



## Planning for Agriculture in New Jersey

A Land Use Planning Report by the Middlesex-Somerset-Mercer Regional Study Council, Inc.

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### Financial Support

The directors and staff of the MSM Regional Study Council, Inc., are grateful to the trustees of the Geraldine R. Dodge Foundation for a grant supporting the publication of this report and related activities; and also for their abiding interest in the future of New Jersey, its agriculture, and its farmlands. Particular thanks are due to Scott McVay, executive director of the Foundation, for his interest and encouragement during the course of the project.



**Planning  
for  
Agriculture  
in  
New Jersey**

## Acknowledgements

Special thanks are due to the following for their particular contributions to this report: Hon. Phillip Alampi, New Jersey Secretary of Agriculture and his able staff including Richard Chumney, John Van Zandt, and Robert Bruch of the Division of Rural Resources; Donald Linky, Esq., Director of the Governor's Office of Policy and Planning, and Thomas Hall of his staff; Richard A. Ginman, Director, Division of State and Regional Planning; C. McKim Norton, MSM Vice President; Gary A. Mount, MSM Farming and Farmlands Committee Chairman; Hugh Howard, Middlesex County Planning Department; Julia Allen, Readington; William Queale, Planning Consultant, Morrisville, Pa.; John Kolesar, Chesterfield; Ken Wishnick, Cumberland County Planning Department; and Jane Barry, Yale Legislative Services, Yale Law School.

MSM wishes to acknowledge the valuable participation of the following members of the MSM Farming and Farmlands Committee, who served as a sounding board for this report. (The MSM staff is responsible, however, for its contents.)

Gary B. Mount, Orchardist, Lawrenceville, Chairman; Irving B. Kingsford, Hopewell, Co-Chairman; John W. Flemer, Chairman, Rural Resources Council; Dr. L. G. Merrill, Jr., Center for Coastal Environmental Studies, Rutgers University; John A. Sully, Head of Comprehensive Planning, Middlesex County Planning Board; L. C. Ellery, Jr., Chairman, West Windsor Environmental Committee; C. McKim Norton, Esq., MSM Board; Chester A. Steen, Clerk, Plainsboro Township; Hon. Peter Cantu, Mayor, Plainsboro Township; Thomas Hall, Governor's Office of Policy and Planning; William Wildey, Executive Director, World Hunger Year of New Jersey; Thomas M. O'Neill, President, Center for the Analysis of Public Issues; David Moore, Executive Director, New Jersey Conservation Foundation; B. Budd Chavooshian, Department of Environmental Resources, Cook College; Karl Kehde, Developer; Carolyn Woodward, Hopewell Township Committeewoman and Farmer; Alan Danser, Farmer, Cranbury; Gerald Lenaz, Consulting Planner; Robert H. Reed, Farmer, West Windsor.

On Friday, May 4, 1979, MSM held a conference entitled *Farming and Farmland in New Jersey's Changing Communities*. MSM also arranged three seminars on farmland preservation in April and May, 1979. MSM is indebted to the following conference and seminar speakers and also to the more than 180 community leaders who participated in these programs.

Conference Participants: Jerome Kurshan, Manager, Administrative Services, RCA; Gary B. Mount, Orchardist, Lawrenceville; Lester Brown, President, Worldwatch Institute; Hon. Phillip Alampi, New Jersey Secretary of Agriculture; Thomas M. O'Neill, President, Center for the Analysis of Public Issues; William Toner, Planning Consultant, Chicago; Robert Gray, Administrative Assistant, Vermont Congressman James M. Jeffords; Hon. Daniel F. O'Hern, New Jersey Commissioner of Environmental Protection; Jay Adelman, President, New Jersey Food Council; Barry Benepe, Urban Planner; James M. Seabrook, President, Seabrook Brothers and Sons, Inc.; John Repko, Director, Division of Markets, New Jersey Department of Agriculture; Lester C. Jones, Sr., Dairy Farmer, Lumberton; George Nieswand, Ph.D., Cook College, Rutgers; Jon Berger, Assistant Professor, University of Pennsylvania; Richard A. Ginman, Director, Division of State and Regional Planning, New Jersey Department of Community Affairs; Richard Leone, Consultant and Former Treasurer, State of New Jersey; John C. Keene, Esq., Associate Professor, University of Pennsylvania; Hon. Barbara W. McConnell, NJ Assemblywoman.

Seminar Participants: Ernest J. Cole, Director, Research Management Division, Northeast Appraisal and Management, Inc.; Hon. Frederick W. Hall, Associate Justice, New Jersey Supreme Court (Retired); Thomas Norman, Esq., Haddonfield; William Toner, Planning Consultant, Chicago.

Particular thanks are due to the officers of the RCA David Sarnoff Research Center, who provided the conference facilities to MSM.

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**Introduction**

## Introduction

There have been some important changes in New Jersey since 1973 — the year that the Blueprint Commission on the Future of New Jersey Agriculture issued its landmark report.

For example, the era of big government spending is waning. Local and county government have become a vital arena for important public policy decisions, particularly those affecting land use. Economic and population growth have slowed, and estimates of land needs for future development have likewise been scaled downward.

The Blueprint Commission's report was comprehensive in scope. But its principal public policy recommendation — that the state purchase development rights from owners of farmland, limiting the future use of that land to agricultural use — has overshadowed the commission's other important findings and recommendations and dominated discussions of the "farmland preservation issue" for six years. A "pilot project" in Burlington County, intended to be a practical experiment with the purchase of development rights by the state, was terminated in 1978 as concerns about its cost to the New Jersey taxpayer were pressed.

Meanwhile, nationwide, there is growing public concern over the future of agriculture and the loss of farmland. In response, the United States secretary of agriculture and the chairman of the Council on Environmental Quality have launched a comprehensive inter-agency study of the nation's farmlands.

Other states have adopted programs that vary in specifics, but share the common goal of retaining farmland. Some states rely on the voluntary formation of agricultural districts: farmers in the districts agree to commit their land to agriculture for a period of time in return for certain benefits. Other states have adopted land planning and zoning regulations that promote agriculture as a positive value. Some are still experimenting, as did New Jersey, with the purchase of development rights on farmland by the state.

Farmland retention programs have in common an objective of reducing land prices, making it available to those who wish to purchase it for agriculture. This can be done by government regulation (zoning), by the purchase of development rights by a state or local government, or by a governmental mechanism whereby the right to develop can be transferred among private parties. The latter is commonly called "transfer of development rights" (TDR). (A variation on TDR is

“transfer of development credits,” or TDC, where rights per se are not actually exchanged, but their security through legal means is a condition of development.)

This report is limited to land policy recommendations. If New Jerseyans want a permanent agriculture, there will have to be more effective land planning at all levels of government — federal, state, and local. This report makes the following specific recommendations:

- *Municipalities should adopt regulations for agricultural land use where this is appropriate. Compensable measures such as cluster development, transfer of development credits, and transfer of development rights may be considered together with these land use regulations.*
- *The state and federal agencies should develop a cooperative planning program to identify and map viable agricultural districts based on soils and economic criteria.*
- *A revised State Development Guide Plan should be the basis for limiting state and federal capital investment in areas designated for agriculture, while guiding growth to areas that are better suited for development.*
- *New Jersey should have an agricultural district law that expands benefits to agriculture, while linking them to land use controls meeting criteria established at the state level.*
- *As part of a study of agricultural district legislation for New Jersey, consideration should be given to a multi-purpose farming and farmland fund.*
- *The governor should appoint a task force with representation from agricultural interests as well as a broad range of public interests to develop a long-range program for agriculture in New Jersey.*

In brief, New Jersey's suburban and rural communities must begin to include agriculture as a positive value in their land-use plans and regulations. The balance of land use control is in the hands of local government, and state-level efforts are in vain if they run against the grain of local practice. We must begin to plan with the needs of agriculture in mind as we now plan with the needs of development in mind. In planning for agriculture, we must begin to think about the farmer's needs: for example, the “right to farm,” adequately buffered from suburban development and free from local laws that inhibit normal farming operations.

But state policies must support local policies and are likewise on the agenda. We need a state plan for agriculture so that we know where to keep development-leading public facilities such as sewers and highways out of our prime farmland. We also need a state plan as a basis for bidding more aggressively for federal funds that now subsidize agriculture in the arid west.

Merely retaining New Jersey's farmland will not assure the future of its farms or farmers. New Jersey's farmland is a limited, non-renewable resource, but New Jersey's farms and its farmers are likewise limited and non-renewable. To aid farming and farmers, public decision-makers need to know more about the economic and social geography of New Jersey agriculture. They also need better facts about the economic advantages of agriculture close to the central Atlantic markets, at a time of rising transportation costs. Research on these and other topics will prove to be important elements of sound agricultural policy.

The Middlesex Somerset Mercer Regional Study Council, Inc. (MSM), in cooperation with private groups such as the New Jersey Conservation Foundation and with state agencies such as the Departments of Agriculture, Environmental Protection, and Community Affairs, and the Governor's Office of Policy and Planning, arranged a conference and a series of public policy seminars on New Jersey farmlands in the spring of 1979. In addition, numerous discussions were held with farmers, state agency representatives, and others with an interest in the future of New Jersey agriculture.

This report, which is based on research as well as these discussions, is limited in scope to a discussion of the reasons for retaining agriculture in New Jersey (Part I), a review of the history and current status of farmland retention efforts in New Jersey (Part II), and a discussion of some of the public policy alternatives that are now available (Part III).

With the demise of the Burlington County Farmland Demonstration Pilot Project, public officials are looking for new directions and for a broad constituency for New Jersey agriculture. There is a great deal to be learned from the efforts of other states and those of foreign nations that are also concerned about their agricultural self-sufficiency.

At a time when New Jersey is steadily losing farmers, farms, and farmland, and is increasingly dependent on the uncertainties of a national food economy, the time is right for a critical review of past efforts, and for a creative look at programs for the future.



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THE HISTORY OF NEW JERSEY



I A Perspective on  
New Jersey Agriculture

## I A Perspective on New Jersey Agriculture

Early in 1979, a 34-year-old Lawrenceville, New Jersey, farmer placed an order for 7,000 apple trees. In West Windsor, a third generation potato farmer recently purchased 200 additional acres of land that he needs to maintain his presently profitable operation. In nearby Cranbury, a township with some of the world's best farmland, a young farmer paid \$500,000 for 180 acres (and a house and farm buildings) because ownership gives him a long-term security that he needs to justify equipment and land maintenance costs.

Lawrenceville, West Windsor, and Cranbury are in central New Jersey, a growing region. Examples of young farmers capitalizing on the fundamental advantages of the state's location in the midst of an urban region — and the intrinsic suitability of its soil and climate for agriculture — are far from common. Yet, they may signal a new beginning for agriculture in New Jersey.

### **The Historic Decline of New Jersey Agriculture**

For better or for worse, farming in New Jersey has been closely linked to growth and change of our nearby metropolitan areas, New York and Philadelphia. Through most of the nineteenth century, people left the rural countryside for better advantages in the growing industrial centers. At first, the growing metropolitan concentrations of population were an important new market for vegetables and fruit. While New Jersey lost its rural countryside (as indicated by diminishing acres of farmland — Figure 1), the number of farms grew, until by 1900 New Jersey had around 34,000 farms, many serving the urban population with produce (Figure 2).

But gradually the effects of suburbanization on near-urban farmland and the development of a national food distribution and marketing system took effect. After 1900, the decline in the number of farms more closely followed the decline in farmland. By 1968, New Jersey had only 9,100 farms. In the past decade, the average rate of loss has slowed to about 80 farms per year. In 1979, New Jersey had about 7,600 farms.<sup>1</sup> While the post-war decline of farms and farmland has been the sharpest in New Jersey's agricultural history, it is only the most recent slope of a long-term downward trend that is closely related to the historic processes of industrial and urban growth.

In 1860, nearly 3,000,000 acres, or 62.5% of the state's total land area was farmed. A century later, in 1968, farmland had dropped to about 1,080,000 acres. In the past decade, the loss rate has slowed markedly though it still averages about 7,000 acres a year. New Jersey now has approximately 990,000 acres of farmland.<sup>2</sup> Figure 3, "Percent Decrease in Farmland, 1959-1977, New Jersey and Selected States," indicates that the diminishing number of acres farmed in New Jersey closely approximates the trend in the other states.

The gross figures about farms and farmland are followed by equally gloomy statistics about its use. In 1945, New Jersey's peak year for vegetable production, 170,270 acres were devoted to this use.<sup>3</sup> By 1978, this amount had dropped precipitously to 60,320, despite a burgeoning local consumer population.<sup>4</sup> The decline of vegetable acreage has been accompanied by a sharp rise in field crops. Between 1968 and 1978, while the overall loss of farms and farmlands has been leveling off, soybean acreage increased from 45,000 to 206,000.<sup>5</sup> Sudden shifts in crops have always characterized New Jersey agriculture, and the current price of soybeans is a strong incentive to grow them. Yet the trend reflects a steady disinvestment and declining commitment to maintaining the productivity of the land. The underlying cause of this disinvestment is the uncertainty about the future that afflicts the agricultural community. The result is a reluctance to invest capital and to care properly for land with an uncertain future.

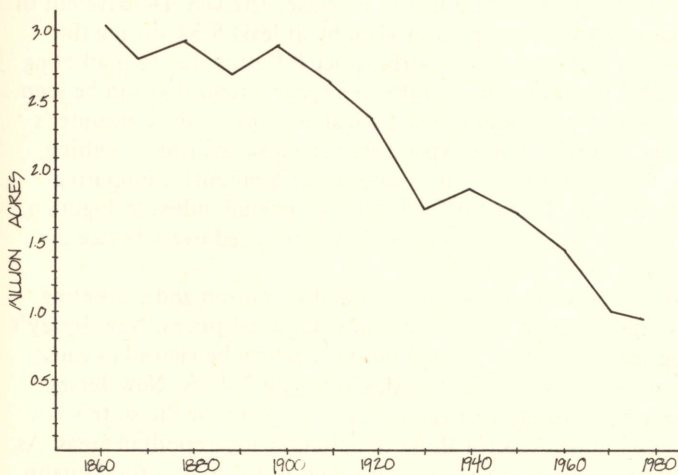


FIGURE 1: LAND IN FARMS, 1860-1978

SOURCES: NJFA STATISTICAL HANDBOOK OF NJ AGRICULTURE (TRENTON, 1929); NJ AGRICULTURAL STATISTICS, 1945-56 & ANNUALS, 1957-79.



FIGURE 2: NUMBER OF FARMS, 1860-1978

SOURCE: SEE FIGURE 1

Figure 2

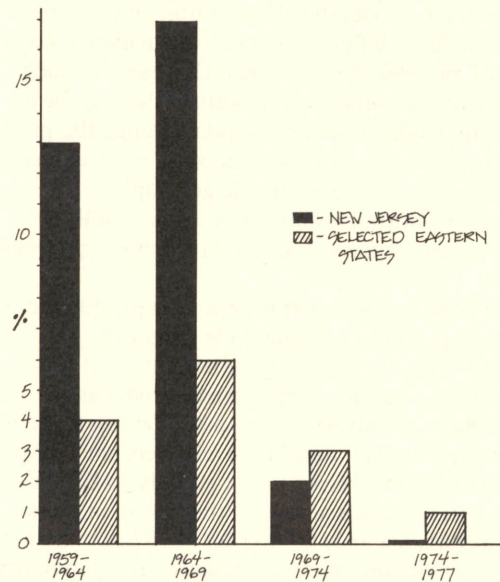


FIGURE 3: % DECREASE IN FARMLAND 1959-77 N.J. AND SELECTED EASTERN STATES

Figure 1

Figure 3

In the face of these trends, how can we argue that retaining agriculture is a realistic public policy for New Jersey, and that this is the right time for a serious effort to preserve farmland? The answer lies in a combination of two principal factors: the changing economics of food production and distribution at a local and a national scale, and the popular yearning for a rural style of life as expressed in changing settlement trends and related factors. In both areas, New Jersey has geographic characteristics and advantages that are virtually unique.

#### **A Special Location in a Changing National Food Economy**

The food market has conferred a high value on those areas of New Jersey's prime farmland that remain productively used. This value could be greatly increased and extended to other prime farmland as well. For New Jersey is not only the nation's most densely populated state, but it is strategically located in the midst of the nation's largest market, where there are at least 24,000,000 people within a two-hour truck trip.

There is statistical evidence that density of population and location both count in the food economy. By the dollar value of agricultural products sold per acre — a measure of productivity of the land — New Jersey ranks fourth in the nation with an average value of \$309 per acre or almost four times the national average of \$80 per acre.<sup>6</sup> In fact, five New Jersey counties are among the nation's top 100 producers: Atlantic, Cumberland, Gloucester, Monmouth, and Salem are ranked in the same class with such famous agricultural names as San Joaquin, California, and Lancaster, Pennsylvania. One can conclude that even in today's agricultural conditions the return that can be derived from New Jersey's remaining farmland is outstanding. The products of New Jersey farms are worth more because they are proximate to the market. In a classic work on the economic geography of the Northeast, *Megalopolis*, Jean Gottman summed it up succinctly, "The direct consumer's market is the megalopolitan farmer's particular advantage."<sup>7</sup>

Among the states, New Jersey is first in vegetable production per square mile and fourth in fruit. Coupling these facts with New Jersey's status as the nation's most densely populated state, it is not surprising that New Jersey is a leading state in direct producer-to-consumer marketing, including roadside stands, pick-your-own operations, and farmers' markets.<sup>8</sup> In fact, despite its relatively small population and geographical area, New Jersey is second only to New York State in total direct marketing outlets and leads the nation in gross sales at roadside stands (evaluated at \$50,000,000 in 1976 by the U.S. Department of Agriculture). Surveys have documented the popularity of direct marketing with both farmers and consumers. Consumers feel that produce is fresher, of a higher quality, and less expensive than at other marketing outlets. Many enjoy the contact with farmers and the friendly rural atmosphere.

In addition to its own population density, New Jersey has unique locational advantages. The state has an excellent transportation network and serves as a key link in both north-south and east-west movement of goods. In northeastern New Jersey alone, 643 wholesale food firms have one or more warehouse facilities.<sup>9</sup> Situated between New York and Philadelphia seaports, New Jersey is a prime location for overseas distribution of food commodities.

The rising costs of the national food distribution and marketing system and uncertain energy prospects should make these economic facts the cornerstone of New Jersey agriculture in the future. The components of the retail price of food on a national basis are shown in Figure 4. In 1978, only 32% of the consumer price of food was actually "farm value." Costs of transportation, processing, and distribution of domestic farm foods are known as the "marketing bill," or difference between what the consumer spends and the farmer receives. Since 1972 the amount consumers have spent for domestic farm foods has risen by \$89 billion. Two-thirds of this amount, or \$61 billion, is due to nonfarm charges for marketing products after they leave the farm.<sup>10</sup> The marketing bill has steadily increased in all but two of the past twenty years (even when food prices have declined).<sup>11</sup> Figure 5 shows the relationship between farm value and marketing costs for the past decade. Transportation is always an important factor in food costs. Between 1974 and 1977, truck rates for transporting fresh fruit and vegetables increased by 14%. During the same period, rail rates increased by 30%.

Consumer costs imposed by our national food distribution and marketing system are continuing to increase. The U.S. Department of Agriculture expects food prices to rise by at least 8.5% during the current year, with two-thirds of this price inflation due to marketing costs.<sup>12</sup> This prediction will continue a recent trend that can be seen in the consumer price index, a statistical measure of the consumer's purchasing power in major expenditure groups (i.e., food, clothing, housing, transportation, medical care, entertainment). Comparing trends in the price index for food with the overall index, in Figure 6, we can see that food price increases have outpaced overall price increases since 1972.

At a time when the national food distribution and marketing system is apparently a major factor in rising food prices, New Jersey's declining self-sufficiency in food production can be viewed as cause for consumer alarm. As the statistics in Figure 7 show, New Jersey farms have been losing their capability to provide for the state's food needs — much less for those of adjoining metropolitan areas. As distribution and marketing costs continue to rise, and as food quality and health continue to be important public concerns, the unique situation of New Jersey's prime farmland will be an important asset to New Jersey agriculture.

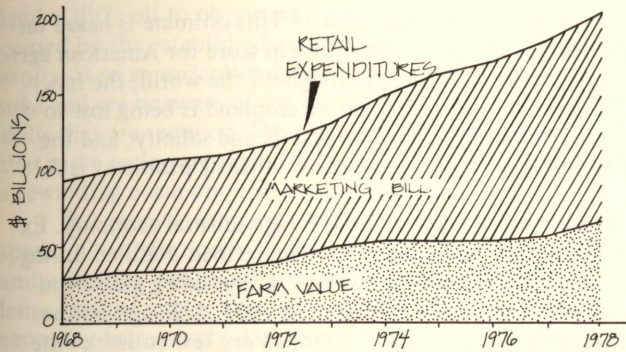


FIGURE 4: COMPONENTS OF RETAIL EXPENDITURES FOR FARM FOODS

SOURCE: USDA AGRICULTURAL ECONOMIC REPORT # 420

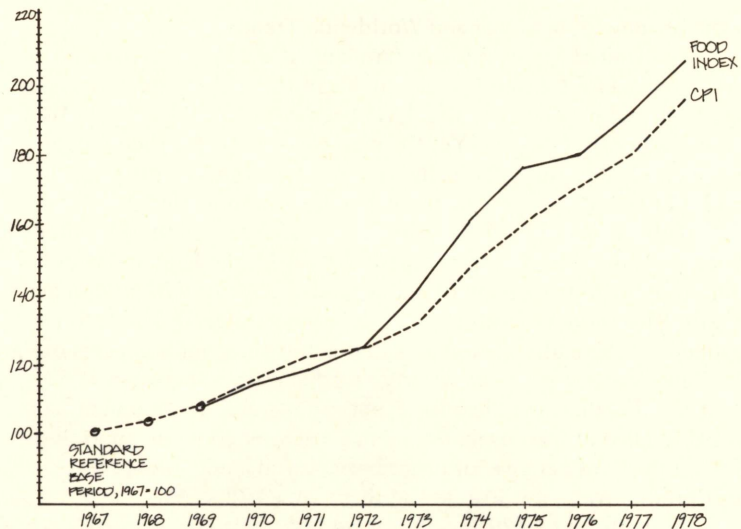


FIGURE 6: COMPARISON OF FOOD INDEX TO CONSUMER PRICE INDEX 1967-78

SOURCE: HANDBOOK OF BASIC ECONOMIC STATISTICS, BUREAU OF ECONOMIC STATISTICS INC., ECONOMIC STATISTICS BUREAU, WASHINGTON D.C., JANUARY 1976, VOL. XXXIII, NO. 1.

Figure 4

Figure 6

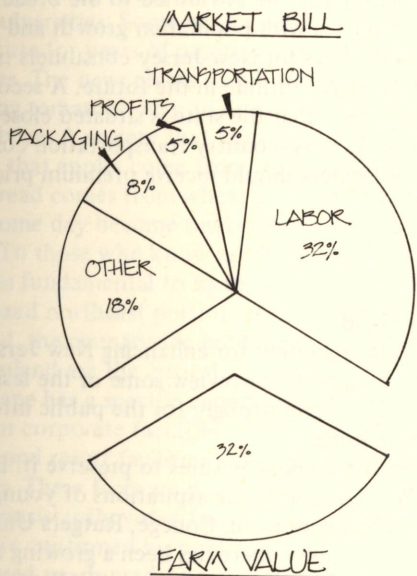


FIGURE 5: FARM VALUE, MARKETING BILL AND RETAIL EXPENDITURES FOR FARM FOOD: 1968-78

SOURCE: "DEVELOPMENTS IN MARKETING SPREADS FOR FOOD PRODUCTS IN 1978", USDA, ECONOMIC STATISTIC AND CO-OPERATIVE SERVICE AGRICULTURAL ECONOMIC REPORT #420

ITEM	1949-50 AVG	1975-76 AVG
VEGETABLES	120%	75%
FRUIT	27%	24%
POTATOES	136%	21%
MILK	60%	25%
RED MEAT	10%	5%
POULTRY	65%	4%
EGGS	105%	29%
GRAINS	22%	58%

FIGURE 7: NEW JERSEY CONSUMER NEEDS AS A PERCENT OF NEW JERSEY PRODUCTION

SOURCE: NJ CROP REPORTING SURVEY, FEB. 21, 1978

Figure 5

Figure 7

### **In the Shadow of National and Worldwide Trends**

The United States is losing farmland at a steady rate which is in itself a real cause for public concern. Meanwhile, the annual increases in agricultural productivity that have been common since World War II are apparently faltering. Yet the worldwide need for food will increase inexorably throughout the last quarter of this century and beyond. Let us look at some of these problems in more detail.

Only about 11% of the world's land surface is naturally suited for crop production. Compared with the world, the United States has a relatively high proportion of arable land — 25%, or 470 million acres. Of this, 81% is under cultivation at the present time.<sup>13</sup> The U.S. Department of Agriculture estimates that about three million acres of rural land was lost per year, mostly to urbanization, between 1967 and 1975. Further, the "leapfrog" pattern of rural development has probably idled at least again as much. Of greater concern, an average of 925,000 acres per year of prime agricultural land — the nation's most productive — was lost during these same years.<sup>14</sup>

While the extent of U.S. farmland is diminishing, experts warn that we cannot count on continued increases in productivity of the remaining land to make up for the loss. After two decades of steady increases in agricultural productivity, cereal yields — a good index of agricultural productivity as a whole — turned abruptly downward beginning in 1973.<sup>15</sup> There are good reasons for skepticism about future productivity gains. In the first place, there is a serious continuing erosion of topsoil. It is estimated that the United States has lost one-third of its topsoil in the past 200 years and that the loss rate has accelerated with the intensive agriculture of recent years despite the diligent efforts of the U.S. Soil Conservation Service. With the topsoil goes the physical structure of the soil and also the plant nutrients that determine its productivity.

High rates of energy usage have been an important factor in productivity increases of the past decades. It is estimated that under current agricultural practices, the energy equivalent of 80 gallons of gasoline is required to produce an acre of corn.<sup>16</sup> During the 1970's, with a fivefold increase in the price of petroleum, energy usage — for farm equipment and for the production of fertilizer — has undoubtedly been curtailed. Further reductions will be necessary as petroleum prices continue to rise, as supplies become less certain. We can anticipate that productivity will likewise decline.

Meanwhile, on a worldwide basis, food production is not keeping pace with need. Of the world's 4.0 billion population, it has been estimated by the United Nations Food and Agricultural Organization that half a billion people are malnourished now. With a world population expected to soar to over 6.0 billion by the end of this century, the balance between people and arable land can only worsen. One analyst forecasts a net decline in land devoted to cereal production

per person from 0.184 to 0.128 hectares.<sup>17</sup> This estimate is based on surveys indicating that the uncertain future in store for American agriculture is worse in other countries. Throughout the world, the inherent fertility of the land is declining, prime cropland is being lost to urbanization, land is being abandoned to deserts and salinity, and the capability of technology to overcome these intrinsic problems is diminishing.

These trends are reflected in the U.S. agricultural economy. Exports of grain from the United States have more than doubled during the 1970's. Agricultural exports in 1974-1975, including grains and other products, were worth \$21.7 billion. In 1975, U.S. agriculture had a positive trade balance of \$12.7 billion. Very few countries are net exporters of food, and of these the United States and Canada dwarf the others. In the 1970's it became evident that U.S. agriculture is an important instrument of national policy.

But how does this affect New Jersey? The food economy is a complex of relationships among the various factors of production and prices of numerous commodities, among which it is hard to trace cause and effect. Yet some experts conclude that rising consumer prices in the 1970's can at least partly be attributed to the broad-scale failure of output to keep pace with population growth and food demand. Further rises in food prices for New Jersey consumers may be inevitable as these relationships continue in the future. A second point for New Jersey agriculture is that the state is situated close to ports serving export markets. As cross-country transportation costs continue to rise, New Jersey farmers should receive premium prices for crops intended for export.

### **Farms, Farmers — and Farmland**

We have summarized the argument for enhancing New Jersey's productive self-sufficiency. Finally, let us review some of the less readily quantifiable factors that argue strongly for the public interest in retaining New Jersey agriculture.

The land may be there if we take measures to preserve it. But who will do the farming? We can look at the aspirations of young people for signs. According to officials at Cook College, Rutgers University — the state's agricultural school — there has been a growing demand for high school programs in agriculture. At Cook College itself there has been a steady increase in agricultural students. At least half are interested in "production agriculture" (as opposed to support professions such as research, veterinary science, marketing, and government).

Unfortunately, many students who want to farm cannot afford access to land. The best land is already being farmed, even marginal

land is difficult to obtain, and young farmers are not always welcomed by the established agricultural community.<sup>18</sup> Further, many aspirants to an agricultural way of life grew up in the city or the suburbs and are unaware of the hardships involved and the particular skills that are required. Despite these problems, there are definite signs that more and more young people are beginning to look at farming as a rewarding occupation and way of life.

But more fundamentally, in society as a whole, there is a widespread dissatisfaction with the transparent rewards of commercial gain and suburban living, and a yearning for the rural life with its real challenges and its virtues of simplicity and self-sufficiency. The risks of an economy increasingly dependent on mid-century technology also weigh heavily on many minds. Against these concerns, the New Jersey agricultural community, with its 7,300 full and part-time practitioners, represents a reservoir of fundamental wisdom and technical skill. Its loss would be a grave risk to the well-being of all.

More than most occupations, successful farming depends on practical experience and a body of knowledge about the vagaries of weather and of the seasons, the peculiarities of soils, the habits of pests, and most of all, the human qualities necessary to cope with these adversities. Some of this can be taught in schools, but there is no substitute for years of practical experience passed on through farm families. The newcomers to suburbia, whether they are raising goats or planting tomatoes, turn to one of the few local farmers for fertilizer and advice. A society that loses sight of the fact that wool comes from sheep, that apples come from trees, that eggs come from chickens, and that bread comes from wheat runs a risk that these things may then some day become unavailable.

To those who know anything about New Jersey, the rural landscape is fundamental to its image. Once you leave the heavily urbanized northeast portion of the state and the suburbs that sprawl beyond, the countryside predominates. New Jersey's 1,000,000 acres of farmland are the critical element in New Jersey's landscape. This landscape has a specific economic value. It is a fundamental attraction for corporate facilities, exurban subdivisions, retirement communities, and resort facilities — and their residents, employees, and visitors. These facts are plainly understood by New Jersey voters who have consistently voted favorably on "Green Acres" bond issues, and they are confirmed by public opinion surveys where respondents have expressed nearly unanimous sentiment in favor of retaining farmlands.

Yet there will be no rural countryside if agriculture disappears. It is not enough to preserve farmland, for it is farming that keeps the pastures green, the fields tilled, and the farm buildings well kept. If there is no farming, the fields will revert to woodland, the views will close, and the farm buildings will become ramshackle. There will be a gradual but significant change in New Jersey's image.

Finally, agriculture is a self-sustaining land use. Not only does agriculture keep the land in a productive use that has great value to the citizens of New Jersey, but it pays taxes as well. In return, agriculture demands very little in the way of municipal services. Agriculture results in less traffic, fewer school children, less frequent calls for police or fire protection, and less demand for water supply or sewer service than residential, commercial, or industrial development. Farmland is, in fact, a promising means of disposing of sewage. Studies of the economic value of farmland to a community are consistent in the conclusion that agriculture is a fiscal plus to local government.



### **New Jersey Growth Trends**

These are the compelling economic reasons for retaining agriculture in New Jersey and for preserving the state's farmland. What, then, is causing the decline of agriculture and the loss of farmland? While there are many factors, agriculture's basic requirement is land. Thus, we should look to New Jersey land use trends for some of the critical answers. To understand them, we will touch on growth projections, migration trends, land needs, land use patterns, and their effect on agriculture.

In the three decades between 1940 and 1970, New Jersey's population increased from roughly 4,100,000 to 7,200,000, a jump of over 75%. Official projections for the future that were prepared during this period put the state's year 2000 population as high as 11,000,000, an additional increase of 53%. The fast growth mentality of the post-war decades also pervaded local planning and zoning. Most community plans of the period talked of "buildout," the idea that market forces would be strong enough to develop the entire township by some "horizon year."

Since 1970, the state's growth has slowed markedly. Current projections put the state's year 2000 population at about 9,000,000 for an increase of 25% over the 1970 figure.<sup>19</sup> Even these forecasts are considered high by many who note that the birth rate has declined markedly in recent years, and that New Jersey lacks the employment opportunities necessary to support marked growth.

On the other hand, it must be pointed out that demographic trends are volatile. Such critical factors as the declining birth rate could reverse suddenly. It should also be remembered that households are getting smaller. This means that housing need — and demand for land — will increase more rapidly than actual population. Finally, overall growth forecasts obscure very significant internal movements in the state's population.

For several hundred years, in the United States as elsewhere, population has tended to concentrate in the cities. This trend persisted until the post-war period, when the present dispersal of population into suburban areas began to overshadow concentration.<sup>20</sup> Across the nation, the past decade has seen areas officially defined as "non-metropolitan" growing at faster rates than those officially defined as "metropolitan." In New Jersey, this is certainly the case. Between 1970 and 1977, the number of New Jerseyans living in the thirteen counties that are defined as metropolitan actually declined slightly in population, while the number in the eight non-metropolitan counties grew by 24%.<sup>21</sup> Non-metropolitan population growth is also an indication of corporate and commercial relocation in rural areas of the state.

Many have speculated on the reasons for these migration and settlement trends. Certainly the rural countryside is an important

attraction to people, as well as corporations. National opinion surveys have documented the preference of most Americans for the open country or small towns and cities.<sup>22</sup> Several recent surveys in suburban New Jersey also show that maintaining the rural environment is a top public concern.<sup>23</sup> Local and national preferences for rural and small-town styles of life are also reflected in an Eagleton poll conducted in February 1978 on behalf of the Rural Advisory Council, an arm of the New Jersey Department of Agriculture. It showed what the pollsters characterized as a "virtual consensus" among New Jerseyans on the importance of preserving prime farmlands and open space — essential elements of rural life.<sup>24</sup>

We can speculate about the attitudes that underlie these poll results. The majority of New Jerseyans live in suburban portions of the state and, naturally, they are concerned about the deterioration of the semi-rural landscape that originally attracted them. There probably is nostalgia among older residents about the open countryside they knew. Certainly, there is an anti-growth sentiment born of the deteriorating garden apartments, strip commercial development, traffic, high taxes, flooding, housing costs, and other expenses and inconveniences that have altogether too often accompanied suburban growth in our state.

When viewed in the context of long-range trends of national scope, we can conclude that migration to the rural countryside is likely to continue, if not accelerate. While some observers see the energy crisis as forcing a return to "the cities" (and there is evidence of such a trend), similar concerns may lead many to what they perceive as a self-sufficient, post-industrial style of life in the rural countryside. Yet while there is every reason to believe that the forces for decentralization will continue, the actual pattern of land use can be significantly modified.

### **Changing Patterns of Land Use and the Decline of Agriculture**

At the present time, our New Jersey population of roughly 7,400,000 people occupies 1,243,000 acres of land, or roughly 26% of the state's total land area (4,797,000 acres). The state has around 1,373,000 acres of unbuildable land (steep slopes, wetlands, publicly-owned lands, etc.). And, as we have noted, 990,000 acres of farmland are currently in use. If the farmland is reserved, this leaves 1,191,000 acres for future growth.<sup>25</sup> Thus, agriculture and suburban development are not necessarily competing uses of the land, as is often assumed.

The actual amount of land area that is required to accommodate growth is substantially less than one might think, even where there are substantial development pressures. For example, the central New Jersey area between Trenton and New Brunswick is approximately 24% developed at the present time. The economic and population

growth anticipated by the year 2000 can be accommodated on an additional 15% of the total land area. This means that most of the land in this region can remain undeveloped (at least until the year 2000) while farmlands can also be retained.<sup>26</sup>

In short, we can accommodate the development we foresee — and preserve farmland as well — even in developing areas of the state. Farther out the radius of suburban development, the actual land area necessary to accommodate future growth becomes a much smaller proportion of the whole, and the opportunity to develop land wisely (putting uses in places appropriate for them) is correspondingly greater.

Yet most post-war development has been characterized as suburban “sprawl.” From the ground, sprawl appears to be a continuous landscape of low-density urban fabric. Yet from the air, sprawl is discontinuous — there is much idle land interspersed among the development. With more recent development in the 1970’s, even this loose fabric has come apart at the fringe. The new sprawl pattern has been termed “buckshot development”: corporate headquarters, large residential subdivisions, garden apartments, and retirement communities are separated by wide expanses of open land.

These patterns of land development have proven devastating to New Jersey agriculture, for several reasons. First of all, they have the effect of interspersing suburban uses with agricultural operations, often to the detriment of agriculture. Farming and suburban living are not usually compatible neighbors. For example, crops, animals, farm machinery, and farm buildings are expensive and highly susceptible to vandalism. The need for constant vigilance is a burden to farmers. On the other hand, noise, blowing dust, and smells are often unavoidable aspects of normal agricultural operations. Despite the fact that they are the essence of rural life, they are often offensive to newcomers.

Many developing communities have overreacted to these conflicts by adopting ordinances restricting farm operations, often without consulting the agricultural community. In the long run, such ordinances may have the unintended effect of making farming increasingly difficult and eventually impossible. The difficulties that New Jersey farmers have experienced in recent years because of local (as well as state and federal) nuisance regulations have led farm leaders to the “right to farm” concept, recently embodied in a proposal for legislation that would constrain local and state government from adopting laws that restrict normal agricultural operations.<sup>27</sup>

Another adverse effect that buckshot development has on agriculture is its inflationary effect on land values. When a corporate headquarters or large residential project is developed, the former landowner receives a large “windfall” profit from the sale of the land. Naturally, every landowner in the vicinity is then led to believe that he or she will receive a similar windfall. Yet the fact is that the development

market is rarely strong enough anywhere in New Jersey to convert more than a small percentage of the total land area in the foreseeable future, particularly at the highest prevailing market prices. The expectation of windfall profits is often abetted by planning and zoning practices which have, in past years, almost institutionalized “spot zoning” in New Jersey. This practice makes the location of new projects unpredictable, and without regard to what the land is planned or zoned for.

The conflicts in proximity of suburban life with farm operations, and the inflationary effect of dispersed development on land values have, over the decades, resulted in abandonment of farms. While many of these farms have been developed, many have not. Much farmland has simply been idled because it has become too difficult to farm it. These land use trends, coupled with a myriad of economic and social problems that are inherent in agriculture as an industry, have led to what was termed by the Blueprint Commission on New Jersey Agriculture as the “impermanence syndrome.”

Many New Jersey farmers feel that they have become obsolete — not really wanted in a suburban, industrial state. It is against these realities — a seemingly methodical effort to make farming difficult, a deliberate policy of suburbanization, and the poor morale of the agricultural community — that we must view past efforts to retain farmland and current efforts to stabilize agriculture and farmland loss. The remainder of this report will review past efforts and point some new directions for the immediate future.



## Notes

1. A "farm" is defined by the 1974 Census of Agriculture as "... all land on which agricultural operations were conducted at any time in the census year under the day-to-day control of an individual management, and from which \$1,000 or more of agricultural products were sold during the census year. Control may have been exercised through ownership or management, or through a lease, rental, or cropping arrangement. Places having less than \$1,000 sales in census year were also counted as farms if they could normally be expected to produce agricultural products in sufficient quantity to meet the requirements of the definition." (U.S. Bureau of the Census, *1974 Census of Agriculture*, Vol. I, Part 30, p. x.) The 1974 Census gives 7,409 farms according to its definition. The New Jersey Crop Reporting Service also reports "number of farms" annually. Their 7,600 figure for 1979 is based on the Census definition.

2. 990,000 is the "preliminary" 1979 figure for "land in farms" from N.J. Crop Reporting Service, *New Jersey Agricultural Statistics*, 1979. The 1974 *Census of Agriculture* reports 961,395 acres. The 1978 *Annual Report* of the N.J. Division of Taxation, Department of the Treasury, gives 1,185,132.87 acres as "qualified" under the Farmland Assessment Act of 1964. This figure is larger because it includes "qualified" woodland as well. A 1972 survey of "prime farmland," based on soil capability, not use, listed 1,497,720 acres in New Jersey; an unknown portion of this total can be assumed to have been developed since that date (survey by the U.S.D.A. Soil Conservation Service, summarized in *Report of the Blueprint Commission on the Future of New Jersey Agriculture*, April 1973).

3. N.J. Crop Reporting Service, official estimates.

4. N.J. Crop Reporting Service, *New Jersey Agricultural Statistics*, 1979, Circular 487, August 1979.

5. Ibid.

6. U.S. Bureau of the Census, *1974 Census of Agriculture*, Vol. IV, Part 2.

7. Jean Gottman, *Megalopolis*, Boston, The Twentieth Century Fund, Inc., 1961.

8. H.R. Linstrom, *Farmer to Consumer Marketing*, Economics, Statistics, and Cooperative Service, U.S. Department of Agriculture, ESCS-01, 1978.

9. New Jersey Interdepartmental Committee on a Food Distribution Center. *Wholesale Food Distribution for Northeastern New Jersey*, Trenton, N.J. Department of Labor and Industry, 1978.

10. U.S. Department of Agriculture, Economics, Statistics, and Cooperative Service, *Developments in Marketing Spreads for Food Products in 1978*, Agricultural Economic Report No. 420, March 1979.

11. Ibid.

12. *New York Times*, June 22, 1979.

13. David Pimental et al., "Land Degradation: Effects on Food and Energy Resources," *Science*, October 8, 1976.

14. American Land Forum, *Land and Food: The Preservation of U.S. Farmland*, American Land Forum Report No. 1, Spring 1979.

15. Lester R. Brown, *The Worldwide Loss of Cropland*, Worldwatch Paper No. 24, Washington, D.C., October 1978.

16. David Pimental et al., "Food Production and the Energy Crisis," *Science*, November 2, 1973.

17. Lester R. Brown, *The Worldwide Loss of Cropland*, Worldwatch Paper No. 24, Washington, D.C., October 1978.

18. Interview with Roger R. Locandro, associate dean, Cook College, Rutgers University, June 1979.

19. Department of Labor and Industry, Division of Planning and Research, *N.J. Revised Total and Interim Age and Sex Projections*, April 1979.

20. For a full discussion of this trend see Regional Plan Association, *The State of the Region*, Regional Plan News No. 97, March 1975; Regional Plan Association, *Growth and Settlement in the U.S.*, RPA Bulletin 124, June 1975; The Urban Land Institute, *Growth and Change in Rural America*, Washington, D.C., The Urban Land Institute, 1979.

21. *New York Times*, December 24, 1978.

22. Commission on Population Growth and the American Future, *Population and the American Future*, March 1972.

23. For example, Hillsborough Growth Management Program, Cook College, Rutgers University, 1979, Survey of Hillsboro Residents.

24. *New Jersey Residents and Farmland Preservation: A Survey of Citizens' Attitudes*. The Eagleton Poll, Eagleton Institute of Politics, Rutgers, April 10, 1978.

25. Figures are from *State Development Guide Plan, Preliminary Draft*, N.J. Division of State and Regional Planning, September 1977.

26. John D. Echeverria, *MSM Municipal Planning and Zoning Review*, MSM Regional Study Council, February 1, 1978 (Appendix).

27. S450, the "Right to Farm" bill.



II Farmland Preservation  
in New Jersey to Date

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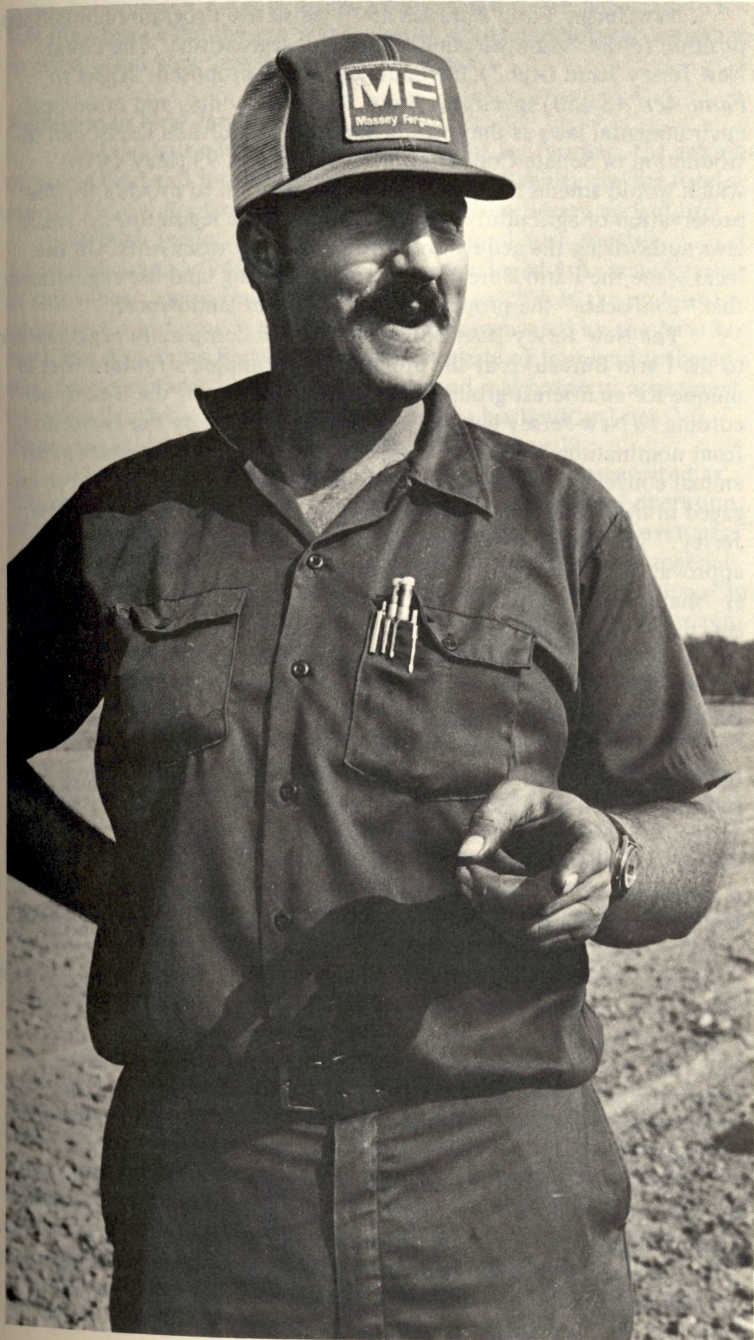
The precipitous postwar decline of New Jersey agriculture led to serious efforts to aid the farmer and to preserve farmland. The *Farm-land Assessment Act* of 1964 – which provides for real property tax assessment of land “actively devoted to agricultural or horticultural use” at its value for such use rather than its market value – has been heralded as a boon to farmers. Yet studies of the act conclude that by inadvertently subsidizing speculation in land, the “farmland assessment” may actually undermine agriculture in the longer run.

New Jersey’s other major public policy effort, the report of the state-created Blueprint Commission (April 1973) widely publicized the “impermanence syndrome” that is such a vital factor in the decision of farmers to sell. The Commission’s key public policy recommendation was that the state purchase development rights on 1,000,000 acres of New Jersey farmland. A pilot project in Burlington County signaled the demise of this idea because it would apparently cost so much.

The principal issue remains: what constitutes “just” compensation for loss of the right to develop the land. Farmers feel that land use regulations “confiscate” their property rights, although zoning regulations have long been upheld by the courts. Others feel that the public should not have to compensate a landowner for speculative gains. At the local government level there is a new wave of experiments with a variety of farmland preservation efforts. State and local government efforts are reviewed in the following section.

### **The Farmer’s Viewpoint**

New Jersey’s farmers, in general, are businessmen and women who are little different from other entrepreneurs in their profit motivation. As a manager, the farmer must combine an amazing variety of skills: agronomy, labor management, investment of large amounts of capital, and marketing. Far more than in other “small” businesses, the farmer is confronted with risks and uncertainties. These include the obscure workings of local, national, and world commodities markets as well as the depredations of weather and pests.



Farmers are individualists. Thomas Jefferson's yeoman farmer may no longer be an apt characterization of today's agricultural community, but a strong element of him remains. Farming is a way of life that sets itself apart from more conventional office, service, and manufacturing pursuits. Farm families are self-sufficient to a greater extent than most, and they like to think of themselves that way. While farmers seek government aid when they need it, they also resent the burden of government regulation more than most people because it affects them so directly.

Annual real estate taxes are a particular burden to farmers. New Jersey's property tax on farm real estate was, in 1977, the third highest in the nation despite preferential treatment for farmland under the *Farmland Assessment Act*.<sup>1</sup> Also, federal and state inheritance taxes make it difficult for farmers to pass their farms on to their children. Because farming has traditionally been a family business, this contributes strongly to the feeling of impermanence that afflicts the New Jersey agricultural community.

According to the Census of Agriculture, New Jersey had 7,409 "farm operators" in 1974.<sup>2</sup> Of these, only 57% reported that farming was their principal occupation, reducing the count of New Jersey's fulltime farmers to 4,257 (in that year). The small numbers are even more conspicuous in county figures. For example, Hunterdon, an intensely agricultural county, had 930 farm operators, of which only 440 (or 47%) reported farming as the principal occupation. Cumberland had 580, Mercer had 291, and Somerset had 378. In local communities, the numbers are small indeed. Cranbury has approximately 34 farms, Readington 19, Holmdel 15, and Chesterfield 31.

New Jersey farmers are an aging population with an average age of 53.8 in 1974; 3,449, or 46% of farm operators were 55 years old and older. It is easy to see why the New Jersey farm community is conservative and why, as they are candid to admit, farmers view land holdings as "social security" — their retirement fund. At the other end of the scale it is striking that only 585, or 8% of New Jersey's farm operators were under 35 years old. Apparently, few young entrepreneurs have the resources and skills to enter this complex and expensive business though many may desire to do so.

From a business viewpoint, these statistics about farmers should come as no surprise, for the profitability of agriculture has declined steadily in the post-war years. In 1950, return on equity for an average New Jersey farm was estimated at 17.4%. Fifteen years later this had decreased to 11.4%. And, by 1971 it had dropped again to 6.4%.<sup>3</sup> Inevitably, the combination of low profitability and high real estate prices has resulted in logical business decisions to retire or find other employment.

But despite their small numbers, farmers are well organized. A 1977 directory lists 120 local and statewide organizations including

professional groups such as the Garden State Milk Council, the New Jersey Apple Institute, the New Jersey Beekeepers Association, and the New Jersey Pinto Horse Association.<sup>4</sup> But the farmers' real power lies in two organizations that are organized at the county and state levels — the Farm Bureau and the Board of Agriculture.

The New Jersey Farm Bureau is a private, non-governmental group that offers services to its 4,000 members (not all of whom are farmers) such as insurance and hospitalization plans, commodities brokerage, supply and business services. However, the Farm Bureau stresses its lobbying efforts. From its promotional brochure:

In the legislative Halls of Trenton and Washington, Farm Bureau's presence is a known and potent force . . . Farm Bureau is leading the fight to amend the pesticide laws, joining in and initiating legal action to defend the private property rights of farmers, and waging full scale encounter against bureaucratic demagoguery.



New Jersey Farm Bureau's 1979 legislative program included opposition to the Administration's Pinelands legislation ("The Great New Jersey Land Grab"); introduction of the proposed "*Right to Farm Act*" (S-450) specifying limits to state, county, and municipal environmental laws as they would apply to agricultural lands; and introduction of Senate Concurrent Resolution No. 93 (May 1978) which would amend the New Jersey Constitution to provide for the preservation of agricultural land by requiring the legislature to enact laws authorizing the acquisition of development easements. On the local scene the Farm Bureau is active in opposing land use regulations that "confiscate" the property rights of farmer landowners.

The New Jersey Board of Agriculture (a companion organization to the Farm Bureau) is at the pinnacle of a complex structure that is unique for an interest group in our state. Members of the Board, according to New Jersey law, are appointed annually by the Governor from nominations submitted by specified agricultural interests at an annual convention.<sup>5</sup> The eight-member Board is limited to "those engaged in the production of farm crops or livestock products in New Jersey." The Board appoints the Secretary of Agriculture "with the approval of the Governor" and in an unusually sweeping grant of power "shall assign to the various divisions, bureaus, officers and employees, their proper functions and duties and either directly or through the secretary supervise and control the performance thereof." The statutes also provide for county Boards of Agriculture that send delegates to the annual convention.

The Secretary of Agriculture presides over the N.J. Department of Agriculture which has a wide range of regulatory and research responsibilities in the fields of animal health, marketing, plant industry, agricultural chemistry, dairy industries, and rural resources. A Rural Advisory Council with a research budget of its own makes studies and recommendations concerning social and economic conditions including land use in rural areas.<sup>6</sup> Farmland preservation has occupied most of the Council's attention in the past decade. The Department of Agriculture's research capabilities are complemented by those of the New Jersey State College of Agriculture (established in 1864, now Cook College of Rutgers University) and the Agricultural Experiment Station (also a part of Cook College, established in 1880). The latter incorporates an Extension Department with agents in each county. A Board of Managers oversees the activities of the Experiment Station and appoints the county agricultural agents.<sup>7</sup>

This unique network has built a strong voice for agricultural interests into New Jersey government. There are a great many complementary activities — research, government administration, political action — that are intimately related. A review of the names of individuals on the various boards shows many that wear several hats. It is also evident that the New Jersey agricultural leadership has left very little

room for representation by other public interests. An unfortunate result may have been the growing isolation of the agricultural community from other New Jerseyans in recent years.

#### Farmland in New Jersey

As land is the fundamental requirement for farming, the amount of prime land and its ownership, price, and availability are the fundamental factors in planning for the future of New Jersey agriculture.

Of New Jersey's 4,797,268-acre total land area, roughly 3,554,268 acres or 74% of the total is undeveloped.<sup>8</sup> As stated earlier in this report, approximately 990,000 acres or 28% of the undeveloped land is in farms at the present time, as measured by the New Jersey Crop Reporting Service.<sup>9</sup> Another measure of farmland is the annual report of land "qualified" for farmland real property assessment by being "actively devoted to agricultural or horticultural use."

There are 1,185,133 acres reported in this category.<sup>10</sup>

The owners of farmland in New Jersey may be categorized as follows: "farmers" own the land primarily for agricultural operations. (They may also lease some or all of the land they farm.) "Developers" are in the business of converting farmland to housing or commercial space, either by improvement and subdivision or by construction. "Investors" own farmland primarily to produce income by lease for agriculture (or for another purpose) or to produce capital gains. Finally, "speculators" are a subspecies of investor who are interested foremost in the financial gains available from relatively short-term transactions.

While precise figures are unavailable, it is estimated by the New Jersey Department of Agriculture that farmers own around 47% of New Jersey's farmland.<sup>11</sup> Not all farmers intend to farm forever, and so investment and speculation are also a part of the farmer's business. A study of farmland ownership in Southampton Township (Burlington County), with a history of prosperous agriculture, showed that farmers owned 61% of the "qualified" farmland.<sup>12</sup> Yet the researchers also found that as little as 30% of the farmland was owned by farmers actually committed to farming. The remainder was held by farmers who either wished to sell their land or who were actually "speculating" (the term used in the study).

Even in New Jersey's rural areas, a high proportion of farmland is owned by investors. In heavily suburbanizing areas, the proportion increases. In Cranbury Township (Middlesex County), located in the path of future growth, farmers own about 35% of the farmland, investors own 60%, and developers own 4%. In nearby Plainsboro, where development has already begun, farmers own 44%, investors 23%, and developers 33%. In Plainsboro the land has passed from farmers and investors into the hands of developers, while in Cranbury, investors have bought the land from farmers in anticipation of future growth and sales to developers.<sup>13</sup>

The New Jersey Department of Agriculture has recently initiated a valuable statewide survey of sales of land that is "qualified" as agricultural under the *Farmland Assessment Act* of 1964.<sup>15</sup> In the period 1977-78, 18,959 such acres changed hands at an average price of \$3,607 per acre. Of this land, 11,005 acres were purchased primarily for agricultural use, at an average price of \$1,974; 4,325 were purchased primarily for investment at an average price of \$3,556; and 3,510 acres were purchased for development at an average of \$8,735. These average figures obscure some important differences. In Middlesex County, for example, land purchased primarily for investment averaged \$12,165 per acre, and land for development averaged \$14,713.

The dollar value of land specifically for agricultural use is difficult to determine with accuracy. The \$1,974 statewide average for land purchased primarily for agricultural use clearly includes a component of investment, greatest in the Piedmont counties (Hunterdon County figure is \$1,994) and other developing areas (Burlington County average is \$2,584) but probably very small in prime agricultural areas (Cumberland County average is \$1,119). Real estate experts working for the Burlington County Demonstration Project appraised farmland for agricultural purposes at \$816 per acre.<sup>16</sup> This figure may be somewhat low for there are indications from other appraisals that the value of farmland for farming is increasing, and there are numerous instances of farmers purchasing land intended for farming at higher prices.<sup>17</sup>

We can conclude that the investment value of land in New Jersey has soared far beyond its value for agricultural use. In places like Middlesex County, where land may sell at \$12,000 an acre, farmers cannot afford to purchase land for agricultural purposes, and much of the state's prime farmland is in similar suburban fringe areas with the highest land values. On the other hand, land throughout rural parts of the state is available at less than \$2,000 an acre (and in some locations for less than \$1,000 per acre) for farmers who can afford to buy it.

Finally, two important distinctions in the categories of farmland ownership should be noted. The first is between "investors" and "developers." As noted, developers typically own very little land. Yet they have the capability of meeting market needs by constructing housing or commercial space. Investors typically do not have this capability. The second important distinction is between "investors" and "speculators." The distinction is one of degree. Speculators are interested in short-term gains, while investors hold land for the long run. In inflationary times, frequent land exchanges drive up the price. Land speculation is a powerful inflationary force, driving up the price of farmland beyond the reach of farmers. It is also a factor in the current sharp housing price increases and in the high public costs of community facilities such as parks, schools, and roads.



### The Farmland Assessment

Alarmed by a wholesale loss of farmland in the postwar period, New Jersey's agricultural leadership sought to lower the property tax burden on farmland owners. Local governments were assessing farmland at a fair market value determined by its development potential. This was rising rapidly with suburban growth, and it often reached many times the value of the land for agriculture. The result of this effort was the *Farmland Assessment Act* of 1964, a measure that has been very popular with farmers and has also received substantial public support because it is perceived as a measure that preserves open space.

Because it violates the constitutional principle that taxes must be uniform among a given class of taxpayers, it was necessary to amend the New Jersey Constitution in 1963 to allow the legislature to enact a measure giving preferential treatment to owners of farmland. The New Jersey Constitution now provides that land not less than five acres in area, which has been "actively devoted to agricultural or horticultural use" for at least two years, shall, on application of the owner, be assessed at the agricultural use value rather than a value based on its development potential. The Constitutional amendment also specifies that when the use of the land changes to other than agricultural, it will be subject to additional taxes equal to the difference between its value for agriculture and its value for development for no more than the past two years.<sup>18</sup> This "rollback" is intended to be a penalty for conversion of land to a non-agricultural use.

The "farmland assessment," as it has come to be known, benefits New Jersey agriculture by providing farmers with a substantial reduction in their property taxes on land that is "qualified" under the terms of the Act. Yet the farmers' tax burden remains very high. Despite the farmland assessment, New Jersey farm real estate taxes have climbed steadily in the past decade from an average of \$12.49 per acre in 1967 to \$19.78 in 1976, the second highest level in the nation and many times the U.S. average of \$2.92.<sup>19</sup> Furthermore, while taxes on "qualified" farmland are greatly reduced by the Act, three-quarters of the farmers' tax burden is on improvements and unqualified land, while only one-quarter is on qualified land.<sup>20</sup> This has suggested to some analysts the possibility of a "tax shift" from qualified to unqualified farm real estate.

The farmland assessment, or at least the idea of a "tax expenditure," or subsidy, could be adapted to make it more favorable to farmers. There is a suggestion for a farmland tax rebate to equalize taxes paid by New Jersey farmers to those paid by farmers in the midwest — a reduction of \$12 to \$13 per acre — but only within specified districts. Because the benefits of maintaining agriculture accrue throughout the state, the rebate would be paid by the state, and a funding source would have to be found.<sup>21</sup> It has also been suggested

that there could be a five-year, or even a permanent tax moratorium on new farm structures in order to encourage new investment in New Jersey agriculture.

While the reduction in property taxes may benefit New Jersey agriculture in the short run by improving the farmers' income, some students of the farmland assessment in New Jersey as well as the other forty-two states that have adopted similar approaches conclude that the farmland assessment may undermine agriculture when one considers long-term land use trends.<sup>22</sup> A preferential assessment for farmland encourages land speculation by reducing the investor's carrying costs, and the two-year "rollback" is such a small penalty that it is not an effective deterrent when the time for development comes. Further, taxes are not the only factor that influences a farmer's decision to sell; the rate and location of new development is determined by a far larger complex of market forces. In fact, the farmland assessment may actually be a significant factor in the "buck-shot" pattern of land development because it delays development of land in suburban fringe areas while equally favoring development farther out the radius of suburban growth. In the words of an authoritative study, "The pattern that results could well be more spread out than that deriving from unfettered market pressures."<sup>23</sup>

The cost of the farmland assessment is borne primarily by local government in the form of property taxes forgone. Yet there may be a "tax shift" from qualified farm real estate to non-farm real estate (principally in rural areas) estimated by one source at \$40,000,000 to \$50,000,000 per year.<sup>24</sup> Thus tax equity also becomes an important issue in discussions of the farmland assessment. Tax considerations may also affect land use patterns adversely as local governments in rural areas accelerate the race for industrial ratables in order to balance their tax bases.

While detailed proposals for revision of the farmland assessment are beyond the scope of this report, some general options may be considered.<sup>25</sup> First, a stiffer "rollback" penalty of at least ten years (and preferably the entire period for which preferential treatment was received), with interest, should be considered. This change would have the effect of limiting the benefits of preferential treatment to those with a serious agricultural commitment. Second, the legislature should consider limiting the benefits to specific districts where agriculture is a viable long-range use of the land. Third, the benefits could be limited to areas where local governments have adopted land use controls for the benefit of agriculture. All of these approaches have been adopted in one or another state, and they are discussed further in Part III of this report. In sum, the farmland assessment cannot be an effective long-term policy unless it is part of an overall plan for agriculture.

### The Blueprint Commission and the Purchase of Development Rights

The agricultural leadership saw the *Farmland Assessment Act* of 1964 as a measure that would buy time while other means to sustain the agricultural economy and to preserve farmland were developed and implemented. In 1971, again as the result of pressure from the farm leadership, Governor William Cahill directed Secretary Alampi to create a commission on the future of New Jersey agriculture.

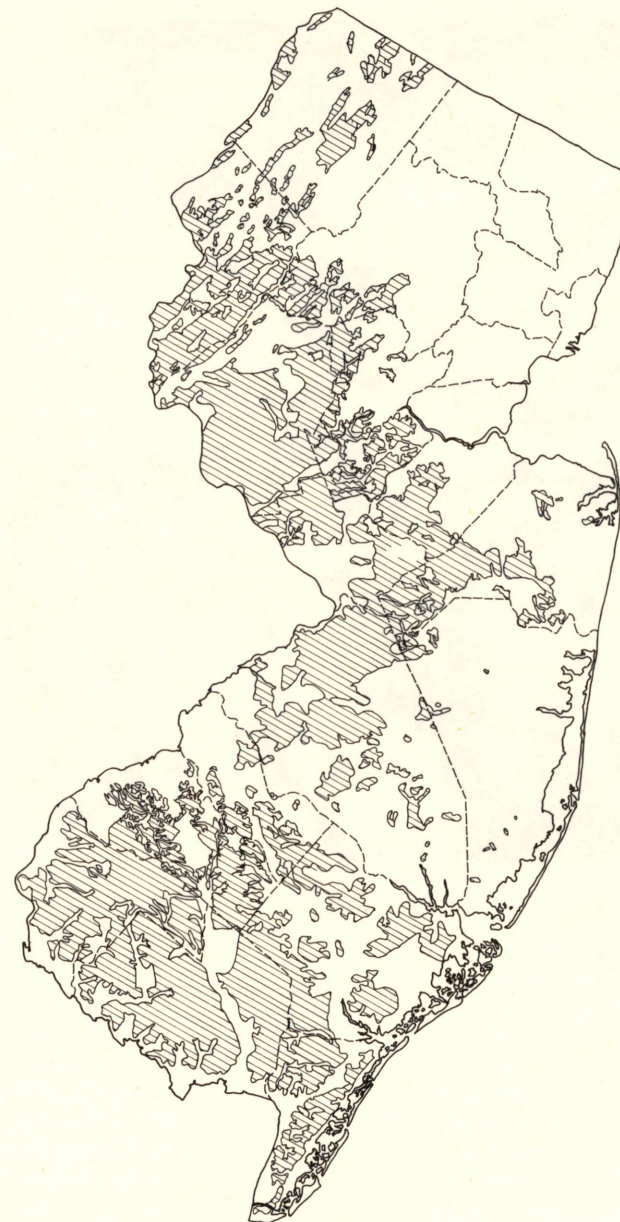
The "Blueprint Commission" issued its report in 1973.<sup>26</sup> It is a thoroughly researched, thoughtful, comprehensive document that received national recognition. Its recommendations cover all facets of New Jersey agriculture including land policy, agricultural education, farm labor, federal estate and state inheritance taxes, farm management, marketing, soil surveys, agricultural organizations, waste recycling, agricultural research, and taxation.

The land policy recommendations are particularly comprehensive. The Commission established a goal of 1,000,000 acres of permanent farmland in Agricultural Open Space Preserves. Municipalities would designate a minimum of 70% of their prime agricultural land to be included in the preserves. Development rights on this farmland would be purchased by the state. The program would be funded by a "dedicated" tax of 0.4% (4 mils) on all real estate transfers in the state. The Commission believed that the proceeds of this tax would suffice, if purchases were spread over a period of several decades.

While the Commission's land policy recommendations embodied valid comprehensive planning considerations, these have not been publicized, while the Commission has become identified only with the idea of purchase of development rights by the state. And this is not surprising since, with the exception of the Commissioner of Environmental Protection, the twenty-one member commission was dominated by farmers and representatives of agricultural interests, who naturally tend to be protective of land values.

The Commission's report was completed at the end of the Cahill administration. And when Governor Byrne took office the public agenda was dominated by the Arab oil embargo, the State Supreme Court decision regarding school financing, and numerous related budgetary and fiscal problems. The shift from the era of free spending to the era of scarce public funds had begun. The Blueprint Commission's real estate transfer tax was in fact adopted, but its proceeds were devoted to the state's general fund.

In 1974, Governor Byrne convened the Commission to Evaluate the Capital Needs of New Jersey (the MacNaughton Commission). In its final report (April 1975),<sup>27</sup> the Commission recommended that opportunities be sought to experiment on a limited basis with the purchase of development rights by the state — and also with the transfer of development rights in the private market — on a pilot project basis in willing municipalities.



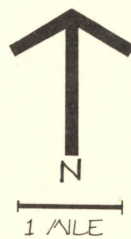
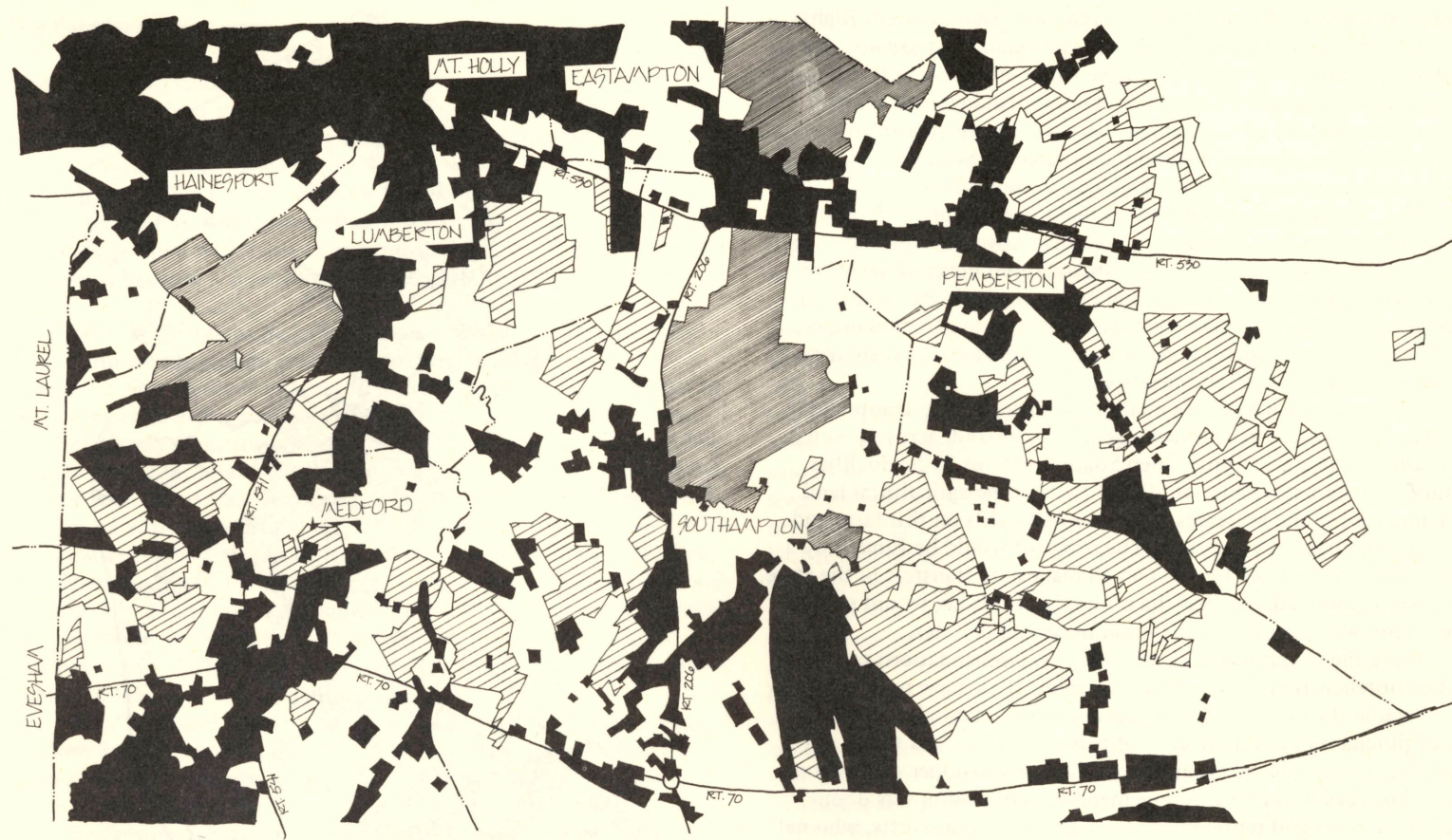
#### PRIMARY AGRICULTURAL LANDS

▨ SOIL CLASSES I, II, III AND SOILS  
USED FOR SPECIAL CROPS

SOURCE: USDA SOIL CONSERVATION SERVICE, 1972.

Figure 8

**Agricultural Preserve Demonstration Program:** The four Burlington County townships where the program was located – Lumberton, Medford, Peaberton, and Southampton – are located just at the urban fringe southeast of Mount Holly. Expanses of prime farmland have been intruded by “buckshot development.” The three areas that were conditionally selected for the program totalled 4,700 acres. The \$5,000,000 allocated for the program by the Legislature might have purchased development rights on about half of this acreage.



AGRICULTURAL PRESERVE DEMONSTRATION PROGRAM

- DEVELOPED LAND
- ▨ FARMLAND ON WHICH BIDS WERE MADE BY OWNERS
- ▩ FARMLAND CONDITIONALLY SELECTED FOR PROGRAM
- OTHER FARMLAND AND OPEN LAND

SOURCE: N.J. DEPARTMENT OF AGRICULTURE

Figure 9

Soon after the MacNaughton Commission's recommendation, the New Jersey Department of Agriculture began to lay the groundwork for a pilot project. After the *Agricultural Preserve Demonstration Program Act* was signed by the governor, the New Jersey Farmland Demonstration Project began in Burlington County in mid-1976 with \$5,000,000 available from the state's "Green Acres" fund.<sup>28</sup>

The Burlington County project area (shown in Figure 9) was selected because it is reasonably representative of the state, with a viable agriculture but significant development pressure. Of 41,500 acres of farmland in the four townships, bids (signaling an interest in participating in the program) were received from the owners of 18,616 acres or 45%. Analysis shows that 50% of the prospective participants were local owner/operators and 36% were absentee owners whose primary interest was not in farming.<sup>29</sup> There is evidence that the owners of larger, more stable farms not under the greatest development pressure were those that wished to participate. Appraisals of the development rights on farmland in three areas conditionally selected for the program concluded that the average price would be \$1,964 per acre. At this price, \$5,000,000 from the Green Acres fund would have purchased somewhat over 2,000 acres (including administrative costs), though the goal of the program had been 5,000 acres.

During the project, opposition developed from two sources. The New Jersey Farm Bureau became concerned that the appraisals of the farmland for agriculture were substantially in excess of assessments under the *Farmland Assessment Act*. The average appraised value was \$816 per acre while the highest assessed value in the county (under the guidelines of the *Farmland Assessment Act*) was \$336. Believing that farmland assessment is critical to New Jersey agriculture, the Farm Bureau was unwilling to jeopardize it for the sake of the pilot project. Further, in the course of a legislative "oversight" function provided for in the project legislation, sharp questions were raised regarding the cost to the taxpayers of a development rights purchase program extended to the Blueprint Commission's objective of 1,000,000 acres. While estimates ranged widely, it became apparent that the total public cost would clearly be in the billions and might well exceed the bonding capability of the state. These two problems were adequate to terminate the program. The final project report stresses the valuable experience that was gained in the complex procedural aspects of delineating agricultural preserves, working with community leaders, and appraising the value of development rights.

The purchase of development rights by the state has the support of the agricultural leadership and is generally but by no means unanimously supported by farmers. The state program in Burlington County gained a great deal of local interest and support. Recently, the county itself purchased the development rights on a 530-acre cranberry bog for \$449 per acre. This is the first of twelve properties totalling 3,000

acres in critical Pinelands areas that the Freeholders intend to purchase with financing from a \$1,000,000 bond issue approved by the voters in 1977. The county anticipates that their \$1,000,000 will be matched by an equal amount from state and federal Pinelands funds.<sup>31</sup> Burlington County approved a referendum in the 1979 general election to authorize a \$1,000,000 bond issue for the purchase of "farmland preservation easements."

In a similar project in Suffolk County, Long Island, the county authorized a bond issue of \$21 million for the purchase of development rights on farmland. To date, rights have been purchased on 3,200 acres of land at an average cost of \$3,000 per acre for a total cost of \$12 million (including administrative costs). Several other states, including Maryland, Connecticut, and Massachusetts, have recently adopted development rights purchase programs, though none has more than token funding.

#### Farmland Retention in New Jersey Communities: Some Examples

Many New Jersey communities are adopting land use regulations intended to preserve farmland and/or to protect agriculture simply because there is strong "grass-roots" community sentiment to do so — most from nonfarm residents, some from farmers.

It is striking that most master plans in New Jersey's suburban and rural communities have as an objective a statement about the need to protect rural resources and qualities. As noted, most of these communities have adopted some form of large-lot zoning toward this end. But a number of more realistic municipalities have given serious consideration to, or even adopted, land use regulations that are more directly intended to preserve farmland. They are shown on Figure 11.

From these, we have selected a few examples. While few of these efforts have borne the fruits of full success, they point to a variety of promising new directions — and noteworthy pitfalls. In New Jersey as elsewhere, local governments learn from each other. The better features of an ordinance are adapted by a neighboring municipality, and through this process of trial and error successful schemes evolve. This is apparently happening now with respect to farmland preservation, and efforts should be made to facilitate the process.

The importance of the human element in successful and unsuccessful experiences should not be overlooked. Frequently one individual initiated a "successful" effort or led the opposition. An ideal situation has been observed: one person cares a great deal, works hard to coordinate studies, enlists cooperation, and carries the plan through to fruition. And local farmers were asked for their advice and seemed to feel that their help was sincerely needed.

What can we improve on? Often, municipalities are confused about whether they want to preserve open space or promote agriculture. In Hillsborough, as we will see, a broad objective of preserving the rural environment was transformed into a regulation that had the

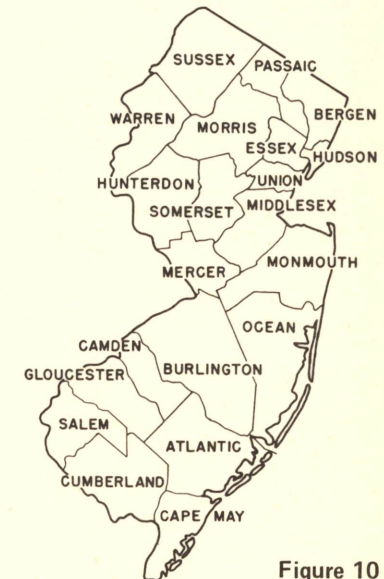


Figure 10

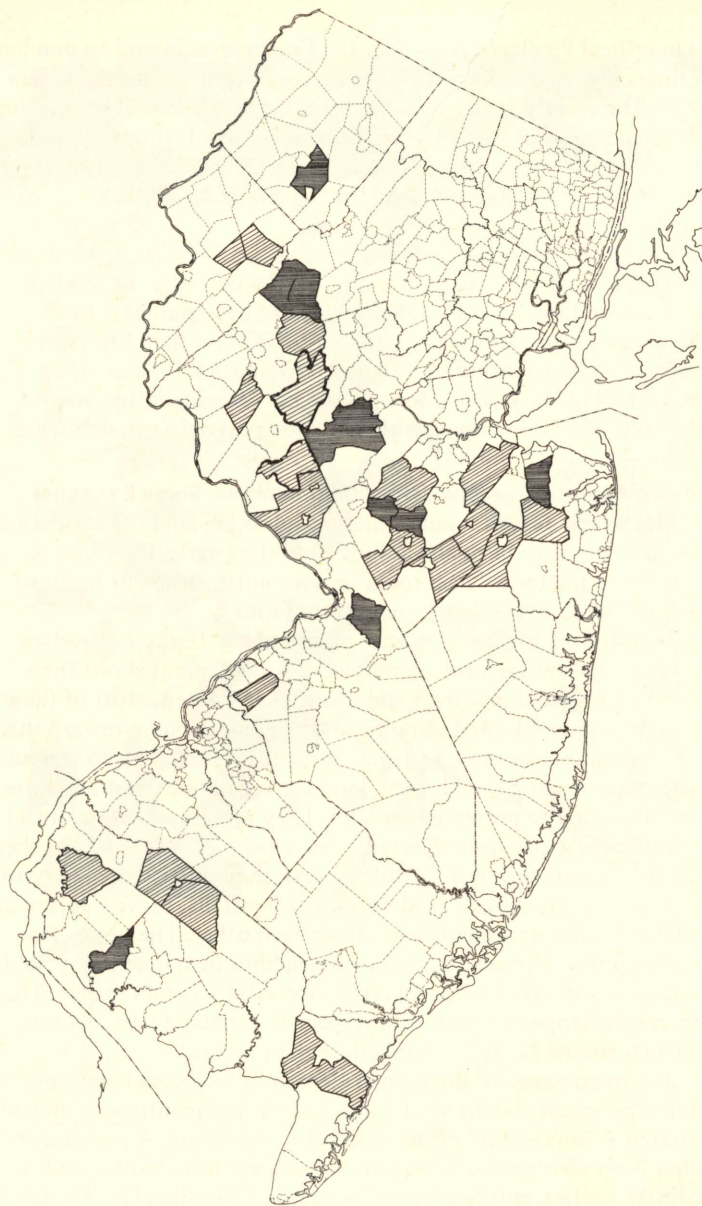


Figure 11

FARMLAND RETENTION IN LOCAL COMMUNITIES

- ▨ COMMUNITIES THAT HAVE CONSIDERED OR ATTEMPTED FARMLAND RETENTION MEASURES
- EXAMPLES IN THIS REPORT

SOURCE: NJPA SURVEY OF COUNTY PLANNING DEPARTMENTS

effect of making the township a land manager — a role it doesn't want — and this has been an important factor in inhibiting the use of their ordinance. Chesterfield, lacking a land use plan that designated the best places for agriculture (and development) will probably find its farming disrupted by intrusive suburban uses. If each community had a land use plan for agriculture, their land use regulations would have an effect closer to the intended objective.

Based on our review of experiences in New Jersey communities and also on a review of undertakings in communities in other states, we can suggest some guidelines for planning for agriculture and for drawing up appropriate policies. These guidelines will be presented in Part III of this report.

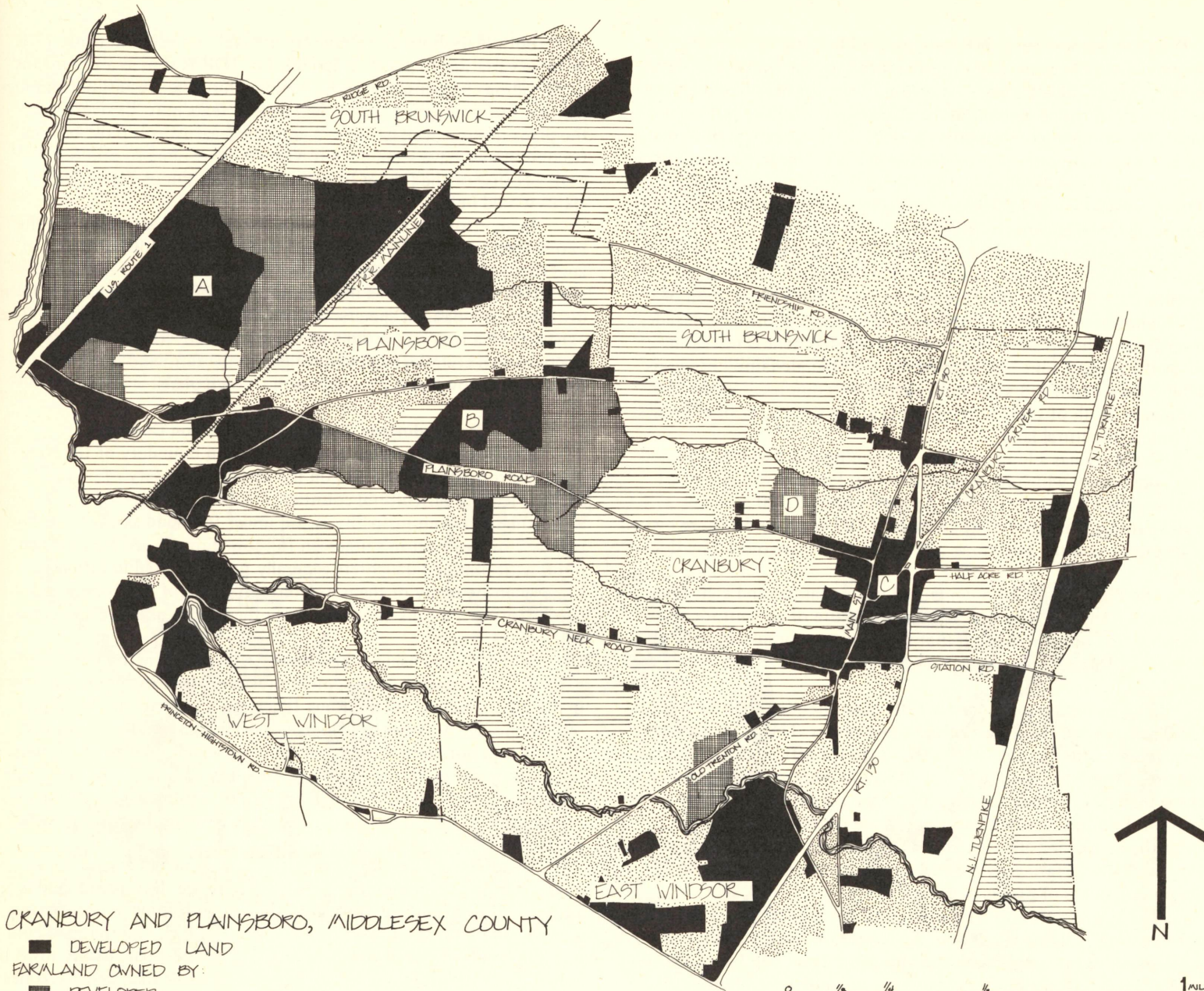
1. Cranbury and Plainsboro, Middlesex County

Cranbury and Plainsboro are adjacent communities in southern Middlesex County. They share a long agricultural history and some of the finest agricultural soils in the state. At the present, agriculture is the most extensive land use. However, both towns are located between U.S. Route 1 and the New Jersey Turnpike, within forty-four miles of Philadelphia and New York (see Figure 12). This location, combined with an abundance of developable land, has resulted in substantial pressures for future growth. Recognizing this pressure but desiring to preserve the rural character of the area, the towns have independently investigated methods of preserving agriculture.

Several research and corporate office complexes have been built along U.S. Route 1 in the western part of Plainsboro. Lincoln Properties has planned a total of 6,200 apartment units (of which 2,400 are now complete), and construction is now in progress on 400 single-family homes and another 600 apartments and townhouses in other parts of the township. Plainsboro's population has climbed from 1,648 in the 1970 census to approximately 5,000 now.

Despite this growth, Plainsboro still has a small but active agricultural community. Thirteen farms use 5,162 acres, or 67%, of Plainsboro's 7,680-acre total land area. The ownership of farmland can be roughly broken down as follows: farmers hold 2,324, or 45%; investors hold 1,137 acres, or 22%; and developers hold 1,701 acres, or 33%.

Plainsboro's recent growth has changed the town's political composition. The current Planning Board has seven nonfarmers and two farmers. The Township Committee has two nonfarmers and one farmer. New residents are increasingly interested in retaining the rural character of the township, so in 1977 the Planning Board asked their planning consultant to investigate methods of preserving farmland. The consultant proposed a Transfer of Development Rights (TDR) concept, which would have allowed the transfer of development rights from agricultural land to a receiving district in the center of town. [Note: Transfer of Development Rights (TDR) and Transfer of Development Credits are explained in Part III of this report.]



**Cranbury and Plainsboro, Middlesex County:** This map shows the land ownership and development pattern in a central New Jersey area with strong development pressure. Princeton University's Forrester Center (A) and the Princeton Meadows housing development (B) will result in 16,000 jobs and 6,200 housing units respectively. Yet nearby, south and east of these developments and toward the village of Cranbury (C), there remains a large expanse of prime farmland still substantially owned by farmers. This area can be a viable agricultural district following the criteria listed in Figure 19. A proposed 500-unit garden apartment project (D) would threaten the viability of this district.

Figure 12

CRANBURY AND PLAINSBORO, MIDDLESEX COUNTY

- DEVELOPED LAND
- FARMLAND OWNED BY:
  - ▨ DEVELOPER
  - ▩ INVESTOR
  - ▧ FARMER
  - UNCLASSIFIED LAND



SOURCE: AGA INTERVIEWS WITH FARMERS AND REVIEW OF MUNICIPAL TAX RECORDS MARCH-JULY 1979.

The proposal was never precisely defined because the township attorney counseled against any proposal involving the transfer of development rights. The attorney's objections were not only based on the lack of state enabling legislation; he also viewed the proposal as an unconstitutional taking of property. As a result, the plan was put aside, and a traditional master plan, requiring one-acre lots in a zone defined as agricultural, was developed. The township remains interested in TDR or a variation of TDR because this type of plan promises to mitigate the landowner's loss of speculative value.

In contrast to Plainsboro, the development which has taken place in Cranbury has been limited to light industry, research, and warehousing. As of the 1970 census Cranbury had a population of 2,253, and there has been no appreciable increase in the past decade. Nevertheless, the pressure for residential development is increasing, and at the present time a development of 100 single-family homes is under construction and a 500-unit apartment complex is in the planning stages. Both of these developments are in the center of expanses of prime agricultural land.

Cranbury has a long tradition of farming and a well established farm community which includes thirty-four farms covering 74% of the township's 8,462 total acres. Approximately 2,300 acres, or 37%, of this farmland are owned by farmers; 3,707 acres, or 59%, are owned by investors, and the remaining 272 acres, or 4%, are owned by developers.

The Planning Board is composed of one farmer and eight non-farmers. Because of their concern for the future of agriculture in the township, the board requested that the planning consultant develop a Transfer of Development Rights scheme during a 1978 revision of the master plan.

The consultant developed a TDR plan intended to preserve 3,500 acres of farmland west of the town center. The receiving zones were two areas to its south presently zoned for office and light industrial uses. A questionnaire was mailed to township residents, and a strong majority responded favorably to the concept of farmland preservation. But during public meetings, some residents voiced fears about the higher densities that the TDR plan required in some locations, and several farmers were very vocal about what they perceived as a potential loss of property value.

The township's attorney questioned the legality of a TDR plan without state enabling legislation. And, because the township was under pressure to comply with the Municipal Land Use Law's February 1979 deadline for master plans, time was not available to investigate the legal questions and further develop the TDR plan, and it was dropped. A conventional master plan has been adopted with the farmland zoned for one-acre lots.

Both Plainsboro and Cranbury are still interested in using TDR or some variation to preserve agriculture. TDR is seen as a fair means of providing compensation to landowners for losses resulting from regulation. But problems remain; the farmers' fears must be overcome, the plans must be well developed, and the legal aspects must be confronted. As we have seen, both towns were unwilling to proceed with TDR because of the fear of litigation. Clarification of TDR's legal status would help.

In an effort to assess the feasibility of future agriculture in the two towns, the MSM Regional Study Council undertook a survey of land ownership patterns and of other factors relevant to the future of agriculture. The result was the identification of a potential agricultural district on the basis of specific criteria that are listed in Figure 19. The existence of a regional, multi-town district (it covers parts of four towns in two counties) will add weight to the farmland retention efforts of each town as it proceeds with its own plans.

## **2. Readington Township, Hunterdon County**

Readington Township is on the western boundary of the New York metropolitan region and on the eastern boundary of one of New Jersey's leading agricultural counties. Fifty-four percent of the forty-eight-square mile municipality is still under farmland assessment. The majority of Readington's nineteen full-time farmers are over the age of 60 with sons and daughters generally not interested in farming. Consequently, many of them welcome an influx of developers and speculators as a means of guaranteeing themselves a secure and comfortable retirement.

While the township is historically rural, Readington has found itself under increasing development pressure. Major corporate facilities in the region include AT&T Long Lines, AT&T Corporate Headquarters, Ortho, RCA, American-Hoerst, and Thomas and Betts. Accessibility is superior, with a combination of new and old highway routes, such as Interstates 78 and 287, U.S. Highways 22, 202, and 206, and State Highway 31. Readington Township is becoming a "bedroom community" where residents can combine a life in the country with proximity to their jobs.

Readington's development pattern, as shown in Figure 13, is characteristic of communities at the urban fringe. Developed land is scattered throughout the township (though with some concentration along Route 22 — the town's best farmland). Much undeveloped land is in the hands of out-of-town owners. The greatest part of the town is zoned for large lots (three to five acres), and while high density zones are designated, a review of current applications shows that development pressure is far stronger in the areas designated for low density.

With suburbia encroaching on an heretofore rural landscape, a Citizens Advisory Committee was appointed (in 1978) to investigate farmland preservation. Their purpose was to develop proposals for agricultural and open space preservation in the municipality. The Advisory Committee sought the advice of numerous open space preservation experts. Following up on their recommendations, a nonbinding referendum for a \$1,000,000 bond issue for the purchase of farmland and open space was placed on the November ballot, and passed by a wide margin.

The committee completed a final draft of an open space master plan in May of 1979. There were three elements: agricultural, environmental, and recreational. Only general guidelines were outlined for farmland preservation. On the other hand, specific priorities were established for recreation. What was originally a movement to retain farms and farmland has now been transformed into an effort to provide recreational open space.

After designating the parcels, township officials hope to partially finance municipal acquisitions through funds from a \$1,000,000 bond issue, matching Green Acres funds, and outright gifts of land. By adopting a cluster ordinance that is attractive to developers, they hope to set aside open space that will be maintained by homeowners associations in new residential developments.

Readington Township officials have become wary of farmland acquisition. They cannot justify heavy involvement in land that may not be farmed, and they are concerned about their responsibility for its management. The risk of an expensive legal proceeding has made them reluctant to experiment with land use regulations. Officials expressed a conviction that outside aid from the federal and state governments is necessary to preserve farms and farmland in Readington. Apparently, these considerations have transformed Readington's original movement to preserve its rural scenery and economy into a specific project to meet a growing community's need for recreational open space.

**Readington, Hunterdon County:** Development is scattered throughout Readington, a rolling piedmont township. Current development applications will extend the pattern (A). Much farmland is in the hands of out-of-town owners, suggesting that leapfrog development will continue (B). While the high density residential and commercial zones planned along Route 22 (in the northern part of the township) and along Route 202 (in the southeast) may be developed, this will not stop development in the remainder of the township, which is zoned for minimum lot sizes of three and five acres.



### 3. Stow Creek, Cumberland County

Stow Creek Township is in one of the state's strongest agricultural areas – Cumberland County. It has had a stable population for over 100 years. Today's Stow Creek farmers come from farm families with long histories in the area. There are 154 full-time farm households.

Stow Creek's strong commitment to agriculture is visible. Almost all of the township's nineteen square miles are farmed. Farmland and farm buildings are well maintained. Vacant farmland is at a minimum, and there are three large farm equipment dealerships. Farmland accounts for 49% of the municipality's real estate valuation.

The first stirrings of development pressure led the township Planning Board to seek a way to protect agriculture. The town had been zoned entirely for one-acre residential lots; this was obviously not adequate. The Cumberland County Planning Department was

asked to assist Stow Creek in developing a new master plan and zoning law. The planners developed a list of factors for the Planning Board to consider, including multi-family housing, recreation, facilities for the elderly, farmland protection, etc. The list comprised elements of a plan for a balanced community.

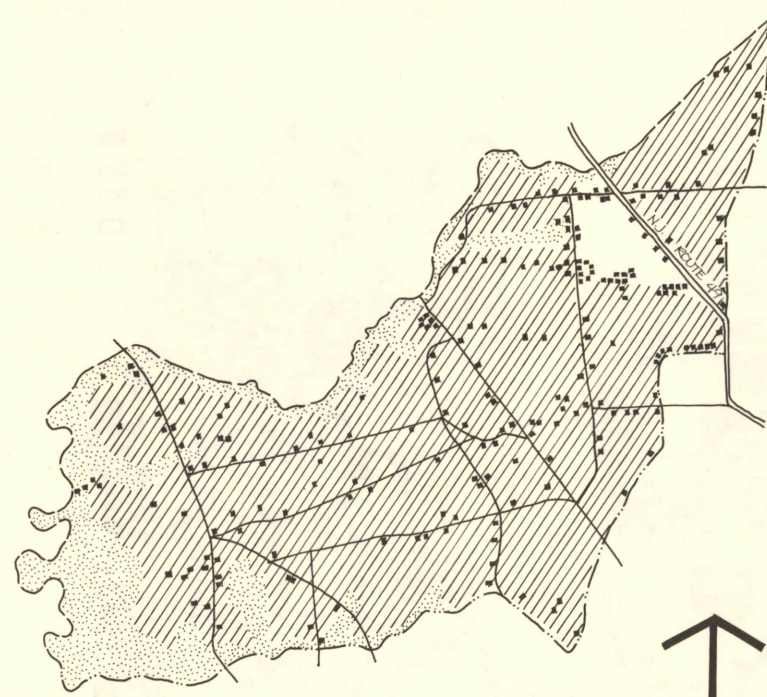
Unsure of public sentiment, the Board sent a questionnaire to all township residents. Of those responding, 93% wished that "specific efforts be made to preserve farmland." The goal of "limiting growth" was supported by 78% of the respondents. This survey gave the Planning Board confidence to initiate an aggressive agricultural preservation effort.

A zoning ordinance which zones practically all of Stow Creek for exclusive agricultural use was drafted by the county planners (see Figure 14). In the agricultural zone, residential construction is a conditional use except for farm workers or members of farmers' families. To construct a nonfarm residence, it must be shown that either the land is not prime farmland (Class I, II, III), or that the land is unsuitable for farming. The ordinance does not permit any industrial development and restricts new residential development to small areas near main roads and existing development. Simplicity is the best feature of the Stow Creek ordinance. It is short and understandable. Its conditions are few, sensible, and necessary for flexibility in its application.

The ease of its passage testifies to the advantage of having farmers involved in the development of legislation from the outset. Farmers on the Planning Board and Township Committee and from the general public initiated, supported, and explained this preservation plan in order to protect their farms for farming.

The ordinance was passed in January 1979 and has not been seriously challenged. A few exemptions were permitted which did not violate the intent of the law. Stow Creek public officials are realistic about future growth pressures, however. They see their agricultural zoning plan as buying time (for possibly ten years) until urbanization pressures reach Stow Creek and the price of farmland begins to climb.

They look to the state for one or more long-term methods of farmland preservation and specifically mention some form of Transfer of Development Rights legislation. Further, Stow Creek planners are alarmed at proposed legislation which would extend the New Jersey Turnpike from the Delaware Memorial Bridge to the Garden State Parkway. Such a highway would cut through the best farmland in New Jersey – Cumberland, Salem, and Cape May counties – and would bring rapid development in its wake, effectively killing that area for future farming. Yet, the area is designated for agriculture in other state plans. An integration of farmland preservation policies with state development policies is sorely needed, Stow Creek people contend, if agriculture is to remain viable in their region.



STOW CREEK CUMBERLAND COUNTY

■ DEVELOPED LAND  
 ▨ LAND ZONED FOR AGRICULTURAL USE

SOURCE: STOW CREEK ZONING LAW, ADOPTED JANUARY 1979

Figure 14

#### 4. Andover Township, Sussex County

Andover is located in the beautiful wooded hills of Sussex County, west of Lake Hopatcong and seven miles north of Interstate 80. Most of the township's twenty-one square miles is wooded, vacant land. Farmland accounts for only 23% of the township, and most of it is owned by speculators or developers. There are thirty-one active farms. Only 5% of the township is presently developed (see Figure 15).

The major goals of a 1976 master plan were retaining Andover's rural character and fertile soils. When drafting the zoning ordinance, the Planning Board decided to adapt the idea of cluster development, a traditional zoning tool, to the objective of retaining farmland. Within areas designated as agricultural, developers would be required to cluster residential development onto 15% of the parcel to be subdivided. The 15% to be developed could not be prime agricultural land (Class I, II, or III soils). It would be required that the remaining 85% be deed-restricted for agricultural use only. Other provisions in the ordinance linked density to water supply and provided for buffers between farm and residential uses.

The Andover plan would remove the development value from the agricultural portion of the land and allow it to be transferred to a portion of the site more suited for development. Under the ordinance, if a developer owned 100 acres, he or she could build as many as 60 units on 15 acres of land (15% of the total parcel) — a density of 4 units per acre — if water and sewer were present. Without water and sewer, the developer could build about 48 units — a density of 3.2 units per acre. The remaining 85 acres would be deed-restricted for agricultural use.

The deed-restricted land, its price substantially reduced, would remain available on the open market to farmers desiring to expand their agricultural operations or start new farms. With farmland remaining in private ownership, there would be no municipal maintenance costs or responsibilities. Nonfarm residents would benefit by having perpetual farmland in their midst. The developer would also gain: construction costs would be less than for the same number of houses spread out over the entire site.

Some nonfarmer landowners and some farmers did not believe that the cluster/agriculture plan could be financially beneficial. They mobilized other farmers, county agricultural officials, and the Farm Bureau to oppose the zoning proposal, contending that it "effectively confiscated property rights of farmer landowners without just compensation." Under pressure, the proposal was rejected by the Township Committee. The agricultural/cluster zones have reverted to large-lot residential and industrial zones.

Andover's Planning Board members feel that they have learned from this initial defeat. They believe their proposal would have been successful if they had involved farmers and farm organizations from

the outset in the farmland preservation plan and developed a cooperative give-and-take atmosphere. They also know that education is needed to convince people that dedicated open land in the agricultural/cluster zone would remain open.

Development pressures will increase in Andover. Planning Board members remain committed to the goal of preserving the township's farmlands. They would like to propose a zoning amendment in the next year which would permit the agricultural/cluster provision as an option, a revision which they hope will make the concept acceptable to the farmers and the township committee and attractive to developers. But the change to a voluntary option will weaken the plan, since development within that zone could and probably still will occur in a standard subdivision pattern on large lots.

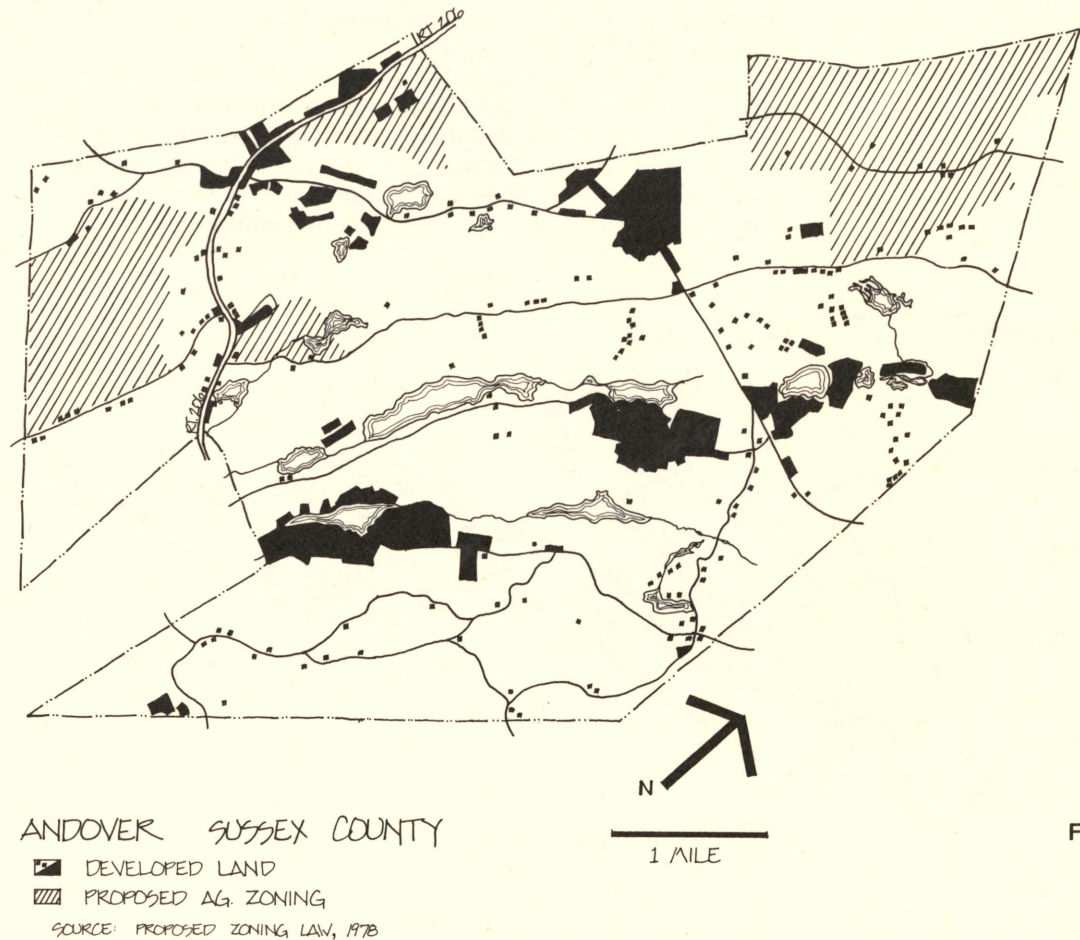


Figure 15

### 5. Karl Kehde, Developer

Karl Kehde is a developer who sees how he can make farmland available for farming by reducing its price to a level affordable by farmers. This can be done through an "on-site transfer" arrangement such as would have been allowed by the aborted Andover Township proposal. The Kehde proposal would benefit the developer, the farmers, and the community.

Kehde has a 330-acre site in Frankford Township, Sussex County. This area remains rural, with farms dotted among the hills and forests. The property is on a hill and can be seen for a number of miles. With a standard subdivision layout, conventional homes would be perched all over the property — a patch of visible suburbanization in an otherwise rural landscape.

The Kehde project is distinguished by its unique plan for retaining the site's farmable land — permanently. The basic features, illustrated in Figure 16, are:

1. The prime agricultural land (about 150 acres) will be preserved permanently by a deed restriction that prohibits development. Then Kehde will sell the land itself, without the development rights, to a farmer or farmers. This would be attractive to farmers since they could have the security of owning the farmland they work and the freedom to sell it to another farmer when they choose.

2. On a portion of the site, 110 residential units will be constructed. The residents will have recreational use of certain parts of the farm area, but not the farmland itself. They will be part of a permanent rural landscape. To insure separation of farmland and residents, Kehde plans careful fencing of the farmed areas.

Unfortunately, Kehde has had difficulty finding agricultural experts to aid him in planning his project. He would like to analyze the land to determine the crops and agricultural practices best suited to the intrinsic suitability of his land, be it for orchard, vegetable, or grain crops. Reportedly, New Jersey's agricultural experts have little information or experience to offer a farm planner who has a relatively small tract.

The project has another environmental feature that links the proposed farms to adjoining development. Treated residential sewage effluent will be available to irrigate the farmland, providing an important opportunity for increased crop yields, with lower fertilization and energy costs.

The Sussex County Planning Department has called Kehde's plan "the ultimate conservation and development plan." Kehde's approach allows a developer to develop profitably *and* preserve agriculture permanently. Thus, the private land market becomes a significant force in serving the public good. Also, both farmland and developed land remain in private hands, avoiding management problems for the municipality.

### 6. Chesterfield Township, Burlington County

Chesterfield Township sits at the "waist" of New Jersey, south-east of Trenton. Only 3% of its twenty-two square miles is developed. Agricultural and vacant land account for 66% of the township. In 1979 there were thirty-one farms.

But strip residential development began to creep along the roads as development pressure moved eastward from the Trenton area. And, suddenly, early in the 1970's, Chesterfield Township (with a population of 2,000) was faced with the spectre of a large development. Municipal leaders realized their land use regulations could not adequately deal with it. They determined to revise their land use plan. (Chesterfield is shown in Figure 17.)

Early in the master planning process, the Planning Board adopted the objective of agricultural preservation. Various approaches involving minimum lot sizes were discussed and discarded. The idea of transferrable development rights was discovered by Chesterfield's consulting planner and the Planning Board chairman. Both liked TDR but felt it could not be defended on constitutional grounds without enabling legislation. Another major problem was the tax status of the proposed development rights. Consequently, the Board asked the

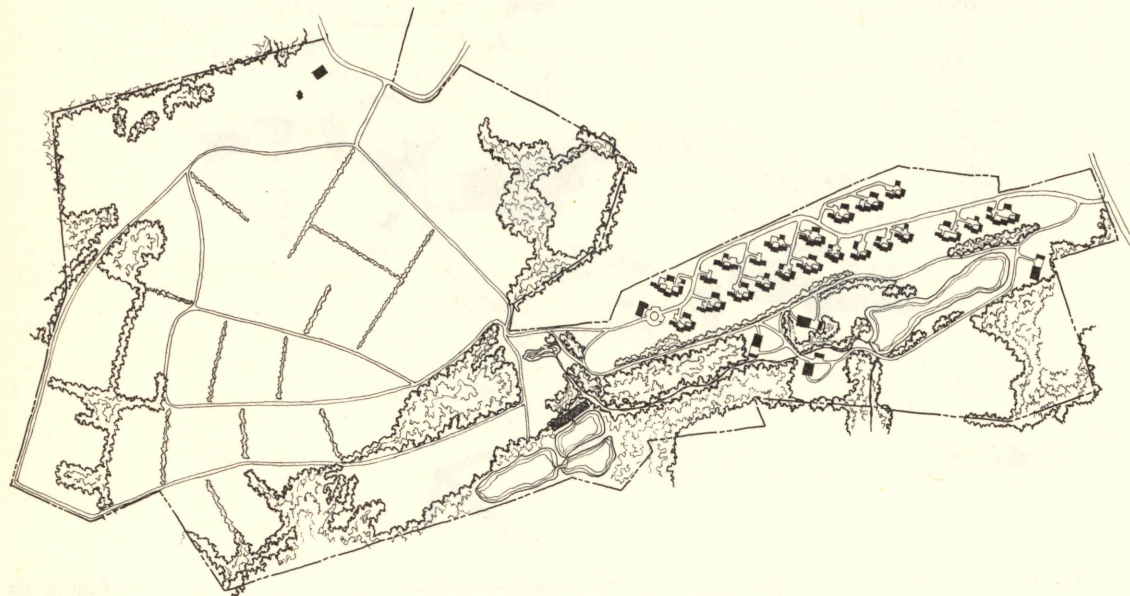


Figure 16

PROPOSED SITE PLAN  
KARL KEHDE, DEVELOPER  
FRANKFORD TOWNSHIP, SUSSEX COUNTY

planner to see if he could accomplish the same objective with existing legislation. The result was called "Transfer of Development Credits" (TDC).

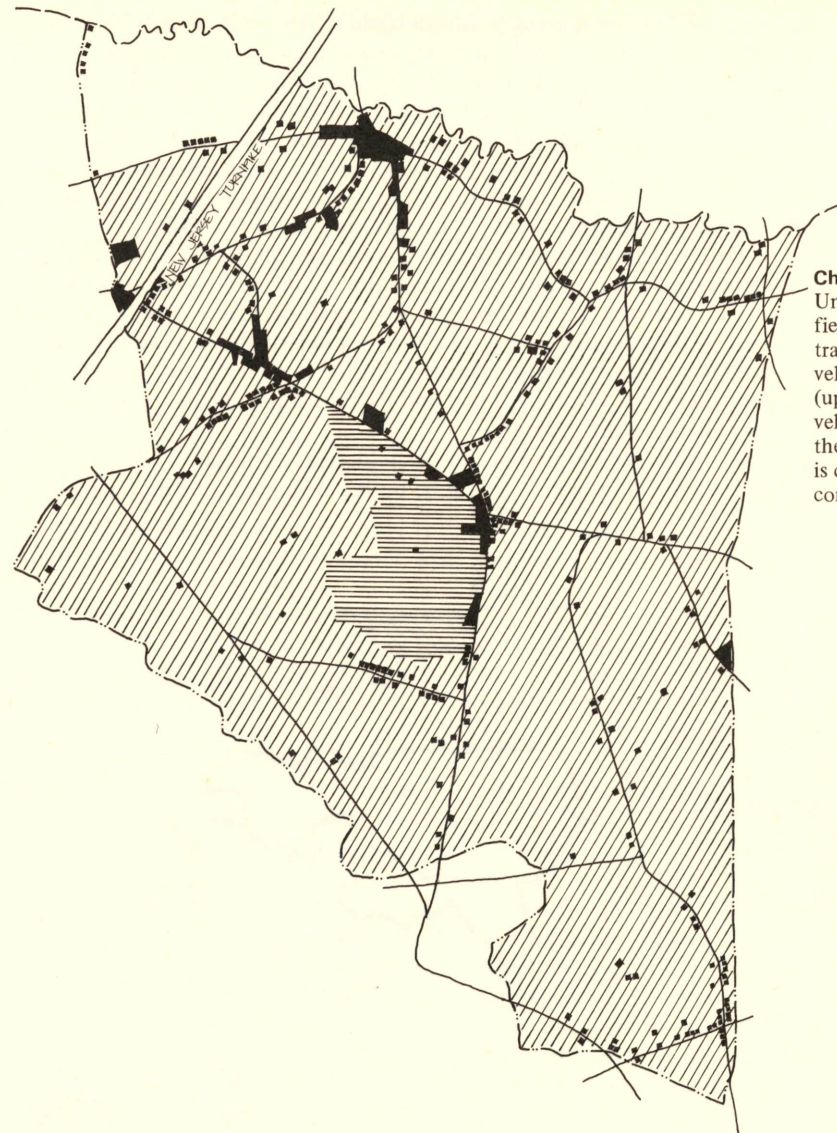
Here's how TDC works. Chesterfield's zoning ordinance designated the entire township for a one-acre minimum lot size. The original Chesterfield TDC plan called for a "sending" district (the eastern half of the township) and a "receiving" district (the western half, nearest to development pressure from the Trenton-Hamilton area). This idea was opposed by farmers from the eastern half of the township on the grounds that their land might not be salable (a common misconception concerning optional transferrable credits). Thus the plan was modified — at the suggestion of a farmer — to allow landowners in *any* part of the township to send or receive transferred development credits.

TDC is optional. A developer can build at one unit per acre, anywhere, by right. But if a developer chooses to build at a higher density, he or she must dedicate a number of acres of permanent farmland for which the developer receives an equal number of credits. The developer can do this by purchasing property in addition to his or her own, filing a deed restriction, and reselling the deed-restricted land to a farmer. In other words, the filing of a deed restriction for a number of acres equal to the additional units the developer wishes to build is a condition that must be met before permission to develop is granted. Thus, no actual "rights" exist. The developer can then build (on the "receiving" parcel) the number of units permitted for the receiving parcel — plus the number of units which could have been built on the sending parcel.

For example, if a developer owns 100 acres of land on which he or she wants to build to the (maximum) density of four units per acre, the developer must acquire and deed-restrict 300 additional acres elsewhere in the township for which he or she receives 300 credits, giving the developer a total of 400 units. Even the industrial zone is open for transfer of credits. The zoning ordinance states: "the gross floor area may be increased by 1,000 square feet for each acre of land preserved for agriculture."

The cost to a farmer of this deed-restricted land would be far less than the cost with full development potential. Young farmers could afford it; older farmers could add to their farm units at reasonable prices.

On adoption of the ordinance, the developer who originally caused the municipality to seek a farmland preservation method filed suit disputing the TDC ordinance. He finally agreed to a consent order, accepting the TDC concept in exchange for more flexible design standards, which were his major concern. He is presently looking for 600 acres of land (600 credits) to apply to his 600-acre parcel. He will then be able to build 1,200 units.



**Chesterfield, Burlington County:** Under the provisions of the Chesterfield zoning law allowing for the transfer of development credits, developers may build at a higher density (up to four units/acre) if they buy development rights on land elsewhere in the township. The owner of site (A) is currently planning a large housing complex under these provisions.

CHESTERFIELD BURLINGTON COUNTY

- DEVELOPED LAND
- ▨ AREA FROM WHICH DEVELOPMENT RIGHTS MAYBE TRANSFERRED
- ▧ TRACT TO BE DEVELOPED UNDER TRANSFER OF DEVELOPMENT CREDITS PROVISION

SOURCE: CHESTERFIELD ZONING LAW, ADOPTED APRIL 1975 AND BUILDING INSPECTOR

Figure 17

The development of Chesterfield's TDC ordinance holds some important lessons for those interested in regulation for agriculture:

1. Because Chesterfield is largely farmland with an approximately even potential for development, it was equitable and simple to zone the entire township at the same density: one unit per acre. These conditions also exist in other New Jersey coastal plain townships.

2. Since the credits are not marketable as "rights" would be, there is no need for a tax policy for "development credits."

3. The government's role is limited to approval of the private arrangements, as it is in conventional planning and zoning procedures.

4. Farmers helped initiate TDC in Chesterfield. The two farmers on the Planning Board took the lead in explaining TDC to other farmers. Many suggestions came from the farm community, were welcomed by the Planning Board and its consulting planner, and incorporated into the ordinance.

TDC, as adopted in Chesterfield, has two negative aspects. First, standard subdivisions can still be built anywhere in the municipality

at one unit per acre. The ordinance cannot prevent large-lot tract development. Second, the ordinance does not concentrate residential development where services can be provided most economically. "Buckshot" development may result throughout Chesterfield's farms. In fact, the first large development in Chesterfield is in the midst of farmland. Nevertheless, this innovative ordinance points an important new direction in land use regulation for agriculture.

### 7. Hillsborough Township, Somerset County

Hillsborough, just south of Somerville, is one of the fastest-growing municipalities in New Jersey. The population tripled during the 1950-1970 period from 3,875 to 11,061. Much of this growth resulted from Hillsborough's master plan of the late 1960's. The plan established a large "planned unit development" district at the junction of Routes 206 and 514. Densities up to ten units per acre were permitted by right along with midrise apartment buildings. Four thousand to five thousand units were built or approved (still to be built) under the plan. (See Figure 18.)

Despite rapid growth, at least three-fourths of Hillsborough's fifty-five square miles remains undeveloped. While there is a good deal of farmland, it is almost all investor-owned; there are only twenty-five full-time farmers in Hillsborough. In 1976 Hillsborough began work on a new master plan because of alarm about the pace of development. Three of the plan's goals were to (1) protect environmentally sensitive areas, (2) provide land for public purposes, and (3) preserve agriculture within the township. The Transfer of Development Credits (TDC) concept developed in Chesterfield was adopted in December 1976 for use in Hillsborough. Farmers had no involvement in the development of the ordinance.

Hillsborough's TDC plan differs from Chesterfield's in some important respects:

1. Only four specific parts of the township can "send" credits. Two specific areas can "receive" credits. The latter are provided with public sewer and water and are close to major roads and local services. Thus, new development is directed to growth centers to minimize sprawl across the entire township.

2. "Credit sending" land must be deeded to the township for use as open space, recreation, school, or other municipal public uses. There is no stipulation that the township manage the dedicated land for agriculture. And, there is no provision for allowing the land to remain in private hands.

3. Many pages of the Hillsborough zoning ordinance are devoted to conditions under which residential credits may be transferred. These conditions were required to address the township committee's concerns about the ownership and maintenance of open space.

#### Hillsborough, Somerset County:

Under the provisions of the Hillsborough zoning law, developers may build at higher densities in the town center if they deed land elsewhere to the township. Under this provision, the developer of site (A) will deed site (B) to the township in return for a higher density.

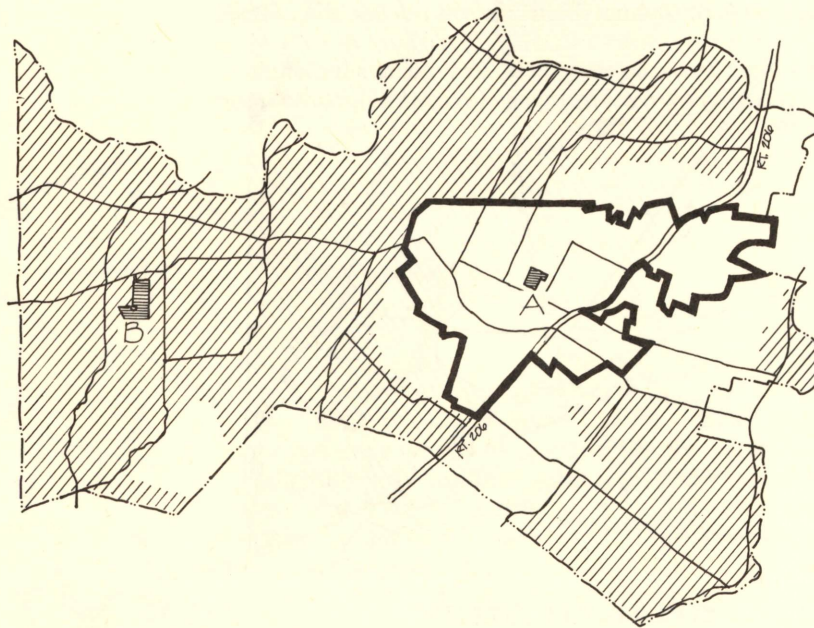


Figure 18

#### HILLSBOROUGH, SOMERSET COUNTY

NOTE: DEVELOPED LAND NOT SHOWN

- ▨ AREA FROM WHICH DEVELOPMENT CREDITS MAY BE TRANSFERRED
- TOWN CENTER, TO WHICH DEVELOPMENT CREDITS MAY BE TRANSFERRED
- ▨ SITES INVOLVED IN CURRENT TRANSFER TRANSACTION

SOURCE: HILLSBOROUGH ZONING LAW ADOPTED DEC. 1976 AND TOWNSHIP PLANNING DEPARTMENT

Interest in transferring credits was expressed by a few developers even before the zoning ordinance was passed, and one application was actually filed. But the ordinance review and revision process took several months while the township committee and attorneys worked out details. It became costly for the developer to hold two parcels of land for an indefinite period while awaiting the ordinance, and he lost interest.

Hillsborough's first transfer of credits should occur in the spring of 1980. The sending parcel of seventy-four acres in a three-acre zone will yield twenty-four units for transfer into a higher density zone. Hillsborough will accept the dedicated land as open space for the growing of shade trees for municipal roads.

With Hillsborough still the focus of development pressure, why has the TDC provision not been used more? There may be explanations:

1. The developers may not view the density bonus to be an adequate profit incentive. The incentive could be increased by allowing sale of deed-restricted land, instead of dedication with no remuneration.
2. The complexity of the ordinance may deter developers because of real or imagined delays in the processing of applications.
3. Hillsborough's main thrust — to preserve open space, rather than to promote agriculture — might have made the township committee reluctant to use the TDC provision for fear of land management headaches.

As with Chesterfield, optional TDC still permits large-lot development in the agricultural areas. Also, no specific areas in either municipality have been determined or mapped as being desirable for preservation; in short, there is no plan for agricultural preservation. Unlike Chesterfield, landowners cannot resell deed-restricted land to farmers; the land must be dedicated to the municipality, leaving it in the land-management business.

Hillsborough is now revising its 1976 master plan, and the goals of maintaining open space and agriculture remain important ones. A 1978 public opinion survey of Hillsborough residents by the Rutgers Department of Environmental Resources revealed overwhelming public support for preserving farms. The survey also indicated widespread concern with Hillsborough's rapid growth rate and a strong interest in preserving the municipality's remaining rural atmosphere and environmentally sensitive areas. Following up on this survey, the Rutgers experts have recommended that the township consider agricultural zoning with a twenty-five-acre minimum lot size in certain parts of the township that have outstanding soils and that are currently in commercial agriculture. The township is now considering alternatives such as this that will keep large areas in agriculture for the long run.

## 8. Holmdel Township, Monmouth County

Holmdel is an eighteen-square-mile community about forty miles south of New York City on the fringe of suburban development. It is the home of the vast Bell Labs research complex and has other substantial corporate ratables. Farmland and publicly owned lands — the Garden State Arts Center and county and municipal parks — give the impression of a good deal of open space. While farming remains the most extensive use of the land (43% in 1977), Holmdel is losing farmland piecemeal to residential development. The fifteen active farmers must work around the corporate headquarters and the 2,000 homes scattered throughout the township.

A particularly fine 307-acre tract of prime farmland in the relatively undeveloped southernmost part of Holmdel was held until recently by a group of investors. When they decided to sell their property, Holmdel's officials became concerned that (1) this would eliminate a large parcel of prime farmland; (2) the stormwater runoff might degrade water in the reservoir of the Monmouth Consolidated Water Co., which abuts the property; and (3) this development might precipitate a housing boom in Holmdel, with the loss of even more farmland.

Holmdel, a wealthy community with a tax surplus, decided to buy the land outright. The township applied for matching state Green Acres funding (50%). Although the Green Acres matching funds have not yet been approved, the township will fund the purchase alone if this is necessary. The sale price was \$7,000 an acre, or \$2,149,000 for the entire tract.

The investors were not interested in selling the development rights alone. Had they been, Holmdel would probably have been better off, for the township could have avoided land management responsibilities by holding only the development rights and making the land itself available for sale to a farmer. The farmer, in turn, would have benefited from the long-term security of land ownership.

The outright purchase of particularly sensitive pieces of land may be crucial in certain specific instances to prevent a chain reaction of farm abandonment. While the area involved here is seemingly small (307 acres), it may be the key to retaining agriculture in Holmdel. This can be accomplished if the township carries through with a broader plan for agriculture. Otherwise, these 307 acres will become a "showcase farm" in the midst of suburban sprawl.

Holmdel saw an opportunity to preserve a large and valuable piece of the state's best agricultural land. It would have been lost forever if the municipality had not acted quickly. The high initial price will be offset somewhat over the years by rent. Holmdel will also avoid the costs associated with residential development — e.g., road construction and maintenance, schools, water and sewer service. With so wealthy a community, outright purchase of farmland is plainly an option.

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III Land Policies for Agriculture  
in New Jersey

### III Land Policies for Agriculture in New Jersey

Communities alarmed about the rate of development rather than the pattern usually resort to large-lot zoning as a means of growth control. While large-lot zoning may indeed slow growth in some instances, it is devastating to agriculture and to the rural environment because it facilitates the disruptive subdivision of land in a random "buckshot" pattern. Even one subdivision can jeopardize an area's precarious agricultural commitment because of its inflationary effect on surrounding land values. Standard zoning laws also include regulations limiting normal agricultural operations and further undermine the farmers' morale.

Farmers have traditionally opposed land use controls because they were perceived to be the invention of urban people for urban purposes. Yet land use regulations can be adapted to promote agriculture, just as they now permit "buckshot" development. If we are to retain agriculture in New Jersey, we must think of regulation *for* agriculture, rather than regulation against new homes, commercial establishments, and industry.

But this in itself will not be enough. For in New Jersey as elsewhere, we are dealing with an interacting system of land management and land development. Federal, state, and local regulatory programs and tax policies interact to perpetuate the land patterns we see. If we are to change the land use pattern, we must change the system — at all levels of government — until it promotes agriculture, rather than destroys it.

### The Constitutional Basis of Land Use Controls

The early English had a strong sense of property rights, dating at least from the time of the Magna Carta. With this sense, however, went an acceptance of the need to regulate the use of land for the common good.<sup>1</sup> Freeholders in rural England were bound by regulations requiring them to provide for drainage and to control flooding on their property. Regulation also protected grazing rights in common land. In urban areas there were regulations requiring roofs to be covered with stone or tile for fire protection and restrictions on the burning of coal to prevent air pollution. Other regulations limited overcrowding and protected views and access to light.

In sixteenth century London, metropolitan growth became an important public issue. Following a proclamation by Queen Elizabeth of her concern that (among other things) her people "... be also provided of substantiation of victual, food, and other like necessaries for man's life, upon reasonable price, without no city can long continue," Parliament (in 1588) attempted to control urban sprawl around the city by zoning with a minimum lot size of four acres. The law was apparently unenforceable, and in 1592 Parliament enacted an outright prohibition of any new dwellings within three miles of the city.

Following a tradition of land regulation, the American colonists also began to regulate the use of land very soon after settlement. Interestingly, some of these regulations were necessary to provide the colonies with adequate food over the natural tendency of landowners to cultivate more lucrative commodities. For example, the Virginia House of Burgesses passed an Act in 1631 requiring each white adult male over 16 to grow two acres of corn or be penalized by the forfeiture of his entire tobacco crop. And, in 1653, New Amsterdam planters were required to sow corn, peas, or grain in amount equal to tobacco or to be penalized by forfeiture of the tobacco.<sup>2</sup>

In the English tradition and in American constitutional history, the law has distinguished two legal principles: the requirement for government to pay compensation, if the land were seized for a public purpose (the appropriation of land for a public purpose is referred to as the power of "eminent domain"); and the right of government to regulate the use of land without compensation to the extent that the regulation was reasonably related to the general welfare.

The requirement of compensation for appropriation under eminent domain is embodied in the "taking clause" of the Fifth Amendment of the United States Constitution: "... nor shall private property be taken for public use without just compensation."<sup>3</sup> Beginning in the late nineteenth century, the concepts of eminent domain and of regulation (referred to as the "police power") merged somewhat when some courts began to find that regulation in fact be-

came a taking if it deprived an owner of reasonable use of his or her property. Justice Holmes stated the principle succinctly: "The general rule at least is, that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking."<sup>4</sup>

The United States Supreme Court, however, has generally upheld land use regulations, despite the fact that these always affect property values for better or for worse, and sometimes very harshly.<sup>5</sup> In a recent leading U.S. Supreme Court decision upholding a New York City land use regulation, the Court observed that:

... the submission that appellants may establish a "taking" simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable.<sup>6</sup>

With this background, it is hard to understand the myth that regulation of the use of land when it is in the public interest is somehow un-American or unconstitutional. And it is even harder to understand the misconception that the constitution somehow safeguards an individual's right to sell his or her land for the highest speculative profit.<sup>7</sup>

### Community Planning for Agriculture

New Jersey's *Municipal Land Use Law*<sup>8</sup> contains the legislative basis for land use planning and regulation by New Jersey municipalities. In order to control land use through zoning, a municipality must first adopt a master plan, and the regulations must be consistent with that plan.

The *Law* also spells out the required contents of municipal master plans. While it is reasonably clear about a range of factors that must be taken into account, it is worth some discussion here about what should be incorporated into a plan for agriculture. This discussion can be divided into two parts: first, the substantive factors that should be incorporated into the plan, and second, how the plan should be prepared.

Farmland preservation must, of course, begin with an assessment of the intrinsic suitability of the land for agricultural purposes. The U.S. Department of Agriculture Soil Conservation Service has prepared a *Standard Soil Survey* for almost every county in New Jersey. These surveys map and classify land for their "capability to support field crops." Capability classes are designated I-VI. Classes I, II, and III are generally deemed to be "prime agricultural lands."<sup>9</sup> Despite the importance of the *Standard Soil Survey* for agricultural planning, other important factors should be taken into account as a basis for delineating areas that are propitious for permanent agriculture. These are listed in Figure 19.

**1. Soil Conditions**

Prevalence of soils rated by USDA standard soils surveys as Class I, II, or III. Attention should also be given to soils that have high productivity ratings by the USDA for specific crops.

**2. Land Ownership**

Two useful classes of land ownership are (a) farmer, (b) investor (many investor-owned lands are used by farmers and their conversion jeopardizes future farming).

**3. Protective Natural Buffers**

Stream corridors, wooded areas, and steep slopes can separate farming from suburban non-farm land uses.

**4. Traffic**

The area should be undivided by arterial roads or by active railroads.

**5. Operating Radius for Farmers**

Maximum of about five miles; less for labor-intensive crops.

**6. Contiguity of Fields**

The area should be free from the intrusion of conflicting suburban and rural non-farm land uses.

**7. Municipal Land Use Controls**

Current master plans, zoning, and subdivision regulations should be supportive of agricultural and other compatible rural uses.

**8. Urban Infrastructure**

The area should not be served by public water or sewer, and there should not be any plans for same.

**9. Public Investments Supporting Agriculture**

Areas where FmHA, SCS, and other federal and state grants and loans have been made reflect a public investment in agriculture.

**10. Regional Plans**

State and county plans and those of regional agencies should be supportive of agricultural uses.

**11. Water Supply**

Water supply should be available where necessary for irrigation.

**12. Agricultural Community**

The areas should have an economically active agricultural community whose members intend to continue farming.

**Criteria for Delineating Agricultural Districts**

Beyond the physical factors, planning for agriculture must also begin with a thorough understanding of the economics of agriculture in the community. This information should at least include the number and type of agricultural operations, marketing practices and problems, availability of services and equipment, plans of each individual farmer, and an estimate of the agricultural "morale" of the farming community. Maps of land ownership patterns and of the locations of existing and prospective developments are also essential.

There are standard sources for much agricultural information. Each county has a Board of Agriculture composed of the local agricultural leadership. Each county also has an agricultural agent who is broadly knowledgeable about agriculture in the county. Federal agencies include the Farmers Home Administration, the Crop Reporting Service, the Agricultural Stabilization and Conservation Service, and the Soil Conservation Service. The New Jersey Department of Agriculture is an important source. The faculty at Cook College, Rutgers University, is also authoritative.

The principle of the "balanced community" must be incorporated in any community plan. Under the *Mt. Laurel* decision of the New Jersey Supreme Court, developing communities in New Jersey are bound to provide their fair share of regional needs for housing, particularly for low and moderate income families.<sup>10</sup> Municipal plans in developing communities cannot have an exclusionary intent or effect. Even indisputably rural communities are in a process of constant change, and usually there is need for a variety and choice of housing. Plans for agriculture must be part of an overall community plan that is well balanced between conservation and development and that affirmatively provides for growth to the extent of the community's "fair share" of regional need.

The intrinsic suitability of soils and climate for agriculture have no necessary relationship to municipal lines. Nor is the agricultural economy organized on a municipal level. Thus, planning for agriculture is often intermunicipal or regional planning. A community plan for agriculture should document the condition of agriculture in the region. A regional approach can give strength to the specific community plan, if it can be shown that one municipality's agricultural zone is an essential part of a larger interdependent area comprising parts of several municipalities and/or counties.

Even more broadly, while agriculture takes place on individual farms in specific municipalities, it is of importance and value to all the citizens of the state. In fact, it is among the stated purposes of the *Municipal Land Use Law* "to ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county, and the state as a whole." Consequently, the plan should include a discussion of the importance of agriculture to the community, the region, and the state.<sup>11</sup>

Figure 19

Finally, in addition to the specific information that should be assembled, analyzed, and incorporated into the plan, attention should be given to *how* the plan is prepared.

In planning for agriculture, the involvement of farmers is essential. A review of numerous successful community plans for agriculture in southeastern Pennsylvania, the midwest, and California has shown that the successful programs are those where farmers were involved in defining the issues, developing the appropriate regulations, and administering the program.<sup>12</sup> This principle applies to New Jersey despite the fact that many former agricultural communities no longer have strong agricultural leadership. Much of the data required for a defensible plan can only be obtained from the agricultural community. To ignore these simple truths is to risk an effective veto by a small but articulate group whose interests may be thwarted and whose views and substantial expertise have been ignored.

Historically, planning and zoning have been seen by farmers as the tools of city people. Farmers have been opposed to them for good reason.<sup>13</sup> Many master plan maps identify farmland as “unimproved” or “vacant” land. Zoning regulations often incorporate standard provisions limiting the number and type of farm animals, fencing, and numerous other normal practices without which farming cannot be practiced.<sup>14</sup> Unless and until we can begin to plan positively for agriculture and to institutionalize the process in municipal planning practices, New Jersey agriculture will continue its decline.

#### Local Regulations for Permanent Agriculture

As noted, the conventional approach to farmland preservation in New Jersey is large-lot zoning. A municipality will zone its “rural” or “agricultural” area for lots of one, three, and possibly five acres in the expectation that this will limit the land market and preserve the rural resources and qualities. In the long run this zoning approach is devastating to the rural environment for reasons that have been discussed earlier in this report.

Where agriculture has come to be viewed as a permanent use, zoning specifically intended to promote agriculture has been adopted in jurisdictions across the nation. Zoning for agriculture limits new development to that which will strengthen the agricultural community. There is a great variety of agricultural zoning laws, and the specific details of a new ordinance should conform to the particular environmental, social, and economic characteristics of the community.<sup>15</sup>

Some ordinances have a “sliding scale” that limits development to a very low density, while allowing landowners the flexibility of selling a few lots where these will not impair agricultural operations. The number of lots is inversely related to the size of a farmer’s landholding in a way that is determined to be reasonable in that community (for example, a landowner with under fifty acres may be per-

mitted five lots, while a landowner with over fifty acres is allowed one additional lot for each additional eight acres of land). The “sliding scale” provision is accompanied by minimum and maximum lot size limits and precise criteria for the location of lots so that they are sited only where the land is ill-suited for agriculture yet well suited for development.

Another variant is zoning for lot sizes large enough so that the minimum lot size is the minimum necessary for viable agricultural operations. Many agricultural communities began by experimenting with small minimum lot sizes (five to ten acres). They found that the lots were too small to farm yet not large enough to prevent disruptive rural subdivision. As these communities began to see agriculture as a permanent use, they raised the minimum lot sizes to those dictated by the requirements of the type of agricultural operations in that community. These ordinances generally allow nonagricultural uses only where specific criteria determine that they will not impair agricultural operations. One variant is the “quarter-quarter” (a “quarter” is one-fourth of a square mile, or 160 acres). This is a measure used extensively in the midwest. This agricultural zoning allows a landowner one lot for every forty acres.

As stated in Part II of this report, Stow Creek, an agricultural township in Cumberland County, New Jersey, is zoned almost entirely for agriculture, with residential construction a conditional use except for farm workers or members of farm families. In order to construct a nonfarm residence in the Stow Creek agricultural zone, it must be shown that the land is not prime land or that it is otherwise unsuited for farming.

Ordinances with variations on basic concepts such as these have been adopted in municipalities and counties throughout the nation as agriculture has come to be perceived as a permanent use in those communities. While some are in rural areas, most are in “exurban” locations that have experienced development pressure — without it there would be no need for such an ordinance. For example, Walworth County, Wisconsin, with one of the nation’s most advanced agricultural zoning ordinances, is an “exurban” community within an hour’s drive of nine million people in the Chicago and Milwaukee metropolitan areas. Most of New Jersey can be so characterized.

#### Some Legal Guidelines for Local Agricultural Regulations

Federal and state courts have rarely had the opportunity to review agricultural zoning ordinances. In the three instances involving a head-on attack on agricultural zoning (in California, Oregon, and New Hampshire) the ordinances were upheld.<sup>16</sup> A close scrutiny of many cases throughout the nation appearing to involve agricultural zoning reveals them to be large-lot residential zoning disguised with an agricultural caption. While the New Jersey courts would certainly con-



sider the decisions of federal courts and those of other states, if a challenge to an agricultural zoning law were heard, the most telling precedents would be those of New Jersey courts. Unfortunately, there has been no judicial review of bona fide agricultural zoning in New Jersey. One noteworthy case involved a Freehold Township large-lot residential zone mis-labeled "agricultural" that was struck down by the Superior Court in 1972 as being fiscal zoning with an exclusionary intent.<sup>17</sup>

In many New Jersey communities zoning for agriculture may be a proper, feasible, and fair option. Communities considering this option should keep the following guidelines in mind as plans are made and regulations are drafted:

*(1) Document the Public Benefit of the Regulations*

The value of agriculture to the community, to its region, and to the state should be researched and documented. The role that the regulations will play in meeting these objectives should be clear. A review of the judicial decisions shows that a mastery of the facts will be the most important factor in persuading a court of the public benefit and thus the validity of the regulations.

*(2) Document Consistency with State and Regional Policies and Plans*

There is a tendency in the courts to approve land use regulations if their purpose has a statewide or regional basis. In *Mt. Laurel* the court said that a municipality must consider not only the needs of the municipality but also the needs of the region. Where a local ordinance can show consistency with the *State Development Guide Plan* or other expressions of state and/or regional policy, the likelihood of success is greater.<sup>18</sup>

*(3) Show Positive Benefits for Agriculture*

The land use regulations should clearly favor agriculture and be complemented by local policies that free the farmers of oppressive regulations and charges for special services. These actions will underscore the community's intent to promote agriculture, rather than to exclude development.

*(4) Delineate Agricultural Areas Clearly*

The selection and delineation of agricultural areas should be based on explicit criteria rigorously applied. Some suggestions for these criteria are listed in Figure 19. The basis for selecting criteria should be carefully documented. It is important that the selection of properties for inclusion in the district not be arbitrary.

*(5) Conform the Regulations to a Master Plan*

The regulations should be based on and conform to an adopted master plan for the community. The master plan should respond to the broad guidelines of the *Municipal Land Use Law* with due consideration for circulation, housing needs, recreation, utility service, community facilities, conservation, etc.

*(6) Plan for a Balanced Community*

The community master plan and the land use regulations must provide for growth to the extent that it is reasonably anticipated. Areas for growth should be identified as plainly as areas for agriculture. Particular attention should be given to the need for a variety and choice of housing and the special needs of low and moderate income families.

*(7) Be Fair to Landowners*

If regulations are reasonably related to the general welfare, they may legally diminish property values. There is no basis for the contention that a landowner is entitled to the most profitable use of his or her land. But fairness also dictates that the landowner is entitled to a reasonable return. The regulations will be strengthened by an approach that mitigates financial loss.

**Cluster Development and the Transfer of Development Rights and Credits**

It is a simple but basic principle of land use that there are appropriate places for various uses: residential, commercial, industrial, agricultural. By analyzing such factors as the intrinsic suitability of the land, present development, and the availability of utilities, it can be determined where to build, where to locate farms, and where to conserve natural areas. This principle applies to a site, a community, or a region.

Rather than spreading housing units uniformly across a site in a large-lot pattern, we can gather these units and place them in one small portion of the site, while the overall "gross" density (or, number of homes per acre) remains the same. This is called "cluster development," and it is an important farmland retention tool.

A deed restriction can be placed on the farmland portion of the site, and the farmland — still in private ownership but much reduced in cost because its "development rights" have been removed — can be sold to a farmer for its farmland value. The return to the landowner should be greater than the return from a conventional subdivision both because it is financially advantageous to the developer to build at higher densities and because the landowner can also sell the deed-restricted land. Local land use laws that mandate clustering on prime farmlands may be an option for many New Jersey communities, par-

ticularly those in piedmont areas where farmland is broken by steep slopes and woodlands. But clustering in the wrong locations — for example, in the midst of large expanses of contiguous coastal plain farms — may simply further the “buckshot” pattern of development that is so fundamental a cause of the decline of agriculture.

Where no part of a site should be developed, a better approach is a combination of incentives and a legal mechanism to transfer the development rights off the site entirely — to a location in the same municipality better situated for growth. “Transfer of development rights” (TDR) is intended to do this. TDR identifies a “preservation zone,” where development is to be discouraged or discontinued for the furtherance of agriculture and a “transfer zone,” where development is to be encouraged. The purpose of the TDR mechanism is to sever the development rights from the land to be preserved and provide for their transfer to land where homes and other developments are to be encouraged.

Transfer of Development Credits (TDC), which has been adopted in three New Jersey communities and is being studied by others, is a system of incentives. Figure 20 illustrates the differences between TDR and TDC. The developer of land in the transfer zone is permitted to build at a higher density on the condition that the developer provide for permanent farmland (or other open space) elsewhere in the community. In Hillsborough (Somerset County) the developer must buy the land outright and deed it to the community. In Chesterfield (Burlington County) the developer must file a deed restriction (in effect, the developer must buy up the development rights) on a number of acres that is linked to the increased density that the developer seeks in the transfer zone. TDC schemes still have imperfections and there has been little experience with the ordinance in either community (both are described in more detail in Part II). As more communities adopt TDC, improvements will certainly occur.

TDR is a more elaborate approach that has been adopted in jurisdictions outside New Jersey. Because it is mandatory (both landowners in a transfer zone and the landowners in a preservation zone must build in accord with the regulations), its legal status is less certain. The proposed *Municipal Density Transfer Act* currently before the Legislature spells out an elaborate set of procedures for a community wishing to adopt a TDR program. Should the *Municipal Density Transfer Act* be passed, it may give an impetus to the very promising density transfer concept.<sup>19</sup>

TDR and TDC are important land management tools, though they should by no means be viewed as a panacea for New Jersey agriculture. First, they are a means of creating broad agricultural areas that are free from the intrusion of suburban nonfarm uses. Second, two land markets exist where there was only one before. By severing development value from the land, they reduce farmland value to a

level low enough for farmers to buy it just for farming. The development rights are an incentive for development elsewhere in accord with a community plan.

Third, the concept is equitable. It provides landowners in the preservation zone a reasonable price for their land while the exorbitant windfall profits that now go only to a lucky few will be equitably distributed. Cluster development, transfer of development credits, and transfer of development rights provide a reasonable measure of compensation to the farmer who wants to sell land.<sup>20</sup>



	TDR	TDC
1. What is the land planning basis of TDR and TDC?	A municipality designates "preservation" zones where there are good reasons to preserve farmland, and "transfer" zones where sewerage, water supply, and transportation are available.	Same.
2. What uses are permitted in the preservation zone?	Land use is restricted to agriculture, forestry, outdoor recreation, and similar open space uses. TDR is mandatory.	In addition to agriculture and open space uses, low density residential is permitted by right. TDC is optional.
3. What is the legal status of land in the preservation zone?	The land is restricted by deed. But it remains in private hands, can be sold, resold, bequeathed, and used for agriculture and other open space purposes.	Same. (Except Hillsborough's current ordinance requires that the land be deeded to the Township - see text.)
4. What will happen to preservation zone land in the future?	Under the terms of proposed state legislation (A-373, 1978), the deed restriction can only be removed under strict conditions.	The Chesterfield and Hillsborough ordinances permit lifting of the restriction if other deed-restricted land is offered in exchange.
5. What about the transfer, or development zone?	Higher development densities must be allowed in the transfer zone in order to create a market for the rights.	Same.
6. How does the right to develop change hands from landowners in the preservation zone to those in the transfer zone?	Landowners in the preservation zone are allocated rights certificates that may be purchased by developers in the transfer zone.	Developers in the transfer zone may build at higher densities - on a showing that they have restricted development on a specified amount of land in the preservation zone.
7. What is the legal status of the rights or credits?	Rights are separate from the land; are deemed real estate in themselves; and are assessed and taxed as such.	Credits have no independent existence but are simply a condition of development.
8. Can office, commercial, or industrial development be a part of the transfer program?	Yes, by use of a table that converts dwelling units per acre into floor area ratios.	Same. (See Chesterfield ordinance in Appendix.)
9. Is special legislation required for these programs?	Probably not, though legislation would clarify some aspects of the concept. TDR ordinances have been adopted in other states without legislation. A bill (A-373, 1978) has been in the New Jersey legislature for several years.	No. TDC is a variation of standard development review procedures under the <i>Municipal Land Use Law</i> .
10. How much additional government involvement would these programs require?	Under A-373, substantial. A municipality must form a commission, distribute rights, assess and reassess them, create a schedule for their conversion, keep records, etc.	Minimal. Municipal approval of transactions can be handled as part of the standard development review process.
11. Are TDR and TDC fair to landowners?	The proposed state legislation has procedural provisions intended to assure the marketability of rights. It also has a fund to assist municipalities in the municipal purchase of rights that cannot otherwise be sold.	TDC is more fair than traditional zoning because it increases the opportunity for preservation zone landowners to be compensated.
12. Can either TDR or TDC be counted on to save farmland?	Not alone. While TDR may restrict land development in preservation zones, other actions will be necessary to promote permanent agriculture.	Not alone. Since it is an option for the landowners in a preservation zone, TDC will still allow "leap-frog" suburban development in agricultural areas.

Figure 20

Comparison of Transfer of Development Rights(TDR) and Transfer of Development Credits (TDC)

### Regional Participation in Land Use Management

Up to this point we have discussed options available to local communities in planning and regulating land for agriculture. Yet New Jersey agriculture has a wider constituency than is found in any single municipality. In New Jersey, as elsewhere, the regional value of land resources is being recognized in legislative enactments and judicial decisions. This recent trend in land policy should be a critical factor in strengthening local efforts. Furthermore, the policies of higher levels of government always have a definite local impact, and cannot be ignored.

Beginning in the 1960's and continuing into the 1970's, there has been an increasingly widespread awareness of the broad public interest in natural resources such as tidal wetlands, shorelands, farmlands, floodplains. This public interest has extended also to less tangible "amenity resources" such as the rural and coastal landscapes. During the same period, changing social and economic patterns in metropolitan regions have generated support for comprehensive regional planning as well as regional planning for specific factors such as housing, transportation, and economic development.

Throughout these two decades there has been a steady nationwide trend toward state legislation that provides state or regional participation in land use decisions affecting resources of statewide or regional importance and socio-economic trends of regional scope.<sup>21</sup> The legislative trend has been complemented by court decisions that sustain (and in some cases anticipate) the legislation. An authoritative survey of legal challenges to land use controls during this period concludes:

Although the number of cases is still small, there is a strong tendency on the part of the courts to approve land use regulations if the purpose of the regulation is state-wide or regional in nature rather than merely local. Although the courts are also supporting local land use regulations with a reasonable degree of consistency, they also show an obvious preference for regulations having a broad multi-purpose goal.<sup>22</sup>

Experience in New Jersey is consistent with the national trend. A comprehensive regional approach (including tax-sharing) was incorporated in legislation creating the Hackensack Meadowlands Development Commission (1968). This was followed by the *Wetlands Act* (1970), the *Coastal Area Facility Review Act* (1973), the *Delaware and Raritan Canal State Park Law* (1974), and the *Pinelands Protection Act* (1979). Each of these statutes established a broad public interest in a resource of importance to the people of New Jersey (or of a region of the state).<sup>23</sup> Where they have been challenged in court, they have been upheld.<sup>24</sup>

Consistent with this trend, the *Municipal Land Use Law* (1976) — the fundamental basis for municipal land use regulation in the state — provides among the "purposes of the Act":

To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county, and the state as a whole.

and further:

To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.<sup>25</sup>

This language is plainly harmonious with *Mt. Laurel*, a judicial determination consistent with the legislation and a milestone in the unfolding concept of regionalism:

Further, the universal and constant need for such housing is so important and of such broad public interest that the general welfare which developing municipalities like Mt. Laurel must consider extends beyond their boundaries and cannot be parochially confined to the claimed good of the particular municipality.<sup>26</sup>

The key point of these and other complementary legislative and judicial determinations is that they have recognized the regional or statewide scope of land management — be it for coastal, rural, suburban, or urban areas — and the limitations of conventional municipal zoning regulations to protect the public interest in regional issues. In New Jersey as elsewhere, they have been criticized because they often result in another layer of expensive bureaucracy that may be dilatory in decision-making and lacking precise criteria for the review of projects. Considerations such as these have suggested to a former New Jersey Commissioner of Environmental Protection that New Jersey needs a "regulatory diet."

Problems with new regulatory agencies are hardly unique to New Jersey.<sup>27</sup> They can, however, be overcome in the design of the program. A successful program should, for example: (1) identify an important role for the community land use decision-making process; (2) limit its role to "region-shaping" decisions and those that would create precedents; (3) develop specific criteria for the review of projects; and (4) base as much regulation as possible on a comprehensive plan.

New Jersey's *Pinelands Protection Act* (1979) specifies this direction for regional planning in New Jersey. The Act provides for an independent commission that will prepare a comprehensive management plan for the Pinelands area. One element of the plan will be: "A program for state and local government implementation of the comprehensive management plan and the various elements thereof . . . and minimum standards for the adoption . . . of municipal and county plans and ordinances concerning the development and use of land in the Pinelands area. . . ." <sup>28</sup>

Within one year of the adoption of the comprehensive management plan, each Pinelands municipality and county shall submit revisions of their master plans and land use ordinances that are necessary



to "implement the objectives of the comprehensive management plan, and conform with the minimum standards contained therein" to the Commission. The Commission may approve, conditionally approve, or reject the plans and ordinances. And if the municipality or county fails to adopt or enforce an approved plan or ordinance, the Commission itself may adopt rules and regulations to implement the plan in the delinquent municipality or county.

This legislation limits the role of the state (the Pinelands Commission) to broad *policies* protecting the resources and qualities of the Pinelands and *standards* for local government implementation. Only where local government is delinquent in its responsibility to protect the public interest will the state assume direct regulatory responsibility. To be successful in practice, the standards will have to be strict enough to protect the Pinelands, yet straightforward enough to be administered locally. This decentralized concept of land use regulation is well suited to preserving farmland.

#### Planning for Agriculture in Other States

There is a general agreement that the idea of preferential assessment of farmland — in New Jersey or in other states — has not been enough either to preserve farmland or to establish the conditions of permanence that agriculture requires in order to thrive. With agriculture continuing to decline, a "second wave" of public concern and legislative activity began several years ago. Recently, a significant number of states have considered bills and enacted laws that have begun to provide some of the conditions necessary for a permanent agriculture, i.e., contiguous agricultural lands free of intrusive suburban development (or the threat of future suburban development); a fair return for farmers who wish to sell out and retire; and for young farmers, the availability of land that can be purchased at its farmland value.<sup>29</sup>

State programs addressing these concerns have generally been described in several broad classes. *State purchase of development rights* has been adopted on an experimental basis by Connecticut, Massachusetts, Maine, and Maryland. However, costs appear prohibitive for widespread application, and appropriations are minimal. *Transfer of development rights* has not been adopted by any state but bills are being considered in the New Jersey, New York, and Maryland legislatures. *Voluntary agricultural districting* is exemplified by New York, Virginia, and Maryland. Various forms of *state-imposed agricultural zoning* statutes are in force in Wisconsin, Hawaii, Vermont, and Oregon.

These broad categorizations mask the unique character of the legislation that each state has shaped in response to factors of great local importance. Thus, the most promising of the state programs are hybrids. For example, Maryland legislation provides for the creation

of voluntary agricultural districts on petition of owners of land actively devoted to agricultural use. After a farmer contracts to continue to farm, the state may purchase development rights from landowners within districts.<sup>30</sup>

Of the farmland preservation approaches, the concept of agricultural districting has the most basic appeal because it embodies the idea that production agriculture requires broad areas of prime land where there is a presumption for farming. This is necessary in order to protect agriculture from incompatible suburban development; from disruptive local laws that impair normal farm operations; and to provide the permanence that is a necessary condition for agricultural investment. Beyond these common ideas agricultural districting laws differ widely in means of implementation. Some rely on a voluntary association of farmers. Others go beyond the voluntary to include mandatory elements.

#### The Wisconsin and New York Programs

Of the state programs, Wisconsin's *Farmland Preservation Act* (adopted in 1977) might be an important model for New Jersey because it combines many of the qualities necessary for a successful state program.<sup>31</sup> Its success is measurable — particularly in metropolitan fringe areas that are experiencing development pressure. As of the present, 1,429,565 acres, or 7.5% of the state's total farmland area, are covered in the program — and this acreage is concentrated in the parts of the state that are experiencing development pressure. (The text of Wisconsin's *Act* is included in the *Appendix* of this report.)

In brief, the Wisconsin *Farmland Preservation Act* has two purposes: first, to assist local governments that want to preserve farmland through local planning and zoning, and second, to provide tax relief to farmers who participate in local programs. Farmers in counties that have adopted land use plans and land use controls in accord with state standards are eligible for state income tax credits. Because the credits depend upon what local government does to protect agriculture, the farmers are a constituency with an interest in land use measures to protect agriculture. At the present, farmers can be eligible for tax credits by signing a contract to continue in agriculture for certain periods of time. After 1982 they will not be eligible for these credits unless the county in which they are located has adopted land use controls for agriculture.

In Wisconsin, rural counties must adopt an agricultural preservation plan. Urban counties must adopt agricultural zoning. Standards for the contents of "agricultural preservation plans" and "agricultural zoning" are detailed in the statute itself. The law further provides crucial financial and technical assistance to counties in the preparation of necessary maps. Plans must also include provisions to guide urban growth.

The Wisconsin model would, of course, have to be modified for New Jersey's circumstances. For example, the income tax is less of a burden on New Jersey farmers than those of Wisconsin, and a better incentive for New Jersey might be greater property tax relief. Nevertheless, there are many relevant aspects of the Wisconsin law. First, by addressing the fundamental system of land use control, the program has begun to "institutionalize" a system that will work at several levels of government to benefit agriculture. (It should be noted that both state and county planning in Wisconsin target development-leading public investments — transportation, water, sewerage — to places that are suited for urban development.) Second, it limits the role of the state to standards necessary to protect the public interest, while the existing "home rule" structure of planning and zoning implements the standards. In general, Wisconsin has a positive program that close observers feel shows promise of reversing the slow unwinding of agricultural areas that results from the intrusion of nonfarm uses into rural areas.

New York currently has around 400 districts, 15,000 farms, and 5.75 million acres (or 13% of the state's total land area) covered under its voluntary agricultural districting program. New York State experts judge that half of the state's prime farmland is presently under the program.<sup>32</sup>

Under the New York State law, owners of 500 contiguous acres or 10% of the land proposed for the district — and who are willing to make an eight-year commitment to continue farming — apply to the county to be designated as a district. Individual commitments may also be made by farmers with at least ten acres of land and gross sales exceeding \$10,000. The county then may designate the district after public hearing and after it is certified by the state. Land in the district must then be assessed at its farmland value. The penalty for early conversion of land is a "rollback" equal to the difference in taxes between the farm value and the market value of the land for the past five years. Outside of certified districts (and individual commitments to the program for which special provision is made) farmland use value assessment is not available in New York.

Agricultural districting in New York is a voluntary "grassroots" program, and it is widely supported by the farmers and by the New York Farm Bureau. There are very substantial benefits to farmers besides the farmland tax assessment benefit: the most important is the "right to farm" principle. The law provides that municipal ordinances may not prohibit normal farming practices. Further, any taking of private land for public purposes within districts requires an administrative hearing. Other state agency regulations and projects that may impair farm operations are also subject to close review. Costs of special service districts (water, sewer, drainage, sanitary landfill, etc.) cannot be assessed against farmland.

The administrative process of delineating a district and its existence as a matter of state policy has pervaded the state land use planning and decision-making process at all levels of government. While an interdepartmental Agricultural Resources Commission is the "lead agency" at the state level, the Commission's meetings involve most of the state's administrative agencies, which are all made aware of the existence of districts in their planning. Counties and municipalities, too, have begun to incorporate agricultural districts in their land use plans.

The process of creating and maintaining the districting program has also resulted in a "land use leadership" of professionals whose skills have come together to manage the program. These include federal agencies such as the Soil Conservation Service, state and local government officials, and the Cooperative Extension Service with its network of county agents. The latter adopted the voluntary district concept as a matter of policy and worked long and hard with the farm community in a successful effort to put it across. The success of the program can be measured in terms of farmland saved from development. Perhaps more significant is the feeling of greater permanence for farmers within districts.



### The Federal Role in Planning for Agriculture

Until recently, agricultural surpluses have obscured the steady nationwide loss of cropland. As new studies have reduced official estimates of cropland "reserves" and increased estimates of the annual loss rate of rural land to more than 3,000,000 acres per year, federal agencies have begun to look more seriously at policies that affect farmland.<sup>33</sup> Recently, an inter-agency study of remedies Washington might apply to this serious national problem was announced.<sup>34</sup>

Of the 3,000,000 acres the greatest amount is lost to urban development, and this proportion is likely to grow with increased development pressures in rural areas. And as noted earlier in this report, the amount of land affected by urban development far exceeds the amount actually developed, for the intervening land is likely to become unsuited for permanent agricultural operations.

Federal policies and programs have materially abetted this misuse of land: tax policies; grants-in-aid for sewers, water supply, and highways; rural development programs have all been implicated. Of these, grants-in-aid for "urban infrastructure" — sewers and highways — have received the most attention. Federal grants as high as 90% for interstate highways and 75% for sewerage facilities have encouraged development in urban fringe areas and generously subsidized the process.<sup>35</sup>

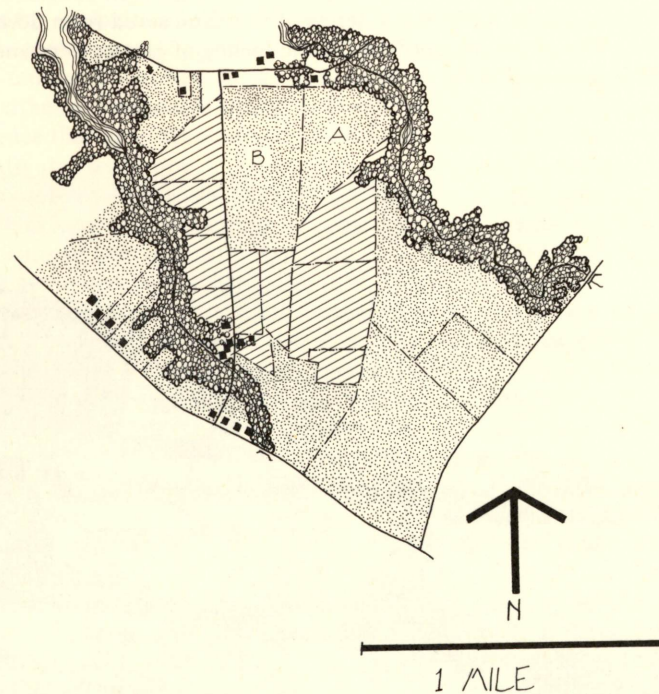
For example, a regional shopping mall may appear to be an enticing tax ratable for a rural municipality located at the suburban fringe. But the mall proposal is probably only feasible because of a nearby interstate highway interchange. And the fiscal costs of the mall to the public will be greatly lessened if public funds (with federal participation) are used to provide sewerage and mitigate ensuing traffic congestion.

This chain of causality — with the public costs it creates extending far beyond the project itself — is termed the "secondary effects." Policies recently adopted by the U.S. Council on Environmental Quality and the U.S. Environmental Protection Agency recognize the adverse effect of many federal programs and begin to establish policies to correct these conditions.<sup>36</sup>

The U.S. Department of Agriculture has also moved "to put its own house in order" by becoming an advocate for retention of all prime farmland where federal programs of any agency are involved. In a recent policy memorandum, Secretary Bergland ordered agencies in his Department to review their programs, determine their impact on the conversion of any prime farmland, and make necessary changes.<sup>37</sup> Through its rural development programs, the Farmers Home Administration (FmHA) spends many millions of dollars annually in New Jersey for operating and farm purchase loans to farmers, rural housing projects, community facilities (water, sewer), and industrial development. Though intended to strengthen rural areas, some of these programs have the effect of converting prime farmland to development and of undermining the agricultural economy.

In its concern about farmland retention, the Secretary's memorandum places policy responsibility squarely in the hands of the localities and states: "Agencies will assure that their actions, investments, and programs on nonfederal lands are consistent with state and local land use plans and programs to the extent practicable." While this is an obvious gesture of respect to forces that have successfully opposed national land use planning in the past, it also represents an opportunity for states and localities that wish to complement their own emerging land use policies. In New Jersey as elsewhere, the levels of government depend on each other and interact to implement land use policies. This system can be used to promote, or to thwart, the public interest in planning for agriculture.

**The New Jersey Farmer's Land Problem — An Illustration:** The area illustrated is prime coastal-plain farmland, free from intrusive development and buffered by roads (north and south) and stream corridors (east and west). A single family of farmers owns the cross-hatched tracts. The non-farmer who owns tract (A) lives on the property and does not plan to sell. Tract (B) is owned by a non-resident investor. Development of tract (B) would make farming of this prime area impossible; the farmer would have to sell and move out of New Jersey. If the price of tract (B) could be reduced by purchase or transfer of its development rights, the neighboring farmer could purchase the land for agriculture. Thus, the destiny of tract (B) is the key to retention of a much larger expanse of farmland — and to retaining this New Jersey farm family.



FARMLAND  
 [Diagonal lines] FARMER-OWNED  
 [Stippled] INVESTOR-OWNED  
 [Cross-hatched] STREAM CORRIDOR  
 SOURCE: USMA

Figure 21

### Planning for Agriculture in New Jersey

Based on experience in New Jersey, a review of local initiatives throughout the country, legislative and judicial trends in other states, and signs of change in federal policies, we can begin to outline new directions for New Jersey.

Some of the important guiding principles can be stated simply. First, there should be a maximum opportunity for innovation at the community level. Second, state level efforts should support communities and provide a regional scope where appropriate. And third, state level efforts should be accomplished with a minimum of regulation and bureaucracy. Let us look at this "two-tiered" program, where state and local efforts mutually reinforce each other, in some detail.

- *Municipalities should adopt regulations for agricultural land use where this is appropriate. Compensable measures such as cluster development, transfer of development credits, and transfer of development rights may be considered together with these land use regulations.*

An examination of the legislative basis for municipal land use controls (and of judicial trends with respect to this legislation) can reasonably conclude that there is an adequate basis for land use controls on behalf of agriculture for municipalities that wish to adopt such provisions. This discussion has noted relatively straightforward zoning and planning measures that have potential far beyond their conventional use. Legal guidelines for local planning and land use regulations have been presented. There are also means available for mitigating the loss of speculative land value, where fairness dictates that this is a necessary consideration; for example, clustering of development and transfer of density through TDR and TDC.

We have noted that large-lot zoning (three to five acres) is not an effective farmland preservation technique. Yet many communities still rely on large-lot zoning. As a judge recently remarked even while validating three-to-five-acre zoning in rural Franklin Township (Hunterdon County):

... continued development of Franklin into three-acre residential lots may, in the long run, destroy its rural flavor and its agriculture as effectively as high density development. Solution of that dilemma is beyond the power of this or any other court and will require imagination and creativity at the local level and probably new approaches to land use control and planning from state government. . . .<sup>38</sup>

The area where suburban and agricultural uses mix offers numerous opportunities for "imagination and creativity" under local planning and zoning enabling statutes. Numerous municipalities and counties in western, midwestern, and even eastern states have begun to adopt agricultural zoning. Where they have been challenged in court they have been sustained. With careful planning, local initiatives stand a good chance of success.

- *The state and federal agencies should develop a cooperative planning program to identify and map viable agricultural districts based on soils and economic criteria.*

We know from our review of legislative and judicial trends that community efforts are more likely to be sustained if they are grounded in regional or statewide policy. The first responsibility of the state should be "objective analysis on a statewide basis" — a better information base for an agricultural land policy.<sup>39</sup> This involves coordination of ongoing research and the contributions of technical participants — particularly those versed in agriculture and agricultural economics. Yet, it is essentially a long-range land use planning project and should be the responsibility of the state planning and agricultural agencies under the direction of a special study group that includes the public agencies with relevant technical resources and others broadly representative of the various interests in farmlands preservation.

Better, more specific information was a recommendation of the Blueprint Commission. This information could take the following form as a minimum.

(1) More detailed maps, on a county level, showing the intrinsic suitability of the soils and other environmental factors for various types of agriculture.

(2) More detailed information about the local economic factors involved in farming, and criteria for compatibility of agriculture with other land uses.

(3) More detailed information on the regional economics of food distribution and marketing.

(4) Based on the above, a map or set of maps delineating prime agricultural lands of statewide and national importance in New Jersey.

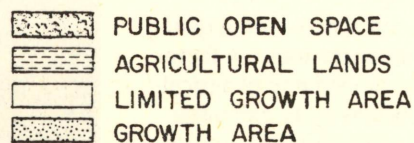
Because "agriculture" is a broad subject and because land policy is the direct or indirect responsibility of so many public agencies at all levels of government, the process of coordinating the appropriate organizations and agencies toward an objective is a challenging one. In such a situation, leadership is required, and it is generally acknowledged that this should be located in the state agencies responsible for agriculture and land policy.

There are also a great many complex planning questions to be resolved. For example, the conventional means of ranking soils for agriculture according to the "capability class" system may not give an accurate picture of the relative productivity of land types, and "yield ratings" may have to be examined. Second, there are questions about the economics of size of various types of farm operations, for example, dairy, grain, or vegetables.<sup>40</sup> Third, the "critical mass" of agricultural land for the various different kinds of farm operations is a factor to be considered. The term refers to the "minimum volume of agricultural output and associated land area which is necessary to exhaust the economies of size in the supporting agribusiness firms."<sup>41</sup> Fourth,



**The New Jersey State Development Guide Plan, Preliminary Draft.** This sketch map is excerpted from the draft *Guide Plan* (New Jersey Department of Community Affairs, September 1977) which has been acknowledged but not formally approved by the Governor. It designates broad areas of prime farmland for future agricultural use. With substantial refinement of detail through a process of discussion with local government, the *Guide Plan* can become an important statement of state-level policy for farmland preservation.

Figure 22



there is a need to determine forecasts for future growth and to locate areas that are best suited for development. Finally, agriculture and nonfarm uses of land must be located so that they do not intrude upon each other.

- *A revised State Development Guide Plan should be the basis for limiting state and federal capital investment in areas designated for agriculture, while guiding growth to areas that are better suited for development.*

With an information base regarding agricultural areas, the state can begin to review its capital investment policies: do they promote or undermine agriculture? As noted earlier, public investments for water supply, sewerage, and transportation often have the effect of subsidizing sprawl in the open countryside. At the same time, cities, small towns, and older suburbs are declining — in part because of diminishing public investments and mounting budgetary pressures. In brief, for the past decades we have had a policy of planned sprawl.

In response to these concerns, the Division of State and Regional Planning (Department of Community Affairs) has prepared, and the Governor has approved, a *State Development Guide Plan* (September 1977) which maps areas for growth and areas for conservation. Agricultural areas are mapped (see Figure 22). The Division of State and Regional Planning is also charged with “fuller coordination of the development activities of the several state departments. In addition, the Governor has recently established an Office of Policy and Planning to facilitate this coordination at the Cabinet level.<sup>42</sup> What can be accomplished to plan for agriculture “vertically” through better coordination with the county and municipal levels can also be achieved “horizontally” by better coordination among the various state agencies. Just as some state policies now promote sprawl, they can be made to promote agriculture.

The *State Development Guide Plan* figured prominently in the recent Franklin Township decision by the Hunterdon County Court. The judge found that Franklin Township, a community of 2,300 with 75% of its land area in agriculture, “has not shed its rural characteristics,” is therefore not within the requirements of the *Mt. Laurel* decision, and does not have to rezone to accommodate a development proposal (which, incidentally, would not have provided low or even moderate income housing). With specific reference to the *State Development Guide Plan*, the judge said:

The Plan is not law. But it is the product of objective analysis on a state-wide basis. The fact that Franklin’s land use policy is consistent with the Plan is a very strong indication of the reasonableness of that policy as expressed in its zoning ordinance.<sup>43</sup>

- *New Jersey should have an agricultural district law that expands benefits to agriculture, while linking them to land use controls meeting criteria established at the state level.*

We can conclude from our discussion that much can be done to coordinate state and federal policies within present legislation. Our local communities can do much on their own to plan and regulate for agriculture. As they proceed, these efforts should be given additional strength from the enactment of agricultural district legislation.

Behind the agricultural district approach is the basic idea of identifying areas where there would be a "presumption" for commercial agriculture. Then state and local governments would join to adopt public policies to promote commercial agriculture within such districts — and, conversely, to neutralize policies that now tend to impair agriculture. The overall objectives would be to limit new development to the amount and type that would not impair agriculture and to stabilize land use so that farmers would retain their land and renew their investments in agricultural operations. Within the agricultural districts there would be conditions necessary for permanent, profitable farming.

The first step in an agricultural district program would be identification of areas clearly suited for commercial farming. This can be accomplished by a blend of state and local initiative. One way was proposed by the Blueprint Commission. The Commission recommended the designation of "Agricultural Open Space Preserves" (AOSP's). Two key parts of this recommendation are as follows:

Each municipality in the state shall designate to an AOSP a minimum of 70 percent of its Open Classes I, II, and III and special agricultural lands; and other contiguous agricultural land.

The administering agency, in cooperation with the Soil Conservation Service, whose definitions are used in the plan, would distribute maps, by way of local districts, showing the location of lands eligible for inclusion in an AOSP.

Areas where agriculture is of state-wide commercial importance can be identified by the state agencies. Local factors that are legitimately beyond the ken of state government are also of importance. Consequently, an "interactive" process of identification that relies on both the state and local levels may be the best approach. The counties, being regional levels of local government, can also have a special role in this task. Federal agencies such as the Soil Conservation Service, that have expertise in agriculture, are organized on a county basis. The designation of agricultural districts can be an assignment that counties are uniquely positioned to accomplish.

The agricultural district approach, as it has been adopted in other states, derives strength from its essentially voluntary character. The districts are established by offering farmers a system of incentives

in return for an agreement to maintain their farmland in agricultural use.<sup>44</sup> In New Jersey, some of the important provisions might include:

(1) The "right-to-farm" principle, whereby municipalities and the state agencies would be enjoined from enacting restrictions on the farmers' ability to carry on normal farming operations, within the need to maintain the public health and safety.

(2) A further reduction of farmland assessment (above that provided for in the *Farmland Assessment Act* of 1964) within the districts, perhaps including an extension of farmland assessment to new farm buildings.

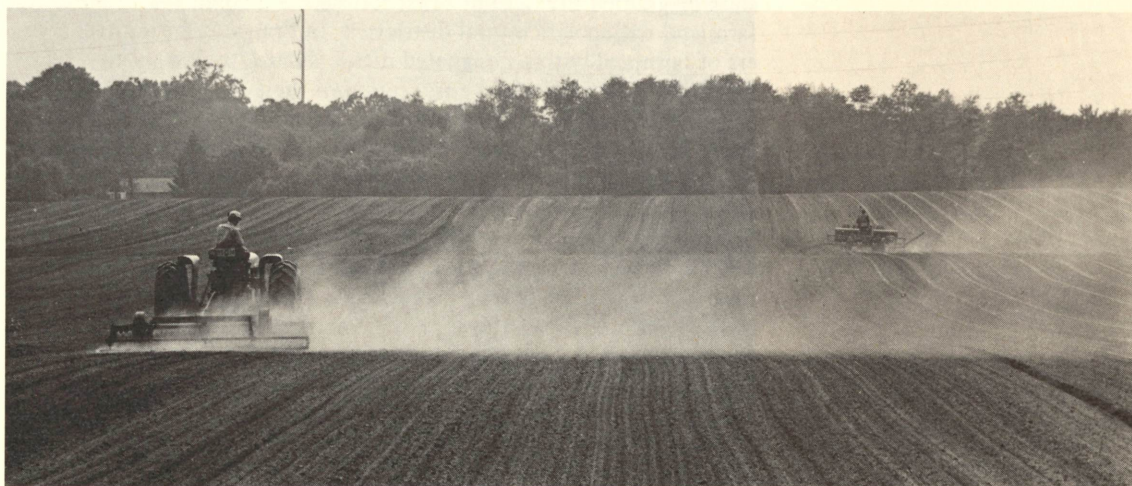
(3) Protection from eminent domain for government projects and from special assessments for water and sewer projects.

(4) Protection against use of state and federal funds for public investments such as sewerage and highways that induce suburban development which intrudes on agricultural operations.

(5) A tax moratorium on new farm structures, in order to encourage investment in farm facilities.

(6) An expanded program of low-interest loans, with a deferred repayment schedule, for purchase of additional farmland by owner/operators within agricultural districts.

Would the above induce farmers to sign agreements? In New York State, the key incentives are the "right to farm" policy and the limitation of preferential assessment for farmland to districts. In Wisconsin, income tax credits are available to farmers only within counties that have adopted land use controls acceptable to the state. In Maryland, state funds can only be used to purchase development rights within established districts. It remains to be seen whether any or all of these inducements would be appropriate in our state.



The value of the agricultural district approach to New Jersey would be to limit farmland retention efforts to areas where the land is clearly suited and where farming is now or can be economically viable. Public resources would be targeted where their effect would be greatest.

- *As part of a study of agricultural district legislation for New Jersey, consideration should be given to a multipurpose farming and farmland fund.*

Our review of New Jersey's six years of experience with the proposal for purchase of development rights on one million acres of farmland concludes that if we cling to this approach, we will not save New Jersey's farmland. The cost alone raises grave doubts. Estimates range to \$8.0 billion and higher, and such sums are staggering in themselves, even if staged over a period of several decades.<sup>45</sup>

There is a further problem of equity arising from the fact that much farmland is owned by investors. By buying them out, the state is to a greater or lesser extent subsidizing land speculation. The inflationary side effects of such a policy were cited earlier in this report.

Nevertheless, a more modest fund that includes the purchase of development rights and other purposes may prove to be a practical approach. Several conditions may be necessary to assure that the public investment in development rights accords with the public interest. First, criteria must be drafted to limit the purchases to the areas where agriculture is plainly the best use and where there is no other way to save the land. This calls for a land use plan that will show places suited for investment in agriculture.

As another safeguard, some analysts have suggested that the state be granted the right of "first refusal" of a landowner's bid to sell farmland within agricultural districts.<sup>46</sup> In France, for example, owners of farmland within designated districts must, by law, notify a state-chartered, non-profit corporation of their intention to sell. The corporations, called SAFER's (Societe d'Amenagement et d'Establissement Rural) may buy — or "preempt" — the farmland within thirty days. Capitalized by the national government, SAFER's function as revolving funds, reselling land to farmers who will commit themselves to commercial farming.<sup>47</sup> While the SAFER's must buy the land at the seller's price (though court accommodations are provided for), this need not be so in New Jersey's case. For example, the price to the state might be fixed at the appraised value when preferential tax status was conferred. Eligibility for preferential tax status — within agricultural districts — would thus be linked to an agreement to sell to the state at a prearranged price. Again, the underlying objective would be to allow the state to enter the farmland market without subsidizing land speculation.

In addition to the purchase of development rights, a farming and farmland fund should include two other equally important purposes. One is a program of grants to counties and townships for agricultural land use plans. Such a program would have a catalytic effect because comprehensive planning funds are no longer available from federal or state sources. Such grants might be effective on a 25% local and 75% state basis for total project costs of, say, \$25,000 to municipalities and \$150,000 for counties. Funds are also essential for state agencies to prepare maps and studies required for the designation of agricultural districts.

Finally, an important purpose of a state fund may prove to be a program of loans or loan guarantees to farmers who wish to purchase farmland and invest in the expensive buildings and equipment that are necessary for farming. The state of Minnesota has a successful \$10,000,000 revolving fund for loan guarantees to farmers seeking land acquisition capital.<sup>48</sup> The extent to which farmers (and particularly young farmers) are denied access to farmland is a subject of much debate, particularly in the light of present Farmers Home Administration programs. While further research is warranted, a "farm start" program may prove to be a wise complement to farmland retention efforts.

There are several potential sources for a farming and farmland fund. The Blueprint Commission recommended a tax of 0.3% (3 mills) on every transfer of real estate in the state. Such a tax was in fact adopted by the legislature though the revenues were diverted to the state's general fund.

Other revenue sources may be considered. The State of Vermont has adopted a tax on windfall profits from the sale or exchange of land. The tax imposes a sliding scale of levies on capital gains from the sale of land held less than six years; the rate is inversely proportional to the length of time that the land is held.<sup>49</sup> Alternatively, the "rollback" penalties for premature withdrawal from the Farmland Assessment program might be dedicated to the farming and farmland fund. Finally, a farming and farmland bond proposal might be considered, though it should be reviewed critically in the light of growing fiscal austerity and unstable financial conditions.

- *The Governor should appoint a task force with representation from agricultural interests as well as a broad range of public interests to develop a long-range program for agriculture in New Jersey.*

It has been noted that New Jersey only had 4,257 full-time farm operators in 1974, the latest year for which accurate data are available. We have also emphasized New Jersey's declining self-sufficiency in food at a time when the diseconomies of the national food

production and distribution system are evident. Rising transportation and distribution costs and uncertain energy supplies make local reliance on the national system seem imprudent.

Land use trends, burdensome regulations, and important cultural and economic factors are resulting in a steady loss of New Jersey farms. Not only are we losing our indigenous food production, but we are losing a reservoir of rural skills that we may need in a post-industrial economy. And, we are losing the rural countryside that is one of our state's fundamental attractions. Without agriculture the land may remain undeveloped, but the landscape will disappear. Our survey has concluded that farmland, farms, and farming are to a material extent the same issue.

One of the most striking insights about the current state of New Jersey agriculture is how pervasive its problems are. Yet this is not altogether surprising because many people have consciously and unconsciously written off agriculture in New Jersey. Farmers have for the most part lost their status in a state that has in recent times perceived itself as urban or suburban. It will take some time to reverse these perceptions and to reestablish agriculture as one of our state's most favored industries.

This report has stressed land policies because much of the decline of New Jersey agriculture can be attributed to land use trends. We have shown that there are public policies that can neutralize the present government programs that result in the steady loss of farmland. The delineation of areas where government would adopt a presumption for agriculture would do much to reverse the decline. Models are available — from other states, from Europe, and from current research. Though there will be some real work in adapting these to New Jersey's conditions, solutions to the land policy questions are at hand.

While land policy measures are critical, there are numerous other elements of a successful agriculture not covered in this report. Expanded "farm start" programs for young farmers, changes in inheritance tax policy, research directed at better farming practices, and marketing projects to improve the competitive position of New Jersey agriculture — all these and more will be essential if New Jersey agriculture is to regain its essential role in the economy of the next decades. While the State and Federal Departments of Agriculture, the New Jersey Agricultural Experiment Station, and many others are continuously engaged in agricultural research, these organizations would be the beneficiaries of a reassessment of agricultural priorities.

One essential condition for a successful reassessment of New Jersey agriculture will be the involvement of a full range of non-farmers with a stake in New Jersey agriculture: consumers, environmentalists, local government officials, food processing and distribution industry groups, and the public at large.

With the demise of the Burlington County Farmland Demonstration Program, public officials are looking for new ideas and for a new constituency for New Jersey agriculture. We urge an official review of past efforts and a creative look at programs for the future.



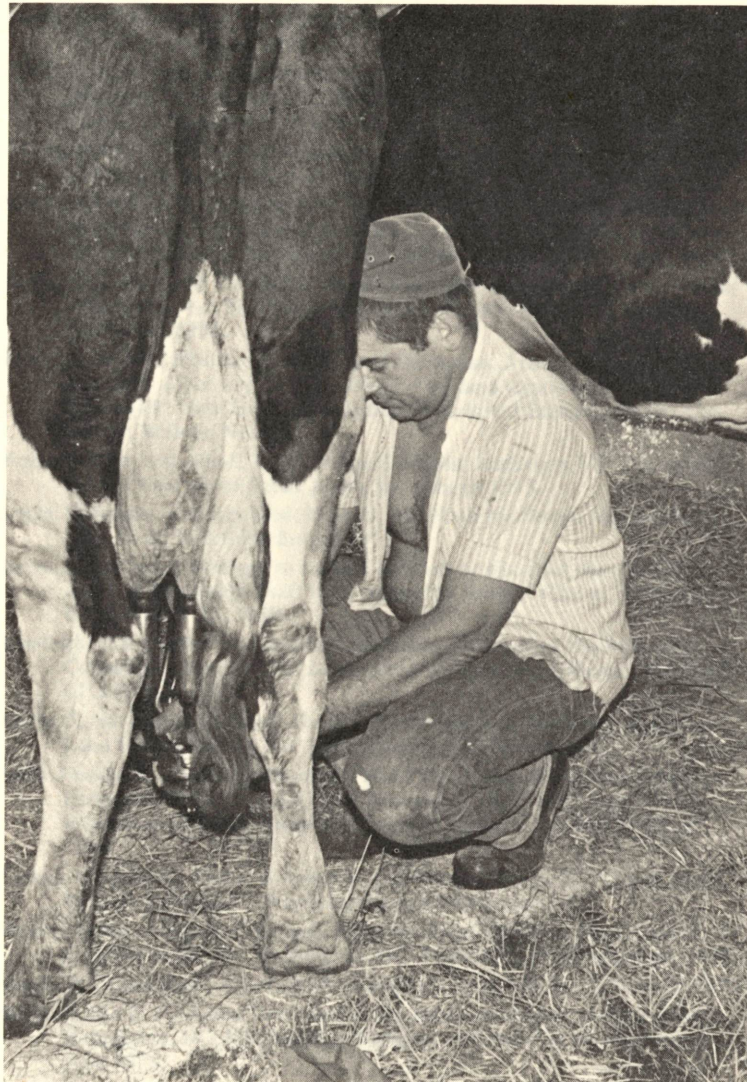
## Notes

1. Fred Bosselman, et al., *The Taking Issue*, pp. 53-81.
2. *Ibid.*, pp. 82-83.
3. This clause is also in the New Jersey Constitution, Article I, Paragraph 20: "Private Property shall not be taken for public use without just compensation."
4. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).
5. For example, *Euclid v. Ambler Realty*, 272 U.S. 365 (1926).
6. *Penn Central Transportation Company v. City of New York*, 98 S.Ct. 2646 (1978).
7. In fact, the basis of land use regulation is explicitly stated in the New Jersey Constitution: "The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specific districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the use of the land, and the exercise of such authority shall be within the police power of the state. Such laws shall be subject to repeal or alteration by the Legislature." (Article IV, Section VI, Paragraph 2.)
8. N.J.S.A. 40:55D1-91.
9. In many soil surveys, each soil is also rated for its estimated yield for certain commonly grown crops: e.g., field corn, potatoes, soybeans, wheat, alfalfa, snap beans, tomatoes. Often the ratings for crop yields may be a more accurate indication of the relative suitability of the land for agriculture than the capability classes.
10. *So. Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel*, 336A2d713 (1975).
11. In the section on municipal master plans: "The master plan shall include a specific policy statement indicating the relationship of the proposed development of the municipality as developed in the master plan to (1) the master plans of contiguous municipalities, (2) the master plan of the county in which the municipality is located, and (3) any comprehensive guide plan pursuant to section 15 of P.L. 1961, c. 47." N.J.S.A. 40-55D-28(d). The latter is a reference to the *New Jersey State Development Guide Plan*; see also Note 42.
12. William Toner, "Local and State Farmland Preservation Incentives in Midwest and Western States," MSM Farming and Farmlands Seminar, May 3, 1979.
13. William Toner, *Saving Farms and Farmland: A Community Guide*, American Society of Planning Officials, Planning Advisory Service Report # 333, July 1, 1978.
14. John M. Hunter, Cook College, Rutgers, is currently compiling a statewide survey of municipal regulations that adversely affect agriculture.
15. A detailed discussion of these approaches and the texts of model ordinances are in Toner, *Saving Farms and Farmland: A Community Guide*. Agricultural zoning ordinances are most prevalent in California, Wisconsin, Michigan, Iowa, southeastern Pennsylvania, and Maryland.
15. Jane Barry, *The Legal Aspects of Agricultural Zoning as a Method of Farmland Preservation in New Jersey: a Primer for Nonlawyers*, Yale Legislative Services, Yale Law School, April 1979 (unpublished). The three cases are: *Steel Hill Development Co. v. Town of Sanbornton* 469F2d956 (1972); *Gisler v. County of Madera* 112 Cal. Repr. 919 (Ct. App. 1974); and *Joyce v. City of Portland* 546 P2d 1100 (Or. Ct. App. 1976).
17. *Schere v. Twp. of Freehold* 292A2d35, 119 N. J. Super. 433 (1972).
18. As noted above, the *Municipal Land Use Law* requires a "specific policy statement" relating the municipal plan to the plans of contiguous municipalities, the county, and the state. The Department of Community Affairs, Division of State and Regional Planning, has instituted a procedure for developing consistency between the plans of these three levels of government.
19. An excellent primer on TDR is B. Budd Chavooshian, *Transfer of Development Rights, A New Concept in Land Use Management*, Rutgers University, Cooperative Extension Service, Leaflet 492 (1974). It should be noted that some authorities believe that TDR ordinances can be sustained against legal challenges without legislation.
20. TDR has recently been given an important boost by a U.S. Supreme Court decision that validated its use in New York City, *Penn Central Transportation Company v. City of New York*, 98 S. Ct. 2646 (1978). While the case involved the preservation of an historic landmark in New York City, the Court emphasized the broad scope of its decision: "Historic conservation is but one aspect of the much larger problem, basically an environmental one, of enhancing — or perhaps developing for the first time — the quality of life for people." With respect to the landowner's ability to use the rights: ". . . the rights afforded are valuable. While these rights may well not have constituted 'just compensation' if a 'taking' occurred, the rights nevertheless undoubtedly mitigate whatever financial burdens the law has imposed on appellants and, for that reason, are to be taken into account in considering the impact of regulation."
21. Fred Bosselman and David Callies, *The Quiet Revolution in Land Use Control*, prepared for the U.S. Council on Environmental Quality, 1971.
22. Fred Bosselman et al., *The Taking Issue*, p. 323.
23. The statutes are *The Hackensack Meadowlands Reclamation and Development Act*, N.J.S.A. 13:17-1 et seq.; *The Wetlands Act of 1970*, N.J.S.A. 13:9A et seq.; the *Coastal Area Facility Review Act*, N.J.S.A. 13:19-1 et seq.; *The Delaware and Raritan Canal State Park Law*, N.J.S.A. 13:13A-1 et seq.; and the *Pinelands Protection Act*. Typical of the declarations of legislative policy with which these acts begin is the following from the *Coastal Area Facility Review Act*: "The Legislature finds that New Jersey's bays, harbors, sounds, wetlands, . . . together constitute an exceptional, unique, irreplaceable, and delicately balanced physical, chemical, and biologically acting and interacting natural environmental resource called the coastal area, that certain portions of the coastal area are now suffering serious adverse environmental effects . . . and that therefore, it is in the interest of the people of the state that all of the coastal area should be dedicated to those kinds of land uses that promote the public health, safety, and welfare. . . ." (N.J.S.A. 13-9-2).
24. N.J. Office of Coastal Zone Management and U.S. National Oceanic and Atmospheric Administration, *New Jersey Coastal Management Program; Bay and Ocean Shore Segment and Final Environmental Impact Statement*, August, 1978, Appendix 1, "Legal Commentary," pp. 300-306.
25. N.J.S.A. 400:55D-2 (d) and (g).
26. *So. Burlington County N.A.A.C.P. v. Twp. of Mt. Laurel*, 336A2d 713 (1975).
27. See, for example, *The Quiet Revolution in Land Use Control*, pp. 314-327.
28. *Pinelands Protection Act*, Section 7(i), 7(i)(1), Section 11(a), (b), (c), and (d).
29. Some of these efforts are surveyed (though not analytically) in Bob Davies and Joe Belden, *A Survey of State Programs to Preserve Farmland*, prepared for the U.S. Council on Environmental Quality, 1979.

30. *Maryland Statutes*, Sec. 2-501 to 2-515. Note that the Maryland purchase of development rights program has received only nominal funding.
31. *Wisconsin Statutes Annotated*, Sec. 71.09(11), 1977. See also Richard Barrows, "Wisconsin's Farmland Preservation Act as amended through May, 1978; an Outline and Summary" (unpublished).
32. MSM Farming and Farmlands Seminar, "The New York State Agricultural Districting Act - Concept and Experience," April 10, 1979. Ernest J. Cole, Director, Research Management Division, Northeast Appraisers, Ithaca, New York.
33. An excellent and up-to-date review of the national policy issue of agriculture is Charles E. Little, ed., *Land and Food: The Preservation of U.S. Farmland*, An American Land Forum Report, No. 1, Spring 1979.
34. National Agricultural Lands Study, to be completed January 1, 1981.
35. Urban Systems Research and Engineering, Inc., *The Growth Shapers: The Land Use Impacts of Infrastructure Investments*, prepared for the U.S. Council on Environmental Quality, May 1976, and U.S. Council on Environmental Quality, Fifth Annual Report, December 1974.
36. U.S. Council on Environmental Quality, "Memorandum for Heads of Agencies; Subject: Analysis of Impacts on Prime and Unique Farmland in Environmental Impact Statements," August 30, 1976, and U.S. Environmental Protection Agency, "EPA Policy to Protect Environmentally Significant Agricultural Lands," September 8, 1978.
37. U.S.D.A., *Statement of Land Use Policy*, Secretary's Memorandum No. 1827, Revised, October 30, 1978.
38. *Glenview Development Co. v. Franklin Township*, 164 N.J. Super. 563 (Law Div. 1978).
39. The phrase is from *Glenview Development Co. v. Franklin Township*.
40. These sizes are highly variable, according to the type of operation. For example, one study suggests that the optimum size of vegetable farms is 39 acres. (P.S. Dhillon, *Economies of Size on Fresh Market Vegetable Farms in Cumberland County*, N.J. Agricultural Experiment Station Report No. 348, December 1973). Grain farmers in central New Jersey say they require 1,000 to 1,500 acres.
41. Pritam S. Dhillon and Donn A. Derr, "Critical Mass of Agriculture and the Maintenance of Productive Open Space," *Journal of Northeastern Agricultural Economics Council*, Vol. III, No. L., June 1974. This paper concludes that the following acreages are required: Specialized dairy, 73,700 acres; specialized poultry, 4,664; specialized vegetables for fresh market, 10,000. While the acreages and many aspects of the approach have been disputed, the concept has validity.
42. N.J.S.A. 13:1B-15.52 establishes the Division of State and Regional Planning. State planning for growth is gaining momentum. Following an Executive Order, a Cabinet Committee on Urban Policy submitted a report entitled *An Assessment of New Jersey's Urban Programs*, September 1978. There is presently a Sub-Cabinet Committee on Development that is considering growth policies for New Jersey. Final recommendations will be made to the full Cabinet by December 31, 1979.
43. *Glenview Development Co. v. Franklin Township*.
44. This concept is explored in Donn A. Derr, *Application of the Agricultural Districts Concept to Farmland in New Jersey*, Department of Agricultural Economics and Marketing, New Jersey Agricultural Experiment Station, Rutgers University, Bulletin 849, November 1978 (unpublished).
45. New Jersey Department of Agriculture, 1976 (unpublished).
46. George W. Luke, *Summary and Recommendations of the Study Entitled "Actively Devoted: The First Decade of New Jersey's Farmland Assessment Act,"* New Jersey Agricultural Experiment Station, A.E. 360, June 1976.
47. Robert E. Coughlin, et al., *Saving the Garden: the Preserving of Farmland and Other Environmentally Valuable Land*, Regional Science Research Institute, August 1977, p. 172.
48. *Minnesota Statutes*, 41.51-41.61 (1976), "The Family Farm Security Act." A brochure from the Council of State Governments (1979) describes the program.
49. *Vermont Statutes Annotated*, Title 32, Section 10001 to 10010, "Tax on Gains from the Sale or Exchange of Land."



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The first decade of the century was a period of rapid change and development. The first decade of the century was a period of rapid change and development. The first decade of the century was a period of rapid change and development.

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Appendices

## Appendix A

*The following remarks on the development of land use regulation in New Jersey were delivered by The Honorable Frederick W. Hall, Associate Justice, New Jersey Supreme Court (retired) at an MSM seminar on New Jersey Land Use Law, April 25, 1979.*

This seminar is devoted to legal aspects of farmland retention, and my part in the program will be a matter of sketching the development of land use regulation as background. I ought to state at the outset that it's not appropriate for me as a former Supreme Court Justice to express an opinion on the decisions of that court, or how I think various questions should be decided. If anything I do say is thought of as an opinion, please keep in mind that there is absolutely nothing official about it.

Land use regulation falls within the so-called police power of state government which is one of the inherent powers of sovereignty. A former Chief Justice used to say that government has just three powers: the police power, the power to tax, and the power of eminent domain (that is, the right to acquire your property and mine for public use on payment of just compensation).

The title "police power" relates generally to regulation or prohibition by a legislative body of any activity which is contrary to the public health, safety, morals, and general welfare — in other words, "the public interest." It is extremely broad and expands as changed conditions require. Again speaking generally, it is limited only to the extent that restrictions must not be arbitrary or capricious and must be reasonable.

In tracing any history of land use regulation, I think you have to start out with the rather basic thought that at common law there was great veneration for land as private property to be used as the owner saw fit. We're now coming to think of it (I think quite properly) as a natural resource, which cannot be replaced like some of our other natural resources. In the early days you couldn't harm your neighbor's property physically or conduct something on your property that was so obnoxious as to amount to a nuisance, which you would be restrained by the court from doing. That was about the extent of it till the early part of this century when we began to have some local ordinances (this was long before zoning) which prohibited various uses of land on these grounds.

The first zoning ordinances really came about in the second decade of this century. I am speaking now of zoning in the sense of segregation of uses by districts, which was the original thought. I think the first ordinance was in New York in 1916 or thereabouts. At that time, urban activity was developing to the point where it was beginning to expand into the adjacent suburbs. There was also concern about light and air. A lot of planless development occurred.

Zoning ordinances received a very mixed reception in the state courts. New Jersey back in 1923 definitely held that they were unconstitutional. To read that decision today makes the reasons that were given by the court almost laughable. The leading case arose in Nutley where a man wanted to put up a store in a residential district which the zoning ordinance prohibited. The courts said no, you can't prohibit him because it's an undue restriction on the use of private property.

That brings us to the landmark case of Village of Euclid against the Ambler Realty Co. which came to the United States Supreme Court in 1926 from Ohio. Ambler Realty Co. owned sixty-eight acres of vacant land near the Cleveland City border. Euclid had a zoning ordinance much like the simple zoning ordinances we have had for many years in many municipalities in this state: industrial, commercial, single-family residential zones. The land in question was zoned partly industrial, partly commercial, and partly residential. The owner objected; he wanted it to be all industrial and if it could not be all industrial, he wanted at least to have an unlimited commercial district that he could use.

The court had no problem at all sustaining the exclusion of industry from a residential zone on the basis of the nuisance aspect of industry in collision with living areas. Let me read something that indicates the rather prophetic and perhaps broad view the court took:

Building zone laws are of modern origin; they began in this country about twenty-five years ago. In recent years urban life was comparatively simple but with the great increase in concentration of population, problems have developed and consequently are developing which require and will continue to require additional restrictions in the respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity, and validity of which as applied to existing conditions are so apparent that they are now uniformly sustained, where a century or even half a century ago probably would have been rejected as arbitrary and oppressive. Such regulations are sustained under the complex conditions for reasons analogous to those which justify traffic regulations, which before the advent of automobiles and rapid transit facilities would have been condemned as entirely arbitrary and unreasonable. . . . And in this there was no inconsistency, for while the meaning of constitutional guarantees never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world it is impossible that it should be otherwise.

These were municipal regulations as they always have been in recent times. What the municipality said was generally going to stand. But, again prophetically, the court pointed out:

It is not meant by this however to exclude the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way.

That was a broad hint that municipal powers are not unbridled and that they must have due regard to conditions and problems that are broader than that same municipality. It took almost fifty years for that to be recognized very much. I think it is the way things are going to be looked at now.

After that decision, we in New Jersey amended our constitution, in 1927. That provision remains today practically as it was adopted then. This is what it says:

The legislature may enact general laws under which municipalities other than counties may adopt zoning ordinances limiting and restricting specified districts and regulating therein buildings and structures according to their construction, the nature and extent of their use, and the exercise of such authority shall be deemed within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

Shortly after that, the U.S. Department of Commerce prepared a standard state zoning enabling act. At that time, you see, it wasn't at all feasible for zoning to be on anything other than an individual municipal basis because it concerned only urban areas and their adjacent suburbs. So New Jersey adopted in 1928 our zoning act which remained until 1976. And that ordinance, following the language of the constitution, delegated to any municipality the right by ordinance to limit and restrict buildings and structures and their uses in specified districts. And then it spoke of these purposes of zoning, which I mention because I am going to contrast them later with the purposes now in the 1976 Municipal Land Use Law. They spelled out the purposes in this language (in Sec. 40-55:32 now repealed):

Such regulations shall be in accordance with a comprehensive plan and designed for one or more of the following purposes: to lessen congestion in the streets; secure safety from fire, flood, panic, and other dangers; promote health, morals, or the general welfare; provide adequate light and air; prevent the overcrowding of land or buildings; avoid undue concentration of population. Such regulations shall be made with reasonable consideration, among other things to the character of the district and its peculiar suitability for particular uses and with a view of conserving the value of property and encouraging the most appropriate use of land throughout the municipality.

The rest of the statute was largely procedural and it was left almost entirely to the courts to decide what was valid by way of zoning regulation: which restrictions met these purposes, and which did not. You'll notice that the emphasis is entirely pointed to effects

and protection against evils, so to speak, within a single municipality. There is no mention in here, no hint, of anything outside a single municipality.

I suppose if we try to put into words the philosophy of zoning on this kind of a basis, it is looked at from the standpoint of, as some writers have said, the "reciprocity of benefit." You're restricted in the use of your land and so is your neighbor. Therefore, you gain the benefit from the restrictions imposed on him and other people. And the uses specified within districts keep that benefit alive.

Now, within this framework, the law of zoning and land use regulation in this state has developed. New Jersey next to New York has more reported decisions about zoning than any other state in the union, probably due to the fact that we have become the most densely populated state in the union, and nothing produces controversial land uses like density of population. At the same time, we don't have to go very far to find wilderness in this state. So it's a real microcosm of every kind of land use problem you can think of.

Now, I'd like to give some general indication of where we appear to be today and where we're going. I've already said that while zoning and land use regulation are instances of police power (state power), the state has delegated those powers to the municipality. But municipalities only have such powers as the legislature may delegate to them, which brings us to the old home-rule argument. There is no such thing in this state as inherent home rule. Home rule only relates to those powers which the legislature has given to local municipalities. And the other side of the coin is that what the legislature has given, it may take away.

You take the Hackensack Meadows development. There the legislature created a special district, removed land use regulation powers from the municipalities which had land in that district, and gave those powers to the Hackensack Meadowlands Commission. In other words, they pulled back part of the zoning power that had been delegated to those municipalities and gave it to a regional commission. Along the same line, we have the Wetlands Act, where the state has imposed restrictions on large areas of coastal property because of the great public need for preserving that kind of land for the food chain and other things, and limiting the power of the municipality to allow anything to be built there under its zoning ordinance. Of course, the Governor's Executive Order on the Pinelands is also designed to take away municipal zoning powers and put them in some kind of overall body, on the basis that the whole area is important to the public in the state as a whole.

There were a few early hints that you had to look beyond your own boundaries. Back in 1948 there was an ordinance of the Borough of Cresskill up in Bergen County, which forbid any industrial use in

the municipality. It was attacked and the court approved the ordinance, because the area surrounding Cresskill had plenty of available land zoned for industrial use and Cresskill could therefore prohibit it.

Again, in the Cresskill-Dumont case (the so-called "Chinese wall case"), one of the municipalities was about to allow a shopping center on a part of its boundary. The adjoining one complained and the court said "yes," you have the right to complain. Furthermore, the municipality where the center was to be established and built has got to take your objections into consideration. Then there was a case considerably later where there was an effort to obtain use of land in a rural area for a private sanitarium. It was to serve people from a vast area. The municipality didn't want it, but the court said you have to allow it because this is something for the benefit of a greater area than you are, for a wide section of the state.

These cases lead, you see, to a more or less regional approach to these problems because as technology advances and we become more conscious of what we've done to our environment and the ecology by overuse, we begin to realize that these things are not confined by artificial municipal boundaries which may not have any sense at all. So you begin to approach a regional point of view and that was what became involved in the *Mt. Laurel* case. It was brought by residents of Mt. Laurel and outside residents who couldn't afford the only type of housing that Mt. Laurel permitted under their ordinance. The court said that housing is so important that where restrictions are shown, the municipality has got to justify them thoroughly. Otherwise, it must amend the ordinance to permit a variety of housing, including housing for low and moderate income people. And what you must consider there are not only the needs of the particular municipality for housing but the needs of the region.

When I wrote that opinion, I was trying to encourage — in fact, suggested that — it was time for legislation to provide some means of regional zoning because, obviously, low and moderate income housing may not belong everywhere. There are some municipalities where it's ill-suited. So we said, take some kind of regional approach to the problem, by legislation or through agreement among municipalities. Each municipality would have to have its fair share of the regional need. That, I think, has been played up to an extent that is a little disappointing to me because I was suggesting this fair share for each municipality only until such time as you have a regional decision with respect to how it is going to be handled.

Of course, if you have regional land use regulation, you're going to have to get into tax sharing because otherwise, it's unfair to say to one municipality: you've got to have all the school children and the other ones may have all the fine houses and all the big industries.

That's the idea behind the Hackensack Meadowlands District and the court has sustained it. Tax sharing has also happened in several other instances around the country; for example, Minneapolis-St. Paul and Portland, Oregon. So many of our municipalities with a high tax for local, school, and municipal purposes are running out of tax base, while others are very wealthy in tax base. I think the time is going to come when there's going to have to be some more adjustment of the methods of raising revenue than we have today.

In the beginning of the 50's, New Jersey was regarded as a pro-zoning state. Whatever a municipality did was sustained on a "presumption of validity" to local legislative action. Here, I think times have changed. As in *Mt. Laurel*, municipalities are being called upon much more than they were to justify regulations.

Another principle which has been solidly established — this now bears more directly on possible agricultural zoning — is the precept that a land owner is not entitled to the most profitable use of his or her land. The land owner is entitled to a reasonable use — to get some reasonable return from it. And may I point to a very recent case last year in the United States Supreme Court, with which many of you might be familiar — the Grand Central Terminal case. Grand Central Terminal had been bought by British real estate investment interests. New York — along with many other states — had developed a concept of historical districts and landmark buildings which could not be changed without city approval. Grand Central Terminal's facade was something architecturally quite unique, but the owners wanted to build a fifty-five-story building on top of it. They were turned down and the case went to the U.S. Supreme Court, where the question was whether the New York City restrictions were so restrictive, so oppressive, that they amounted to a "taking." Mr. Justice Brennan's opinion, which upheld the New York City regulations, deals at great length with what is a taking and what is not. The case is very important because, to my way of thinking, it extended very considerably the concept of police power regulation.

In the early days of zoning, the districts used to be "cumulative" in their use: If you had an industrial district, you also could have commercial uses in it as well as residential uses. After a while it began to be realized that that didn't work; that residences in an industrial district were just as bad for industry as industry in a residential district was bad for residences. So you now have general recognition in the court decisions of the exclusive zone: industrial, commercial, residential, what not, where you can keep everything else out. That has some pertinence with respect to agricultural zoning, I would suggest.

Another salient feature that comes up in the development of the law is comprehensive plan requirement. In the enabling act of 1928, everything had to be done in accordance with a comprehensive plan.

That never worked very well. The courts got so they would say, well, the zoning ordinance itself is a comprehensive plan. But perhaps more important (even when a municipality did have a fine planner draw up a comprehensive plan which the planning board adopted), it could be disregarded by the local legislative body in adopting the zoning ordinance. Under the 1976 Municipal Land Use Law, things are much tighter. The master plan has now got to have various elements and it can't be overridden by the zoning ordinance except by a two-thirds vote of the membership of the local body.

Another thing that has happened, of course, and many of you are actively engaged in this, is the development of state and county development plans and the use of them. They aren't binding but they're very instructive, if they're honestly done and not done to favor some particular element of society in one way or the other. And they're being used more and more by the courts in testing ordinances. The *Franklin Township* case (Hunterdon County) of very recent origin — which is a semi-agricultural case — made great use of the State Development Guide Plan which designated that area of the state and that township agricultural.

Finally, the last thing I want to mention is the concept of a "balanced community." That thought has crept into the law of land use regulation as a permissible object of zoning and planning, particularly of a large community that has the room for a lot of things. It can have all kinds of industry, and commerce, and expensive housing as long as it does not exclude everybody else. Again, it has some relevance I think to agricultural zoning in prime agricultural land being segregated and zoned as such and the rest of the community used in different ways.

As I have said all along, there has been, I think, a new approach which I've tried to point out. The greatest indication of that is found in the "purposes" section of the 1976 Municipal Land Use Law. Sometimes I wonder if the legislature realized what they were passing. Remember I read the purposes of the original Act about light and air, etc. All that's gone. Let me read you a few of the things that are now the purposes of the Land Use Law.

It is the intent and purpose of this act:

- To encourage municipal action to guide the appropriate use or development of all lands in this state, in a manner which will promote the public health, safety, morals, and general welfare;
- To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county, and the state as a whole;
- To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions, and preservation of the environment;
- To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial, and industrial uses and

open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

And throughout the statute you find references to the necessity when preparing the master plan to have regard for your neighbors and regard for all kinds of activities that may well go on.

I think the purposes as stated will be a great vehicle for enlargement of the approach to land use regulation that has been creeping up, as I've tried to show, through court decisions. An awful lot of this is something the courts can't do very well. It's much better done by legislators, but courts have to decide the cases that come before them. They can't just say: we don't want to decide this case; we think somebody else can do it better. The court has to decide. And that is the kind of thing that led to, I suppose, the court being thought of as a leader in some respects, if they're careful. We shouldn't be making all the policy that belongs in other areas but sometimes we have to because that's in the case and that's what the case was about.

I think that concludes an overall view of the development of land use law in New Jersey — where I think it is and perhaps where it may well go in the future. Thank you.

## Appendix B

### Excerpt from Proposed Andover Township (New Jersey) Zoning Law — Re: Agricultural-Rural Cluster

#### 5.300 Agricultural-Rural Cluster

In order to preserve prime agricultural land, retain the rural character of the Township, and provide for reasonable development, the following uses are permitted:

##### 5.301 Principal Permitted Uses

- a. Agricultural, farm, and horticulture uses (6.300).
- b. Single-family detached home for the sole use of the farm owner/operator consistent with some requirements of the R-1.0 district.
- c. Nurseries and greenhouses (6.400).
- d. Riding academies and stables (7.1000) in section.
- e. Rural cluster (5.304).

##### 5.302 Permitted Accessory Uses

- a. Any use or structure customarily incident to a principal permitted use.
- b. Private garages and carports.
- c. Signs.
- d. Home occupations.
- e. Professional home offices.
- f. Roadside stands in conjunction with a principal permitted use.
- g. Private recreational facilities for residences.

##### 5.303 Conditional Uses

- a. Essential services (7.200).
- b. Common water and sewer incentive (5.106).
- c. On-site housing for not more than two (2) farm employees.

##### 5.304 Rural Cluster

Residential development upon Agriculture-Rural Cluster zoned land is only permitted wherein the houses are clustered or grouped upon a minor portion of the property and the remaining property is used for agricultural purpose.

1. Dwellings shall be built at a density not to exceed the gross "R" density prescribed for the parcel.
2. A maximum of 15 percent of the tract shall be used for dwellings, access drives, parking, accessory buildings and residentially oriented space.

3. Common water utilities shall be provided.
4. Single-family detached, patio homes or single-family attached (townhouses) homes may be developed consistent with standards set forth in this ordinance.
5. Dwelling should have direct access to a public road or street.
6. Minimum of one garage plus one non-garage parking space per unit.
7. A landscaped buffer 50 feet between residential property lines and farm activities shall be provided. The rural cluster shall provide 25 feet on the farm tract and 25 feet on the rural cluster tract.
8. A 200-foot buffer shall be provided between the property line and barns, outbuildings, manure storage area, or other odor producing substances or activities.
9. The cluster option shall be designed taking into account:
  - a. Prevailing wind direction.
  - b. Soil characteristics.
  - c. Relationship to surrounding land uses both present and future.
  - d. Architectural style and arrangement of structure.
10. A deed restriction shall be placed upon the agricultural portion of the parcel wherein future uses for all other activities except agriculture, farm, or horticulture are prohibited. This agricultural parcel shall be so designated on the Township official map.

**6.300 Agricultural, Farm, and Horticultural Uses**

6.301 Minimum Area. Not less than seventeen (17) acres in the A-R district and not less than six (6) in the R districts.

6.302 Spacing Requirements. The following minimum distances shall be maintained:

1. Between residence and barns, outbuildings, and accessory buildings (except residence garage): 75 feet.
2. Between all barns, outbuildings, and accessory buildings (except residence garage) and property line: 150 feet.
3. Except as noted above all other bulk requirements enumerated in article 10.000 shall apply.

6.303 Prohibited Activities. The following Agriculture, Farm, and Horticulture and activities are prohibited:

1. Feed lot operation where animals are confined to limited areas for fattening prior to slaughtering is prohibited.

**Appendix C**

**Excerpt from Chesterfield Township (New Jersey) Zoning Law – Re: Transfer of Development Credits**

**Cluster Development**

- A. The purpose of this section is to provide flexibility in design options, aid in reducing development costs, and provide a method of preserving land for agricultural uses, open spaces, common property, conservation areas, flood plains, school sites, recreation areas, parks, and/or land for other public purposes by permitting a reduction in residential lot size without increasing the number of lots or permitted number of dwelling units.
- B. Cluster developments may be approved in accordance with the following standards provided the tract size is at least 25 acres.

1. All dwelling units shall be connected to approved and functioning central water and central sanitary sewer systems.
2. The maximum number of lots or dwelling units shall be as set forth in the zoning provisions of Article 7.
3. Land area equal to a minimum of 25 percent of the total tract's land area shall be set aside for open space, conservation areas, flood plains, school sites, recreation and park areas, common property, agriculture, or lands for public purposes, singly or in combination, except that land utilized for street(s), parking, drives and required yards shall not be included as part of the above 25 percent.

Lands to be set aside shall be dedicated to either the township or a homeowners association as outlined below.

- C. Lands offered to the township or homeowners association shall meet the following requirements:

1. The minimum size shall be 1 acre if offered to the township.
2. Lands for recreation purposes shall be improved by the developer including equipment, walkways, and landscaping.
3. It shall be an integral part of the development and designed, improved, and located to best suit the purpose(s) for which it is intended.
4. Every parcel accepted by the township shall be conveyed by deed at the time final plat approval is granted.

D. Transfer of Development Credits

1. Purposes and Authorization

In an effort to add flexibility to development proposals, to preserve land for open space, agricultural and public purposes, to prevent development on environmentally sensitive areas, and to aid in reducing the cost of providing streets, utilities, and services to residential developments, and hence offer the opportunity to reduce housing costs, the owner of land may use a cluster design by increasing the density of development on one tract, or a portion of one tract, or exchange for dedicating other separate, non-contiguous, subdivided lot(s) in perpetuity by deed restriction for agricultural use or for open space, school site, or other public purpose.

2. Standards for Land to be Deeded

- a. The minimum lot size for deeded lands for which credit is sought shall be 25 acres, unless the parcel for which credit is sought is to be joined to an already dedicated 25-acre or larger parcel, in which case the additional lot may be as small as 5 acres.
  - b. The number of dwelling unit credits to be received for dedicated lands shall be the number of units permitted in the district in which the deeded land is located.
  - c. Any lot for which credit is being sought shall be controlled by the owner of the receiving tract by having title to the property, a contract of sale, or an option to purchase. The lot for which credit is being sought shall be either deeded to the township at the time of final approval when the credits, by deed, are transferred to the receiving tract, or the lot for which credit is being sought shall be restricted to agricultural use in perpetuity by deed. Such land deeded to the township shall, by deed, be restricted to agricultural use or public purpose(s).
3. An application using the transfer of development credits shall include plats and certifications of ownership of each tract so all land involved in the development is processed simultaneously.

- E. Concurrence of governing body procedure. A copy of the proposal to dedicate land to the township shall be transmitted to the governing body. The acceptability of the land shall be subject to the approval of the approving authority and the governing body. Both shall be guided by the Master Plan, the ability to assemble and relate such lands to an overall plan, the accessibility and potential utility of such lands to serve the

intended purpose, and such existing features as topography, soils, wetlands, and tree cover as these features may enhance or detract from the intended use of the land.

**OP District: Office Park and Light Industrial Park**

In order to encourage the preservation of agriculture, open space, school sites, recreation, or land for other public purposes, the Transfer of Development Credits provisions may be applied in the following manner: the gross floor area may be increased by 1,000 square feet for each acre of land preserved for agriculture, open space, school site, recreation, or other public purpose resulting in a building having a floor area ratio of not more than 0.6; maximum building height of 60 feet; and maximum building coverage of 30 percent, provided all parking requirements and setback provisions can also be met.

## Appendix D

### Excerpts from Two York County (Pennsylvania) Agricultural Zoning Regulations: North Hopewell Township and Peach Bottom Township

#### Section 203 RURAL AGRICULTURAL ZONE (RA) North Hopewell Township

s. 203.1 Purpose: The primary purpose of this zone is to maintain and promote the rural-agricultural character of the land within this zone. This zone is composed of those areas in the Township whose predominant land use is rural residential and agricultural. The regulations for this zone are designed to protect and stabilize the essential characteristics of these areas, to minimize conflicting land uses detrimental to agricultural enterprises and to limit development which requires highways and other public facilities in excess of those required by rural-oriented uses.

s. 203.2 Uses by Right: The following principal uses are permitted by right in the RA zone:

1. Single-family dwelling on an approved lot in a minor residential land development (6 or fewer existing or proposed dwelling units excluding the prime farmstead; see definition on page I-9) or on an individual lot the dimensions of which have not changed since April 18, 1975.
2. Farm Buildings
3. Crops, Pasture
4. Dairy, Livestock, Poultry, Small Animals
5. Greenhouse, Nursery
6. Forestation and Wildlife Preserves

s. 203.4 Lot Area and Width: Lot area and lot width consistent with the following dimensions shall be provided for each principal use hereafter established in this zone:

Minimum Lot Area -- 1 acre (43,560 sq. ft.)

Minimum Lot Width -- 175 feet

Maximum Lot Area -- No maximum except for single-family dwellings as follows. A lot on which a new dwelling is to be located shall not contain more than one and one-half (1.5) acres (65,340 sq. ft.), unless it is determined prior to subdivision or land development approval that the property owner has sufficient low quality land not suitable for agricultural purposes to justify using more than 1.5 acres for the location of the proposed dwelling unit; or unless the physical characteristics of the land (ex: topography,

underlying rock structure, shape of existing lot boundaries) require a lot size in excess of 1.5 acres.

RESIDENTIAL LAND DEVELOPMENT (1) The improvement of one lot or two or more contiguous lots, tracts or parcels of land involving (a) a group of two or more buildings to be occupied as dwelling units, or (b) the division or allocation of land or space for dwelling purposes between or among two or more existing or prospective occupants; (2) A residential subdivision. In determining the number of lots in a residential land development all lots which on April 18, 1975 were a part of the same parcel shall be included. A property owner submitting a subdivision plan will be required to specify on his plan which lot or lots shall carry with them the right to erect or place any unused quota of dwelling units his tract may have.

Minor Residential Land Development A residential land development consisting of six (6) or fewer existing or proposed dwelling units, excluding the prime farmstead.

Major Residential Land Development Any residential land development involving seven (7) or more existing or proposed dwelling units (including dwelling units previously approved for minor residential land developments, but excluding the prime farmstead).

RESIDENTIAL SUBDIVISION The division or redivision of a lot, tract or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing lot lines for the purpose whether immediate or future of lease, transfer of ownership, or building or lot development where one or more of the lots, tracts, parcels or division will be used immediately or in the future as a place for a dwelling unit to be occupied by human beings. In determining the number of lots in a residential subdivision all lots which on April 18, 1975 were a part of the same parcel shall be included. A property owner submitting a subdivision plan will be required to specify on his plan which lot or lots shall carry with them the right to erect or place any unused quota of dwelling units his tract may have.

LOW QUALITY LAND Includes land: (1) denoted in soil capability units III e-3 through VII s-2, as classified by the Soil Survey of York County, Pennsylvania. Series 1959, No. 23 issued May, 1963; or (2) characterized by rock outcroppings, swamp or heavily wooded areas; or (3) having slopes exceeding fifteen percent, or (4) which is of such size or shape that is insufficient to permit efficient use of farm machinery.

G. CONDITIONAL USES Peach Bottom Township

- s. 493 All applications for approval of a conditional use shall be referred to the Township Planning Commission for recommendation.
- s. 494 Single family dwelling units in the agricultural zone shall be subject to the following limitations:

a) There shall be permitted on each tract of land the following number of single family dwelling units:

<u>Size of Tract of Land</u>	<u>Number of Single Family Dwelling Units Permitted</u>
0-7 acres	1
7-30 acres	2
30-80 acres	3
80-130 acres	4
130-180 acres	5
180-230 acres	6
230-280 acres	7
280-330 acres	8
330-380 acres	9
380-430 acres	10
430-480 acres	11
480-530 acres	12
530-580 acres	13
580-630 acres	14
630-680 acres	15
680-730 acres	16
730-780 acres	17
780-830 acres	18
830 acres and over	19

b) New single family dwelling units shall be located on lots in soil capability units III e-3 through VII s-2, as classified by the Soil Survey of York County, Pennsylvania, Series 1959, No. 23 issued May, 1963, or on lots on lands which cannot feasibly be farmed, (1) due to existing features of the site such as rock outcroppings, swamps, the fact that the area is heavily wooded, or the fact that the slope of the area exceeds fifteen (15%) percent, or (2) due to the fact that the size or shape of the area suitable for farming is insufficient to permit efficient use of farm machinery. Where such location is not feasible, permits shall be issued to enable dwelling units to be located on lots containing higher quality soils. However, in all cases such residential lots shall be located on the least agriculturally productive land feasible, and so as to minimize interference with agricultural production.

c) A lot on which a new dwelling is to be located shall not contain more than one (1) acre, unless it is determined from the subdivision plan submitted by the property owner that the property owner has sufficient land of the type described in paragraph e of this section to justify using more than one (1) acre for the location of the proposed dwelling unit, or that the physical characteristics of the land itself require a lot size in excess of one (1) acre.

d) A property owner submitting a subdivision plan will be required to specify on his plan which lot or lots shall carry with them the right to erect or place any unused quota of dwelling units his tract may have.

e) Lots for the location of single family dwelling units in addition to those authorized by subparagraph (a) may be permitted provided that all of the new dwelling units permitted by subparagraph (a) and all the additional new dwelling units are located on lots which are located:

1) On land in soil capability units IV e-5 through VII s-2 as classified by the Soil Survey of York County, Pennsylvania, Series 1959, No. 23 issued May, 1963; or

2) On lands which cannot feasibly be farmed:

(a) Due to the existing features of the site such as rock outcroppings, rock too close to the surface to permit plowing, swamps, the fact that the area is heavily wooded, or the fact that the slope of the area exceeds fifteen (15%) percent; or

(b) Due to the fact that the size or shape of the area suitable for farming is insufficient to permit efficient use of farm machinery .

Such additional lots must meet all the requirements of this Ordinance, the Township Subdivision Ordinance and all requirements of the Pennsylvania Department of Environmental Resources.

f. The applicant shall have the burden of proving that the land he seeks to subdivide meets the criteria set forth in this section.

g. Any landowner who disagrees with the classification of his farm or any part of it by the Soil Survey of York County, Pennsylvania, Series 1959, No. 23 issued May, 1963, may submit an engineering analysis of the soils on the portion of the farm which he seeks to have reclassified, and if the Board of Township Supervisors finds his study correct, it shall alter the Township Soil Map to reflect the results of such analysis.

## Appendix E

### Wisconsin Statutes, Chapter 91, Farmland Preservation

*Sections of the Wisconsin statutes pertaining to the preservation of agricultural lands and establishing a farmland preservation tax credit, as created by Chapter 29, laws of 1977 (the executive budget act), and amended by Chapters 169, 272, 418 and ... (Senate Bill 745).*

#### INCOME AND FRANCHISE TAXES 71.09

(11) **FARMLAND PRESERVATION CREDIT.** The purpose of this subsection is to provide credit to owners of farmland which is subject to agricultural use restrictions, through a system of income tax credits and refunds and appropriations from the general fund.

(a) In this subsection:

1. "Claimant" means an owner of farmland, as defined in s. 91.01 (9), domiciled in this state during the entire year for which a credit under this subsection is claimed.

a. When 2 or more individuals of a household are able to qualify individually as a claimant, they may determine between them who the claimant shall be. If they are unable to agree, the matter shall be referred to the secretary of revenue, whose decision is final.

b. If any person in a household has claimed or will claim credit under sub. (7), all persons from that household are ineligible to claim any credit under this subsection for the year to which the credit under sub. (7) pertained.

c. For partnerships, "claimant" means each individual partner.

d. For purposes of filing a claim under this subsection, the personal representative of an estate and the trustee of a trust shall be deemed owners of farmland. "Claimant" does not include the estate of a person who is a nonresident of this state on the person's date of death, a trust created by a nonresident person, a trust which receives Wisconsin real property from a nonresident person or a trust in which a nonresident settlor retains a beneficial interest.

e. For purposes of filing a claim under this subsection, when land is subject to a land contract, the claimant shall be the vendee under the contract.

f. For purposes of filing a claim under this subsection, when a guardian has been appointed under ch. 880 for a ward who owns the farmland, the claimant shall be the guardian on behalf of the ward.

2. "Department" means the department of revenue.

3. "Farmland" means 35 or more acres of real property in this state owned by the claimant at the close of the income year for which a credit under this subsection is claimed which farmland, during that year, produced not less than \$6,000 in gross farm profits resulting from the farmland's agricultural use, as defined in s. 91.01 (1), or which, during that year and the 2 years immediately preceding that year, produced not less than \$18,000 in such profits.

3m. "Gross farm profits" means gross receipts, excluding rent, from agricultural use, as defined in s. 91.01 (1), less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the income year.

4. "Household" means an individual and his or her spouse and all minor dependents.

5. "Household income" means all of the income of the claimant, the claimant's spouse and all minor dependents attributable to the income year while members of the household.

6. "Income":

a. For an individual, means income as defined under sub. (7) (a) 1, less the first \$7,500 of nonfarm wages, tips and salaries earned by the household.

b. For a corporate claimant, means the same as for an individual claimant except that income as defined under s. 71.02 (1) (a) plus any business loss carry forward allowed under s. 71.06 shall be included instead of income under sub. (7) (a) 1 and "income" of a corporate claimant shall include all household income of each of its corporate shareholders of record at the end of its income year.

c. For an estate or trust, means the same as "income" for an individual except that the net income of the estate or trust before subtracting any deductions claimed for income distributable to the estate's or trust's beneficiaries shall be included instead of Wisconsin adjusted gross income as defined in s. 71.02 (2) (e).

7. "Property taxes accrued" means property taxes, exclusive of special assessments, delinquent interest and charges for service, levied on a claimant's farmland and improvements in any calendar year under ch. 70, less the tax credit, if any, afforded in respect of the property by ss. 79.10 (3) and 79.25 (5). "Property taxes accrued" shall not exceed \$6,000. If farmland is owned by 2 or more persons or entities as joint tenants, tenants in common or partners and one or more such persons or entities is not a member of the claimant's household, "property taxes accrued" is that part of property taxes levied on the farmland (reduced by the tax credit under ss. 79.10 (3) and 79.25 (5)) as reflects the ownership percentage of the claimant and the claimant's household. For purposes of this paragraph, property taxes are "levied" when the tax roll is delivered to the local treasurer with the warrant for collection. If farmland is sold during the calendar year of the levy the "property taxes accrued" for the seller and buyer shall be the amount of the tax levy prorated to each in the closing agreement pertaining to the sale of

the farmland or, if not so provided for in the closing agreement, the tax levy shall be prorated between the seller and buyer in proportion to months of their respective ownership.

(am) Subject to the limitations provided in this subsection, a claimant may claim as a credit against Wisconsin income taxes otherwise due, the amount derived under par. (b). If the allowable amount of claim exceeds the income taxes otherwise due on claimant's income or if there are no Wisconsin income taxes due on claimant's income, the amount of the claim not used as an offset against income taxes shall be certified to the department of administration for payment to the claimant by check drawn on the general fund. No such check and no offset against income taxes otherwise payable, or refund of income taxes paid in respect of any such claim shall be charged against any town, city, village or county in the distribution of income taxes under this chapter. No interest shall be allowed on any payment made to a claimant under this subsection.

(b) The amount of any claim filed in 1978 and based upon property taxes accrued in 1977, or claims filed in later calendar years based upon property taxes accrued in the preceding calendar year shall be determined as follows:

1. The amount of excessive property taxes shall be computed by subtracting from property taxes accrued the amount of 3% of the first \$5,000 of household income plus 4% of the 2nd \$5,000 of household income plus 6% of the 3rd \$5,000 of household income plus 8% of the 4th \$5,000 of household income plus 15% of the 5th \$5,000 of household income plus 25% of the 6th \$5,000 of household income plus 35% of household income in excess of \$30,000. The maximum excessive property tax which can be utilized is \$6,000.

2. The credit allowed under this subsection shall be limited to 80% of the first \$4,000 of excessive property taxes plus 50% of the next \$2,000 of excessive property taxes. The maximum credit shall not exceed \$4,200 for any claimant. The credit for any claimant shall be the greater of either the credit as calculated under this subsection as it exists at the end of the year for which the claim is filed or as it existed on the date on which the farmland became subject to a current agreement under subch. II or III of ch. 91 or as it existed on the date on which the farmland became subject to a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91, using for such calculations household income and property taxes accrued of the year for which the claim is filed.

3. a. If the claimant owns farmland which is located in a county which has a certified agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed and is in an area zoned by a county, city or village for exclusive agricultural use under ch. 91 at the close of such year, the amount of the claim shall be that as specified in subd. 2.

b. If the claimant owns farmland which is subject to a transition area agreement under subch. II of ch. 91 on July 1 of the year for which

credit is claimed, or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, and the farmland is located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, or in a town which is subject to a certified county exclusive agricultural use zoning ordinance under subch. V of ch. 91 in effect at the close of the year for which credit is claimed, the amount of the claim shall be that as specified in subd. 2.

c. If the claimant is ineligible for credit under subd. 3. a or b but owns farmland which is subject to a farmland preservation agreement or a transition area agreement under subch. II of ch. 91 on July 1 of the year for which credit is claimed, or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 70% of that specified in subd. 2.

d. If the claimant owns farmland which is located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 at the close of the year for which credit is claimed, and is located in an area zoned for exclusive agricultural use under a certified town ordinance under subch. V of ch. 91 at the close of such year, the amount of the claim shall be limited to 70% of that specified in subd. 2.

e. If the claimant owns farmland which is located in an area zoned for exclusive agricultural use under a certified county, city or village ordinance under subch. V of ch. 91 at the close of the year for which credit is claimed, but the county in which the farmland is located has not adopted an agricultural preservation plan under subch. IV of ch. 91 by the close of such year, the amount of the claim shall be limited to 70% of that specified in subd. 2.

f. If the claimant owns farmland which is subject to a farmland preservation agreement under subch. III of ch. 91 on July 1 of the year for which credit is claimed or the claimant had applied for such an agreement before July 1 of such year and the agreement has subsequently been executed, the amount of the claim shall be limited to 50% of that specified in subd. 2.

4. Notwithstanding the time requirements of subd. 3, for claims filed in 1978 based on property taxes accrued in 1977:

a. Claimants may file under subd. 3. a or d if the farmland was located in an agricultural district under a certified county agricultural preservation plan under subch. IV of ch. 91 on March 1, 1978, and was zoned for exclusively agricultural use under an ordinance certified under subch. V of ch. 91 on March 1, 1978.

b. Claimants may file under subd. 3. b if the claimant had applied for a transition area agreement under subch. II of ch. 91 before March 1, 1978, and the agreement had subsequently been executed and the farmland was located in a city or village which has a certified exclusive agricultural use zoning ordinance under subch. V of ch.

91 in effect on March 1, 1978, or in a town which is subject to a county exclusive agricultural use zoning ordinance certified under subch. V of ch. 91 on March 1, 1978.

c. Claimants may file under subd. 3. c or f if the claimant had applied for a farmland preservation agreement or transition area agreement under subch. II or III of ch. 91 before March 1, 1978, and the agreement has subsequently been executed.

d. Claimants may file under subd. 3. e if the farmland was zoned for exclusively agricultural use under an ordinance certified under subch. V of ch. 91 on March 1, 1978.

(c) All amounts allowed as credits under this subsection constitute income for income and franchise tax purposes and are reportable as such in the year of receipt.

(d) No credit shall be allowed under this subsection unless a claim therefore is filed with the department within 12 months following the close of the income year in which the property taxes accrued.

(e) The amount of any claim otherwise payable under this subsection may be applied by the department against any liability outstanding on the books of the department against the claimant or against any other individual who was a member of the claimant's household in the year to which the claim relates.

(f) The department may disallow any claim under this subsection if it determines that ownership of the farmland has been transferred to the claimant primarily for the purpose of maximizing benefits under this subsection.

(g) The department shall prepare a table under which claims under this subsection shall be determined.

(h) Every claimant under this subsection shall supply, at the request of the department, in support of the claim, a copy of the property tax bill relating to the farmland, a copy of the farmland preservation agreement or a certificate of the appropriate zoning authority. The certificate of the zoning authority shall certify:

1. That the lands are within the boundaries of an agricultural zoning district which is part of an adopted ordinance meeting the standards of subch. V of ch. 91 and certified under s. 91.06.

2. That the ordinance has been approved, where necessary, by the board of the town within which the lands are situated, as required by s. 59.97, and shall indicate the date of approval.

3. That each structure or improvement on the lands conforms to the requirements of the exclusive agricultural use ordinance.

4. The portion of the claimant's farmland which is within the area zoned for exclusive agricultural use.

(i) Whenever an audit of any claim filed under this subsection indicates that an incorrect claim was filed, the department shall make a determination of the correct amount and notify the claimant of the determination and the reasons therefor. Notice of the determination shall be given to the claimant within 4 years of the last day prescribed by law for filing the claim. If the

claim has been paid, or credited against income taxes otherwise payable, the credit shall be reduced or canceled, and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and such assessment shall bear interest at 9% per annum from the due date of the claim. Any person feeling aggrieved by the determination may, within 30 days after receipt, petition the department for redetermination. The department shall make a redetermination on the petition within 6 months after it is filed and notify the claimant. If no timely petition for redetermination is filed with the department, its determination shall be final and conclusive.

(j) A claimant who has filed a timely claim under this subsection may file an amended claim with the department within 4 years of the last day prescribed by law for filing the original claim.

(k) In any case in which it is determined that a claim is or was excessive and was filed with fraudulent intent, the claim shall be disallowed in full and, if the claim has been paid or a credit has been allowed against income taxes otherwise payable, the credit shall be canceled and the amount paid may be recovered by assessment as income taxes are assessed and such assessment shall bear interest from the due date of the claim, until refunded or paid, at the rate of 1.5% per month. The claimant in such case, and any person who assisted in the preparation or filing of the excessive claim or supplied information upon which the excessive claim was prepared, with fraudulent intent, shall be guilty of a misdemeanor. In any case in which it is determined that a claim is or was excessive and was negligently prepared, 10% of the corrected claim shall be disallowed and, if the claim has been paid or credited against income taxes otherwise payable, the credit shall be reduced or canceled and the proper portion of any amount paid shall be similarly recovered by assessment as income taxes are assessed and the assessment shall bear interest at 1.5% per month from the due date of the claim.

(n) Any person aggrieved by the department's redetermination under this subsection may appeal the redetermination to the tax appeals commission by filing a petition with the commission within 30 days after the redetermination, as provided under s. 73.01 (5) with respect to income tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01 (5) (a) shall not apply.

(o) No credit may be allowed under this subsection if the claimant has been notified of a violation of s. 91.13 (8) (d).

(p) No credit shall be allowed under this subsection for property taxes accrued on farmland zoned for exclusive agricultural use under an ordinance certified under subch. V of ch. 91 which is granted a special exception or conditional use permit for a use which is not an agricultural use, as defined in s. 91.01 (1).

## FARMLAND PRESERVATION

### SUBCHAPTER I

#### GENERAL PROVISIONS

**91.01 Definitions.** In this chapter:

(1) "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming and vegetable raising.

(2) "Board" means the agricultural lands preservation board.

(3) "Department" means the department of agriculture, trade and consumer protection.

(4) "Develop" means change to any use other than agricultural use.

(5) "Devoted primarily to agricultural use" means under agricultural use for at least 12 consecutive months during the preceding 36-month period.

(6) "Eligible farmland" means a parcel of 35 or more acres of contiguous land which is devoted primarily to agricultural use which during the year preceding application for a farmland preservation agreement produced gross farm profits, as defined in s. 71.09 (11) (a) 3m, of not less than \$6,000 or which, during the 3 years preceding application produced gross farm profits, as defined in s. 71.09 (11) (a) 3m, of not less than \$18,000.

(7) "Farmland preservation agreement" or "transition area agreement" means a restrictive covenant, evidenced by an instrument whereby the owner and the state agree to hold jointly the right to develop the land except as may be expressly reserved in the instrument and which contains a covenant running with the land, for a term of years, not to develop except as expressly reserved in the instrument.

(8) "Local governing body having jurisdiction" means the city council, village board or town board if that body has adopted a certified ordinance under subch. V; or the county board where such a city, village or town zoning ordinance is not in effect.

(9) "Owner" means a resident of this state owning land and includes an individual, legal guardian, corporation incorporated in this state, business trust, estate, trust, partnership or association or 2 or more persons having a joint or common interest in the land. However, where land is subject to a land contract, it means the vendor in agreement with the vendee.

History: 1977 c. 29, 418.

**91.03 Interdepartmental cooperation.** All other departments and agencies of state government shall cooperate with the board and the department in the exchange of information concerning projects and activities, including takings

under eminent domain, which might jeopardize the preservation of land contemplated by this chapter. The department shall periodically advise other departments and agencies of state government of the location and description of land upon which there exist farmland preservation agreements or zoning for exclusively agricultural use and the departments and agencies shall administer their planning and projects consistent with the purposes of this chapter.

History: 1977 c. 29.

#### 91.05 Preliminary agricultural area delineation.

(1) For the purpose of assisting local units of government to preserve agricultural lands, the department, under standards prepared by the board, and in connection with other state agencies, counties and soil and water conservation districts shall prepare or cause to be prepared, maps that locate lands in the state which should be considered for preservation because of their agricultural significance.

(2) Maps shall be prepared first for those portions of the state where the need for agricultural preservation is of the highest priority. Priority shall be based upon the degree of threat of agricultural alteration, loss to other uses, agricultural quality and agricultural importance.

(3) Agricultural maps shall be prepared by the department utilizing the best practicable method and shall be based upon data such as soil surveys, aerial photography interpretation, existing agricultural zoning and surveys and may be supplemented by on-site surveys and other studies.

History: 1977 c. 29.

**91.06 Certification.** The board shall review farmland preservation plans and exclusive agricultural use zoning ordinances submitted to it under ss. 91.61 and 91.78 and shall certify to the appropriate zoning authority whether the plans and ordinances meet the standards of subchs. IV and V, respectively. Certifications may be in whole or in part.

### SUBCHAPTER II

#### FARMLAND PRESERVATION AGREEMENTS

**91.11 Eligibility.** (1) An owner may apply for a farmland preservation agreement under this subchapter if:

(a) The county in which the land is located has a certified agricultural preservation plan in effect; or

(b) The land is in an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(2) An owner of land located in a county which has adopted a certified exclusive agricultural use zoning ordinance may not apply under this subchapter if the town in which the land is located has not approved the ordinance.

(3) In any county with a population of 75,000 or more or any county adjacent to a county with a population of 400,000 or more, an owner may apply for a farmland preservation agreement under this subchapter only if the county in which the land is located has a certified exclusive agricultural use zoning ordinance under subch. V.

(4) In any county, city, town or village that has adopted a certified exclusive agricultural use zoning ordinance under subch. V, an owner may apply for a farmland preservation agreement only if the land is in an area zoned for exclusive agricultural use.

History: 1977 c. 29.

#### 91.13 Farmland preservation agreements.

(1) Any owner of eligible farmlands who desires to have the lands covered by a farmland preservation agreement may apply to the county clerk on or after December 1, 1977, by executing a form provided by the department. The application shall include a land survey or legal description of all eligible farmland to be covered under the agreement, a map showing significant natural features and all structures and physical improvements on the lands or an aerial photograph of all land which is an integral part of the owner's farming operation which is marked to indicate the farmland and structures to be covered by the agreement, the soil classification of the lands and such other data as the department deems reasonably necessary to determine the eligibility of the lands for coverage under the agreement.

(2) Upon receipt of the application, the county clerk shall forward the application to the local governing body having jurisdiction, if not the county, and shall send written notification to the department, county planning and zoning committee, the regional planning commission and the soil and water conservation district. If the county has jurisdiction, the clerk shall also notify the board of the town in which the land is situated. If the land is within the extraterritorial zoning jurisdiction of any municipality under s. 62.23 (7a), the clerk shall send written notification to the governing body of the city or village.

(3) An agency or local governing body receiving written notice shall upon receipt of notification have 30 days to review, comment and make recommendations to the local governing body having jurisdiction.

(4) After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body having jurisdiction shall approve or reject the

application within 120 days after the application is received unless time is extended by mutual agreement of the parties involved. The local governing body's approval or rejection of the application shall be based upon and consistent with the following:

(a) Whether the farmland is designated an agricultural preservation area in a certified agricultural preservation plan established under subch. IV or is an area zoned for exclusive agricultural use under an ordinance certified under subch. V.

(b) The productivity and viability of the land for agricultural use.

(c) The predominance of agricultural use on the land.

(d) The inclusion of all contiguous lands which are in single ownership.

(e) Whether the property is eligible farmland.

(f) Consistency with the county agricultural preservation plan.

(g) Other criteria established by the local governing body consistent with the agricultural preservation purposes of this chapter.

(5) The clerk of the local governing body having jurisdiction shall forward a copy of all approved applications for farmland preservation agreements, along with the comments and recommendations of the reviewing bodies, to the department. If action is not taken by the local governing body within the time prescribed or agreed upon, the applicant may proceed as provided in sub. (7) as if the application was rejected.

(6) The department may reject an application for a farmland preservation agreement which has been approved by a local governing body only if the land is not eligible farmland.

(7) If the application for a farmland preservation agreement is rejected by the local governing body or the department, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (4) (a) to (g), approve or reject the application.

(8) If an application is approved by the department or, on appeal, by the board, the department shall prepare and send to the applicant a farmland preservation agreement which shall include the following provisions:

(a) Except as provided under s. 91.75 (2), no structure may be built on the land except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(b) Land improvements shall not be made except for use consistent with agricultural use or with the approval of the local governing body having jurisdiction and the department.

(c) A structure or improvement made as an incident to a scenic, access or utility easement or

license shall be deemed consistent with agricultural use under pars. (a) and (b).

(d) Farming operations shall be conducted in substantial accordance with an approved soil and water conservation district conservation plan. The county soil and water conservation district supervisors shall ensure that such plans are prepared and followed. Deviations from a plan may be allowed, if in the judgment of the supervisors, personnel are not available to lay out the suggested practices on the land or if the practices are not economical for the owner to adopt.

(e) The state agrees to pay, with respect to each year the agreement is in effect, the greater of the credits claimable under s. 71.09 (11), as such statute exists on the date the agreement takes effect, or the credits claimable under s. 71.09 (11), as such statute exists at the end of the year for which a claim for credit is filed, if all the requirements of s. 71.09 (11) are satisfied.

(f) The department shall not require the owner to permit public access onto the land.

(g) Any other condition and restriction on the land as agreed to by the parties that is deemed necessary to preserve the land for agricultural use if it is not in conflict with the county agricultural preservation plan.

(9) If the owner executes the farmland preservation agreement, the owner shall return it to the department for execution on behalf of the state. An agreement shall become effective on the date it is delivered or mailed to the department for execution. The department shall within 30 days of receipt record the executed agreement with the register of deeds of the county in which the land is situated and notify the applicant, the local governing body having jurisdiction, all reviewing agencies and the department of revenue.

(10) Agreements under this subchapter shall be for not less than 10 years nor more than 25 years.

(11) An applicant may reapply for a farmland preservation agreement following a one-year waiting period from notice of final determination of the original application by the local governing body having jurisdiction, the department, the board or a court on appeal.

(12) The value of the jointly owned development rights as expressed in a farmland preservation agreement shall not be exempt from general property taxation and shall be assessed to the owner of the land as part of the value of the land.  
History: 1977 c. 29, 169, 418, 447.

**91.14 Transition area agreements.** An owner may apply for a transition area agreement under this subchapter if the farmland is located in an area identified as a transition area under a certified county agricultural preservation plan under subch. IV. The provisions of this subchapter, except ss. 91.11 (1) (b) and (4), 91.13 (4) (a) and (10) and 91.15, apply to agreements under this section. Agreements under this section shall be for not less than 5 nor more than 20 years, consistent with the county

agricultural preservation plan.

History: 1977 c. 29.

**91.15 Exemption from special assessments.** A city, village, town, county or other governmental agency may not impose special assessments for sanitary sewers, water, lights or nonfarm drainage on land zoned for exclusively agricultural use under subch. V or for which a farmland preservation agreement under this subchapter has been recorded except as to a dwelling or a nonfarm structure located on the land unless the assessments were imposed prior to the recording of the agreement. Land covered by this exemption shall be denied use of an improvement created by the special assessment as long as the owner of the land has a recorded agreement under this subchapter unless the owner has paid the amount that would have been paid had the land not been excluded.  
History: 1977 c. 29, 418.

**91.17 Change of ownership.** (1) Land subject to a farmland preservation agreement may be sold without a lien being filed under s. 91.19, subject to the reservation of rights contained in the agreement. The seller shall notify the department of any such transfer. The purchaser shall be liable under any subsequent lien under s. 91.19 only for the amount of tax credits paid on that portion of the land purchased.

(2) When the owner of land subject to a farmland preservation agreement dies or is certified by a physician to be totally and permanently disabled, the land may be released from the program under this chapter and shall be subject to a lien under s. 91.19 (8).  
History: 1977 c. 29, 169.

**91.19 Relinquishment of agreements.**

(1) A farmland preservation agreement shall be relinquished by the department on behalf of the state at the expiration of the term of the agreement.

(2) A farmland preservation agreement may be relinquished by the department prior to the termination date contained in the instrument as follows:

(a) The owner of the land may submit an application, on forms prescribed by the department, to the local governing body having jurisdiction requesting that the agreement be relinquished. Upon receipt of the application, the clerk of the local governing body shall send written notification thereof to the persons specified under s. 91.13 (2), and such persons shall have 30 days from receipt of notification to review, comment and make recommendations to the local governing body having jurisdiction.

(b) After considering the comments and recommendations of the reviewing agencies, the local governing body having jurisdiction shall approve or reject the application within 120 days after it is filed, unless the time is extended by mutual agreement of the parties involved. The local governing body having jurisdiction shall not approve an application for relinquishment under this subsection unless it finds that

one or more of the following conditions exist:

1. The agreement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land. In this subdivision "economic inviability" means continued uneconomic operation because of the restrictions in the agreement and not merely the existence of uses of the land which would allow higher returns.

2. Significant natural physical changes in the land which are generally irreversible and permanently affect the land.

3. Surrounding conditions prohibit agricultural use.

(3) If the request for relinquishment of the farmland preservation agreement is approved by the local governing body having jurisdiction, a copy of the application, along with the comments and recommendations of the reviewing agencies, shall be forwarded to the board. The board shall, within 60 days, upon consideration

of the factors in sub. (2) (b), approve or reject the application for relinquishment. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.

(4) If action is not taken by the local governing body having jurisdiction within the time period prescribed or agreed upon, the applicant may proceed as provided in sub. (5) as if the application was rejected.

(5) If the application for relinquishment is rejected by the local governing body having jurisdiction, the application shall be returned to the applicant with a written statement regarding the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the board. The board shall, within 60 days after the appeal has been received, upon consideration of the factors listed in sub. (2) (b), approve or reject the request for relinquishment. If the board approves the application it shall notify the local governing body having jurisdiction and the department of revenue, prepare an instrument under sub. (7) and record it with the register of deeds of the county in which the land is located.  
History: 1977 c. 29, 169, 418.

(6) The department shall relinquish from a farmland preservation agreement any lands acquired for use as an electric generating facility authorized under s. 196.491 (3), or which involves acquisition of the fee by a utility or a cooperative organized under ch. 185 for purposes of generating electricity or other utility uses.

(7) Whenever a farmland preservation agreement is relinquished under sub. (2) or a transition area agreement is relinquished under sub. (1) or (2), the department shall cause to be prepared and recorded a lien against the property formerly subject to the agreement for the total amount of all credits received by all owners of such lands under s. 71.09 (11) during the last 10 years that the land was eligible for such

credit, plus interest at the rate of 6% per year compounded annually on the credits received from the time the credits were received until the lien is paid. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(8) Upon the relinquishment of a farmland preservation agreement under sub. (1), the department shall cause to be prepared and recorded a lien against the property formerly subject to the farmland preservation agreement for the total amount of the credits received by all owners thereof under s. 71.09 (11) during the last 10 years that the land was eligible for such credit, plus 6% interest per year compounded from the time of relinquishment. No interest shall be compounded for any period during which the farmland is subject to a subsequent farmland preservation agreement or transition area agreement or is zoned for exclusive agricultural use under an ordinance certified under subch. V.

(9) A lien recorded under this section shall be effective upon recording and shall be subordinate to a lien of mortgage which is recorded prior to the recording of the lien under this section.

(10) The lien may be paid and discharged at any time and shall become payable to the state by the owner of record at the time the land or any portion of it is sold by the owner of record or if the land is converted to a use prohibited by the former farmland preservation agreement. Upon reentry in an agreement under this subchapter, the portion of the lien on the land reentered shall be discharged. The discharge of a lien does not affect the calculation of any subsequent lien under sub. (7) or (8). The proceeds from the payment shall be paid into the general fund.

(12) No lien shall be filed under sub. (7) or (8), on the date of relinquishment or termination, for tax credits paid on lands or any portion thereof which are zoned for exclusively agricultural use under an ordinance certified under subch. V.  
History: 1977 c. 29, 169, 418.

**91.21 Penalty for use change.** (1) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter changes the use of the land to a prohibited use without first acting under ss. 91.17 and 91.19, the owner or successor in title may be enjoined by the state, acting through the attorney general, or by the local governing body having jurisdiction, acting through its attorney, and is subject to a civil penalty for actual damages, but in no case to exceed double the value of the land as established at the time the application for the agreement was approved.

(2) The department or local governing body having jurisdiction shall send written notification to the owner or successor in title, the

department or local governing body having jurisdiction, as appropriate, and the department of revenue, of any action taken under this section. Such person may, within 30 days of receipt of the notice, request a hearing before the department or local governing body issuing the notice, which shall be scheduled within 30 days of receipt of the request. All actions of the department under this section are subject to review under ch. 227.

(3) If the owner or a successor in title of the land upon which a farmland preservation agreement has been recorded under this chapter fails to comply with s. 91.13 (8) (d), such person shall be given one year to restore compliance before the remedies of sub. (1) shall be applicable.  
History: 1977 c. 29.

**91.23 Conversion.** An owner under a farmland preservation agreement may at any time apply for a transition area agreement, and an owner under a transition area agreement may at any time apply for a farmland preservation agreement. If such an application is approved, the prior agreement shall be relinquished without a lien being filed under s. 91.19.  
History: 1977 c. 29, 169.

#### SUBCHAPTER III

#### INITIAL AGREEMENTS

**91.31 Eligibility.** Prior to October 1, 1982, an owner may apply for an initial farmland preservation agreement under this subchapter if the county in which the land is located does not have a certified agricultural preservation plan in effect and if the eligible farmland is not in an area zoned for exclusive agricultural use under an ordinance certified under subch. V. Subchapter II applies to such farmland preservation agreements except as specifically provided in this subchapter. No agreements shall be made under this subchapter after September 30, 1982.  
History: 1977 c. 29.

**91.33 Applications.** An application under this subchapter need not include the soil classification of the lands involved.  
History: 1977 c. 29.

**91.35 Agreement provisions.** (1) Farmland preservation agreements under this subchapter shall require that a soil and water conservation district conservation plan be either under development or in effect.

(2) Except as provided in s. 91.39, farmland preservation agreements under this subchapter shall expire on September 30, 1982.  
History: 1977 c. 29, 169.

**91.37 Liens.** (1) If the owner withdraws during the term of an agreement under this subchapter, the lien shall apply to the amount of all credit under s. 71.09 (11) received for the period the land was subject to the agreement

plus 6% interest per year compounded annually from the time the credit was received until it is paid.

(2) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II, the lien shall apply, without interest, to the credit received under s. 71.09 (11) for the last 2 years the land was eligible for such credit if the land is not subject to a certified exclusive agricultural use zoning ordinance under subch. V and either the county in which the land is located has not adopted a certified agricultural preservation plan, or, if such a plan is adopted, the farmland would not be eligible for an agreement under the terms of the plan.

(3) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II, although the land is eligible for an agreement under subch. II and is not subject to a certified exclusive agricultural use zoning ordinance under subch. V, the lien shall apply to all credit received during the period the land was subject to an agreement under this subchapter, plus 6% interest per year compounded from the time of expiration.

(4) If at the end of an agreement under this subchapter, the farmland is not eligible for agreement under subch. II because s. 91.11 (2), (3) or (4) is applicable, the lien shall apply, without interest, to the credit received under s. 71.09 (11) for the last 2 years the land was eligible for such credit.

(5) If at the end of an agreement under this subchapter, the owner does not apply for a renewal under s. 91.39 or an agreement under subch. II and only a portion of the land subject to the agreement is eligible for an agreement under subch. II, the lien shall be calculated under sub. (2) or (4) on that part of the land which is ineligible and under sub. (3) on that part which is eligible.

(6) No lien shall be filed, on the date of relinquishment or termination of an agreement under this subchapter, for tax credits paid on lands or any portion thereof which are zoned for exclusively agricultural use under an ordinance certified under subch. V.

History: 1977 c. 29, 169, 418.

**91.39 Renewal.** Such agreements may be renewed for a single one-year period only if an agricultural preservation plan is adopted by the county in which the farmland is located and the farmland is eligible for an agreement under subch. II under such plan.

History: 1977 c. 29.

**91.41 Conversion.** Any person subject to a farmland preservation agreement under this subchapter may apply under subch. II whenever the county in which the land is located adopts a certified agricultural preservation plan under subch. IV or whenever the farmland becomes subject to a certified exclusive agricultural use

zoning ordinance under subch. V. In such case, the farmland preservation agreement under this chapter shall be relinquished under s. 91.19 without a lien being filed.

History: 1977 c. 29, 169.

## SUBCHAPTER IV

### AGRICULTURAL PRESERVATION PLANNING

**91.51 Purpose.** The purpose of this subchapter is to specify standards for county agricultural preservation plans required to enable farmland owners to enter into farmland preservation agreements under this chapter. Agricultural preservation planning shall be undertaken in accordance with s. 59.97 and agricultural preservation plans shall be a component of and consistent with any county development plan prepared under s. 59.97 (3).

History: 1977 c. 29.

**91.53 Studies.** County agricultural preservation plans shall be based upon, without limitation because of enumeration, surveys, studies and analyses of agricultural use and productivity, natural resources and open space, population and population density, urban growth, housing and the character, location, timing, use and capacity of existing and future public facilities.

History: 1977 c. 29.

**91.55 Content of plans.** (1) County agricultural preservation plans shall, at a minimum, include:

(a) Statements of policy regarding preservation of agricultural lands, urban growth, the provision of public facilities and the protection of significant natural resource, open space, scenic, historic or architectural areas.

(b) Maps identifying agricultural areas to be preserved, areas of special environmental, natural resource or open space significance and, if any, transition areas. Transition areas shall be areas in predominantly agricultural use which the plan identifies for future development. Any agricultural preservation areas mapped must be a minimum of 100 acres. Any transition areas mapped must be a minimum of 35 acres. In mapping agricultural preservation areas, the maps identifying preliminary agricultural preservation areas prepared under s. 91.05 shall be considered if the map is provided to the county at least 12 months prior to adoption of the agricultural preservation plan.

(2) The maps may include areas other than those mapped under s. 91.05. Areas mapped under s. 91.05 may be excluded from the county maps upon a finding that one or more of the following conditions exist:

(a) Existing or planned activities adjacent to the identified agricultural area are incompatible with agricultural use.

(b) The area is not economically viable for agricultural use.

(c) Substantial urban growth in the area or planned urban expansion has created a public need to convert agricultural land use to other uses.

(d) Maintenance of the area in agricultural use is not consistent with the goals and objectives of a county agricultural preservation plan.

(3) Statements regarding the coordination requirements of s. 91.59.

History: 1977 c. 29.

**91.57 Implementation programs.** County agricultural preservation plans shall include a program of specific public actions designed to preserve agricultural lands and guide urban growth. Such implementation programs shall include, without limitation because of enumeration:

(1) A general description of land use controls and programs to implement the policy statements of s. 91.55 (1).

(2) A program that describes the character, location, timing, use, capacity and financing of existing and proposed public facilities to serve existing and new development.

(3) An identification of procedures and standards for controlling the installation and maintenance of private waste disposal systems, specifically identifying areas not suitable for the installation of such systems.

(4) A program to protect areas of special environmental, natural resource or open space significance.

History: 1977 c. 29.

**91.59 Coordination.** (1) County agricultural preservation plans shall include agricultural preservation plans adopted by municipalities within the county if such plans comply with ss. 91.55 and 91.57.

(2) At least 60 days prior to the public hearing under s. 59.97 (3) (d), copies of the agricultural preservation plan shall be submitted for review and comment to all cities, villages

and towns within the county, all adjoining counties and the regional planning commission to which the county belongs.

(3) County agricultural preservation plans must indicate how they compare with regional plans prepared under s. 66.945 and must explain any discrepancies between the plans.

History: 1977 c. 29.

**91.61 Certification.** Upon completion of county agricultural preservation plans described in this subchapter, copies of the plan may be submitted to the board for review and certification under s. 91.06.

History: 1977 c. 29.

**91.63 Revisions.** Counties shall continually review and evaluate the agricultural preservation plan in light of changing needs and conditions and shall provide for periodic revision of the agricultural preservation plan set forth in this subchapter. Revisions shall be made in the same manner as adoption of the plan.

History: 1977 c. 29.

**91.65 State aids.** Subject to the approval of the board, the department of local affairs and development shall distribute the funds appropriated under s. 20.545 (1) (c) to assist counties in developing agricultural preservation plans in accordance with this subchapter.

History: 1977 c. 29.

## SUBCHAPTER V

### EXCLUSIVE AGRICULTURAL ZONING

**91.71 Purpose.** The purpose of this subchapter is to specify the minimum requirements for zoning ordinances designating certain lands for exclusively agricultural use, allowing the owners of such lands to claim the farmland preservation credit permitted under s. 71.09 (11).

History: 1977 c. 29, 418.

**91.73 Procedures.** (1) Except as otherwise provided, exclusive agricultural zoning ordinances shall be adopted and administered in accordance with ss. 59.97 to 59.99, 60.74 and 60.75, 61.35 or 62.23.

(2) Exclusive agricultural zoning ordinances shall be consistent with county agricultural preservation plans established under subch. IV.

(3) A majority of towns in a county with population exceeding 75,000 or a county adjacent to a county with population exceeding 400,000, may reject adoption of a county exclusive agricultural use zoning ordinance under this subchapter for all towns within the county only by filing within 6 months after adoption of the ordinance by the county board certified copies of resolutions disapproving the ordinance with the county clerk. Notwithstanding s. 59.97 (5) (c), the procedure established in this subsection shall be the only procedure by which a town in such a county may reject the application of a county agricultural use zoning ordinance in that town.

(4) Amendments to the texts of existing county zoning ordinances to bring the ordinances into compliance with this chapter, which are adopted by the county board, shall be effective in any town which does not file a certified copy of a resolution disapproving of the amendments pursuant to s. 59.97 (5) (c) 3m or 6. In those towns which disapprove of the amendment the former agricultural zoning remains in effect and shall be so designated on the official zoning map.

History: 1977 c. 29, 169.

**91.75 Ordinance standards.** A zoning ordinance shall be deemed an "exclusive agricultural use ordinance" if it includes those jurisdictional, organizational or enforcement provisions necessary for its proper administration, if the land in exclusive agricultural use districts is limited to agricultural use and is identified as an agricultural preservation area under any agricultural preservation plans adopted under subch. IV and if the regulations on the use of agricultural lands in such districts meet the

following standards which, except for sub. (4), are minimum standards:

(1) Except as provided under subs. (2) and (6), the minimum parcel size to establish a residence or a farm operation is 35 acres.

(2) The only residences allowed as permitted uses are those to be occupied by a person who, or a family at least one member of which, earns a substantial part of his or her livelihood from farm operations on the parcel, or is a parent or child of the operator of the farm. Preexisting residences located in areas subject to zoning under this section which do not conform to this paragraph may be continued in residential use and may be exempted from any limitations imposed or authorized under s. 59.97 (10).

(3) No structure or improvement may be built on the land unless consistent with agricultural uses.

(4) Such ordinances shall be considered local ordinances for purposes of s. 196.491 (3) (i) and shall provide that gas and electric utility uses not requiring authorization under s. 196.491 (3) are special exceptions or permitted or conditional uses and do not conflict with agricultural use.

(5) Special exceptions and conditional uses are limited to those agricultural-related, religious, other utility, institutional or governmental uses which do not conflict with agricultural use and are found to be necessary in light of the alternative locations available for such uses. The department shall be notified of the approval of any special exceptions and conditional uses in areas zoned for exclusive agricultural use.

(6) For purposes of farm consolidation and if permitted by local regulation, farm residences or structures which existed prior to the adoption of the ordinance may be separated from a larger farm parcel.

History: 1977 c. 29, 169, 418.

**91.77 Ordinance revisions.** (1) A county, city, village or town may approve petitions for rezoning areas zoned for exclusive agricultural use only after findings are made based upon consideration of the following:

(a) Adequate public facilities to accommodate development either exist or will be provided within a reasonable time.

(b) Provision of public facilities to accommodate development will not place an unreasonable burden on the ability of affected local units of government to provide them.

(c) The land proposed for rezoning is suitable for development and development will not result in undue water or air pollution, cause unreasonable soil erosion or have an unreasonably adverse effect on rare or irreplaceable natural areas.

(2) Land which is rezoned under this section shall be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits paid on the land rezoned.

(3) The department shall be notified of all rezonings under this section.

History: 1977 c. 29, 169.

**91.78 Certification.** Copies of exclusive agricultural zoning ordinances may be submitted to the board for review and certification under s. 91.06.

History: 1977 c. 29

**91.79 Conditional uses; lien.** Any land zoned under this subchapter which is granted a special exception or conditional use permit for a use which is not an agricultural use shall be subject to the lien provided under s. 91.19 (8) to (10) for the amount of tax credits paid on the land granted such a permit.

History: 1977 c. 169.

## Appendix F

### Article 25-AA New York State Agricultural and Market Law: *Agricultural Districts* <sup>2/</sup>

#### Sec.

- 300. Declaration of legislative findings and intent.
- 301. Definitions.
- 302. Agricultural districting advisory committee.
- 303. Agricultural districts; creation.
- 304. Unique and irreplaceable agricultural land; creation of districts.
- 305. Agricultural districts; effects.
- 306. Agricultural lands outside of districts; agricultural value assessments.
- 307. Promulgation of rules and regulations.

#### Sec. 300. Declaration of legislative findings and intent

It is the declared policy of the state to conserve and protect and to encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean air sheds, as well as for aesthetic purposes. The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. Agriculture in many parts of the state is under urban pressure from expanding metropolitan areas. This urban pressure takes the form of scattered development in wide belts around urban areas, and brings conflicting land uses into juxtaposition, creates high costs for public services, and stimulates land speculation. When this scattered development extends into good farm areas, ordinances inhibiting farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements. Many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. Certain of these lands constitute unique and irreplaceable land resources of statewide importance. It is the purpose of this article to provide a means by which agricultural land may be protected and enhanced as a viable segment of the state's economy and as an economic and environmental resource of major importance.

Added L. 1971, C. 479, Sec. 1.

<sup>2/</sup> The text of the law was taken from McKinney's Consolidated Laws of New York-Annotated, Book 2B: Agriculture and Markets Law, West Publishing Company, St. Paul, Minn., 1972. For those interested in the original law or the specific changes resulting from the amendments, refer to Chapter 479 of McKinney's 1971 Session Laws of New York (the original legislation), Chapters 700 and 712 of McKinney's 1972 Session Laws of New York (the 1972 amendments), Chapters 232 and 390 of McKinney's 1973 Session Laws of New York (the 1973 amendments), Chapters 169, 552, and 864 of McKinney's 1974 Session Laws of New York (the 1974 amendments), Chapters 464, 717, and 718 of McKinney's 1975 Session Laws of New York (the 1975 amendments), Chapters 576, 671, and 672 of McKinney's 1976 Session Laws of New York (the 1976 amendments), and Chapters 241 and 663 of McKinney's 1977 Session Laws of New York (the 1978 amendments).

Sec. 301. Definitions

1. Viable agricultural land. Land highly suitable for agricultural production and which will continue to be economically feasible for such use if real estate taxes, farm use restrictions, and speculative activities are limited to levels approximating those in commercial agricultural areas not influenced by the proximity of urban and related nonagricultural development.

2. Unique and irreplaceable agricultural land. Land which is uniquely suited for the production of high value crops, including, but not limited to fruits, vegetables and horticultural specialties.

3. Agricultural production. The production for commercial purposes of crops, livestock and livestock products, but not land or portions thereof used for processing or retail merchandising of such crops, livestock or livestock products.

4. Crops, livestock and livestock products include but are not limited to the following:

- a. Field crops, including corn, wheat, oats, rye, barley, hay, potatoes, dry beans.
- b. Fruits, including apples, peaches, grapes, cherries, berries.
- c. Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, and onions.
- d. Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.
- e. Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs, furs.
- f. Woodland products, including logs, lumber, posts, firewood, and maple syrup, if such products are produced on property otherwise used for agricultural production. For purposes of computing total agricultural production under sections three hundred five and three hundred six of this article, the sale of woodland products may be included up to a maximum annual amount of two thousand dollars.

As amended L. 1972, C. 712, Sec. 1; L. 1978, C. 241, Sec. 1.

Sec. 302. Agricultural districting advisory committee

A county legislative body may establish an agricultural districting advisory committee which shall consist of four active farmers and four agribusinessmen residing within the county and a member of the county legislative body, who shall serve as the chairman of the committee. Such a committee shall be established in the event no such committee exists and a petition is received

by the county legislative body for the creation of an agricultural district pursuant to subdivision one of section three hundred three. The members of such committee shall be appointed by and shall serve at the pleasure of the chairman of the county legislative body. The members shall serve without salary, but the county legislative body may entitle each such member to reimbursement for his actual and necessary expenses incurred in the performance of his official duties. Such committee shall advise the county legislative body and work with the county planning board in relation to the proposed establishment, modification, and termination of agricultural districts. In particular, the committee shall render expert advice relating to the desirability of such action, including advice as to the nature of farming and farm resources within the proposed area and the relation of farming in such area to the county as a whole.

Added L. 1971, C. 479, Sec. 1.

Sec. 303. Agricultural districts: creation

1. Any owner or owners of land may submit a proposal to the county legislative body for the creation of an agricultural district within such county, provided that such owner or owners own at least five hundred acres or at least ten percent of the land proposed to be included in the district, whichever is greater. Such proposal shall be submitted in such manner and form as may be prescribed by the commissioner of environmental conservation, and shall include a description of the proposed district, including the boundaries thereof.

2. Upon the receipt of such a proposal, the county legislative body:

a. shall thereupon provide notice of such proposal by publishing a notice in a newspaper having general circulation within the proposed district and by posting such notice in five conspicuous places within the proposed district. The notice shall contain the following information:

(1) a statement that a proposal for an agricultural district has been filed with the county legislature pursuant to this article;

(2) a statement that the proposal will be on file open to public inspection in the county clerk's office;

(3) a statement that any municipality whose territory encompasses the proposed district or any landowner who owns at least ten percent of the land proposed to be included within the proposed modification of the proposed district may propose a modification of the proposed district in such form and manner as may be prescribed by the commissioner of environmental conservation;

(4) a statement that the proposed modification must be filed with the county clerk and the clerk of the county legislature within thirty days after the publication of such notice;

(5) a statement that at the termination of the thirty day period, the proposal and proposed modifications will be submitted to the county planning board and county agricultural advisory committee, and that

thereafter a public hearing will be held on the proposal, proposed modifications and recommendations of the board and committee.

b. shall receive any proposals for modifications of such proposal which may be submitted by such landowners or municipalities within thirty days after the publication of such notice;

c. shall, upon the termination of such thirty day period, refer such proposal and proposed modifications to the county planning board, which shall, within forty-five days, report to the county legislative body the potential effect of such proposal and proposed modifications upon the county's planning policies and objectives;

d. shall simultaneously, upon the termination of such thirty day period, refer such proposal and proposed modifications to the agricultural districting advisory committee, which shall, within forty-five days report to the county legislative body its recommendations concerning the proposal and proposed modifications, and;

e. shall hold a public hearing in the following manner:

(1) The hearing shall be held at a place within the proposed district or otherwise readily accessible to the proposed district;

(2) The notice shall contain the following information:

(a) a statement of the time, date and place of the public hearing;

(b) a description of the proposed district, any proposed additions and any recommendations of the planning board or advisory committee;

(c) a statement that the public hearing will be held concerning:

(i) the original proposal;

(ii) any written amendments proposed during the thirty day review period;

(iii) any recommendations proposed by the agricultural districting advisory committee and/or the county planning board.

(3) The notice shall be published in a newspaper having a general circulation within the proposed district and shall be given in writing to those municipalities whose territory encompasses the proposed district and any proposed modifications, owners of real property within such a proposed district or any proposed modifications who are listed on the most recent assessment roll, the commissioner of environmental conservation, the agricultural resources commission and the secretary of state.

3. The following factors shall be considered by the county planning board, the agricultural districting advisory committee, and at any public hearing:

i. the viability of active farming within the proposed district and in areas adjacent thereto;

ii. the presence of any viable farm lands within the proposed district and adjacent thereto that are not now in active farming;

iii. the nature and extent of land uses other than active farming within the proposed district and adjacent thereto;

iv. county developmental patterns and needs; and

v. any other matter which may be relevant.

In judging viability, any relevant agricultural viability maps prepared by the agricultural resources commission shall be considered, as well as soil, climate, topography, other natural factors, markets for farm products, the extent and nature of farm improvements, the present status of farming, anticipated trends in agricultural economic conditions and technology, and such other factors as may be relevant.

4. The county legislative body, after receiving the reports of the county planning board and the agricultural districting advisory committee, and after such public hearing may adopt as a plan the proposal or any modification of the proposal it deems appropriate, including the inclusion, to the extent feasible, of adjacent viable farm lands, and, the exclusion, to the extent feasible, of nonviable farm land and non-farm land. The county legislative body shall act to adopt or reject the proposal, or any modification of it, no later than one hundred eighty days from the date the proposal was submitted to this body. Upon the adoption of a plan, the county legislative body shall submit it to the commissioner of environmental conservation. The commissioner may, upon application by the county legislative body and for good cause shown, extend the period for adoption and submission once for an additional thirty days. Where he does so, the county legislative body may extend the period for the report from the county planning board and/or the period for the report from the agricultural districting advisory committee.

5. The commissioner of environmental conservation shall have sixty days after receipt of the plan within which to certify to the county legislative body whether the proposal, or a modification of the proposal, is eligible for districting and whether districting would be consistent with state environmental plans, policies and objectives. The commissioner of environmental conservation shall submit copies of such plan to the agricultural resources commission and to the secretary of state, who shall have thirty days within which to report their respective determinations to the commissioner of environmental conservation. The commissioner of environmental conservation shall not certify the plan as eligible for districting unless, (a) the agricultural resources commission has determined that the area to be districted consists predominantly of viable agricultural land, and, that the plan of the proposed district is feasible, and will serve the public interest by assisting in maintaining a viable agricultural industry within the district and the state, and (b) the secretary of state has

determined that the districting of the area would not be inconsistent with state comprehensive plans, policies and objectives.

6. Within sixty days after the certification of the commissioner of environmental conservation that the proposed area is eligible for districting, and that districting would be consistent with state environmental plans, policies and objectives, the county legislative body may hold a public hearing on the plan, except that it shall hold a public hearing if the plan was modified by the commissioner of environmental conservation or was modified by the county legislative body after they held the public hearing required by paragraph e of subdivision two of this section and such modification was not considered at the original hearing. Notice of any such hearing shall be in a newspaper having general circulation in the area of the proposed district and individual notice, in writing, to those municipalities whose territories encompass the proposed district modifications, the persons owning land directly affected by the proposed district modifications, the commissioner of environmental conservation, the agricultural resources commission and the secretary of state. The proposed district, if certified without modification by the commissioner of environmental conservation, shall become effective thirty days after the termination of such public hearing or, if there is no public hearing, ninety days after such certification unless its creation is disapproved by the county legislative body within such period. Provided, however, that if, on a date within the thirty days after the termination of such public hearing or, if there is no public hearing, within the ninety days after such certification, the county legislative body approves creation of the district, such district shall become effective on such date. Provided, further, that notwithstanding any other provision of this subdivision, if the commissioner modified the proposal, the district shall not become effective unless the county legislative body approves the modified district; such approval must be given on a date within the thirty days after the termination of the public hearing; and the district, if approved, shall become effective on such date. Before approving or disapproving any proposal modified by the commissioner, the county legislative body may request reports on such modified proposal, from the county planning board and the agricultural districting advisory committee.

7. Upon the creation of an agricultural district, the description thereof shall be filed by the county legislative body with the county clerk and the commissioner of environmental conservation.

8. The county legislative body shall review any district created under this section eight years after the date of its creation and every eight years thereafter. In conducting such review, the county legislative body shall ask for the recommendations of the county planning board and the agricultural advisory committee, and shall, at least one hundred twenty days prior to the end of the eighth year and not more than one hundred eighty days prior to such date, hold a public hearing at a place within the district or otherwise readily accessible to the district upon notice in a newspaper having a general circulation within the district and individual notice, in writing, to those municipalities whose territory encompass the district, the persons owning land within the district, the commissioner of environmental conservation, the agricultural resources commission and the secretary of state. The county legislative body, after receiving the reports of the county planning board and the agricultural districting advisory committee and after the public hearing, may terminate the

district at the end of such eight year period by filing a notice of termination with the county clerk and the commissioner of environmental conservation, or may modify the district in the same manner as is provided in subdivisions four, five, six and seven of this section relating to the creation of a district. If the county legislative body does not act or if a modification of a district is rejected, the district shall continue as originally constituted unless the commissioner of environmental conservation terminates such district, by filing a notice thereof with the county clerk, because: (a) the agricultural resources commission has determined that the area in the district is no longer predominantly viable agricultural land, or (b) the continuance of the district would not be consistent with state environmental plans, policies and objectives, or (c) the secretary of state has determined that the continuance of the district would not be consistent with state comprehensive plans, policies and objectives, except, however, if the commissioner of environmental conservation certifies to the county legislative body that he will not approve the continuance of the district unless modified, such modified district may be established in the same manner provided in subdivision six of this section.

As amended L. 1972, C. 712, Sec. 2; L. 1973, C. 390, Secs. 1-3; L. 1974, C. 552; L. 1975, C. 464, Sec. 4; L. 1975, C. 718; L. 1976, C. 672, Sec. 1; L. 1976, C. 671, Sec. 1.

#### Sec. 304. Unique and irreplaceable agricultural land; creation of districts

1. Four years after the effective date of this act, the commissioner of environmental conservation may create agricultural districts covering any land in units of two thousand or more acres not already districted under section three hundred three, if (a) the agricultural resources commission has determined that the land encompassed in a proposed district is predominantly unique and irreplaceable agricultural land, and had recommended that the commissioner of environmental conservation establish an agricultural district for such area; (b) such district would further state environmental plans, policies and objectives; (c) the secretary of state has determined that such proposed district would be consistent with state comprehensive plans, policies and objectives and (d) the director of the division of the budget has given approval of the establishment of such area.

2. Prior to creating an agricultural district under this section, the commissioner of environmental conservation shall work closely, consult and cooperate with local elected officials, planning bodies, agriculture and agribusiness interests, community leaders, and other interested groups. The commissioner shall give primary consideration to local needs and desires, including local zoning and planning regulations as well as regional and local comprehensive land use plans. The commissioner shall file a map of the proposed district in the office of the clerk of any municipality in which the proposed district is to be located, and shall provide a copy thereof to the chief executive officer of any such municipality and the presiding officer of the local governing body, and, upon request, to any other person. The commissioner shall publish a notice of the filing of such proposed map and the availability of copies thereof in a newspaper of general circulation within the area of the proposed district, which notice shall also state that a public hearing will be held to consider the proposed district at a specified time and

at a specified place either within the proposed district or easily accessible to the proposed district on a date not less than thirty days after such publication. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land within the proposed district. The commissioner shall conduct a public hearing pursuant to such notice, and in addition, any person shall have the opportunity to present written comments on the proposed district within thirty days after the public hearing. After due consideration of such local needs and desires, including such testimony and comments, if any, the commissioner may affirm, modify or withdraw the proposed district. Provided, however, that if the commissioner modifies the proposal to include any land not included in the proposal as it reads when the public hearing was held, the commissioner shall hold another public hearing, on the same type of published and written notice, and with the same opportunity for presentation of written comments after the hearing. Then the commissioner may affirm, modify or withdraw the proposed district, but he may not modify it to include land not included in the proposal upon which the second hearing was held.

3. Upon such affirmation or modification, a map of the district shall be filed by the commissioner of environmental conservation with the county clerk of each county in which the district or a portion thereof is located and publication of such filing shall be made in a newspaper of general circulation within the district to be created. The creation of the district shall become effective thirty days after such filing and publication.

4. The commissioner of environmental conservation shall review any district created under this section, in consultation with the agricultural resources commission, the secretary of state and the director of the division of the budget, eight years after the date of its creation and every eight years thereafter. Each such review shall include consultations with local elected officials, planning bodies, agricultural and agribusiness interests, community leaders, and other interested groups and shall also include a public hearing at a specified time and at a specified place either within the district or easily accessible to the proposed district, notice of such hearing to be published in a newspaper having general circulation within the district. In addition, the commissioner shall give notice, in writing, of such public hearing to persons owning land in the districts. After any such review, the commissioner of environmental conservation may modify such district so as to exclude land which is no longer predominantly unique and irreplaceable agricultural land or to include additional such land, provided: (a) the agricultural resources commission had recommended the exclusion or inclusion of such land; (b) such modification would further state environmental plans, policies and objectives; (c) the secretary of state has determined that such modification would be consistent with state comprehensive plans, policies and objectives; and (d) such modification has been approved by the director of the division of the budget; provided, further, that if the commissioner modifies the district to include additional land, he shall hold another public hearing, on the same type of published and written notice. Then the commissioner may again modify or dissolve the district, but he may not modify it to include land not included in the proposed modification upon which the second hearing was held. After any such review the commissioner of environmental conservation shall dissolve any such district if (a) the agricultural resources commission has determined that the land within the district is no longer predominantly unique and irreplaceable

agricultural land or (b) the continuation of the district would not further state environmental plans, policies and objectives, or (c) the secretary of state has determined that the continuation of the district would be inconsistent with state comprehensive plans, policies and objectives. A modification or dissolution of a district shall become effective in the same manner as it provided for in subdivision three of this section, except that in the case of dissolution, a notice of dissolution shall be filed instead of a map.

As amended L. 1972, C. 712, Sec. 3; L. 1974, C. 864; L. 1975, C. 474, Sec. 5.

Sec. 305. Agricultural districts; effects

1. Agricultural value assessments. a. Any owner of not less than ten acres of land used in agricultural production within an agricultural district, which land had been used in the preceding two years for the production for sale of agricultural products of a gross average sales value of ten thousand dollars or more, shall be eligible for an agricultural value assessment on such land pursuant to this section. If an applicant owning not less than ten acres rents land from another for use for agricultural production, the gross sales value of the agricultural products produced on such rented land shall be added to the gross sales value of agricultural products produced on the land of the applicant for purposes of determining eligibility for an agricultural value assessment on the land of the applicant. Such assessment shall be granted only upon an annual application by the owner of such land on a form prescribed by the state board of equalization and assessment. The applicant shall furnish such information as such board shall require. Such application shall be filed with the assessor of the city, town, village or county having the power to assess property for taxation on or before the appropriate taxable status date of such city, town, village or county. If the assessor is satisfied that the applicant is entitled to an agricultural value assessment, he shall approve the application and the land shall be assessed pursuant to this section. The assessor shall not less than ten days prior to the date for hearing complaints in relation to assessments mail to each applicant, who has included with his application at least one self-addressed, prepaid envelope, a notice of the approval or denial of the application. Such notice shall be on a form prescribed by the state board of equalization and assessment. Failure to mail any such notice or failure of the owner to receive the same shall not prevent the levy, collection and enforcement of the payment of the taxes on such real property.

b. That portion of the value of land utilized for agricultural production within an agricultural district which represents an excess above the agricultural value ceiling as determined in accordance with this subdivision shall not be subject to real property taxation. Such excess amount if any shall be entered on the assessment roll in such manner as shall be prescribed by the state board of equalization and assessment.

c. Agricultural value per acre shall be determined annually by the state board of equalization and assessment by ascertaining the average value per acre of lands used in agricultural production in New York state after consulting with the agricultural resources commission and taking into consideration the data promulgated by the United States department of agriculture with respect to its index numbers of average value per acre of farm real estate and such other data

as may be appropriate, including sales and appraisals utilized by such board in the establishment of equalization rates pursuant to article twelve of the real property tax law.

Such determination shall be made after a public hearing by such board or its duly designated representative. Separate determinations may be made, where it deems appropriate, for different regions of the state and for different types of farm lands. Such determinations shall annually be certified by the state board to the assessor of each affected jurisdiction.

d. The assessor shall utilize such average value per acre as certified by such state board in determining the amount of the assessment of farm lands eligible for agricultural value assessments under this article by multiplying it by the number of acres of land utilized for agricultural production and adjusting such result by application of the latest state equalization rate or special equalization rate established for such jurisdiction. This resulting amount shall be the agricultural value ceiling for such lands. Where a special equalization rate has been established by the state board pursuant to subdivision two of section four hundred eighty-nine-1 or subdivision two of section six hundred six of the real property tax law, the assessor is directed and authorized to recompute the agricultural value ceiling on the assessment roll by applying such special equalization rate instead of the latest state equalization rate in computing the agricultural value ceiling, and to make the appropriate corrections on the assessment roll, notwithstanding the fact such assessor may receive the special equalization rate after the final completion, verification and filing of such assessment roll. In the event that the assessor does not have custody of the roll when such recomputation is accomplished, the assessor shall certify such recomputation of the agricultural value ceiling to the local officers having custody and control of such roll, and such local officers are hereby directed and authorized to enter the recomputed agricultural value ceilings certified by the assessor on such roll.

e. If any land within an agricultural district utilized for agricultural production is converted to a use other than agricultural production, each appropriate taxing jurisdiction shall compute an amount ascertained by applying the applicable tax rate for each of the preceding five years to the excess amount of assessed valuation of such land as set forth on the assessment rolls for such year as provided for in paragraph a and b of this subdivision. Such amount shall be the roll-back taxes to be levied and collected on the first assessment roll prepared subsequent to such conversion in the same manner and at the same time as other taxes. If such converted land constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment of such parcel on the first assessment roll prepared subsequent to the conversion and enter the apportioned amount attributable to the portion converted as a separately assessed parcel on the assessment roll. Such apportionment shall be made for each of the years to which roll-back taxes apply. The assessor shall also apportion the agricultural value ceiling applicable to such parcel for each of the years to which roll-back taxes apply. The difference between such apportioned assessment of the portion converted and such apportioned agricultural value ceiling attributable thereto shall constitute the excess amount of value to which roll-back taxes shall apply for each applicable year.

Roll-back taxes shall be levied and collected on the first assessment roll prepared subsequent to such conversion in the same manner and at the same time as other taxes are imposed and levied on such roll.

Provided, however, that in the event that such land or any portion thereof is converted to a use other than agricultural production by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such land or any portion thereof involuntarily converted to uses other than agricultural production shall not be subject to roll-back taxes. In the event the land involuntarily converted to a use other than agricultural production constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. The assessor shall adjust the agricultural value ceiling attributable to the portion of the parcel not subject to the involuntary conversion by subtracting the proportionate part of the agricultural value ceiling attributable to the portion involuntarily converted.

f. In connection with any district created under section three hundred four of this article, the state shall provide assistance to each taxing jurisdiction in an amount equal to one-half of the tax loss that results from requests for agricultural value assessments in the district. The amount of such tax loss shall be computed annually by applying the applicable tax rate to an amount computed by subtracting the agricultural value assessment from the assessed value of the property on the assessment roll completed and filed prior to July first, nineteen hundred seventy-one, taking into consideration any change in the level of assessment. The chief fiscal officer of a taxing jurisdiction entitled to state assistance under this article shall make application for such assistance to the state board of equalization and assessment on a form approved by such board and containing such information as the board shall require. Upon approval of the application by such board, such assistance shall be apportioned and paid to such taxing jurisdiction on the audit and warrant of the state comptroller out of moneys appropriated by the legislature for the purpose of this article; provided, however, that any such assistance payment shall be reduced by one-half the amount of any roll-backs levied under paragraph e of this subdivision for land in any district created under section three hundred four of this article, unless one-half the amount of such roll-backs have already been used to reduce a previous assistance payment under this paragraph f.

g. Notwithstanding any inconsistent general, special or local law to the contrary, if a natural disaster, act of God, or continued adverse weather conditions shall destroy the agricultural production and such fact is certified by the cooperative extension service and, as a result, such production does not produce a gross average sales value of ten thousand dollars or more, the owner may nevertheless qualify for an agricultural value assessment provided the owner shall substantiate in such manner as prescribed by the state board of equalization and assessment that the agricultural production initiated on such land would have produced an average gross sales value of ten thousand dollars or more but for the natural disaster, act of God or continued adverse weather conditions.

2. Limitation on local regulation. No local government shall exercise any of its powers to enact local laws or ordinances within an agricultural district in a manner which would unreasonably restrict or regulate farm structures or farming practices in contravention of the purposes of the act unless such restrictions or regulations bear a direct relationship to the public health or safety.

3. Policy of state agencies. It shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and their administrative regulations and procedures shall be modified to this end insofar as is consistent with the promotion of public health and safety with the provisions of any federal statutes, standards, criteria, rules, regulations, or policies, and any other requirements of federal agencies, including provisions applicable only to obtaining federal grants, loans, or other funding.

4. Limitation on the exercise of eminent domain and on the advance of public funds. a. Any agency of the state, any public benefit corporation or any local government which intends to acquire land or any interest therein, provided that the acquisition from any one actively operated farm within the district would be in excess of ten acres or that the total acquisition within the district would be in excess of one hundred acres, or which intends to advance a grant, loan, interest subsidy or other funds within a district for the construction of dwellings, commercial or industrial facilities, water or sewer facilities to serve non-farm structures, shall at least thirty days prior to such action file a notice of intent with the commissioner of environmental conservation, containing such information and in such manner and form as he may require. Such notice of intent shall contain a report justifying the proposed action including an evaluation of alternatives which would not require action within the agricultural district.

b. Upon receipt of such notice, the commissioner shall thereupon forward a copy of such notice to both the agricultural resources commission and the secretary of state. The commissioner, in consultation with the agricultural resources commission and the secretary of state, shall review the proposed action to determine what the effect of such action would be upon the preservation and enhancement of agriculture and agricultural resources within the district, state environmental plans, policies and objectives, and state comprehensive plans, policies and objectives.

c. If the commissioner finds that such proposed action might have an unreasonably adverse effect upon such goals, resources, plans, policies or objectives, the commissioner shall issue an order within such thirty day period to such agency, corporation or government directing such agency, corporation or government not to take such action for an additional period of sixty days immediately following such thirty day period.

d. During such additional sixty day period, the commissioner shall hold a public hearing concerning such proposed action at a place within the district or otherwise easily accessible to the district upon notice in a newspaper having a general circulation within the district, and individual notice, in writing, to the municipalities whose territory encompass the district, the agricultural resources commission, the secretary of state, and the agency, corporation or government proposing to take such action. On or before the conclusion of such additional sixty day period, the commissioner of environmental conservation

shall report his findings to the agency, corporation or government proposing to take such action, to any public agency having the power of review of or approval of such action, and in a manner conducive to the wide dissemination of such findings, to the public.

e. The commissioner of environmental conservation may request the attorney general to bring an action to enjoin any such agency, corporation or government from violating any of the provisions of this subdivision.

f. This subdivision shall not apply to any emergency project which is immediately necessary for the protection of life or property.

5. Limitation on power to impose benefit assessments or special ad valorem levies in certain improvement districts or benefit areas. Within improvement districts or areas deemed benefited by town improvements for sewer, water, lighting, non-farm drainage, solid waste disposal or other landfill operations, no benefit assessments or special ad valorem levies may be imposed on land used primarily for agricultural production within an agricultural district on the basis of frontage, acreage, or value, except a lot not exceeding one-half acre surrounding any dwelling or non-farm structure located on said land unless such benefit assessments or ad valorem levies were imposed prior to the formation of the agricultural district.

As amended L. 1972, C. 712, Sec. 4; L. 1973, C. 232, Secs. 1, 2; L. 1974, C. 169; L. 1975, C. 464, Sec. 6; L. 1975, C. 717; L. 1976, C. 576, Sec. 1; L. 1978, C. 663, Sec. 1.

Sec. 306. Agricultural lands outside of districts; agricultural value assessments

1. Any owner of not less than ten acres of land used in agricultural production, which land had been used in the preceding two years for the production for sale of agricultural products of a gross average sales value of ten thousand dollars or more, may make a commitment on a form to be prescribed by the state board of equalization and assessment to continue to use such land exclusively for agricultural production for the next succeeding eight years. If an applicant owning not less than ten acres rents land from another for use for agricultural production the gross sales value of the agricultural products produced on such rented land shall be added to the gross sales value of agricultural products produced on the land of the applicant for purposes of determining eligibility for an agricultural value assessment on the land of the applicant.

Such commitment shall be filed annually with the county clerk of the county in which such land is located, at a time and in a manner to be prescribed by the state board of equalization and assessment, and shall entitle such land to be assessed for real property tax purposes pursuant to paragraphs a, b, c and g of subdivision one of section three hundred five of this article as if such land were in an agricultural district.

2. In the event, any part of such land is converted by such owner or by any subsequent owner, during the period of any such commitment, to a use other than for agricultural production, such conversion shall constitute a breach

of commitment and shall disqualify all of the land subject to such commitment from being entitled to an agricultural value assessment, and shall subject all of the land subject to such commitment to an additional amount in compensation for the prior benefits of agricultural value assessments, equal to two times the taxes determined in the year following the breach of commitment for all of the land previously under commitment. This amount shall be added by the local taxing jurisdiction to the taxes determined for that year, and when levied, shall become a tax lien on such land. Provided, however, that in the event that such land or any portion thereof is converted to a use other than agricultural production by virtue of a taking by eminent domain or other involuntary proceeding, except a tax sale, such involuntary conversion of such land or any portion thereof to uses other than agricultural production shall not constitute a breach of commitment. In the event the land involuntarily converted to a use other than agricultural production constitutes only a portion of a parcel described on the assessment roll, the assessor shall apportion the assessment, and enter the portion involuntarily converted as a separately assessed parcel on the appropriate portion of the assessment roll. The assessor shall adjust the agricultural value ceiling attributable to the portion of the parcel not subject to the involuntary conversion by subtracting the proportionate part of the agricultural value ceiling attributable to the portion involuntarily converted.

3. Upon the inclusion of agricultural lands subject to a pre-existing commitment in an agricultural district formed pursuant to section three hundred three, such commitment shall become null and void and provisions of section three hundred five shall be controlling. Upon such inclusion, the owner of such land shall file a certificate of cancellation with the county clerk. Such certificate of cancellation shall be filed in the same manner and place as the commitment was filed.

As amended L. 1972, C. 712, Sec. 4; L. 1973, C. 232, Sec. 3; L. 1976, C. 576, Secs. 2, 3.

#### Sec. 307. Promulgation of rules and regulations

The state board of equalization and assessment and the commissioner of environmental conservation are each empowered to promulgate such rules and regulations and to prescribe such forms as each shall deem necessary to effectuate the purposes of this article. Where a document or any other paper or information is required, by such rules and regulations or by any provision of this article, to be filed with, or by a county clerk or any other local official, such clerk or other local official may file such document, paper or information as he deems proper, but he shall also file or record it in any manner directed by the state board of equalization and assessment, by rule or regulation. In promulgating such a rule or regulation, such board shall consider, among any other relevant factors, the need for security of land titles, the requirement that purchasers of land know of all potential tax and penalty liabilities, and the desirability that the searching of titles not be further complicated by the establishment of new sets of record books.

As amended L. 1972, C. 712, Sec. 4.

## The MSM Regional Study Council, Inc.

MSM — the Middlesex Somerset Mercer Regional Study Council, Inc. — is an independent, non-profit regional planning and research organization. Incorporated in 1968, MSM is committed to improving the future of the central New Jersey area. MSM initiates technical studies, encourages full public discussion, and facilitates intergovernmental cooperation and action on regional issues: land use, transportation, housing, and the natural environment. A small professional staff is essential to this program.

As an independent organization, MSM is supported principally by membership dues. MSM has over 200 members including municipalities, corporations, civic or service organizations, and numerous individuals. All of these share a desire for an independent voice in regional development issues, and for the service to members that MSM can provide. Membership has more than doubled in the past two years, and MSM is actively expanding — in areawide distribution as well as numbers.

MSM has adopted these broad goals as a guide in evaluating issues and determining study priorities:

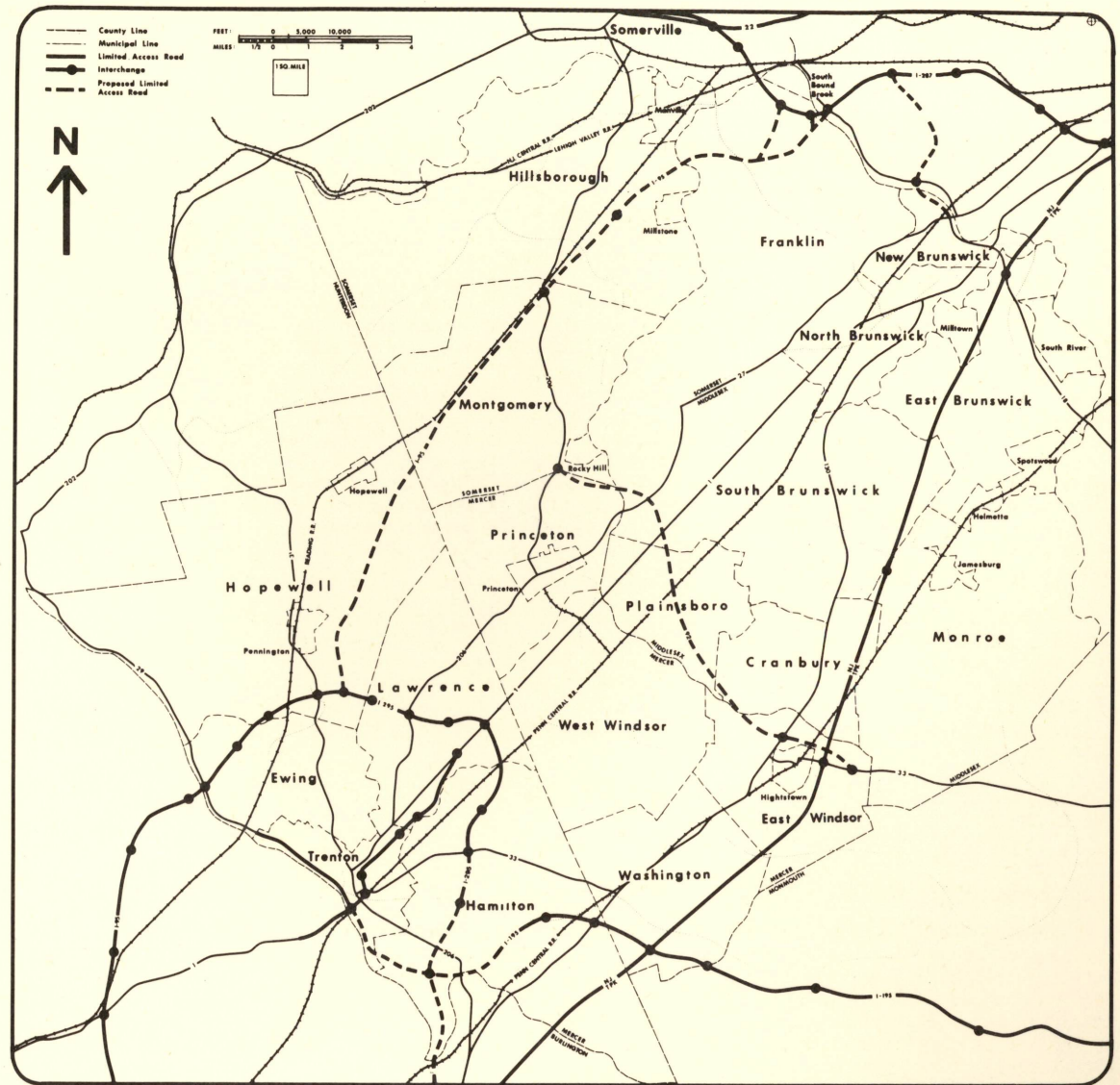
*Protect Natural Resources and Qualities.* Woodlands, wetlands, stream corridors, prime agricultural lands, and recreational open space adequate for the needs of present and future generations.

*Expand the Range of Housing Choice.* A wider range of dwelling types and prices to accommodate young, elderly, and low-to-middle income households.

*Encourage Transportation Alternatives.* Transportation improvements — bus, rail, automotive, bicycle, and pedestrian — that serve the land use pattern we want and minimize dependence on scarce energy resources.

*Promote Better Community Design.* For the residential and commercial places where we do our daily living; and protection of our unique scenic, historic, and architectural assets.

Equal to these substantive goals, our region needs a growth planning and management process that recognizes the interdependence of its local governments, and functions effectively to solve their common problems. It also needs concerned and informed citizens who will weigh alternatives for the future with proper information in hand. It is a specific MSM objective to facilitate these vital public processes.



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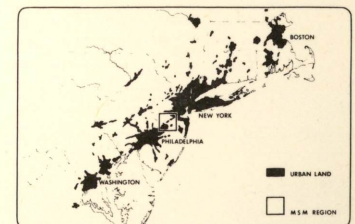
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