FARMLAND INFORMATION CENTER

FACT SHEET

THE FARMLAND PROTECTION TOOLBOX

American Farmland Trust

FARMLAND INFORMATION CENTER
One Short Street, Suite 2
Northampton, MA 01060
Tel: (413) 586-4593
Fax: (413) 586-9332
Web: www.farmlandinfo.org

NATIONAL OFFICE
1200 18th Street, NW, Suite 800
Washington, DC 20036
Tel: (202) 331-7300
Fax: (202) 659-8339
Web: www.farmland.org

DESCRIPTION

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

AGRICULTURAL DISTRICT PROGRAMS

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

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

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

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

To reduce farm operating expenses, some programs offer automatic eligibility for differential assessment or property tax credits to farmers who enroll.

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

AGRICULTURAL PROTECTION ZONING (APZ)

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

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

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

The **FARMLAND INFORMATION CENTER** (FIC) is a clearinghouse for information about farmland protection and stewardship.
The FIC is a public/private partnership between the USDA Natural Resources Conservation Service and American Farmland Trust.

THE FARMLAND PROTECTION TOOLBOX

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

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

CLUSTER ZONING

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

Cluster subdivisions can keep land available for agricultural use, but generally they are not designed to support commercial agriculture. The protected land is typically owned by developers or homeowners' associations. Homeowners may object to renting their property to farmers and ranchers because of the noise, dust and odors associated with commercial agricultural production. Even if the owners are willing to let the land be used for agriculture, undeveloped portions of cluster subdivisions may not be large enough for farmers to operate efficiently, and access can also be a problem. For these reasons, cluster zoning has been used more successfully to preserve open space or to create transitional areas between farms and residential areas than to protect farmland.

COMPREHENSIVE PLANNING

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

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

CONSERVATION EASEMENTS

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

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

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

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

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

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

EXECUTIVE ORDERS

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

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

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

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

THE FARMLAND PROTECTION TOOLBOX

FARM VIABILITY PROGRAMS

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

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

GROWTH MANAGEMENT LAWS

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

Growth management laws take a comprehensive approach to regulating the pattern and rate of development and set policies to ensure that most new construction is concentrated within UGBs. They direct local governments to identify lands with high resource value and protect them from development. Some growth management laws require that public services such as water and sewer lines, roads and schools be in place before new development is approved. Others direct local governments to make decisions in accordance with comprehensive plans that are consistent with plans for adjoining areas.

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

MITIGATION LAWS AND POLICIES

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

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

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

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

PURCHASE OF AGRICULTURAL CONSERVATION EASEMENT PROGRAMS (PACE)

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

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

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

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

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

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

RIGHT-TO-FARM LAWS

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

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

THE FARMLAND PROTECTION TOOLBOX

THE FARMLAND PROTECTION TOOLBOX

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

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

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

TAX RELIEF

Circuit Breaker Tax Relief Credits

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

Like differential assessment laws, circuit breaker tax relief credits reduce the amount farmers are required to pay in taxes. The key differences between the programs are that most circuit breaker programs are based on farmer income and are funded by state governments.

Differential Assessment

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

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

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

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

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

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

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

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

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

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

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

THE FARMLAND PROTECTION TOOLBOX

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

www.farmlandinfo.org

(800) 370-4879

FARMLAND PROTECTION ACTIVITY BY STATE

State	Agricultural Districts	Conservation Easements	Circuit Breaker	Differential Assessment	PACE	Right-to-Farm*	TDR
Alabama		▲		▲		▲	
Alaska		▲		▲		▲	
Arizona		▲		▲	▲	▲	
Arkansas		▲		▲		▲	
California	▲	▲		▲	▲❖	▲	❖
Colorado		▲		▲	▲❖	▲	❖
Connecticut		▲		▲	▲	▲	❖
Delaware	▲	▲		▲	▲	▲	❖
Florida		▲		▲	▲	▲	❖
Georgia		▲		▲	▲❖	▲	❖
Hawaii		▲		▲	▲	▲	
Idaho		▲		▲		▲	❖
Illinois	▲	▲		▲	❖	▲	
Indiana		▲		▲		▲	
Iowa	▲	▲	▲	▲		▲	
Kansas		▲		▲		▲	
Kentucky	▲	▲		▲	▲❖	▲	❖
Louisiana		▲		▲		▲	
Maine		▲		▲	▲	▲	❖
Maryland	▲	▲		▲	▲❖	▲	❖
Massachusetts	▲	▲	▲	▲	▲	▲	❖
Michigan		▲			▲❖	▲	
Minnesota	▲❖	▲		▲	❖	▲	❖
Mississippi		▲		▲		▲	
Missouri		▲		▲		▲	
Montana		▲		▲	❖	▲	❖
Nebraska		▲		▲		▲	
Nevada		▲		▲		▲	❖
New Hampshire		▲		▲	▲❖	▲	❖
New Jersey	▲	▲		▲	▲❖	▲	❖
New Mexico		▲		▲		▲	❖
New York	▲	▲	▲	▲	▲❖	▲	❖
North Carolina	▲	▲		▲	▲❖	▲	
North Dakota				▲		▲	
Ohio	▲	▲		▲	▲	▲	
Oklahoma		▲		▲		▲	
Oregon		▲		▲	❖	▲	
Pennsylvania	▲	▲		▲	▲❖	▲	❖
Rhode Island		▲		▲	▲	▲	
South Carolina		▲		▲	▲	▲	
South Dakota		▲		▲		▲	
Tennessee	▲	▲		▲		▲	
Texas		▲		▲		▲	
Utah	▲	▲		▲	▲	▲	❖
Vermont		▲		▲	▲	▲	❖
Virginia	▲❖	▲		▲	▲❖	▲	❖
Washington		▲		▲	▲❖	▲	❖
West Virginia		▲		▲	▲	▲	
Wisconsin		▲	▲	▲	❖	▲	❖
Wyoming		▲		▲		▲	
TOTAL	16	49	4	49	32	50	24

▲ State level

❖ Local level

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