no systematic method of collecting data on its agricultural districts, a 1995 survey of 63 counties reported that 2.37 million acres were enrolled in agricultural districts, accounting for 21.8 percent of the farmland in those counties⁴.

Next to California, New York has the largest area of farmland enrolled in agricultural districts. Its total number of districts has grown from 19 in 1972 to 411 in 1996, and the total amount of land in districts has increased from 171,528 acres in 1972 to nearly 8.5 million acres over the 24-year period⁵. In 1996, 71 percent of the state's farms were enrolled in the program, accounting for 85 percent of New York's farmland⁶.

In the seven-county St. Paul-Minneapolis metropolitan area, 193,586 acres were enrolled in the Metropolitan Agricultural Preserves program in 1994, representing approximately 35 percent of land that was certified as eligible for the program⁷. An additional 152,407 acres in three counties were enrolled in agricultural preserves through the state's Agricultural Land Preservation program in 1994.

TABLE 7.2: LAND ENROLLED IN AGRICULTURAL DISTRICTS

State	Area (acres)	Year Enacted	Figures current as of
California	15,900,000	1965	1996
New York	8,480,666	1971	1996
Virginia (state)	629,045	1977	1995
Maryland	277,693	1977	1995
Illinois	104,381	1979	1995
Minnesota: Twin Cities	193,586	1980	1994
Ohio (partial est.)	2,370,000	1982	1996
Pennsylvania	2,441,638	1981	1995
Iowa	453,665	1982	1994
Kentucky	213,440	1982	1995
New Jersey	46,559	1983	1995
Minnesota (state)	152,407	1984	1995
Delaware	30,439	1991	1995
Tennessee	1,927	1995	1996

CHALLENGES

Other agricultural district programs have been less successful. Massachusetts' program, authorized by the Agricultural Incentive Areas Law, has never been implemented. Utah enacted an agricultural district law in 1994, but, as of early 1997, there had been few applications to form districts. Virginia and North Carolina have enabling legislation that allows counties to create their own agricultural district programs, but neither state keeps records on the creation of local agricultural districts or enrollment of land in these programs.

ISSUES TO ADDRESS IN DEVELOPING AN AGRICULTURAL DISTRICT PROGRAM

ISSUES AND OPTIONS

Agricultural district programs are flexible. They can be designed to prevent development of farmland, to provide incentives to keep land in agriculture or simply to address some of the challenges of farming in urban-influenced areas. How the programs are structured determines which of these functions they are likely to serve. Legislative issues considered include:

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

DESCRIPTIVE ANALYSIS OF AGRICULTURAL DISTRICT PROGRAMS

Eligibility for enrollment in agricultural districts

States have established a variety of criteria for local governments to determine eligibility for enrollment in agricultural districts. New Jersey's State Agricultural Development Committee has developed one of the most comprehensive sets, indicating the broad range of factors that may be taken into account⁸:

1. Agriculture is area's predominant land use;
2. Quality and productivity of agricultural soils in the district;
3. Extent of suburban and conflicting commercial development;
4. Consistency with current and anticipated land use plans and regulations;
5. Agricultural property tax assessment status;
6. Anticipated approvals of non-agricultural development;
7. Accessibility to publicly funded water and sewer systems;

8. Compatibility with comprehensive and special purpose county and state plans;
9. Proximity to and accessibility from major highways and interchanges;
10. Size of proposed district;
11. Natural and special features of land;
12. Patterns of land ownership;
13. Extent of landowner support;
14. Type and distribution of agriculture; and
15. Extent of participation by landowners in the area.

All programs set minimum sizes for establishing a district, ranging from 20 acres in Virginia's county program to 500 acres in the New York state program. In most states, property acreages can be combined to qualify. Ohio requires that land enrolled in the program yield a minimum yearly gross income of \$2,500. Delaware uses a Land Evaluation and Site Assessment (LESA) system to evaluate applications. LESA is a numerical system for ranking parcels of farmland for fertility and suitability for agricultural production. Parcels must score 170 or greater on the 300-point LESA scale to be included in an agricultural district.

Minnesota requires agricultural protection zoning as a condition of enrollment in an agricultural district. In the St. Paul-Minneapolis metropolitan area, the local government must first adopt a comprehensive plan that describes and designates long-term agricultural land, and then plan and zone these areas at a density of no more than one residence per 40 acres. Once these conditions have been met, land in the area can be certified as eligible for the Metropolitan Agricultural Preserves program⁹.

Under Minnesota's statewide Agricultural Land Preservation Law, a county must develop an agricultural land preservation plan and a set of regulations implementing the plan in order to become eligible to create agricultural preserves¹⁰. The plan must identify land currently in agricultural use and areas in which development is occurring or likely to occur in the next 20 years. It must classify land suitable for long-term agricultural use and take note of its current and future development. The county must determine present and future housing needs representing a variety of price and rental levels, and identify areas adequate to meet these needs. Finally, the agricultural land preservation plan must be integrated with comprehensive county and municipal plans.

Regulations implementing the plans must address at least the following elements:

- Designation of land suitable for long-term agricultural use and the creation of exclusive agricultural use zones, allowing for conditional, compatible uses that do not conflict with long-term agricultural use;
- Designation of urban expansion zones where limited growth and development may be allowed;
- Residential density requirements and minimum lot sizes in exclusive agricultural use zones and urban expansion zones; and

Standards and procedures for county decisions on rezoning, subdivision and parcel divisions¹¹.

Only owners of land that has been designated for exclusive long-term agricultural use under an approved agricultural preservation plan may apply for the creation of an agricultural preserve¹².

Enrollment criteria in other states include: viability of farming in and near the proposed district (New York); whether the land is located in an incorporated municipality (Ohio); consistency with the statewide agricultural lands preservation strategy (Delaware); compactness of district and contiguity of parcels (Illinois); whether the proposed district contains the critical mass of farmland needed to ensure continuation of agriculture (Maryland); and the environmental benefits of retaining lands in the district for agricultural and forestry uses (Virginia).

Procedures for Creating Agricultural Districts

Agricultural districts are generally proposed by farmers. Some states have special local committees to review farmer petitions for agricultural districts. In Illinois and North Carolina, the local government has final authority over the creation of the district. In Maryland and New York, a state agricultural agency must approve the local recommendation. Most states require that a notice of the proposal to create a district be published in a local newspaper, and that local planning agencies review and comment on whether the proposed district is in accordance with relevant plans. Several states call for a public hearing on the proposal before any action is taken. Many include the county soil and water conservation district (SWCD) in the process. In Kentucky, SWCDs have the final decision-making authority. Several states require that the boundaries of the district be recorded, and that the Secretary of Agriculture be given formal notice of its creation.

Massachusetts' Agricultural Incentive Areas Law is unique in that it empowers local committees to form agricultural districts without the consent of landowners who would be affected. This provision may be one of the reasons why the program has never been implemented. New York also has a provision that allows the state Commissioner of Agriculture and Markets to create agricultural districts, but as of 1996, no districts had been formed through this process.

Incentives for Participation

Each agricultural district law has its own recipe for encouraging farming. Several states offer unique benefits to farmers who enroll their land in an agricultural district (see Table 7.1, p. 198). North Carolina's Farmland Preservation Enabling Act is slightly different from other agricultural district laws. It allows county governments to establish agricultural district programs and lists a series of benefits that they may provide; however, the actual provisions of each local program are determined by the county government, not the state.

Property tax relief

All states offer some form of property tax relief to farmers, and several provide additional tax benefits to farmers who enroll their land in an agricultural district. In California,

Utah, Virginia and the Twin Cities metropolitan area, farmers who enroll in an agricultural district are automatically eligible for differential assessment. Delaware farmers are exempt from most local property taxes and the state's realty transfer tax. Agricultural district laws in Illinois, Iowa, Minnesota, New York, North Carolina, Ohio and Virginia exempt farmers from paying special assessments for services that do not directly benefit them.

Minnesota has a differential assessment program known as Green Acres, as well as two agricultural district programs. The Metropolitan Agricultural Preserves Program is available to landowners in seven counties surrounding the Twin Cities of St. Paul and Minneapolis, and the Minnesota Agricultural Land Preservation Program offers similar benefits to farmers in the rest of the state. Farmers may apply for deferred taxation through Green Acres, or enroll their land in a state or Twin Cities metropolitan agricultural preserve. Farmers with land in an agricultural preserve receive greater tax savings than owners of land enrolled in Green Acres.

Under Green Acres, all farmland is assessed at its agricultural value, and special assessments are deferred. When land is converted to a non-eligible use, the owner is required to pay a penalty, plus the sum of all deferred special assessments with interest. Farmers who enroll their property in an agricultural preserve, however, do not have to pay back tax savings when they withdraw the land from the program. In addition to having their land assessed at its agricultural value, farmers in either of the agricultural district programs are eligible for tax credits. Under the metropolitan area program, a special tax rate equal to 105 percent of the previous year's statewide average tax rate for towns outside the metropolitan area is applied to farmland enrolled in an agricultural preserve. If the local tax rate is higher than the special tax rate, the farmer receives a property tax credit for the difference. Program participants are guaranteed a minimum tax credit of \$1.50 per acre per year. Under the state program, farmers receive an across-the-board \$1.50 per acre property tax credit.

Enrollment patterns in the Twin Cities Metropolitan Agricultural Preserves Program in two Minnesota counties suggest that agricultural districts can be a powerful farmland protection tool.

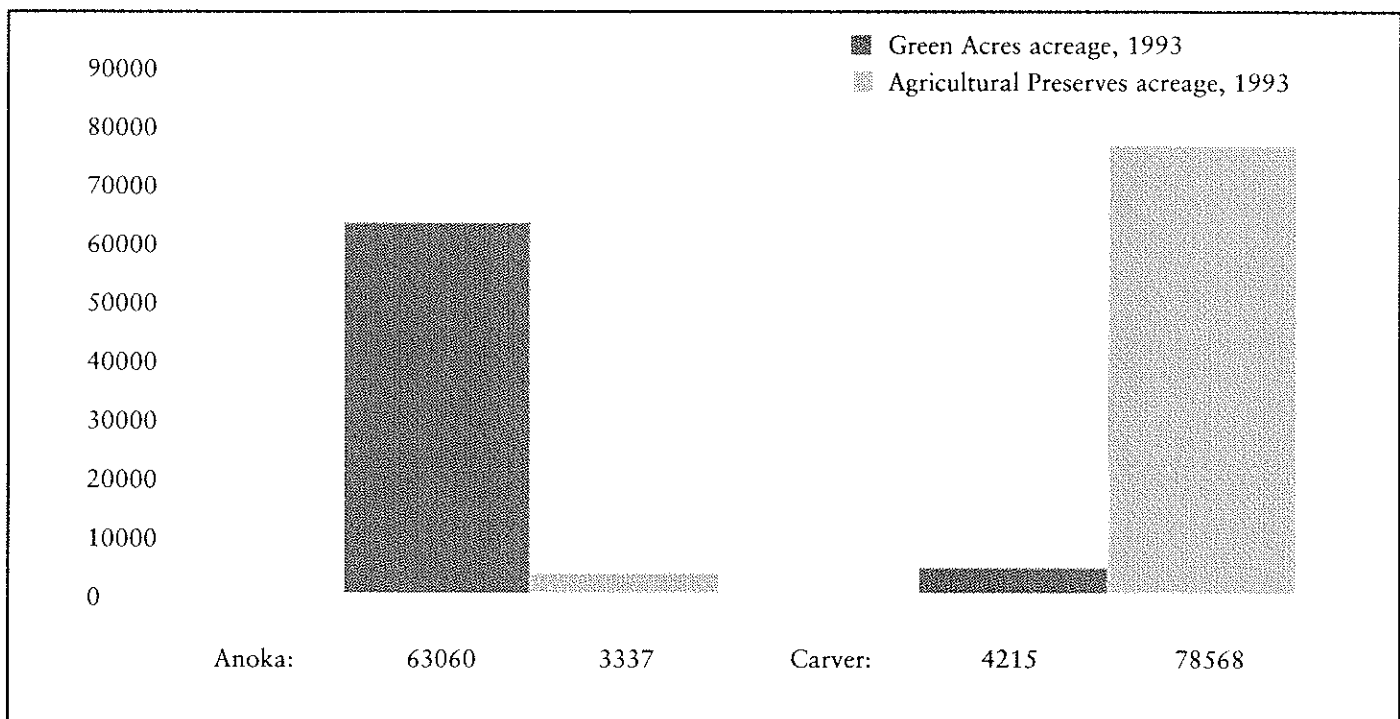
A Tale of Two Counties - Agricultural Districts and Farmland Protection in Anoka and Carver Counties, Minnesota¹³

Most towns in Anoka and Carver Counties, Minn., are within an easy commute to the Twin Cities of St. Paul and Minneapolis. Both counties were predominantly rural until recently, and both fall within the jurisdiction of the Twin Cities regional government, making landowners eligible to participate in the Metropolitan Agricultural Preserves Program. Anoka County encompasses approximately 271,350 acres; Carver County is slightly smaller at 228,550 acres. There the similarities between the two counties end.

Anoka County lies north of the Twin Cities and to the east of the Mississippi River. Its soils are sandy and relatively poor for agriculture, and few commercial farms operate in the county. Farms accounted for approximately 23 percent of the county's land base in 1992, compared to 73 percent of the land base in Carver County, which is west of St. Paul-Minneapolis. The average market value of agricultural products sold per farm was \$40,826 in Anoka County in 1992, while farmers in Carver County sold an average of \$71,406 in farm products.

Few farmers in Anoka County have created Metropolitan Agricultural Preserves. The majority of the county's farmland is enrolled in the state's Green Acres agricultural property tax relief program. In Carver County, the pattern of enrollment in the two programs is exactly the opposite (see Figure 7.1).

FIGURE 7.1: LAND ENROLLED IN GREEN ACRES AND METROPOLITAN AGRICULTURAL PRESERVES PROGRAM. ANOKA AND CARVER COUNTIES, MINN., 1992

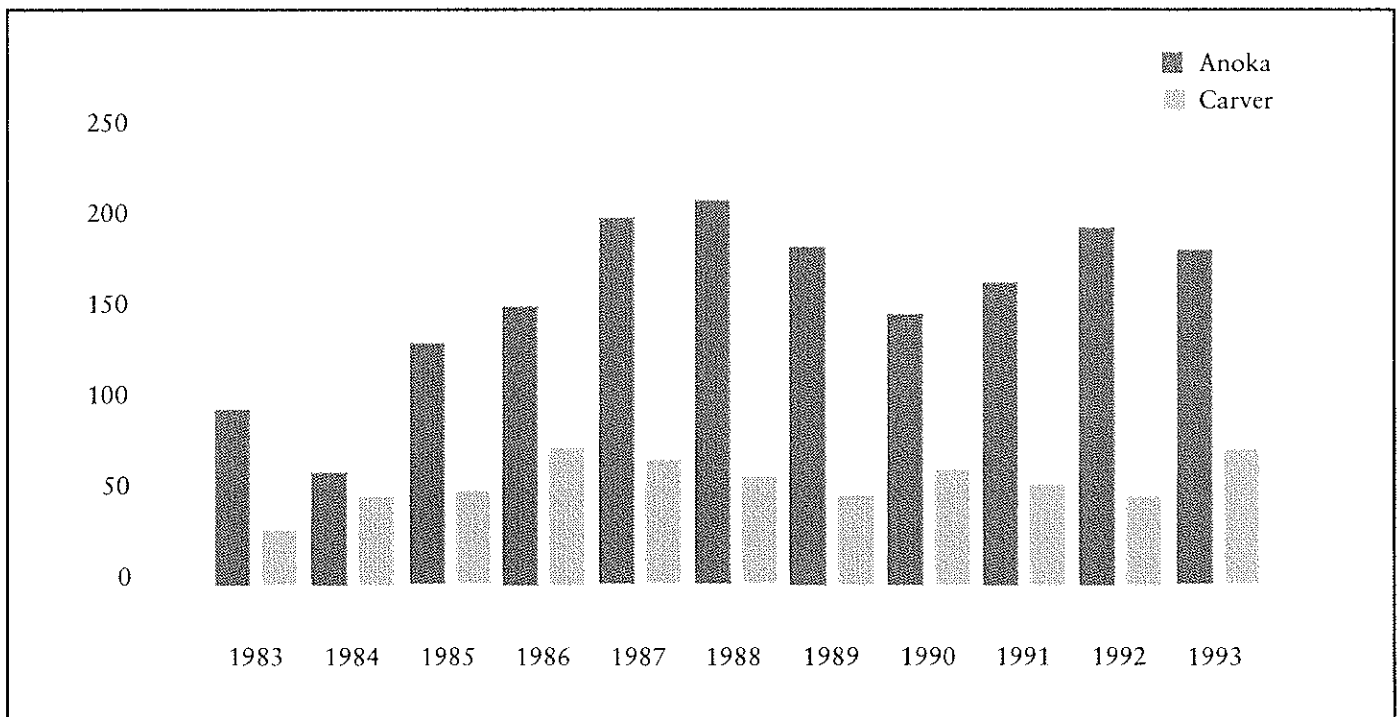


Landowners' choices between enrolling in Green Acres and the Metropolitan Agricultural Preserves Program have important implications for farmland protection in Anoka and Carver Counties. Planners in Anoka County believe that local farmers are more interested in reducing current property tax burdens on their property than in saving the land for agriculture. They expect development to occur and are therefore unwilling to support the agricultural protection zoning required by the Metropolitan Agricultural Preserves Program. There is no comprehensive farmland protection program in Anoka County, and only 4,226 acres were certified as eligible for enrollment in the Metropolitan Agricultural Preserves Program in 1994.

In Carver County, on the other hand, landowners' interest in the tax benefits and protection offered by the Metropolitan Agricultural Preserves Program has resulted in planning that supports agriculture. Zoning in rural areas allows one house per 40 acres, and no more than two acres of prime agricultural land per parcel may be used for residential development. In 1994, 223,879 acres were certified as eligible to enroll in the Metropolitan Agricultural Preserves Program.

Between 1983 and 1993, 573 residential building permits were approved within unincorporated areas of Carver County. In Anoka County, which is 15.7 percent larger than Carver County, 1,758 building permits were approved during the same period (see Figure 7.2). While other factors may account for some of the difference in development patterns between the two counties, it appears that the Metropolitan Agricultural Preserves Program is working to protect valuable agricultural land in Carver County.

FIGURE 7.2: RESIDENTIAL BUILDING PERMITS APPROVED FOR UNINCORPORATED AREAS OF ANOKA AND CARVER COUNTIES, MINN., 1983-1993



Right-to-farm provisions and nuisance lawsuit protection

While all states have at least one right-to-farm law, agricultural district laws in some states expand the scope of protection for farmers. In New York, farmers with land enrolled in agricultural districts are protected from unreasonable local regulations. New York's 1992 APA provided farmers with a new process to defend themselves against complaints. The law allows farmers with land enrolled in agricultural districts to request an opinion by the Commissioner of Agriculture and Markets as to whether a particular agricultural practice is "sound," and states that the activity shall not constitute a private nuisance if the commissioner issues a positive opinion. Sound agricultural practices refer to "those practices necessary for the on-farm production, preparation and marketing of agricultural commodities," including operation of farm equipment, proper use of agricultural chemicals and construction and use of farm structures.

In evaluating whether an agricultural practice is sound, staff from the New York Department of Agriculture and Markets visit the farm property and consult appropriate state agencies, the New York State College of Agriculture and Life Sciences, the USDA Natural Resources Conservation Service and any guidelines recommended by the advisory council on agriculture. One of the first challenges to a sound agricultural practices determination was rejected in a 1996 court decision. A local citizens' group filed suit against the state Commissioner of Agriculture and Markets to nullify an opinion that a hog farm was using sound agricultural practices. A New York State Supreme Court judge ruled in favor of the state, noting the commissioner had "fully assessed these practices, conducted analysis and made a rational decision"¹⁴.

Iowa's agricultural district law, enacted in 1982, included some of the strongest right-to-farm provisions in the nation. Farms located in an "agricultural area" were protected from nuisance complaints regardless of their date of establishment. A new right-to-farm law enacted in 1995 extended this provision to all livestock farms. This change does not appear to have diminished the popularity of Iowa's agricultural areas. According to Christina Gault, an attorney with the Iowa Farm Bureau, approximately 25 new agricultural areas have been formed since the change. "As far as defense against nuisance," reflects Gault, "it's good to have more than one option"¹⁵.

If an Iowa court determines that a nuisance claim filed against a farmer in an agricultural area is frivolous, the person bringing the lawsuit is required to pay the farmer's legal fees. Agricultural district laws in New York and Delaware contain similar provisions. The Iowa law also provides that "a person shall not bring an action or proceeding based on a claim of nuisance arising from a farm operation unless the person [first] proceeds with mediation." Mediation is also required for nuisance complaints in New Jersey's agricultural districts. Agricultural district laws in Delaware, Illinois, Minnesota, New York, Pennsylvania, Utah and Virginia prevent local governments from enacting ordinances that restrict farming practices, unless regulation is necessary to protect public health and safety.

Planning and policies to support agriculture

State agency policies

Agricultural district laws in Illinois, Iowa, Kentucky, Minnesota, New Jersey, New York, Pennsylvania, Utah and Virginia require that state agency policies support the continuation of farming in agricultural districts. It is unclear to what extent this provision has been implemented.

Local decision-making

Iowa's Agricultural Areas Act requires county commissions to prepare a land use plan for unincorporated areas. The plans must include, among other elements:

- methods of preserving agricultural lands for agricultural production;
- methods of encouraging the voluntary formation of agricultural areas by the owners of farmland; and
- methods of considering the platting of subdivisions and its effect upon the availability of farmland.

New York requires local planning and land use decision-making to recognize the policy and goals of the agricultural district law. At the local and county levels, applications for special use permits, site plan approvals, use variances and subdivision approvals requiring municipal review and endorsement also require an agricultural data statement if they occur on a property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district. In these cases, the reviewing board must evaluate the statement and consider the possible impact of the proposed project on the functioning of farm operations.

The municipality must notify the owners of farmland identified in the agricultural data statement of the planned action and give them the opportunity to comment on the effect of any proposed change on their farm operation. In addition, the municipality's review board is required to evaluate the possible impact of the proposed project so that local land use decisions are not at cross purposes with the policy and goals of the agricultural districts law. On paper, this would seem to be an important feature of the law, because it goes beyond a simple requirement that local ordinances be consistent with state policy on agricultural protection; county and municipal land use laws must also be applied in a way that upholds the purposes of the agricultural districts law. However, critics complain that the provision has no teeth, because in practice the boards are not obligated to modify their actions based on their findings¹⁶.

Since 1992, New York's county AFPBs have taken an active role in planning for agriculture. The boards may apply for up to \$50,000 in state funds to pay for up to 50 percent of the cost of preparing a plan. At least a third of the counties in the state have completed or are in the process of developing plans, which have focused on education, agricultural development and land protection. In 1996, implementation funding for farmland protection was made available for counties and towns with agricultural and farmland protection plans. Implementation grant requests must also be made or endorsed by AFPBs.

Washington County, N.Y., was one of the first in the state to develop an agricultural and farmland protection plan. Planning took more than two years and involved volunteers and staff from several agencies and organizations. Results of the process have included:

- Approval from the County Board of Supervisors;
- A new video slide presentation entitled “Agriculture, A Key to Economic Success”;
- Outreach, media and special events that increased public awareness of and appreciation for agriculture;
- A new partnership between the AFPB and a local land trust, with the goal of conserving farmland; and
- State implementation funding to purchase a conservation easement as a demonstration of PACE.

Orange County offers another example of how planning and implementation grants have jump-started county agricultural and farmland protection initiatives in New York. Acting on one of the recommendations made in the agricultural and farmland protection plan, the AFPB secured funding from the Chamber of Commerce and Farm Bureau to create a new agricultural economic development director position. The director helped Orange County coordinate and package grant applications in a timely manner. As a result, Orange County was awarded a large chunk of the first round of farmland protection implementation funds.

Limits on annexation and use of eminent domain

Kentucky prohibits municipal annexation of land in agricultural districts. New Jersey’s agricultural district law states:

...no public body shall exercise the power of eminent domain for the acquisition of land in a municipally approved program...nor shall any public body advance a grant, loan, interest subsidy or other funds within a municipally approved program...for the construction of dwellings, commercial facilities, transportation facilities or water or sewer facilities to serve non-farm structures unless the Governor declares that the action is necessary for the public health, safety and welfare and that there is no immediately apparent feasible alternative.

Several other states place strict limits on the use of eminent domain within agricultural districts, and require public notice, comment and hearings before any land is taken. In Pennsylvania, state agencies, local governments and public utilities that wish to acquire land in an agricultural district by eminent domain must first receive approval from the state Agricultural Lands Condemnation Approval Board.

Agricultural nuisance notice

In Delaware, developers of subdivisions within 300 feet of an agricultural district are required to attach a notice to the deeds of new homes to warn buyers that they may experience noise, odors and other inconveniences from nearby farming operations. North Carolina and New York agricultural district laws contain similar provisions.

Eligibility for Purchase of Agricultural Conservation Easement Programs

Maryland was the first jurisdiction to make enrollment in an agricultural district a requirement for eligibility to sell an agricultural conservation easement to the state. Pennsylvania included the same condition in its agricultural district law in 1981, seven years before state funding for PACE became available. The incentives offered by the law helped prevent conversion of farmland until the state could buy easements. Delaware's law contains a similar provision.

Other benefits

In New Jersey, farmers who enroll their land in an "agricultural development area" are eligible to receive grants for soil and water conservation projects. According to Don Applegate, former director of New Jersey's farmland preservation program, this provision is the strongest incentive for farmers to enroll their land in agricultural districts. Between 1983 and 1995, the state spent more than \$2.6 million on conservation projects in agricultural districts. The New Jersey law also exempts farmers in agricultural districts from emergency restrictions on water and energy use. Iowa's agricultural district law contains a similar provision.

Farmers in Delaware's agricultural districts are exempt from state inheritance taxes. Delaware is the only state that offers relief from such taxes as a farmland protection strategy.

Restrictions on Non-Agricultural Uses

Several states, including Kentucky, Pennsylvania, New York and Tennessee, place no restrictions on non-farm land uses in agricultural districts. In Iowa, county boards of supervisors may permit non-agricultural uses after finding that:

1. the proposed use is not inconsistent with the purposes of the Agricultural Areas Act;
2. the use would not interfere seriously with farm operations in the area; and
3. the use would not materially alter the stability of the overall land use pattern in the area.

Delaware, Maryland, Minnesota, New Jersey and Ohio require landowners to sign agreements limiting the land to agricultural use. These agreements have varying provisions and terms, ranging from five years in Ohio to 10 years in Delaware. Maryland and Delaware impose civil penalties for violations of the agreement; other states simply collect deferred taxes plus interest if land is converted. Delaware prohibits rezoning and major subdivision of land within agricultural districts for the term of the agreement.

Provisions for Review and Withdrawal

In Virginia, land enrolled in agricultural districts may be withdrawn at any time for "good and reasonable cause." Other states, however, impose limits on withdrawal. In Iowa, landowners may petition for withdrawal at any time after three years. After six years, they may withdraw by filing a notice. In New Jersey, withdrawal is allowed in cases of death,

illness, serious hardship or bankruptcy; otherwise, landowners must wait until the end of the eight-year term to file a notice of withdrawal. In Delaware, farmers must file a notice to withdraw six months before the end of the 10-year term. Without such notice, their land is automatically re-enrolled for successive five-year periods.

In Illinois, landowners who wish to withdraw their land from an agricultural area must submit a petition to the county board. The petition must indicate the proposed use of the land and explain the necessity for conversion and why land outside the area would not be suitable for any non-farm uses. The county is required to hold a public hearing before making a decision on petitions for withdrawal. If fewer than 350 acres remain in an agricultural area after land is withdrawn, the area is automatically dissolved. Ten years after the date of creation of an agricultural area, two-thirds of the landowners in the area may submit a petition to dissolve it.

Several states, including New York, Kentucky and Maryland, require local governments to conduct periodic reviews of agricultural districts. The districts may be modified or terminated if they are no longer serving the purpose for which they were established.

RELATIONSHIP BETWEEN
AGRICULTURAL DISTRICT
PROGRAMS AND OTHER
FARMLAND PROTECTION
STRATEGIES

Agricultural district programs in 16 states combine many of the elements of other farmland protection strategies: property tax relief, right-to-farm protection and protection from local ordinances, planning and zoning for agriculture, and eligibility for purchase of agricultural conservation easement programs. In many cases, agricultural districts seem to increase the effectiveness of these other farmland protection techniques.

AGRICULTURAL DISTRICTS AND AGRICULTURAL TAX PROGRAMS

In Minnesota, farmers with land in agricultural districts get more substantial tax benefits than farmers who simply enroll in the state differential assessment program. The program thus targets tax benefits to the farmers who are most committed to keeping their land in farming. Provisions that limit special assessments on land enrolled in agricultural districts achieve a similar purpose.

Two states have other farmland protection programs that resemble agricultural districts. Wisconsin's circuit-breaker income tax credit program creates incentives for local governments to plan and zone land for commercial farming. Farmers become eligible to receive income tax credits based on their local property taxes when their local government prepares a farmland protection plan and enacts agricultural protection zoning. In Michigan, farmland owners must place temporary easements on their land to become eligible to receive circuit-breaker income tax credits. The Michigan legislature was also considering a separate agricultural district law in 1997.

AGRICULTURAL DISTRICTS AND AGRICULTURAL PROTECTION ZONING

Minnesota is the only state that requires APZ as a condition of enrollment in an agricultural district, but several states supplement the protection provided by agricultural districts with strong zoning ordinances. APZ is common in Illinois, Iowa, Maryland, Minnesota and Pennsylvania. Several county zoning ordinances in Iowa refer to the state's agricultural district law as a mandate to protect farmland.

AGRICULTURAL DISTRICTS AND PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT PROGRAMS

In Delaware, Maryland and Pennsylvania, farmers who want to sell an agricultural conservation easement through the state program must first enroll their land in an agricultural district. One function of this provision has been to establish a sort of "waiting section" for PACE applicants. It helps stabilize land uses adjacent to protected farms. The requirement also leverages PACE funding; Maryland has more than four times as much land in agricultural districts as is protected by permanent easements. A 1994 survey of 147 farmers with land enrolled in agricultural security areas in Chester County, Pa., found that 31 percent of respondents had applied to the PACE program¹⁷. In Ohio, North Carolina, Tennessee and Utah, agricultural district programs may be a first step toward building support for PACE.

AGRICULTURAL DISTRICTS AND TRANSFER OF DEVELOPMENT RIGHTS

Calvert County, Md., has its own independent agricultural district program. In 1978, county commissioners approved both an agricultural district and a transfer of development rights ordinance. To sell development rights, farmers were required to enroll their land in an agricultural district. This provision has achieved the same purpose as the state requirement for PACE eligibility. Calvert County has protected approximately 7,700 acres through TDR, more than any other jurisdiction in the nation except nearby Montgomery County.

In 1968, the New York Commission on the Preservation of Agricultural Land reported that "the problem of preserving agriculture is a problem of preserving farmland"¹⁸. Agriculture is an industry that relies on favorable social and economic conditions to maintain profitability. State and local policy-makers who are considering enactment or amendment of an agricultural district law are faced with a dilemma. If there are few restrictions on development and on withdrawing land from a district, the program gives little assurance that it will actually protect farmland from conversion to other uses. If there are substantial requirements for enrollment, such as agricultural zoning, or limitations on withdrawal, such as a long waiting period, farmers may not enroll. Most legislatures have resolved this paradox in favor of relatively few land use restrictions and weak limits on withdrawal.

OBSERVATIONS

Agricultural district laws employ a variety of techniques to support farming. This pro-farming orientation has made agricultural districts popular with farmers and farm advocacy organizations. Many farmers prefer agricultural districts to agricultural zoning because enrollment in an agricultural district is voluntary, provides benefits in exchange for

restrictions, and protects equity. Pat Hooker, deputy director of government relations for the New York Farm Bureau, emphasizes the importance of the state's agricultural district program to farmers. "Support for it is universal," he maintains, noting that the organization's policy statement always reinforces support for the agricultural district law¹⁹. Dr. Bob Somers, chief of the Agricultural Protection Unit of the New York Department of Agriculture and Markets, believes that the agricultural district law helps maintain agricultural communities by giving farmers the security that there will be other farms in the area to support agricultural service businesses. "It helps maintain critical mass," he asserts²⁰.

Yet even in New York, farmers are concluding that districts are not sufficient to protect farmland from development. Somers insists that the agricultural district law is not a farmland protection program. "It allows farmers to continue farming," he explains. "It doesn't address the resource²¹." Pat Hooker agrees. He notes that a growing number of farm bureau members believe that the law should be more protective of farmland. "It's a good start," these farmers tell him, "but it's not enough." Hooker believes that support for a state-sponsored PACE program is increasing among New York farmers²².

In 1996, the New York legislature appropriated \$3.75 million in funding for AFPBs to implement their plans. Some of these funds are being used to purchase agricultural conservation easements. New York voters also approved a \$1.75 billion environmental bond act in 1996; \$150 million will be dedicated to acquiring open space and protecting farmland. New York's 25-year experience with agricultural districts suggests the need for state and local governments to employ comprehensive farmland protection strategies that encompass a wide range of techniques.



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

1. California Department of Conservation, *The California Land Conservation (Williamson) Act: 1993 to 1995 Status Report* (Sacramento, Calif., 1996).
2. The last three purposes were added to the law in 1989.
3. Maryland was the first state to include eligibility for PACE as a benefit of enrollment in an agricultural district; Pennsylvania followed Maryland's example.
4. John Rohrer and Maria Castro, *Ohio Farmland Enrollment in Agricultural Districts 1995* (Columbus, Ohio: Community Development, The Ohio State University Extension, 1996).
5. New York State Department of Agriculture and Markets, *Agricultural Districts and County Agricultural and Farmland Protection Plans - A Status Report* (Albany, N.Y., 1996).
6. *Ibid.*
7. Twin Cities Metropolitan Council, *1994 Agricultural Preserves Status Report* (Minneapolis, Minn., January 1995).
8. New Jersey State Agricultural Development Committee, Rules, Chapter 76, R.1989 d. 453. N.J. Admin. Code 2:76-1 1 *et seq.*
9. Twin Cities Metropolitan Council, *op. cit.*
10. Minnesota Statute 40A.04.
11. Minnesota Statute 40A.05.
12. Minnesota Statute 40A.09.
13. Jim Schwab, *Farmland Preservation in the Twin Cities Area: The Proof is in the Local Planning* (Unpublished report, 1996).
14. *Pure Air and Water, Inc. of Chemung County v. Donald Davidsen, as Commissioner of Agriculture and Markets* (Albany County, N.Y., 1996).
15. Christina Gault, telephone conversation with Robin Sherman, 1996.
16. Jerry Cosgrove, telephone conversation with Robin Sherman, January 1997.
17. Coughlin, Keene & Associates. *Private Initiatives for Farmland Protections and Increasing the Economic Viability of Agriculture in the Southeastern Pennsylvania Region* (Philadelphia, Pa., 1995), p. 16.
18. Commission on the Preservation of Agricultural Land, *Preserving Agricultural Land in New York State: A Report to Nelson A. Rockefeller, Governor of New York* (Albany, N.Y., January 1968), p. 11.
19. Pat Hooker, telephone conversation with Robin Sherman, 1996.
20. Bob Somers, telephone conversation with Robin Sherman, 1996.
21. *Ibid.*
22. Pat Hooker, *op. cit.*

ENDNOTES

LITERATURE CITED

Commission on the Preservation of Agricultural Land. *Preserving Agricultural Land in New York State: A Report to Nelson A. Rockefeller, Governor of New York*. Albany, N.Y. January 1968.

Coughlin, Keene & Associates. *Private Initiatives for Farmland Protections and Increasing the Economic Viability of Agriculture in the Southeastern Pennsylvania Region*. Philadelphia, Pa. 1995.

New York State Department of Agriculture and Market. *Agricultural Districts and County Agricultural and Farmland Protection Plans - A Status Report*. Albany, N.Y. 1996.

Rohrer, John and Maria Castro. *Ohio Farmland Enrollment in Agricultural Districts, 1995*. Columbus, Ohio: Community Development, The Ohio State University Extension. 1996.

Schwab, Jim. *Farmland Preservation in the Twin Cities Area: the Proof is in the Local Planning*. Unpublished report. 1996.

Twin Cities Metropolitan Council, *1994 Agricultural Preserves Status Report*. Minneapolis, Minn. January 1995.