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State Policies to Preserve Farmland

Executive Summary

While agriculture has a rich tradition in the United States, farmers are facing a new set of challenges in the 21st century. A number of factors have contributed to the increasing conversion of farmland, for housing, office, retail, and commercial development. These include rising housing costs in urban cores and in suburbs; the relocation of jobs to the fringes of communities where land is cheaper and parking and amenities more plentiful; and a general pattern of low-density, sprawling development reaching exurban areas past the suburban edge.

As communities expand into former farmland and rural areas, farmers faced with rising land values and economic hardship (due in part to the increased costs of doing business in a developing region) begin to sell their land. This can lead to neighboring farmers facing complaints of nuisance (such as noise and odor) from new residential neighborhoods as farmland is converted to nonfarm uses.

States have implemented a number of programs that support farmers in maintaining the viability of their farms, particularly those situated near urban edges, which can be the most vulnerable to development pressures and also the most productive farmland for agriculture.

State policies assisting in the preservation of farmland (and farm-related jobs) include:

- Conservation easements;
- Purchase of development rights;
- Tax incentives to farmers to make farming more economically viable;
- State land conservation purchasing programs; and
- Right-to-farm laws.

The Challenges Facing Farmers

Data suggest that farmland, particularly farmland located on the edges of expanding communities, is at increasing risk of conversion to nonfarm uses. Between 1992 and 1997, farmland was lost at a rate of two acres for every minute of the day in the United States, according to a study by the American Farmland Trust.¹ During that same period, the most fertile prime land (agricultural land that is highly productive but in many cases located near encroaching development) was converted 30 percent faster than nonprime rural land.² More recent data from 2002 suggests the conversion of farmland continues unabated, with the U.S. losing more than 16 million acres of farmland between 1997 and 2002, bringing the total number of acres of farmland lost between 1974 and 2002 to more than 78 million.³ One reason for this is low-density growth and development. While the U.S. population grew only 17 percent between 1982-1997, urbanized land grew by 47 percent during those years.⁴ This suggests that the high-rates of farmland conversion are attributable, at least in part, to sprawling low-density development which uses more land per person than traditional urban development.

Today, 86 percent of fruit and vegetable production and 63 percent of dairy products in the United States are produced on what is termed the “urban edge”—land near the edges of cities and towns.⁵ Urban-edge farms present unique advantages not only for farmers but also for communities. For farmers, being situated on the urban edge provides proximity to a large pool of potential consumers which results in lower transportation costs to move products to those consumers.⁶ For communities, urban-edge farms provide jobs, require less in government services than comparable residential lands, provide habitat for wildlife as well as aesthetic benefits, and preserve open spaces.⁷ Because of their location near population centers, urban-edge farms are able to help maintain and increase access to fresh, local, nutritious foods for the surrounding community. This is in part because urban-edge farmland is located on some of the most prime and highly productive land available.

Of course, farms operating on an urban edge face several challenges, including rising land prices, nuisance objections (such as complaints about noise from farming equipment, or odor) from new residential developments, and incompatibility between the farm’s operation and neighboring properties’ uses.⁸

In addition to the unique challenges of operating on the urban edge, farmers now face economic challenges regardless of where the farm is located. The market value of farmland and buildings on farmland rose from an average of \$147,838 per farm in 1974 (\$336 per acre) to an average of \$537,833 per farm in 2002 (\$1213 per acre), making it economically attractive to convert land to non-farm uses.⁹ More farmers are taking on non-farm related work as their primary occupation to supplement their income, and the average age of farmers is rising.¹⁰ According to U.S. Department of Agriculture data from 1999, smaller farms, those with farming-related sales of less than \$10,000 per year, made up more than half of all farms, but many of these farms are actually losing money from their farming operations.¹¹ Of those small farm operators, 60 percent had a non-farm occupation to supplement their income.¹² Even somewhat larger farms, those with sales between \$10,000 and \$49,999, on average lost money from farming, although not as much as the smaller farms.¹³

State Policies to Preserve Farmland

States have a variety of tools at their disposal to help preserve farmland. The following sections highlight approaches states are using to successfully maintain agricultural lands as productive farms while ensuring farming remains a viable way of life in the U.S.

Conservation Easements

Working with farmers, states have used conservation easements to limit conversion of farmland while providing farmers with funds that help them continue using their land for agricultural purposes. An agricultural conservation easement can be placed on an entire farm or a portion of the farm. This easement restricts the manner in which the property can be used (farm easements typically require that the land must be employed in agricultural purposes) and provides the purchaser of the easement (e.g., the state, local government, land trust, non-profit interest groups) with the right to enforce the restriction. The farmer selling the easement retains ownership of the land and the right to farm. The duration of the easement depends on the agreement between the landowner and the purchaser; however, many are permanent. In addition to selling easements, farmers can place voluntary easements on their property and thereafter may qualify for federal, state, and/or local tax incentives or for a charitable income-tax deduction. Forty-eight states have conservation easement laws.¹⁴

Maryland has worked to create a cooperative process by which state and local governments collaborate to preserve farmland through conservation easements. The Maryland Agricultural Land Preservation Foundation (MALPF) was established by the Maryland General Assembly and is part of the Maryland Department of Agriculture.¹⁵ MALPF is comprised of a 12-member Board of Trustees (eight of which are gubernatorial appointments) and works with county programs and local officials to preserve farmland through the purchase of conservation easements.¹⁶ MALPF manages an investment of \$333 million in permanently preserved land throughout all of Maryland's 23 counties.¹⁷ Local governments share directly in the conservation easement process in

Summary of Farmland Preservation Tools

Conservation Easement – The farmer sells an easement restricting the uses to which land can be put to a state or local government or land trust. In exchange, the farmer receives a payment for abiding by the easement's terms, which might restrict land use to agriculture and not permit development. The easement can run on all or part of the land for a term of years or in perpetuity. The purchaser of the easement can enforce its term against farmer/landowner. The farmer may qualify for tax incentives for voluntarily placing an easement on his/her land.

Purchase of Development Rights – The farmer sells the development rights for the farmland to an interested purchaser (again, possibly a land trust or state or local government). The farmer retains all rights to farm and use the land. The purchaser may be able to transfer the development rights from the farmland to another more suitable location, thereby preserving the farmland from development and conceivably focusing development away from farmland and toward existing development.

State Land Conservation Purchase – Here the state purchases land (such as farmland) outright and preserves it. The land may still be used as working agricultural land, at the discretion of the state.

Tax Incentives to Farmers – In addition to providing mechanisms for farmers to receive economic benefits in the form of payment or tax incentives for preserving their land, states also can offer property or income tax incentives to farmers based on their agricultural productivity. This does not necessarily require an easement on the land, and criteria would more likely include that the farmer owns a certain number of acres of productive land. The farmer receives incentives to make farming the land more economically competitive with other uses such as development.

Maryland, and they each appoint five-member advisory boards to assist in developing priority ranking systems, approving easement applications, and drafting policy recommendations.¹⁸ The role of local governments is so integral to the process that no district petition or easement is approved by the state unless it has already been reviewed and accepted by individual counties.¹⁹ Moreover, a program administrator is designated in each county to serve as a bridge between the agricultural community, MALPF, and the local governing officials.²⁰ MALPF's cooperative process has proven so successful that as of 2006 an estimated 250,370 acres on approximately 1,816 farms were permanently protected from development.²¹

Many states are trying to preserve farmland in the face of rapid development. A prime example is **Colorado**, which is one of the fastest growing states in the nation, with over a million new residents in the last decade and 2 million more projected by 2025.²² Development in the state consumes upwards of 130,000 acres of farmland a year.²³ In 1992, Colorado created the Great Outdoors Colorado (GOCO) Trust Fund, a conservation easement program that provides funding to many public and private land trusts that purchase and manage agricultural easements throughout the state. Through a constitutional amendment that dedicates 50 percent of the state's lottery revenues to the program, GOCO has funded approximately 1,800 conservation projects, secured 361,145 acres for open space preservation, and established 47,041 acres of parks and wildlife areas.

In addition to concerns over growth and access to nutrition, many states are concerned about the loss of agricultural industries due to the disappearance of farmland. Agriculture is **Pennsylvania's** largest industry, with one of every six jobs in agriculture or related businesses.²⁴ Pennsylvania farms produce more than \$45 billion in revenues annually.²⁵ Between 1982 and 1997 however, 1.14 million acres of fields, open space, and natural land was developed in Pennsylvania.²⁶ To address this, Pennsylvania created a conservation easement program cooperatively administered by the state Agricultural Land Preservation Board, similar county preservation boards, and some municipalities.²⁷ In 2007 alone, \$40 million was allocated for farmland preservation by the state's Department of Agriculture, and \$37.3 million was matched by local county programs. This investment will preserve an estimated 33,100 acres.²⁸ Overall, Pennsylvania's conservation easement program has conserved 3,273 farms and 365,553 acres since its inception nearly two decades ago.²⁹

The Pennsylvania program is similar to farmland conservation programs of other states in that it enables state, county, and local governments to purchase conservation easements from owners of farmland.³⁰ Agricultural land preservation boards are appointed by counties to oversee the program at a local level, although the state board remains responsible for distributing state funds, approving and monitoring county programs and the specific purchase of easements.³¹ Unlike programs in other states, however, Pennsylvania's distributes funds on a formula basis to qualified counties, with individual amounts determined by the level of local matching funds.³² Pennsylvania's review process for county easement purchase proposals is deferential, but still requires counties to give priority to farms found to have higher soil quality during their independent reviews.³³ Depending on the size of shares between the local and state governments, easements may be held entirely by counties, entirely by the state, or jointly.³⁴ Many municipalities share costs with county governments in the acquisition of easements, and a few municipalities even operate their own independent preservation programs.³⁵

As an additional tool to preserve farmland, Pennsylvania allows for the formation of Agricultural Security Areas (ASA's). ASA's offer participants special consideration and status on issues regarding local ordinances affecting farming activities, nuisance complaints, and a review of farmland condemnation by state and local agencies.³⁶ Under the ASA system, farmers submit petitions to township supervisors requesting the creation of an ASA.³⁷ A minimum of 250 acres from among all participants is required to form an ASA. If the ASA has at least 500 acres enrolled, it also qualifies for consideration under the Conservation Easement Purchase Program, at the landowners' request.³⁸

Purchase of Development Rights

In addition to conservation easements, states can preserve farmland and limit development through programs that allow purchase of development rights (PDR). PDR programs are similar to conservation easements in that they also allow the landowner to retain ownership of the property and all remaining rights to the land, including the right to farm. However, with PDRs, the purchaser (in many instances a land trust or a state agency) buys the right to develop the land as opposed to purchasing an easement restricting development. That purchaser may then transfer the right to develop the farmland to another location better suited for development or may retire the right to develop the farmland through a voluntary conservation easement.

Maryland's Rural Legacy Program provides funding to local governments to purchase transferable development rights from willing sellers in established Rural Legacy areas. These transferable development rights allow the purchaser to develop land elsewhere in exchange for not developing in Rural Legacy areas, which encompass forests, watersheds, open spaces, and resource-based areas that include agricultural operations. If transferable development rights are purchased they can then be sold to developers but only for use in Priority Funding Areas (where the state focuses development). Half of the proceeds from the sale of transferable development rights go to the local government in which the rights are used. The other half is returned to the Rural Legacy Program for future land and easement acquisition.

New Jersey also provides a number of farmland preservation programs administered by the State Agricultural Development Committee (SADC), an 11-member committee comprised of public officials and private citizens. New Jersey works with local county agriculture development boards and municipal townships to offer these programs.³⁹ One of the most notable is the County Easement Purchase Program, which allows landowners to work directly with their county agriculture development board to sell development rights on their farmland to their county.⁴⁰ State funding for the purchase of easements under this program is provided by the SADC in the form of grants. Altogether, the SADC provides between 60 to 80 percent of the costs of purchasing development rights on approved farms.⁴¹ The number of farms preserved by this program depends on the availability of state, county, and municipal funding.⁴²

Tax Incentives to Farmers to Make Farming More Economically Viable

While a number of states offer tax incentives to farmers who place conservation easements on their property, many states also provide farmers with tax incentives based on the agricultural productivity of their land—without requiring the farmer to place an easement on the land.⁴³ To be eligible for these tax incentives, farmers typically must meet certain requirements, including refraining from developing the property for a specified period of time.⁴⁴ For example, **Wisconsin**'s farmland preservation tax credit is offered to those who have 35 acres of land zoned for agricultural use, and the farmland must produce a profit of \$6,000 a year or \$18,000 over three years.⁴⁵ This earnings requirement is in place to ensure that developers or land speculators are not holding onto the property seeking lower taxes before subdivision and construction begin.⁴⁶

California has been providing tax incentives to farmers to preserve agricultural lands for decades. In 1965, **California** passed the California Land Conservation Act, commonly called the Williamson Act, to provide farmlands within “agricultural preserves” tax assessments based on the production of the property rather than its fair market value. Under the act, the boundaries of an “agricultural preserve” are established by either a town or city government and must be at least 100 contiguous acres in size. The law allows landowners and municipalities to enter into, at minimum, 10-year renewable agreements to restrict the use of land to agriculture or to preserve it as open space. In exchange, landowners

receive a 20- to 75-percent reduction in property taxes. The state reimburses counties for lost property tax revenue. To date, the Williamson Act has provided benefits to 16.9 million acres of California's estimated 45 million acres of farmland.

To discourage a change of use, the Williamson Act requires that any cancellation of the contract must be approved by the local governing body and must be based on substantial evidence of the need for change (the mere existence of an opportunity for a different use is not grounds for cancellation). After approval of cancellation, the landowner must pay a penalty of 12.5 percent of the unrestricted fair market value of the property. If the owner wishes not to renew the contract upon its expiration, he or she must file a notice of nonrenewal, which begins a nine-year nonrenewal period. Over the course of the nonrenewal period, the assessment gradually increases until the end of the nine years, when the contract is terminated and the land is once again assessed at its fair market value.

In 1998, the Williamson Act was significantly strengthened by the addition of Farmland Security Zones. Farmland Security Zones are established within existing "agricultural preserves" and are specifically targeted at preserving agricultural lands. Landowners within the Farmland Security Zone enter into 20-year conservation agreements in exchange for receiving property assessments valued at 65 percent of their original assessment under the Williamson Act. Cancellation of a contract within a Farmland Security Zone must be in the public interest and approved by the local governing body. Additionally, landowners who cancel contracts are subject to a 25 percent penalty of the unrestricted fair market value of the property.

In 1995, to bolster protection for farmlands under the greatest threat from encroaching development, California passed the Agricultural Land Stewardship Program, renamed in 1999 the "California Farmland Conservancy Program Act."⁴⁷ The act allows public appropriations to be used to purchase landowner's development rights, which are then held by a local government or a land trust as an agricultural conservation easement. While the agricultural easement is intended to run with the land in perpetuity, it may be terminated upon approval of the local government and the repurchase of development rights by the landowner. Additionally, land within the Williamson Act program may be transferred into the Farmland Conservancy Program without the standard penalties for early withdrawal that the Williams Act would otherwise impose.

State Land Conservation Purchasing Program

A third approach used by many states to prevent the loss of farmland is a state land conservation purchasing program. Such programs permit states to purchase land outright, thereby allowing states to restrict development on the land. These state-owned lands can still be used for farming and are typically managed by a state agency or department. For example, **Virginia** established the Virginia Land Conservation Foundation in 1999 to provide state funds for the purchase of lands including farmland. The foundation's purpose is to conserve land, and among its many purposes it helps to facilitate (through grants) the outright purchase of land to preserve it for agriculture.⁴⁸

Right-to-Farm Laws

In many states, part of the effort to preserve farmland includes protecting farmers from legal actions related to the agricultural use of their property. As development encroaches upon farmland and farm communities, new residential and commercial developments bring new landowners who are using their land in very different ways from farmers. This incompatibility can lead to complaints and even legal actions against farmers by new landowners and communities. A common example is nuisance complaints from nearby communities about odors from farms.

In response to issues of incompatible land use that can arise from encroaching development in rural communities, many states and communities have enacted right-to-farm laws to preserve agricultural operations, alleviate neighbor-on-neighbor conflicts, and protect established agricultural operations from nuisance lawsuits. While right-to-farm laws vary widely, they typically have some common components. These include defining the agricultural operations eligible for protection,⁴⁹ prohibiting a finding of nuisance if the agricultural operation is conducted in accordance with generally established farming practices and has existed for a specified period of time (usually three years),⁵⁰ and offering grievance procedures to resolve complaints between landowners.

California has used right-to-farm laws as part of a comprehensive strategy for preserving farmland in developing areas.⁵¹ California's right-to-farm laws are implemented at the county and municipal level and vary from one jurisdiction to the next. Since the early 1980s, approximately 40 counties and 50 cities within California have adopted some form of right-to-farm laws.⁵² Many of the ordinances create notice and disclosure requirements and provide formal grievance procedures to alleviate conflicts between new residents and established farming operations.

New Jersey also uses right-to-farm laws as part of a comprehensive farmland preservation strategy. In New Jersey, the right-to-farm law entitles a farm to protection if it is a commercial farm greater than five acres, has horticultural production of at least \$2,500 annually, and is eligible for Farmland Assessment Tax status.⁵³ New Jersey's threshold is lower than some other states', which require substantially more revenue from the farming operation to receive protection from nuisance lawsuits. Additionally, New Jersey state law preempts local ordinances that interfere with protected agricultural activities. Farming operations must occur in compliance with agricultural management practices established by the State Agricultural Development Committee (SADC). In the event of a dispute, individuals or municipalities must formally complain to the SADC or one of 18 County Agricultural Development Committees (CADCs). The SADC or CADC will then investigate the complaint and conduct informal conflict resolution between the aggrieved party and the farmer. If informal conflict resolutions fail, the SADC or CADC will issue an administrative decision, which may be appealed to the New Jersey Appellate Division.⁵⁴

Conclusion

States are working to preserve and maintain agricultural lands as working farms amid encroaching development and economic pressure. Policies that preserve farmland have numerous benefits, including the preservation of farm and farm-related jobs; providing wildlife habitat and open space; and providing fresh, nutritious farm foods to the community. As states continue to identify farmland preservation as a component of growth management strategies, the tools outlined in this *Issue Brief* offer a range of options to help states preserve farmland and protect agricultural operations from new challenges and pressures.

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