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rejects the application, the farmer may appeal to the Land Conservation Board.

The tax credits available to a farmer who executes an initial preservation agreement and the penalties for violating or not renewing an initial agreement after the expiration date of September 30, 1982, are described in Sections C and D, below.

2. Land Use Planning Requirements After 1982

After 1982, for a farmer to be eligible for tax credits, the local governmental unit in which the land is located, must have taken some action to preserve agricultural land. In counties with a population density of 100 or more persons per square mile ("urban" counties), farmers are only eligible for tax credits if the land is subject to an exclusive agricultural use zoning ordinance. Counties with population densities of 100 persons per square mile or more are: Brown, Dane, Eau Claire, Fond du Lac, Jefferson, Kenosha, La Crosse, Manitowoc, Milwaukee, Outagamie, Ozaukee, Racine, Rock, Sheboygan, Walworth, Washington, Waukesha and Winnebago.

As noted previously, farmers in counties with a population density less than 100 persons per square mile ("rural" counties) are eligible for tax credits if the county has an agricultural land preservation plan (and the farmer signs a preservation agreement) or the land is subject to an exclusive agricultural use zoning ordinance [s. 91.11 (1) and (2), Stats.].

The provisions of and procedures to be used in adopting agricultural use preservation plans and exclusive agricultural use zoning ordinances are described below.

a. County Agricultural Preservation Plans

One way for a county (with a population density of less than 100 persons per square mile) to make farmers eligible for tax credits is to adopt an agricultural preservation plan. An agricultural preservation plan must be consistent with any county land use plan [s. 91.51, Stats.], and must be based on studies and surveys of various characteristics (e.g., agricultural use, population, urban growth, public facilities and open space) of the county [s. 91.53, Stats.]. County agricultural preservation plans are not binding on landowners or the county. They are intended to guide future land use decisions and can serve as the basis for adopting an exclusive agricultural zoning ordinance.

Agricultural preservation plans must contain statements of policy regarding such things as preservation of agricultural lands, urban growth,

provision of public facilities and protection of natural resources. The plans must also contain maps identifying agricultural areas to be preserved, areas of special environmental significance, and, if necessary, transition areas. Transition areas are areas in predominantly agricultural use which the plan identifies for future development. Transition areas must contain at least 35 acres while areas to be preserved for agricultural use must contain at least 100 acres [s. 91.55, Stats.].

Agricultural preservation plans must contain "implementation programs" including land use controls designed to implement the policy statements, plans for development of public facilities to serve existing and new developments, procedures for controlling the installation of private waste disposal systems and a program for protecting areas of special environmental, natural resource or open space significance [s. 91.57, Stats.].

County agricultural preservation plans must include any agricultural preservation plans adopted by municipalities in the county (if they meet the requirements specified for county plans) and indicate how the county plan compares to any regional land use plans [s. 91.59, Stats.].

Before the plan can be adopted, a hearing must be held and comments solicited from all the towns, cities and villages in the county, the regional planning commission for the county and all adjoining counties [ss. 91.51 and 91.59, Stats.].

The Farmland Preservation Law provided state grants for the development of county agricultural preservation plans and maps [s. 91.65, Stats.]. Up to this point, over $1.5 million in grants have been provided to counties for planning and mapping.

In order for farmers to be eligible for tax credits, counties developing agricultural preservation plans must have the plans certified by the Agricultural Lands Preservation Board. [After July 1, 1983, certification will be by the Land Conservation Board.]

Once a county agricultural preservation plan has been certified, a farmer whose land is designated for preservation is eligible to sign an agreement to preserve the land [s. 91.11, Stats.]. Such an agreement is identical to the initial preservation agreements described above, except:

(1) The agreement can last from 10 to 25 years (rather than expiring on September 30, 1982, as the initial agreements do); and

(2) That farming operations must be conducted in "substantial accordance" with a soil and water

conservation plan (rather than simply having to have such a plan in existence or under development, as is required for an initial agreement).

In addition, farmers who own farmland, which is classified as a transition area under a county agricultural land preservation plan, may sign a transition area agreement which is similar to both the initial and final preservation agreements except:

(1) The agreement lasts for five to 20 years (rather than 10 to 25 years); and

(2) The farmer is not exempt from special assessments (as farmers under a preservation agreement are).

b. Exclusive Agricultural Use Zoning

The other route for farmers to become eligible for tax credits under the Farmland Preservation Law is through adoption of an exclusive agricultural use zoning ordinance by a county, city or village. [Town adoption of an exclusive agricultural use zoning ordinance only qualifies farmers for tax credits if the county has adopted an agricultural preservation plan.]

Exclusive agricultural use zoning ordinances are generally adopted the way other county, city, village or town zoning ordinances are [s. 91.73, Stats.]. For example, if a county which did not previously have a county zoning ordinance adopts an exclusive agricultural zoning ordinance, it is not effective in any town (except as described below for "urban" counties) until the ordinance is approved by the town board [s. 59.97 (5) (c), Stats.]. On the other hand, if a county which previously had a county zoning ordinance amends the ordinance to adopt exclusive agricultural zoning, the amendment automatically becomes effective unless a town files a resolution disapproving the ordinance [s. 91.73 (4), Stats.]. The only major change made in existing zoning procedures by the Farmland Preservation Law was with respect to counties with a population density of 100 or more persons per square mile. In these "urban" counties, towns can only reject an exclusive agricultural zoning ordinance (if no previous county zoning existed) if a majority of the towns in the county file resolutions disapproving of the exclusive agricultural zoning ordinance within six months of adoption of the ordinance by the county board. If a majority of towns in the county disapproves of the county exclusive agricultural zoning ordinance within six months, the ordinance is rejected for all of the towns in the county [s. 91.73 (3), Stats.].

An exclusive agricultural zoning ordinance must meet the following standards [s. 91.75, Stats.]:

> (1) Except for establishment of the residences described in (2) below, or separation of existing residences from larger farms, the minimum parcel size for establishing a residence or a farm operation is 35 acres;
>
> (2) The only new residences allowed are those allowed under preservation agreements (i.e., for a person who, or a family in which at least one member, earns a substantial part of his or her livelihood from the farm or for the parent or child of the operator of the farm).
>
> (3) No structures or improvements may be allowed unless they are consistent with agricultural uses (or gas and electric utility uses).
>
> (4) The only special exceptions or conditional uses allowed are those related to agricultural, religious, utility (other than gas or electric), institutional or governmental uses which do not conflict with agricultural uses and which are necessary in light of the alternative locations available. [The DATCP must be notified of the approval of any exceptions or conditional uses in areas zoned for exclusive agricultural use.]

To qualify farmers for income tax credits, ordinances must be certified by the Agricultural Lands Preservation Board [s. 91.78, Stats.]. [After July 1, 1983, certification will be by the Land Conservation Board.]

A local unit of government may only approve a petition for a rezoning of an area zoned for exclusive agricultural use after considering whether [s. 91.77, Stats.]:

> (1) Adequate public facilities are, or will be, available;
>
> (2) Provision of necessary public facilities will not place an unreasonable burden on the affected local unit of government; and
>
> (3) 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.

The DATCP is to be notified of all rezonings but does not have the power to veto a local decision to rezone.

C. INCOME TAX CREDIT PROVISIONS OF THE FARMLAND PRESERVATION PROGRAM

This section of the Staff Brief describes the income tax credits available to farmers who participate in the farmland preservation programs described above.

As described previously, in general, the amount of income tax credit available depends on the household income and the amount of property taxes paid. The higher the property taxes, the higher the credit, while the higher the income, the lower the credit. [Also, the Farmland Preservation Law was amended by the 1981 Legislature to provide a minimum tax credit to any farmer subject to an exclusive agricultural use zoning ordinance, regardless of the household income. The minimum credit is equal to 10% of the property tax (up to $6,000).]

Calculation of the maximum available income tax credit involves a fairly detailed formula which has been revised several times since enactment of the original Farmland Preservation Law. The formula is comprised of the following three major steps [s. 71.09 (11) (b), Stats.].

1. Determining the Household Income

Household income includes adjusted gross income plus transfer payments such as unemployment compensation, social security, pensions and public assistance. In calculating income for claiming a farmland preservation credit, a farmer can (subsequent to the changes made by the 1981 Legislature) claim a deduction for the first $25,000 of depreciation only, and no deductions are allowed for nonfarm business losses. Also, nonfarm income must be included. [Previously, the first $7,500 of nonfarm income was not considered income.]

2. Calculating the Amount of "Excessive Property Taxes"

The amount of "excessive property taxes" is determined by subtracting a specified amount, based on the size of household income, from the property tax bill. The maximum property tax which can be used as a starting point is $6,000. Then, as household income increases, the amount subtracted from the property tax bill increases so the amount of excessive property taxes decreases. Conversely, lower income households will subtract less from the property tax bill and will therefore calculate a

higher excessive property tax. The amount subtracted from the property tax bill to determine excessive property taxes is equal to 7% of the second $5,000 of household income plus 9% of the third $5,000 plus 11% of the fourth $5,000 plus 17% of the fifth $5,000 plus 27% of the sixth $5,000 plus 37% of household income in excess of $30,000.

3. Determining the Size of the Maximum Tax Credit

The size of the maximum possible income tax credit is determined using the amount of excessive property tax and is equal to 90% of the first $2,000 of excessive property taxes plus 70% of the second $2,000 and 50% of the third $2,000 of excessive property taxes. The maximum credit cannot exceed $4,200 -- the credit available assuming $6,000 in excessive property tax.

Table 1 shows the maximum amount of tax credit for a given property tax bill and household income.

TABLE 1

Farmland Preservation Tax Credits Schedule
Effective for Property Taxes Levied in 1981

Household Income	Property Tax Bill					
	1,000	2,000	3,000	4,000	5,000	6,000
0	900	1,800	2,500	3,200	3,700	4,200
5,000	900	1,800	2,500	3,200	3,700	4,200
10,000	585	1,485	2,255	2,955	3,525	4,025
15,000	180	1,080	1,940	2,640	3,300	3,800
20,000	0*	585	1,485	2,255	2,955	3,525
25,000	0	0	720	1,620	2,360	3,050
30,000	0	0	0	405	1,305	2,115
35,000	0	0	0	0	0	0
40,000	0	0	0	0	0	0

*Note: If land is subject to an exclusive agricultural zoning ordinance, the farmer is eligible for a minimum tax credit equal to 10% of property taxes (up to $6,000) regardless of household income.

Source: Department of Agriculture, Trade and Consumer Protection.

4. Determining the Size of the Actual Credit

Table 1 shows the maximum tax credit available. However, farmers are only eligible for 100% of the maximum tax credit if the county in which the farm is located has a certified agricultural preservation plan and the farm is located in an area zoned by a county, city or village for exclusive agricultural use. If a county (with a population density of less than 100 persons per square mile) has an agricultural preservation plan and the farmer has a farmland preservation agreement, but the land is not zoned for exclusive agricultural use, the tax credit is equal to 70% of the maximum. Similarly, if the farm is located in an area zoned by a county, city or village for exclusive agricultural use, but the county has not adopted an agricultural preservation plan, the tax credit is also 70% of the maximum. Note in this case, as well as the case of a farmer

receiving 100% of the maximum credit, the exclusive agricultural use zoning must be done by a county, city or village ordinance; a town exclusive agricultural zoning ordinance (in a county which does not have exclusive agricultural zoning) only qualifies farmers for tax credits if the county has an agricultural preservation plan and the town adopts an exclusive agricultural use zoning ordinance. In that case, a farmer can be eligible for 70% of the maximum credit without signing a preservation agreement. [A preservation agreement is normally required to receive a tax credit in counties with agricultural preservation plans.] Finally, if a farmer has an initial preservation agreement, the tax credit equals 50% of the maximum. [Initial preservation agreements, which expire on September 30, 1982, were described above.] These variations are summarized in Table 2, below.

TABLE 2

Percentage of Maximum Tax Credit
Available to Farmers Participating
in Various Farmland Preservation Programs

Farmland Preservation Program	Percentage of Maximum Credit	Statutory Cite
1. County has a certified agricultural preservation plan and land is zoned by a county, city or village for exclusive agricultural use. [A preservation agreement is not required].	100%	s. 71.09 (11) (b) 3 a, Stats.
2. Land is subject to a transition area agreement (i.e., land must be in a transition area identified by a county agricultural preservation plan) and the land is located in an area zoned by a city, village or county exclusive agricultural use zoning ordinance.	100%	s. 71.09 (11) (b) 3 b, Stats.
3. Land is subject to a 10- to 25-year preservation agreement, but is not in an area zoned for exclusive agricultural use. [Note: This only applies in counties with less than 100 persons per square mile which have adopted agricultural preservation plans.]	70%	s. 71.09 (11) (b) 3 c, Stats.
4. Land is zoned by a county, city or village for exclusive agricultural use but the county has not adopted an agricultural preservation plan. [A preservation agreement is not required.]	70%	s. 71.09 (11) (b) 3 e, Stats.
5. County has adopted an agricultural preservation plan and the town has an exclusive agricultural zoning ordinance. [A preservation agreement is not required.]	70%	s. 71.09 (11) (b) 3 d, Stats.
6. Land is subject to an initial preservation agreement (expires September 30, 1982).	50%	s. 71.09 (11) (b) 3 f, Stats.

5. The 10% Minimum Credit

As noted previously, starting in 1981, any farmer who is subject to an exclusive agricultural use zoning ordinance is eligible to receive a minimum tax credit (of up to $600) equal to 10% of the property tax bill (up to $6,000), regardless of the size of the household income [Ch. 93, Laws of 1981]. In this case, the exclusive agricultural use zoning ordinance may be adopted by a county, city, village or town.

D. PENALTIES UNDER THE FARMLAND PRESERVATION LAW

This section describes penalties under the Farmland Preservation Law for not preserving farmland in accordance with a preservation agreement or an exclusive agricultural use zoning ordinance. In general, if a preservation agreement expires, or is relinquished before the expiration date in accordance with the procedure established by the Farmland Preservation Law (described below) or land under an exclusive agricultural use zoning ordinance is rezoned, the penalty is creation of a lien against the property for all or part of the tax credits received under the Program (including interest in some cases). The lien is payable to the state at the time the land is sold or at the time the land is converted to a prohibited use (e.g., developed) [s. 91.19 (10), Stats.].

If a farmer wants to relinquish a preservation agreement before the expiration date, application must be made to the local governing body (e.g., county, village or town board or city council). The local governing body may only approve the application to relinquish the agreement for one of the following reasons [s. 91.17 (2) (b), Stats.]:

1. The agreement imposes continuing "economic inviability" due to the restrictions of the agreement. ["Economic inviability" does not, however, result merely from the existence of uses of the land which would allow higher returns.]

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

3. Surrounding conditions prohibit agricultural use.

If the local governing body approves the application, it must be referred to the Land Conservation Board which may either approve or reject the application. If the local governing body rejects the application (or does not act within 120 days), the applicant may appeal to the Land Conservation Board. If an application to relinquish a preservation agreement is approved, a lien on the land is prepared for the amount shown in Table 3.

Table 3 also summarizes the liens applied for nonrenewal of an agreement, or rezoning of land previously under an exclusive agricultural use zoning ordinance, as well as the civil penalties for violating the use

restrictions of a preservation agreement without first having had the agreement relinquished. Also, as indicated in Table 3, there is no penalty if land subject to a preservation agreement is sold if the agreement is transferred with the sale.

TABLE 3

Penalties Under the Farmland Preservation Law

Farmland Preservation Mechanism and Action Taken	Penalty	Statutory Cite
Initial Preservation Agreement		
- Owner withdraws from the agreement before the agreement expires.	Lien on the land for all tax credits received plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.37 (1), Stats.
- Initial agreement expires and a final agreement is not applied for because all or part of the land is not eligible for an agreement and is not subject to exclusive agricultural zoning.	Lien on the land for credits received during the last two years on that part of the land which is not eligible for a final agreement.	s. 91.37 (2), (4) and (5), Stats.
- Initial agreement expires and a final agreement is not applied for even though all or part of the land would be eligible for a final agreement (and the land is not subject to exclusive agricultural zoning).	Lien on the land for all tax credits received on that part of the land which is eligible for a final agreement plus 6% interest compounded from the time of expiration.	s. 91.37 (3) and (5), Stats.
Final Preservation Agreement		
- Ownership changes; agreement remains in effect.	No penalty.	s. 91.17 (1), Stats.
- Owner dies or is permanently disabled.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment due to death or disability.	s. 91.17 (2), Stats.
- Agreement expires and is not renewed.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment.	s. 91.17 (8), Stats.
- Application to relinquish agreement before the expiration date is approved.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.
Transition Area Agreement		
- Transition area agreement expires and is not renewed.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.
- Application to relinquish agreement before expiration date is approved.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time the credit was received until the lien is paid.	s. 91.17 (7), Stats.

TABLE 3 - CONTINUED

Penalties Under the Farmland Preservation Law

Farmland Preservation Mechanism and Action Taken	Penalty	Statutory Cite
Final Preservation Agreement or Transition Area Agreement		
- Use of the land changed to a prohibited use without first relinquishing the agreement.	Owner may be enjoined by the Attorney General (on behalf of the state) or an attorney for a local governing body and may be subject to a civil penalty for "actual damages" up to double the value of the land at the time the agreement was approved.	s. 91.21 (1), Stats.
- Failure to operate the farm in substantial accordance with a soil and water conservation plan.	Civil penalties described directly above may apply after owner has been given one year to comply.	s. 91.21 (3), Stats.
Exclusive Agricultural Use Zoning		
- Land is rezoned or a special exception or conditional use permit for a non-agricultural use is granted.	Lien on the land for the credits received during the last 10 years plus 6% interest compounded from the time of relinquishment.	ss. 91.77 (2) and 91.79, Stats.

Note: 1) With respect to preservation agreements, liens are not filed for any tax credits paid on land which is subject to exclusive agricultural use zoning [ss. 91.19 (12) and 91.37 (6), Stats.].

2) Interest on a lien is not compounded during any period for which the farmland is subject to a subsequent preservation agreement or is zoned for exclusive agricultural use [s. 91.19 (7) and (8), Stats.].

PART II

STATUS OF THE FARMLAND PRESERVATION PROGRAM

This Part of the Staff Brief describes the status of the Farmland Preservation Program, indicating the number of farmland preservation agreements in effect, the number of counties which have adopted agricultural preservation plans, the number of towns which have adopted exclusive agricultural zoning and the amount of tax credits paid under the Program. Typically, the DATCP compiles statistics on the Farmland Preservation Program every six months. The most recent report fully summarizing the status of the Program is dated December 31, 1981 ["Technical Report #9: Final Participation Report for 1981, Wisconsin Farmland Preservation Program" (December 31, 1981); referred to hereafter as "Technical Report #9"]. This Part relies primarily on the information in Technical Report #9. However, where more recent information is available from the DATCP, this is also included. It should be recognized, however, that any more recent information represents only preliminary estimates which may change as more information becomes available.

A. FARMLAND PRESERVATION AGREEMENTS

As of December 31, 1981, there was a total of 2,100 farmland preservation agreements in effect. According to DATCP staff, these were essentially all initial or final preservation agreements, since only one or two transition area agreements have been signed. These agreements cover about 546,000 acres.

In addition, as of July 1, 1982 (the application deadline for receiving tax credits for 1982), an additional 700 applications for agreements were received.

B. AGRICULTURAL PRESERVATION PLANS

As of December 31, 1981, 32 counties had adopted agricultural preservation plans which had been certified by the Agricultural Lands Preservation Board. Figure 1 shows the status of county efforts to adopt agricultural preservation plans as of December 31, 1981. An additional 28 counties were scheduled to have plans adopted and certified in 1982. As of July 1, 1982, seven of these county plans had been adopted and certified (Door, Grant, Kenosha, Kewaunee, Outagamie, Racine and Winnebago). In addition, several counties (Green Lake, Oconto, Ozaukee and Rusk) which were not previously preparing preservation plans have begun the planning and mapping process.

FIGURE 1

Wisconsin Farmland Preservation Planning Projects
December 31, 1981

Source: Technical Report #9, "Participation in the Wisconsin Farmland Preservation Program," Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

As noted in Part I, farmers in "rural" counties (less than 100 persons per square mile) which have an agricultural preservation plan can enter into a preservation agreement and receive 70% of the maximum allowable tax credit. In either a rural or "urban" (100 or more persons per square mile) county with an agricultural preservation plan, farmers can become eligible for 70% of the maximum tax credit if the town in which the land is located adopts exclusive agricultural zoning.

C. EXCLUSIVE AGRICULTURAL ZONING

As of December 31, 1981, 20 counties had adopted exclusive agricultural zoning ordinances. Figure 2 indicates those counties and the number of towns in each county that had adopted the exclusive agricultural use zoning ordinance.

FIGURE 2

County Adopted Exclusive Agricultural Use Zoning
December 31, 1981

TOP NUMBER - TOWNS THAT HAVE ADOPTED ZONING

BOTTOM NUMBER - TOTAL NUMBER OF TOWNS IN COUNTY

Source: Technical Report #9, "Participation in the Wisconsin Farmland Preservation Program," Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

In addition to the county exclusive agricultural zoning ordinances shown in Figure 2, there are other exclusive agricultural zoning ordinances in effect in the state which have been certified by the Agricultural Lands Preservation Board. First, there are a relatively small number (less than 10) certified ordinances adopted by a city or village. Secondly, there are a number of towns which have adopted (or are in the process of adopting) an exclusive agricultural use zoning ordinance, even though the county has not adopted such an ordinance. [As noted above, in counties with an agricultural preservation plan, adoption of an exclusive agricultural use zoning ordinance by a town qualifies farmers for 70% of the maximum tax credit.]

The total number of farms protected by county-adopted exclusive agricultural zoning ordinances as of December 31, 1981, was 13,278. [Not all of these farms, however, applied for or received tax credits for the 1980 tax year, since as described below, credits were received by a total of only 6,300 farms. For the 1980 tax year, this could be partially attributed to the fact that not all farmers in zoned areas would have been eligible for tax credits (i.e., their household income may have been too high). For the 1981 tax year, however, the formula was changed to provide a minimum tax credit (10% of the first $6,000 of property taxes) to all farmers subject to exclusive agricultural zoning, regardless of income. The effect of this change on the number of farms receiving tax credits cannot yet be ascertained since a final analysis of 1981 claims has not been made.]

D. TAX CREDITS

For the 1980 tax year (credits paid in 1981), more than $10 million in tax credits was paid to over 6,300 farms with the average credit being approximately $1,600. Table 4 indicates the number of credits granted, the total of the credits and the average size of the credit for each county.

TABLE 1

Farmland Preservation Tax Credits By County
Payments Made in 1981 for 1980 Taxes

	# Credits	Total	Avg. Credit
Adams	9	$6,099.50	$782.43
Ashland	1	313.00	313.00
Barron	113	169,243.40	1,495.95
Bayfield	2	529.50	254.25
Brown	8	6,120.56	765.07
Buffalo	35	44,289.20	1,258.25
Burnett	4	2,348.50	587.12
Calumet	31	34,561.20	1,114.94
Chippewa	5	2,358.00	471.60
Clark	10	9,076.30	907.63
Columbia	603	1,094,161.60	1,814.53
Crawford	11	9,432.50	857.50
Dane	617	873,501.34	1,416.72
Dodge	78	116,796.80	1,497.39
Door	9	8,304.00	922.66
Douglas	0	0	0
Dunn	17	20,278.52	1,192.85
Eau Claire	2	1,723.00	861.50
Florence	0	0	0
Fond du Lac	45	39,748.06	833.29
Forest	0	0	0
Grant	24	32,317.59	1,346.56
Green	67	86,572.40	1,292.12
Green Lake	4	3,006.10	751.52
Iowa	583	1,561,041.91	2,235.56
Iron	1	730.00	730.00
Jackson	5	6,250.50	1,252.10
Jefferson	805	1,403,152.35	1,739.22
Juneau	12	16,003.76	1,333.64
Kenosha	9	11,157.00	1,239.66
Kewaunee	4	5,622.50	1,405.62
LaCrosse	95	164,991.00	1,736.74
Lafayette	187	401,546.30	2,147.34
Langlade	1	1,519.00	1,519.30
Lincoln	2	1,937.10	968.55
Manitowoc	56	61,399.10	939.38
Marathon	42	43,651.00	1,039.30
Marinette	5	6,221.50	1,244.30
Marquette	1	2,369.00	2,369.00
Milwaukee	11	7,499.33	681.75
Monroe	14	14,725.01	1,051.35
Oconto	5	4,735.00	947.00
Oneida	1	3,338.75	3,338.75
Outagamie	14	17,227.70	1,231.26
Ozaukee	9	12,129.70	1,348.74
Pepin	45	77,535.10	1,725.22
Pierce	99	118,422.20	1,196.18
Polk	17	21,589.20	1,269.95
Portage	2	1,472.00	736.00
Price	0	0	0
Racine	25	28,725.64	1,149.02
Richland	28	31,714.50	1,132.66
Rock	519	837,522.81	1,613.91
Rusk	1	567.50	567.50
St. Croix	130	192,806.10	1,483.12
Sauk	132	209,154.90	1,584.50
Sawyer	1	2,572.50	857.50
Shawano	33	37,161.58	1,032.25
Sheboygan	201	237,488.73	1,175.68
Taylor	14	10,832.00	773.71
Trempealeau	65	84,153.30	1,294.67
Vernon	25	24,843.00	993.72
Vilas	1	2,561.20	2,561.20
Walworth	442	889,005.53	2,011.32
Washburn	3	5,401.00	1,800.33
Washington	19	24,313.98	1,279.68
Waukesha	21	20,743.50	987.78
Waupaca	23	22,254.15	855.32
Waushara	4	4,994.00	1,248.50
Winnebago	25	23,276.20	929.24
Wood	7	8,554.54	1,228.27
Menominee	0	0	0
State Total	5,729	9,494,204.75	1,657.24

Note: Totals do not add due to missing addresses for several filers. Also, returns are sorted by address of filer. The farm may be located in another county.

Source: "Technical Report #9, 'Participation in the Wisconsin Farmland Preservation Program,' Wisconsin Department of Agriculture, Trade and Consumer Protection (December 31, 1981).

Table 5 summarizes the status of both the land use planning and tax credit aspects of the Farmland Preservation Program as of December 31, 1981.

TABLE 5

Status of the Farmland Preservation Program
as of December 31, 1981

	Number of Farms	Percentage of Total Number of Farms in the State 1/	Number of Acres	Percentage of Total Number of Acres of Farmland in the State 1/
Farmland Preservation Provisions				
Preservation Agreements	2,100	2.2%	546,000	3.0%
Exclusive Agricultural Zoning 2/	13,278	14.3%	2,667,343	14.3%
TOTAL	15,378	16.5%	3,213,343	17.3%
Tax Credits (Paid in 1981 for 1980 Tax Year)				
Total Number of Credits	6,300			
Total Amount of Credits (approximate)	$10,300,000			
Average Size of Credit (approximate)	$1,600			

1/ Statewide totals from "1982 Wisconsin Agricultural Statistics," Wisconsin Department of Agriculture, Trade and Consumer Protection (June 1982). In 1981, there were 93,000 farms and 18,600,000 acres of farmland in the state.

2/ Totals are for number of farms and number of acres protected by county exclusive agricultural use zoning. Not all farms protected by zoning received tax credits.

PART III

STUDIES ON THE FARMLAND PRESERVATION PROGRAM:

PRESERVATION OF FARMLAND AND PATTERNS OF URBAN DEVELOPMENT

The original law creating the Farmland Preservation Program, directed the DATCP to study the Program and report back to the Legislature by January 1, 1981 [SECTION 1641e, Ch. 29, Laws of 1977]. Consequently, the DATCP, in conjunction with the University of Wisconsin (UW)-Madison and UW-Extension Departments of Agricultural Economics, studied several aspects of the Farmland Preservation Program, including an analysis of: (a) participation in the Program; (b) the process of local government action under the Program; (c) farmers' response to farmland preservation agreements; (d) effects of exclusive agricultural zoning on farmland preservation; (e) distribution of tax credits; and (f) the effect of the Farmland Preservation Program on soil conservation practices.

Part III describes those studies which address the following two key questions--one from a rural perspective, the other urban:

a. Does the Farmland Preservation Program preserve farmland?

b. Does the Farmland Preservation Program affect patterns of urban development?

This Part relies primarily on the following studies of the Farmland Preservation Program:

a. Barrows, Richard and John Redman, "The Effects of Exclusive Agricultural Zoning in Columbia County, Wisconsin," Agricultural Economics Staff Paper #190, UW-Extension (January 1981). [Referred to hereafter as "Staff Paper #190."]

b. Barrows, Richard and Carol Smith, "The Effects of Exclusive Agricultural Zoning in Walworth County, Wisconsin," Agricultural Economics Staff Paper #195, UW-Extension (February 1981). [Referred to hereafter as "Staff Paper #195."]

c. Barrows, Richard, "Overview and Analysis of Participation in the Farmland Preservation Program, 1977-1979," Agricultural Economics Staff Paper #194, UW-Extension (January 1981). [Referred to hereafter as "Staff Paper #194."]

A. DOES THE FARMLAND PRESERVATION PROGRAM PRESERVE FARMLAND?

In evaluating the Farmland Preservation Program from a rural perspective, perhaps the most important question is, "Does the Farmland Preservation Program preserve farmland?" The short answer to this question is that it is probably too early to tell. The Farmland Preservation Program has only been in effect since December 1977 and the permanent Program is only beginning this year. Consequently, it is difficult to tell whether, in the long run, the Farmland Preservation Program will effectively preserve farmland. However, at least two of the studies cited above give some indication of the effectiveness of the Program.

1. Zoning

Zoning appears to be the method of choice for most farmers to participate in the Farmland Preservation Program. Of the 6,300 farms receiving tax credits in 1981 for the 1980 tax year, only about 1/3rd (2,100) had preservation agreements. The rest were subject to exclusive agricultural use zoning. In addition, there are a large number of farms (approximately 9,000) protected by exclusive agricultural zoning which did not claim tax credits. Also, the counties with exclusive agricultural zoning are located primarily in the southeastern corner of the state where the best agricultural soils are also located [Staff Paper #194, pp. 4-7]. Consequently, in order to evaluate whether the Farmland Preservation Program preserves farmland, a key component is to determine whether exclusive agricultural zoning preserves farmland.

Although the Farmland Preservation Law has not been in effect long enough to have studied the effects of exclusive agricultural zoning enacted under the law, there are two studies analyzing the effects of exclusive agricultural zoning ordinances adopted in southeastern counties before enactment of the Farmland Preservation Law. Because the exclusive agricultural zoning ordinances adopted in these two counties generally met the standards established in the Farmland Preservation Law for exclusive agricultural zoning, these studies, described below, can give some indication of the effectiveness of exclusive agricultural zoning enacted subsequent to the Farmland Preservation Law.

a. Effect of Exclusive Agricultural Zoning in Columbia County on Farmland Preservation

In March 1973, Columbia County amended its comprehensive zoning ordinance and effectively transferred all land which was previously in an agricultural zoning district into an exclusive agricultural zoning district. The difference is that under the original ordinance, land zoned as "agricultural" could be used for "any use permitted in a Single-Family

Residence District; two-family dwellings, except a major subdivision..." [Staff Paper #190, p. 8]. The 1973 amendment to the comprehensive zoning ordinance deleted this provision and reduced the number of residential uses permitted in the zoning district. The result was an "exclusive" agricultural use zoning ordinance. [Note that "exclusive" agricultural zoning is not completely "exclusive," since an additional residence can be built on each farm if the occupant is connected with the farm operation and certain special exceptions and conditional uses which do not conflict with agricultural use are allowed, as under the Farmland Preservation Law.]

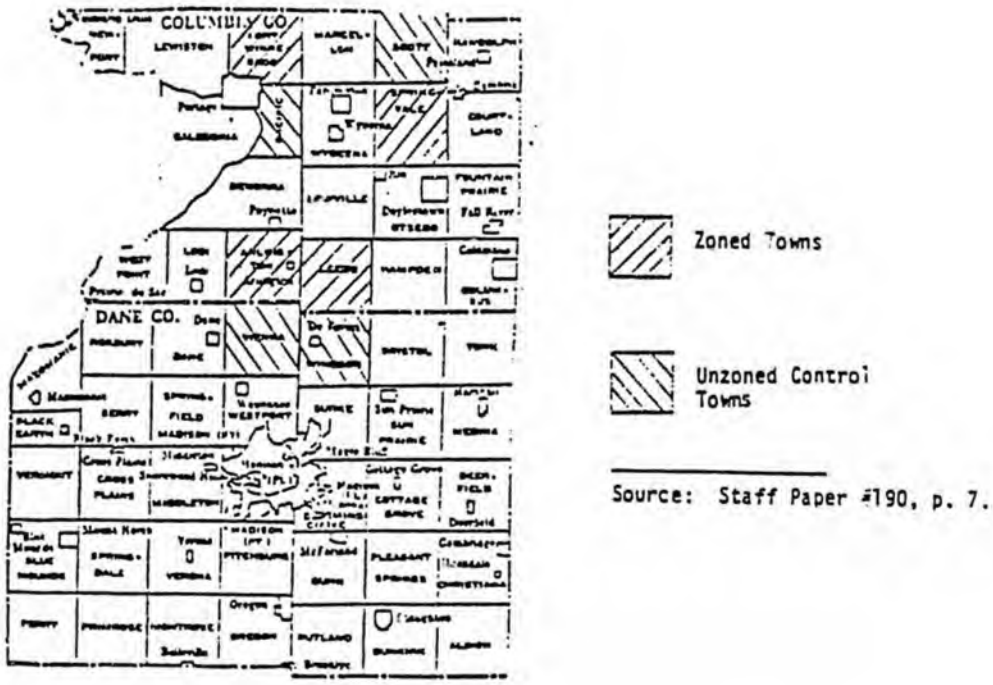
In order to study the effects of exclusive agricultural use zoning in Columbia County, Richard Barrows and John Redman, the authors of Staff Paper #190, chose four zoned towns in Columbia County to compare with four unzoned "control" towns as follows:

Zoned Towns (All in Columbia County)	Control Towns
Springvale	Scott (Columbia County)
Arlington	Vienna (Dane County)
Leeds	Windsor (Dane County)
Fort Winnebago	Pacific (Columbia County)

Figure 3 shows the location of these four pairs of towns.

FIGURE 3

Location of Zoned and Unzoned Towns Used to Study the Effects of Exclusive Agricultural Use Zoning in Columbia County



Source: Staff Paper #190, p. 7.

The authors note that although the towns are generally paired to minimize differences between the zoned town and the control town, there are, nonetheless, differences due primarily to size and locational factors. In general, however, the differences between the control and zoned towns leads to the expectation of more development in the zoned towns (i.e., because they are bigger or have soils better suited to development than the control towns) except that in the control towns in Dane County (Vienna and Windsor) one would expect more development pressure because of their proximity to Madison and other population centers.

To compare the amount of development in the zoned towns, the researchers looked at the number of rezoning petitions granted for the zoned towns. As noted by the authors, "The approval of a rezoning petition does not necessarily mean that the parcel was developed, but it is a good indication that the owner intended to do so sometime in the immediate future" [Staff Paper #190, p. 19].

In order to study development in the unzoned towns, other data sources had to be used since, obviously, there were no rezoning petitions to study. For the unzoned Columbia County townships, the authors reviewed sanitary permits. [A sanitary permit is required to build a septic system or other on-site waste disposal system.] For the unzoned towns in Dane County, information on development was gathered from building permits.

Table 6 summarizes the results of the comparison of the zoned and control towns. For all four pairs of towns, there was more acreage developed in the unzoned control town than in the zoned town. In the case of Arlington (Columbia County) and Vienna (Dane County), the difference was relatively small, but in the other three pairs of towns, the difference was substantial. Overall, there were 323 acres developed in the zoned towns while there were 1,010 acres developed in the unzoned control towns.

TABLE 6

Number of Developments and Acreage in
Zoned and Unzoned Control Towns, 1973-1977

Town [Z=zoned C=control]	Individual Parcels		Subdivisions		Total Acres Developed
	No.	Acres	No.	Acres	
Springvale (Z)	8	99	0	0	99
Scott (C)	12	158	1	72	230
Arlington (Z)	13	91	0	0	91
Vienna (C)	23	83	1	20	108
Leeds (Z)	0	0	0	0	0
Windsor (C)	28	75	6	221	304
Fort Winnebago (Z)	11	133	0	0	133
Pacific (C)	35	207	4	161	368

Source: Staff Paper #190, p. 24.

In addition, the researchers looked at the quality of the soil in the areas developed. In all cases, there was a higher proportion of development on high-quality soils in the control towns than in the zoned towns. The authors concluded that, "Not only was the absolute amount of development less in the towns with exclusive agricultural zoning, but the development that did occur was more often directed to lower-quality agricultural soils than in the towns without any [exclusive agricultural zoning]" [Staff Paper #190, p. 26].

b. Effect of Exclusive Agricultural Zoning in Walworth County on Farmland Preservation

Walworth County adopted an exclusive agricultural zoning ordinance in 1974. There are at least two important differences between the exclusive agricultural use zoning in Columbia County and that in Walworth County. First, the Walworth County zoning maps were prepared after a large number of community meetings and an extensive mapping process to identify "prime agricultural land." Designation of land to be included in the exclusive agricultural zoning district in Walworth County was based on soil quality, size of farms and suitability of soils for on-site septic systems [Staff Paper #195, pp. 8 and 9]. On the other hand, Columbia County did not make an effort to map their prime farmlands prior to adoption of the exclusive agricultural zoning ordinance. Rather, Columbia County just included all lands which were previously zoned agricultural in the exclusive agricultural districts. Secondly, Walworth County designated a substantial amount of land (approximately 25% of the land in the County) as "suitable for urban development." That is, Walworth County specifically set aside land designated for urban development, whereas Columbia County did not do this.

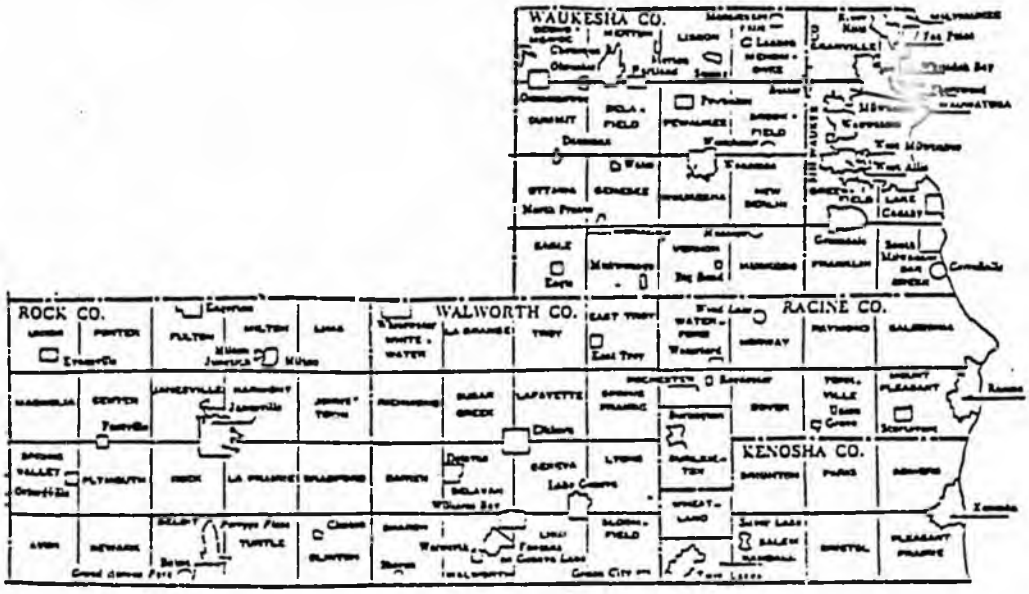
To study the effect of exclusive agricultural zoning in Walworth County, the authors of Staff Paper #195 examined three areas, each consisting of the unincorporated land lying within about four miles of either side of certain segments of the Walworth County line.

Figure 4 shows Walworth County and towns in surrounding counties. The sample areas were in the following towns:

Walworth County Towns	Control Towns
Sharon, Darien and Richmond	Clinton, Bradford and Johnstown (Rock County)
Troy and East Troy	Eagle and Mukwonago (Waukesha County)
Lyons and Bloomfield	Wheatland and Randall (Kenosha County)

FIGURE 4

Walworth and Surrounding Counties
(For Description of Study Areas See Text)



Source: Staff Paper #195, p. 13.

Once again, while there are some differences between the unzoned control areas and the zoned areas, these differences are generally slight, with the exception of the unzoned areas in Waukesha County which lie approximately four miles closer to Milwaukee than the corresponding zoned areas in Walworth County. Consequently, the unzoned areas in Waukesha County might be expected to have experienced slightly more development pressure [Staff Paper #195, p. 12]. On the other hand, three of the "unzoned" control towns adopted some sort of zoning or land use control during the period of the study (1971-1977). As a result, it could be expected that these "control" towns would not have experienced as much development pressure had they not acted to control development. The Town of Eagle (Waukesha County) adopted three-acre zoning in late 1976, the Town of Clinton (Rock County) adopted exclusive agricultural zoning in 1974 and Mukwonago (Waukesha County) adopted a moratorium on development in unincorporated areas in October of 1977, at the end of the study period. Because of these actions, the effects of exclusive agricultural zoning in Walworth County as compared to the "control" towns was probably less pronounced than if the "control" towns had not taken any action [Staff Paper #195, p. 14].

To examine the amount of development in the zoned and unzoned towns, the researchers reviewed certified survey maps. All of the counties in the study require that either certified survey maps be filed with the county whenever land divisions occurred which resulted in the creation of parcels five acres or less in size.

Table 7 shows the number of acres in certified surveys for three time periods during this study. In the zoned Walworth towns, the number of acres in certified surveys dropped over the study period, while in the unzoned control towns the number of acres increased. As was the case in Columbia County, it appears that adoption of exclusive agricultural zoning does reduce the number of acres of agricultural land converted for nonagricultural uses.

TABLE 7

Number of Acres in Certified Surveys in Study Areas
Walworth and Control Towns 1971-77

	1971-73 (Before Adoption of Exclusive Agricultural Use Zoning)	1974-75 (During Adoption of Exclusive Agricultural Use Zoning)	1976-77 (After Adoption of Exclusive Agricultural Use Zoning)	Total
Walworth Study Areas (Zoned)	186	131	93	410
Control Town Study Areas (Unzoned)	157	158	360	675

Source: Staff Paper #195; pp. 17 and 24.

The number of acres in certified surveys in Walworth County was reduced by approximately 1/2 from the period before adoption of exclusive agricultural zoning (1971-73) to the period after adoption of exclusive agricultural use zoning (1976-77). Meanwhile, in the control towns, the number of acres in certified surveys more than doubled from the 1971-73 period to the 1976-77 period.

In addition, the number of acres of good agricultural soils included in certified surveys dropped in the zoned towns over the study period whereas it increased in the unzoned control towns as shown in Table 8 [Staff Paper #195, p. 18]. That is, in Walworth County, as in Columbia County, exclusive agricultural use zoning appears to have reduced both the total number of acres and the number of acres of good agricultural soils lost to development, as compared to unzoned towns.

TABLE 8

Number of Acres of "Good" Agricultural Soil in Certified Surveys
["Good" Agricultural Soils Defined as Soils in the U.S. Soil Conservation Service Capability Classes I-II]

	1971-73	1976-77
Walworth Study Areas (Zoned)	103	48
Control Study Areas (Unzoned)	102	173

Source: Staff Paper #195, p. 18.

2. Preservation Agreements

Although the effect of farmland preservation agreements has not been studied as extensively as the effects of zoning in preservation of farmland, it can be noted that while there were approximately 2,100 preservation agreements in effect as of December 31, 1981, according to DATCP staff, fewer than 10 liens have been filed against land subject to an agreement and no farmers have been taken to court to collect civil penalties for conversion of farmland in violation of the provisions of an agreement. This indicates that at least to this point, farmers who have signed preservation agreements have indeed preserved the land for agricultural use.

B. DOES THE FARMLAND PRESERVATION PROGRAM AFFECT PATTERNS OF URBAN DEVELOPMENT?

From an urban perspective, perhaps the key question regarding the Farmland Preservation Program is, "Do efforts to protect farmland affect patterns of urban development?" For example, urban officials may be concerned about patterns of urban development and what these mean for providing urban services because it appears to be generally accepted that providing services to compact development is less expensive than providing the same services to scattered development.

There have been no studies directly examining the question of whether farmland preservation can affect patterns of urban development, but as part of the Columbia and Walworth County studies described above, some information pertinent to this question was gathered.

1. Columbia County

The study of the effects of the Columbia County exclusive agricultural zoning ordinance on farmland preservation was described above. This subsection of the Staff Brief will describe the findings in that study related to preservation of farmland and urban development.

Before reviewing the results of the study, it can first be noted that according to interviews conducted by the researchers, a major objective of Columbia County officials in enacting exclusive agricultural zoning in March 1973 was to help minimize the cost of providing public services to new development. That is, there was the belief in Columbia County that the location of development influenced the cost of servicing the development [Staff Paper #190, p. 10]. Two aspects of the research conducted on the effects of Columbia County zoning indicate that exclusive agricultural zoning does tend to reduce the amount of scattered development. First, the researchers determined the location of all of the

parcels of land developed in the zoned towns and the results of the researchers' analysis are reproduced below. In each pairing, the zoned town is described first and the unzoned town second. The results indicate that there was "significantly less scattered development" in the zoned towns than in the control towns [Staff Paper #190, p. 29].

> 1. Springvale/Scott: In Springvale, new development was clustered in the western half of the town, in six sections; three rezoning requests in eastern sections were denied. In Scott, development was more scattered, occurring in 10 sections throughout the town.
>
> 2. Arlington/Vienna: New development was considerably less scattered in Arlington, concentrated primarily in three northern sections near Poynette. Overall, the pattern of development in Vienna was scattered and most occurred outside, and at some distance from existing sanitary districts.
>
> 3. Leeds/Windsor: There was no new development on agricultural land in Leeds during the study period. In Windsor there were not only small individual parcels, but also a number of subdivisions, developed at some distance from both incorporated areas and existing sanitary districts.
>
> 4. Fort Winnebago/Pacific: New development was somewhat more concentrated in Fort Winnebago. In Fort Winnebago, 3 of 11 rezonings were adjacent to the city of Portage and 5 others were located in four adjoining sections in the western part of the town. In Pacific, new development occurred in 14 different sections (of 22 total). [Staff Paper #190, p. 28.]

Secondly, the researchers looked at the actions taken by 10 of the 11 persons whose petitions for rezoning of land in an exclusive agricultural district were denied (the 11th person could not be located). The actions taken by the petitioners after denial of their petitions were [Staff Paper #190, p. 25]:

> a. One built on the same parcel after repetitioning.

b. One built a single-family residence in another county.

c. One built in a subdivision within an unzoned Columbia County township.

d. One built a single-family residence within an incorporated area of Columbia County.

e. One bought an existing house within an incorporated area of Columbia County.

f. One refurbished an existing farmhouse within a zoned Columbia County township.

g. Four had not relocated.

It can be noted that although three of the petitioners denied rezoning went ahead and built a house in what appears to have been an unincorporated area, four of the persons did not relocate and two moved into incorporated areas of Columbia County. That is, six of the 10 persons denied rezoning appear to have either not relocated or relocated in an area already receiving public services. [The 10th person denied rezoning refurbished an existing farmhouse within a zoned Columbia County township. The effect of this action on the need to provide services is unclear.]

2. Walworth County

As part of the review of the effectiveness of exclusive agricultural zoning in Walworth County, the researchers examined the distance of land surveyed for development from population centers. [A population center was defined to include both incorporated and unincorporated areas with substantial development, such as a rural subdivision.] The surveyed land was divided into land within one mile or less of the population center and land more than one mile from a population center.

The results of the analysis, as shown in Table 9, are somewhat ambiguous. In reviewing the total number of acres, Walworth towns had a greater number of acres surveyed more than one mile from a population center prior to the zoning, but only about 1/2 as many acres more than one mile from a population center after the zoning. That is, zoning seems to have led to more compact development in Walworth County than in the control towns when considering total acreage. However, the proportion of developed acres more than one mile from a population center is greater in Walworth towns than in the control towns. That is, of the development that did occur in Walworth County (on parcels of five acres or less), a greater percentage occurred more than one mile from a population center

than did in the control towns. The researchers note, however, that the proportions of development occurring at distances from population centers did not substantially change in Walworth County from before zoning to after zoning. In both cases, approximately 60% of the development that took place in Walworth County occurred more than one mile from a population center. The researchers suggest that since the Walworth County exclusive agricultural zoning ordinance is based on soil quality, efforts to protect prime agricultural soil may lead to a more dispersed pattern of development [Staff Paper #195, p. 18].

TABLE 9

Number of Acres in Certified Surveys by Distance From Population Center for Two Time Periods

	1971-73		1976-77	
	Number of Acres	Percentage	Number of Acres	Percentage of Total
Walworth Study Areas (Zoned)				
- One mile or less from a Population Center	62	36.5%	34	38.0%
- Greater than one mile from a Population Center	108	63.5%	56	62.0%
	170	100.0%	90	100.0%
Control Study Areas (Unzoned)				
- One mile or less from a Population Center	96	58.5%	226	68.5%
- Greater than one mile from a Population Center	68	41.5%	104	31.5%
	164	100.0%	330	100.0%

Source: Staff Paper #195, p. 20.

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Managing Oregon's Growth

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Authors

A Report to the
National Agricultural Lands Study
from the
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Amherst, Massachusetts

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CHAPTER 1

EXECUTIVE SUMMARY*

I. LOSS OF VALUABLE AGRICULTURAL LAND: THE PROBLEM AND ITS CAUSES

A. From 1967 to 1975, Three Million Acres of Agricultural Land were Lost Each Year

Over the last three decades, millions of acres of agricultural land have been lost as America's suburbs grew, the interstate highway system and innumerable water resource development projects were completed, and extensive surface mineral deposits were tapped. In fact, in the eight-year period from 1967 to 1975, some 23.4 million acres were converted to urban, transportation, water resource development, and other non-farm uses.

Citizens across the country and their representatives at all levels of government have shared rapidly deepening concerns over the adverse effects of this loss of agricultural land. Some feared the decline of the rural way of life, as carefully tended fields become carefully mowed lawns. Others emphasized the economic disruption that accompanies the decline of agriculture in an area. Still others were apprehensive that continued loss of farmland would lead to reduced production that, in turn, would have grave impacts on the nation's ability both to feed itself and to make significant foreign sales that earn foreign exchange. Still others pointed out that using poorer, more remote land that requires irrigation or more fertilizer increases the consumption of energy by the farming sector.

Underlying these concerns is the realization that good farmland is a finite resource which is necessary for survival. The importance of protecting the land resource has become increasingly evident because of continually growing populations which must be fed both in the United States and throughout the world, the constantly increasing price of oil on which U.S. agricultural technology is based, and uncertainty about the likelihood of major additional increases in agricultural productivity. Many realize that the nation could seriously reduce its long-run options by under-assessing the seriousness of the loss of farmland.

These concerns led to action. County after county, state after state, and Congress have taken significant steps aimed at protecting farming and reducing the rate of conversion of farmland. This Guidebook presents the story of these efforts and shows what governments can do to achieve this goal.

B. The Reasons Why Agricultural Land Is Converted to Non-Farm Uses

The conversion of agricultural land is a complex process, often taking place over a period of fifteen or twenty years. It involves such factors as farm profitability, urban growth pressures, land values, personal decisions about work and retirement, community expectations, taxes and government programs, incentives, and regulations. Urban growth pressure can be compared to a great flood, moving out slowly into the countryside raising land values as it goes. Investors begin buying land for its development potential. New farmers cannot afford to buy farms. Old farmers are less and less able to increase their holdings. At some point, the process becomes irreversible, and farm after farm is subdivided and developed.

Communities that wish to protect their agricultural lands must start early in the process to change the expectations of farmers, investors, and developers. The comunities must convince owners that they will allow development only in urban or suburban areas. In effect, they must build levees which protect farmland against the flood of urban growth pressure.

II. THE RESPONSE: AN OVERVIEW

State and local governments have adopted a remarkable variety of programs whose objective is to reduce the rate of conversion of farmland. The most important are defined in Table 1-1 and their numbers are summarized in Table 2-2.

A. The Programs

1. Incentives: Tax Relief

Legislators have long understood that the capacity to earn a reasonable living from farming is the most important determinant in a farmer's decision whether or not to keep farming. Since

* The principal author of this chapter was John C. Keene.

TABLE 1-1
SHORT DEFINITIONS

Comprehensive Planning - A process leading to adoption of a set of policies regarding land use, transportation, housing, public facilities, and economic and social issues. It may include a land use plan designating particular uses and a program for providing transportation, sewers, and other public facilities. In most states the plan in itself is not legally binding on governments or individuals, but a few states require that zoning and major public facility plans be consistent with comprehensive plans.

Agricultural Zoning - A legally binding designation of the uses to which land may be put, including the type, amount, and location of development. Agricultural zoning restricts uses to agriculture and related uses such as a farmstead. Often a large minimum lot size (20-160 acres) is stipulated in an agricultural zone.

Agricultural Districting - The designation of specific tracts of long-term agricultural uses, usually coupled with benefits and assurances which improve the conditions for farming. Generally no legally binding controls are imposed on land use.

Purchase of Development Rights - Purchase of the right to develop from owners of specific parcels, leaving the owner all other rights of ownership. The price of the rights is the diminution in the market value of the land as a result of the removal of the development rights. The remaining value of the land is the "farm use" value.

Purchase and Resale or Lease with Restrictions - Purchase of land, imposition of restrictions on use and development, and resale at market price. End result is equivalent to purchase of developing rights.

Transfer of Development Rights - Development rights on land in a designated preservation area may be purchased by a developer and transferred to a designated development area where the equivalent amount of additional development can be constructed.

Differential Assessment - Assessment for property tax purposes based on the farm use value of the land rather than on its market value. There are three major types of differential assessment: pure preferential assessment with full abatement, deferred taxation with partial or with no abatement, and restrictive agreement, under which a farmland owner contracts to maintain his land in farm uses in return for a lower assessment.

Development Permit System - Requirement that a special permit be obtained for development from designated state or regional agency. Permit is in addition to normal local zoning and building permits.

Right to Farm - Legislation stating that local ordinances cannot be enacted which restrict normal farming practices unless they endanger public health or safety, and providing farmers with some protection against private nuisance lawsuits.

taxes constitute a significant cost to farmers and are under government control it is not surprising that legislatures often turned first to tax relief as a tool for protecting farmland. They enacted laws which reshape the impact on farmers of the real property and death taxes and, in two instances, state income taxes.

Both the property tax and inheritance or estate taxes are *ad valorem* taxes and are imposed on the assessed or appraised value of property. The problem with farmland is that it often has two values: one, its agricultural use value and the other, its value as a site for residential, commercial, or industrial development. This is referred to as its fair market value. In many farming areas, especially those near large cities, the fair market value of agricultural land is much greater than agricultural use value because developers are able to make a reasonable profit from their development even if they pay high prices for the land.

Many farmers have found that their real property taxes were going up because of the rising fair market value of their land and the increased fiscal burdens which go along with suburbanization. Some farm estates have had liquidity problems that made it difficult or impossible to pay estate taxes that were measured by the fair market value of the land without selling some or all of the farm. In response to their complaints, tax incentives were enacted. They have two primary purposes: first, to reduce taxes for farmers, and second, as a consequence of that reduction, to lower the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales.

TABLE 1-2
NUMBERS OF EXISTING PROGRAMS
TO PROTECT AGRICULTURAL LAND

Type of Program	State	County	Municipality	Total
Differential Assessment for Property Tax				
Preferential Assessment	17			17
Deferred Taxation	28			28
Restrictive Agreement	2			2
Income Tax Credits	2			2
Farm Use Valuation for Death Tax				
Use IRC rules	16			16
Use rules similar to IRC	8			8
Special rules	5			5
Capital Gains Tax on Land Sales	1			1
Agricultural Districts	6			6
Right-to-Farm Legislation	16			16
Agricultural Zoning	1	104	166	271
Purchase of Development Rights	4	4	1	9
Transfer of Development Rights		2	10	12
Development Permits	2			2
Integrated Programs	7*	3*		10

* We lack a clear definition of the numbers of elements and interrelationships necessary to define an integrated program. Depending on the definition adopted, one could include many more than the seven state and three sub-state programs listed in this table and discussed in Chapters 9 and 10.

a. Differential Assessment

As of the end of 1980, all states except Georgia and Kansas had laws which seek to reduce the burden of real property taxes on farmers. There are two major kinds: differential assessment laws (which include preferential assessment, deferred taxation, and restrictive agreement laws) and circuit breaker tax credit laws.

Seventeen states authorize preferential assessment. Eligible land is assessed for real property tax purposes at its agricultural use value. The effect is to reduce a farmer's taxes.

Twenty-eight states have deferred taxation programs. In addition to permitting agricultural use value assessment, they require participating land owners who develop their land for ineligible uses to pay some or all of the taxes that they have been excused from paying. These 'roll-back" taxes are usually equal to the difference between what the tax on fair market value would have been and what the actual tax was for a given number of years. Seven of these states simply impose a "land use change" tax equal to a percentage of either this difference or of the fair market value in the year of development.

New Hampshire and California have restrictive agreement programs that require an owner to enter into a long-term contract in which he agrees not to develop his land, in exchange for receiving preferential assessment. It is very difficult for landowners in these states to get out of the contracts and develop their land before the end of the contract period. See Figure 1-1 which shows the program in effect in each state.

These programs clearly provide tax relief for farmers. Preferential assessment is the most effective in this regard, while restrictive agreement programs are the least. The more eligibility requirements there are, the greater the recovery of rollback taxes, and the more the farmer is re-

FIGURE 1-1
REAL PROPERTY OR STATE TAX INCENTIVES FOR LOCAL PROPERTY TAX PURPOSES

quired to restrict his land, the fewer farmers will participate and the lower the tax benefits will be.

b. Property Tax Credits

Michigan and Wisconsin allow a farmer to apply some or all of his local real property taxes as dollar-for-dollar credits against his state income tax. Income tax credit approaches are more directly relevant to alleviating the cost squeeze that farmers in urbanizing areas find themselves caught in, because they are based on the farmer's net income rather than just one element (property taxes) which affects his net income.

c. Death Tax Benefits for Farmers

In the Tax Reform Act of 1976, Congress made major changes in the federal estate tax which made estate tax preferences available to eligible farm estates. Since then, many states have followed suit by enacting similar amendments to their inheritance and estate tax laws. These changes are complicated and technical and can be discussed here only in a general way.

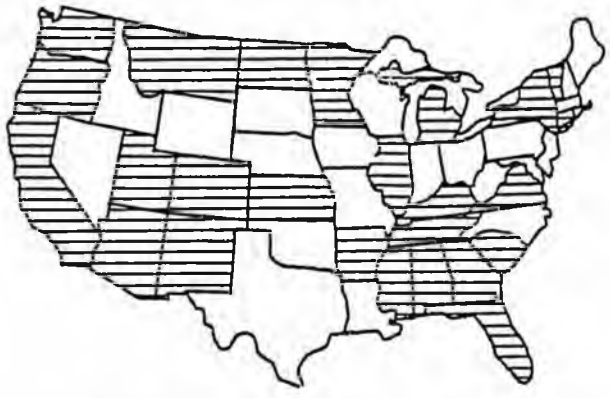
Congress raised the threshold at which estates become liable for estate taxation and increased the marital deduction so that at least 70% of farm estates are exempted from estate tax liability.

In addition, Congress enacted two new sections of the Internal Revenue Code that benefited qualifying farm estates. The first, Section 2032A, permits agricultural use valuation of eligible farmland that is left to heirs of the deceased. The second, Section 6166, gives executors of eligible farm estates the option of deferring the payment of estate taxes on farm property for five years and then paying them in equal installments over another ten years. These sections have detailed eligibility requirements that limit their availability. They require a payment of the taxes foregone if the heirs cease to farm the property or sell it to a person who is not a family member.

Section 2032A and 6166 can significantly ease the estate tax burden of farm estates that qualify for and actually elect to use them. Our calculations indicate that a relatively small number will be eligible for and elect these benefits, because of the stringent eligibility and recapture provisions. As a result, they will not reduce total farm estate taxes significantly.

A slim majority of the states have taken steps to make some form of preferential valuation available to farm estates. They are shown in Figure 1-2.

FIGURE 1-2
PREFERENTIAL VALUATON FOR STATE INHERITANCE AND ESTATE TAXATION



Six others, California, Kansas, Michigan, Minnesota, New York, and Wisconsin, have made special Section 6166 deferral procedures available for farm estates.

d. Differential Assessment and Death Tax Benefits: Effectiveness for Reducing the Rate of Conversion of Farmland

For a complex set of reasons which are discussed at length in the Guidebook, these tax incentives, if made available by themselves and not as a part of an integrated program, are largely ineffective in reducing the rate of conversion of farmland.

Despite the above characteristics, differential taxation and death tax benefits are necessary components of a comprehensive agricultural land protection program. First, as a matter of

equity, if a program prevents agricultural land from being developed, the owner should only pay taxes on its agricultural use value. Second, benefits such as these serve as incentives to encourage farmers to participate in integrated farmland protection programs.

2. Incentives: Agricultural Districting

Agricultural districts are legally recognized geographic areas whose formation is initiated by one or more farmers and approved by one or more government agencies. The districts, with their benefits and obligations, are created for fixed but renewable periods of time ranging from four to ten years. In most programs land cannot be included in an agricultural district without the owner's written permission. Agricultural districting programs are based on the idea that if farmers are given incentives to join in the voluntary creation of districts of significant size where farming would be the only activity, and if they are protected against many of the factors which might otherwise make it undesirable or unprofitable for them to farm, they will be able to keep their land in agricultural use. The formation of an organization initiated by farmland owners that is dedicated to protecting and promoting farming in a specific geographical area will, it is hoped, strengthen the position of agriculture in the districted area and in the community as a whole.

As of 1980, six states, California (1965), New York (1971), Virginia (1977), Maryland (1977), Illinois (1979), and Minnesota (1980), had enacted laws based on this idea. Minnesota's Agricultural Preserves Act is unique in that it is in effect only in the Twin Cities Metropolitan Area. The elements of the various programs are shown in Table 1-3.

TABLE 1-3
ELEMENTS OF SIX AGRICULTURAL DISTRICTING PROGRAMS

Elements	N.Y.	Va.	Ill.	Md.	Calif.	Twin Cities
1. Differential assessment	x	x			x	x
2. Protection from local government ordinances which hinder farming	x	x	x	x		x
3. Limitations on public investments promoting non-farm developments within districts	x	x			x	x
4. Limitations on the acquisition of land within districts by public agencies	x	x			x	x
5. Limitations on special assessments	x	x	x			x
6. State agency regulations and procedures supportive of agriculture within districts	x	x	x			x
7. Limitations on annexations of land in districts by municipalities						x
8. Requirements for sound conservation practices				x		x
9. Limitations on rate of tax increases						x
10. Compensation to local governments for tax losses	x				x	x
11. Zoning adjacent lands so as to reduce conflict		x				
12. Purchase of the development rights to land within districts				x		
13. Limitations on development of districted land with zoning or other restrictions				x	x	x

Agricultural districts provide a geographical and organizational framework within which certain incentives and safeguards can be made available to farmers. Their effectiveness as a way to reduce the rate of conversion of farmland depends on the particular combination of elements they include. The programs studied vary considerably in this regard, and evaluation is difficult because they are either recently enacted or part of a broader, integrated program. The program with sufficient longevity to permit evaluation is New York's. The evidence indicates that while it has been relatively ineffective in reducing farmland conversion, it has provided rural farmers with an enhanced sense of security and a modest protection against special assessments and eminent domain.

3. Incentives: Right-To-Farm Legislation

There is a basic incompatibility between many types of agricultural activity and residential use. As city people begin to move into rural areas, they object to the smells, noises, dust, pesticides, and other by-products of operating a modern farm. These complaints can take several forms. A landowner may sue the farmer, claiming that his farm operations are a nuisance. He may try to persuade the local government to pass an ordinance limiting various farm activities. He may report the farmer to a county or state agency that is responsible for enforcing air or water pollution control laws for the purpose of getting an order to end the offending farm practices.

Farmers find that defending themselves against such actions can be expensive, time consuming, and aggravating, even if they are successful. They have turned with increasing frequency to their state legislators for protection. The laws that have been passed in response have been called "right-to-farm" laws.

At least sixteen states, listed in Table 1-4, have adopted some form of right-to-farm legislation.

Some of these right-to-farm laws, such as New York's, simply prohibit local governments from enacting laws that unreasonably restrict or regulate farming structures or practices unless they are needed to protect the public health or safety. Others, such as North Carolina's, limit farmers' liability for damages in nuisance lawsuits. Still others, such as Tennessee's, exempt farm activities from certain of the state's anti-pollution laws. The laws vary considerably from one state to another. They are, by and large, of recent origin. Many of the questions of interpretation that they raise are still unanswered, and we have little evidence of their effectiveness in achieving their central goal: to protect the farmer against unnecessary and disruptive nuisance actions and government regulations, while at the same time protecting the public health and safety.

TABLE 1-4
STATES WITH RIGHT-TO-FARM LAWS*

Laws Protecting Against Local Government Regulations

Alabama (1980)	New York** (1971)
Delaware (1980)	North Carolina (1979)
Illinois** (1979)	Oregon** (1973)
Kentucky (1980)	Tennessee (1979)
Maryland** (1977)	Virginia** (1977)
Minnesota (Twin Cities)** (1980)	

Laws Protecting Against State Regulations

Tennessee (1979)	Oregon (1973)

Laws Protecting Against Private Nuisance Lawsuits

Alabama (1980)	Mississippi (1980)
Delaware (1980)	North Carolina (1979)
Florida (1979)	Oklahoma (1980)
Georgia (1980)	Tennessee (1979)
Kentucky (1980)	Washington (1979)

* Some states provide more than one form of protection.
** The statute applies only in agricultural districts or, in the case of Oregon, in exclusive farm use zones.

4. Land Use Controls: Agricultural Zoning

Agricultural zoning is the most popular and common method used by local governments to prevent the use of agricultural land for non-agricultural purposes. In the last decade at least 270 jurisdictions have turned to it to protect their farmlands (See Figure 1-3). Many communities also use other tools to complement, sustain, or reinforce the agricultural zone. Agricultural zones are often combined with community plans,

FIGURE 1-3
AGRICULTURAL ZONING

urban boundary agreements, or voluntary or mandated state programs that together protect farmland. Thus, agricultural zoning must often be viewed as one part of a larger local program.

a. Types of Agricultural Zoning Ordinances

The most important characteristic of an agricultural zoning ordinance is the extent to which it limits the intrusion of new, non-agricultural uses (usually non-farm dwellings) into established agricultural areas. With this in mind, we have divided agricultural zoning ordinances into the following categories:

1. Non-exclusive agricultural zoning ordinances:

a. large minimum lot size,

b. fixed area-based allocation combined with a small building lot size,

c. sliding scale area-based allocation combined with a small building lot size, and

d. conditional use approval based on multiple, discretionary standards.

2. Exclusive agricultural zoning ordinances.

(1) Non-exclusive Zoning Ordinances

Non-exclusive agricultural zoning ordinances are by far the most popular approach to agricultural land protection. Non-farm dwellings are allowed, but agricultural uses are preferred. In these zones, non-farm dwellings may be permitted conditionally or as of right.

Large lot ordinances require a substantial minimum lot size, ranging from as little as ten acres to as much as 640 acres for one single-family dwelling.

In fixed area-based allocation ordinances, owners are allowed to build one house for each unit of land of a specified area that they own, ranging from one dwelling per ten acres to one per 160 acres. Thus, what have been called "quarter/quarter" zoning ordinances allow an owner to build one dwelling unit for each quarter of a quarter section. No units are allowed for remainders of less than the specified number of acres.

Sliding scale area-based allocation zones also allocate building rights on the basis of ownership of units of land of a given area, but the number of dwellings allocated per acre decreases as farm size increases. The advantage of area-based allocation zones as compared with large lot zones is that they allow dwellings to be built on relatively small lots, typically from one to three acres, clustered on one part of the farm, leaving the rest relatively far removed from potentially conflicting residential uses.

The fourth type of non-exclusive zoning ordinance, the conditional use zone, allows non-farm dwellings as a conditional use if they meet specified criteria based on the compatibility of the proposed dwelling with surrounding agricultural uses. No large minimum lot size requirement is imposed. Conditional use zones have the potential for producing non-farm development that is compatible with the purpose of the agricultural zone, since they do not permit non-farm dwellings as of right.

(2) Exclusive Agricultural Zoning Ordinances

These ordinances share three characteristics. Non-farm dwellings are prohibited. The communities use a performance definition of a farm or farm use rather than defining a farm by a large minimum lot size or area-based allocation. Each request to build a farm dwelling requires individualized review. The primary advantage of exclusive agricultural zoning is that the conflict between residential and farm uses is minimized because non-farm dwellings are prohibited.

b. Effectiveness: The Experience in Ten Communities

In order to see how agricultural zoning works in practice, ten communities were selected for more detailed study on the basis of length of experience, varied development pressure, varied location, and type of governmental unit. since their zoning programs do not represent a random sample, the case studies simply suggest what might happen in other communities with similar characteristics of agriculture, development pressure, and political commitment.

The case studies were done of the following jurisdictions, which adopted agricultural zoning ordinances in the year indicated:

Counties	Municipalities
Black Hawk County, Iowa (1973)	Brooklyn Park, Hennepin Co., Minnesota (1974)
DeKalb County, Illinois (1974)	Sioux Falls, Minnehaha Co., South Dakota (1978)
Marion County, Oregon (1971)	West Hempfield, Lancaster Co., Pennsylvania (1978)
Stanislaus County, California (1973)	
Tulare County, California (1975)	
Walworth County, Wisconsin (1974)	
Weld County, Colorado (1973)	

The case study communities adopted agricultural zoning ordinances to deal with one or more of the following three problems. First, farmland was being lost to premature rural subdivisions at increasing rates. Second, these rural subdivisions required increased expenditures for public services and facilities, expenditures which led to increases in local property taxes. Third, farmers and suburbanites discovered that rural subdivisions and farm operations often conflict. Farmers felt victimized by vandalism, harassment, and nuisance actions, while suburbanites complained of the smells, dust, noise, and chemicals from nearby farm operations.

The case studies permit several important conclusions to be drawn, although they must be tentative because of the relative novelty of the agricultural zoning efforts and the difficulty of separating out other causal factors such as state farmland protection programs and short-term developments in the economy. First, the new non-exclusive agricultural zoning ordinances have greatly decreased permitted residential densities in agriculture zones. Second, most of the communities now view agriculture as a long-term, permanent land use. Third, since the initial agricultural zoning ordinances were adopted, most communities have revised their approaches so as to strengthen the restrictions on non-farm uses, an indication that local approaches to agricultural zoning are enjoying good political support. Fourth, the record of communities in dealing with proposed rezonings is good. For the most part, good agricultural land is simply not being taken out of agricultural use. Rezonings are granted, but generally only to those lands which are not well-suited to agriculture. Fifth, the important role played by the planning staff in dealing with applicants for rezonings is another indicator of the consistency and coherence of local rezoning decision-making processes. Staff usually provided an informal evaluation of proposed rezonings using the same criteria applied by decisionmakers. Sixth, evidence of changes in the pattern of land speculation suggests that agricultural zoning has been producing the desired effects. In the majority of communities, speculation for non-agricultural purposes shifted from agricultural areas to designated development areas. Seventh, in most cases, local planners and officials felt that the subdivision of agricultural land had greatly decreased, while an increasing proportion of new development was being channeled into designated development areas.

Establishing and applying reasonable criteria governing the division of land in the agricultural area was the most common problem. The majority of the case study communities were faced with two additional problems. First, most of them permitted a variety of rural-oriented or community uses in their most restrictive districts. Second, a majority relied upon a large minimum lot size to protect agricultural land from non-agricultural development. This means that non-

farm dwellings could easily be built within the agricultural zone so long as the minimum lot size was maintained. Such practices are likely to generate the frictions and nuisance suits that often result when residential and agriculture uses mix.

Thus, large lot and fixed and sliding scale area-based allocation ordinances may temporarily deter non-agricultural development in agricultural areas, but in the long run, the validity of these techniques is questionable, unless permitted densities are significantly lowered. The solution to this long-term problem will most probably be found in the stringent administration of either the conditional use approach, which requires a case-by-case evaluation of proposed dwellings in the agricultural area, or of exclusive agricultural zoning premised on a performance definition of a farm dwelling.

5. Land Use Controls: Purchase of Interests in Land

a. Purchase of Development Rights

In certain situations, zoning may not be an appropriate technique for preventing the development of agricultural land. For example, it may prove politically unfeasible to enact an exclusive agricultural zoning ordinance, particularly in locations where development pressure is high and it is evident that the zoning restrictions would deprive landowners of substantial value. In addition, in many jurisdictions, experience has shown that zoning tends to be weakened in order to accommodate strong demands for development.

In response to such concerns, and reflecting a feeling that such uncompensated restrictions on development as are embodied in exclusive agricultural zoning are unfair to owners of farmland in rapidly urbanizing areas, many policy makers have turned to the idea of acquiring less-than-fee interests in land in order to control its use.

Fee simple ownership (the full ownership) of land may be defined as a set of interests or rights: the right to keep others off the land, the right to sell or bequeath it, the right to use it for farming forestry or outdoor recreation, the right to build structures on or beneath it, etc. The right to build on or beneath the land is known as the development right or rights. They are, of course, limited by restrictions embodied in health and building codes and in whatever zoning may exist. The objectives of farmland protection may be served by buying the development rights to farm property.

Purchase of Development Rights (usually known as PDR) programs have been adopted by the governments shown in Table 1-5.

New Jersey had an experimental program that was terminated before any easements were purchased.

The PDR programs have been successful in attracting landowners who wish to participate. To date, some 10,300 acres have been enrolled in PDR programs at an average cost of $1,848 per acre. There has been little emphasis on clustering the land whose development rights have been purchased so as to insure that a critical mass of farmland is protected. To date, no enforcement problems have been encountered.

b. Ways of Reducing the Cost of Development Rights Programs

While the actual purchase of an interest in land is the most permanent way to prevent its development, it is often also the most expensive. Several techniques have been proposed or tried that are designed to reduce the cost. Maryland's PDR program assigns the highest priority for purchase to those farmers whose offers are the lowest percentage of the theoretical value of the development rights. Other approaches include the right of pre-emption and land banking. Pre-emption allows a government to match an open market price and buy agricultural land only when it is actually on the market. Land banking has never been tried in the continental United States, but if found politically acceptable, has the potential for allowing a government to acquire land while its price is low and then locate and program development with a view to agricultural and other long-term resource values.

6. Land Use Controls: Techniques that Rely on Private Initiative

Another set of approaches relies on working with private landowners to retire development rights voluntarily in areas designated for agricultural production. The first technique is transfer of development rights (TDR), a way of re-

TABLE 1-5
PDR PROGRAMS FOR
FARMLAND PROTECTION

Jurisdiction	Year First Funded	Acreage under Easement (ac.)	Total Authorized Funding ($Million)
Suffolk Co., N.Y.	1976	3,214	21.0
Maryland	1977	2,400	6.3
Massachusetts	1977	1,349	15.0
Connecticut	1978	2,585	9.0
Howard Co., Md.	1978	0	1.5
Burlington Co., N.J.	1979	810	3.0
King Co., Wash.	1979	0	50.0
New Hampshire	1979	0	3.0
Southampton, N.Y.	1980	0	6.0

ducing or eliminating the public costs of acquiring development rights by shifting the responsibility for purchasing them from the government to private developers. In the classic mandatory TDR system, a preservation district is identified, as is a development district. Development rights are assigned to owners of land in the preservation district in a systematic manner. However, owners of land in the preservation district are not allowed to develop, but instead may sell their development rights to owners of land in the development district, who may use these newly acquired development rights to build at higher densities than normally allowed by the zoning. TDR systems are intended to maintain designated land in open uses and compensate the owners of the preserved land for the loss of their right to develop it. To date, only voluntary TDR systems have been used. The owner of open land has the option of either developing at low densities or selling the development rights to his land and then restricting it by covenant to open space use.

Ten municipalities and two counties have adopted TDR systems for the preservation of farmland and other open space. All twelve ordinances permit transfer to non-adjoining properties, a fundamental feature which distinguishes true TDR systems from cluster, planned residential development, or planned unit development systems.

To date, only four TDR transactions, including 184 acres, have taken place. If TDR programs are to be useful for protecting farmland, they must be designed to provide the market situations which will enable the developer to realize enough profit from the purchase and transfer of development that he will find it worthwhile to engage in the TDR process and will offer an attractive price to the farmland owner. This involves not only providing incentives for the landowners to sell their rights and providing density incentives for the developer, but also designating areas under strong development pressure as development districts and assuring the availability of water, sewer, highways, and other facilities necessary for higher density development. It is possible that large metropolitan counties will be successful in implementing TDR programs although townships have generally failed.

The second approach is the donation of development rights in perpetuity. This is made possible by Section 170(h) of the Internal Revenue Code, which permits a landowner to deduct from his income the value of land, or of interests in land, which he donates to a public body or a qualified private non-profit corporation.

A third technique involves the establishment of a private land trust: a private, non-profit, charitable (and tax exempt) entity set up to acquire and manage lands in the public interest. Trusts generally have the confidence of landowners and are able to move faster in acquiring

land than governments can, though they tend to have limited permanent funding capacity. They are able to acquire development rights either by gift or through purchase. In some cases, the land trust may act as an intermediate owner, holding the land for later sale to an appropriate public agency.

Finally, there is the farmland conservancy, proposed (but untried) as a local organization operating within a conservancy district. It would be empowered by state law to buy and sell land or rights in land for the purpose of maintaining important farmland in farm use. The conservancy could acquire land when offered for sale when it believed that the sale would be injurious to the practice of farming in its area. It might resell the land with restrictions on use to an appropriate buyer. The conservancy would have the right to intervene in any sale of land previously designated by the conservancy as important farmland.

7. Integrated Programs of Incentives and Controls: Metropolitan Growth Management Programs

In many parts of the country, the problem of agricultural protection can be addressed realistically and effectively only by considering its relation to the entire system of land use and development within a given region. In other words, the goal of protecting farmland must be balanced with other competing and supporting interests of the region, such as providing housing and jobs for current and future residents, protecting environmentally sensitive areas, providing adequate public services and facilities, and keeping fiscal expenditures at a minimum. The need to incorporate agricultural protection into an overall strategy for dealing with growth is especially apparent in metropolitan areas, where there is often intense competition for limited land resources.

The Guidebook examines comprehensive growth management programs for three metropolitan areas: the seven-county Twin Cities region, Minnesota; Lexington-Fayette Urban County, Kentucky; and Metropolitan Dade County, Florida. A coordinated regional approach to growth management can accomplish a variety of mutually complementary objectives, such as minimizing public investment costs and focusing farmland preservation efforts on areas where agriculture is most likely to remain economically viable over the long run. Therefore, ideally, a growth management strategy should consider functional and spatial interrelationships at the regional as well as the local level.

There are too many important aspects of these three programs for them to be adequately summarized here. The basic rationale of each program is to promote an orderly and efficient pattern of urban growth in the metropolitan area, and each recognizes the value of adopting a regional perspective in identifying and implementing certain goals and priorities. In addition, these programs seek not to limit the total amount of growth in the metropolitan region, either in the short or long run, but rather to guide it into appropriate areas.

The three plans share several specific objectives:

- To coordinate the provision of certain necessary public services and facilities, such as transportation, water, and sewer, so as to maximize efficiency in construction and operation.
- To promote the growth and redevelopment of already urbanized areas.
- To protect environmentally sensitive or unique areas.
- To protect prime farmland and maintain the economic viability of agriculture.

Thus, agricultural protection represents only one of a set of integrated policies designed to achieve the overall goal of rational and efficient metropolitan growth. In general, these objectives are mutually reinforcing when placed in a regional context.

The Twin Cities and Dade County programs are still young and not yet fully implemented, and historical land use data are not available for Lexington-Fayette County. But it is clear that the effectiveness of any program depends largely on the degree of authority that the metropolitan government possesses to implement the growth policy, and the extent to which this authority is exercised. The most basic tool required is some

power to control the location of public facilities, especially sewers. It is also clear, however, that facility siting is often not sufficient to keep development out of agricultural areas, because low density housing that uses septic systems may still spread, taking relatively large amounts of farmland out of production. In order to assure the protection of farmland, facility siting must be combined with other tools, such as zoning and incentive programs.

8. Integrated State Programs of Incentives and Controls

The states have the power to control the uses to which land may be put. In most states, however, most of this power has been delegated to local governments, which make nearly all decisions concerning the planning and regulation of land use.

Local governments have an intimate knowledge of local conditions, needs, and community goals, but this knowledge is often combined with a parochial outlook, and the tendency to accommodate the desires and pressures of local landowners rather than to promote the regional welfare and to achieve long-range objectives for the use of the land resource. Most states have provided only tax incentives in order to encourage the retention of agricultural land. A few have retrieved a limited number of specific powers and have linked incentives to land use controls over agricultural lands.

Without involving local government in any way, state governments can declare it a state policy to protect prime agricultural land and require its own agencies to act consistently with that objective. Illinois has issued such an executive order.

In both voluntary and mandatory state programs a variety of incentives and controls are combined. In the voluntary programs, the incentives play the preliminary role of inducing landowners to join the program and accept the restraints on land use. These restraints assure the public that their expenditures for incentives will achieve their long-term purpose of protecting land for agricultural use. Once the restraints on land use are in effect, the continuing incentives act to offset the additional costs caused by nearby urbanization and make it possible for farmers to continue to farm. Thus, the linkage of incentives and controls is equitable for both the public and the participating landowner.

a. Voluntary State Programs

The Guidebook analyzes three voluntary state programs. In California's Williamson Act program, use value assessment is the incentive for individuals to contract not to develop their farmland for ten or more years. In Maryland, the possibility of selling development rights to the state along with right-to-farm protection are the major inducements for enrolling in an agricultural district and contracting not to subdivide or build for at least five years.

The Wisconsin Farmland Preservation Program, which went into effect in December 1977, will be discussed more fully. It provides annual tax credits to farmland owners who contract not to develop their land. Landowners' credits will be continued after 1982 only if their counties adopt agricultural preservation plans or agricultural zoning ordinances. The tax credits available to owners are based on a "circuit breaker" concept that provides a credit against state income tax to the extent that property taxes are deemed excessive in relation to the owner's household income. The state establishes criteria for agricultural zoning districts and works with counties to set standards for defining agricultural land.

By March 1980, 20 counties had adopted an agricultural zoning ordinance, an agricultural preservation plan, or both. Agricultural zoning covered 2,157,000 acres.

Although there was considerable political opposition to the program in the beginning, the program has evolved from a political cost to a political asset. The only issues now related to the program concern possibilities of improving it and increasing its benefits.

Voluntary programs do not require the participation of landowners who are not willing to assume the stipulated obligations. Thus, they tend to generate relatively little political opposition and are relatively easy to enact, particularly if they consist only of tax expenditures. Voluntary programs which require the direct expenditure of public funds are more difficult to enact.

If the controls are too strong and the incentives too weak, participation is likely to be low. Conversely, if attractive incentives are coupled with weak obligations, participation is likely to be high. At the same time, the weakness of the controls is likely to reduce effectiveness. The balance between participation and effectiveness is a delicate one.

The Wisconsin program makes a bold effort to avoid the weaknesses of a voluntary program. By providing tax credits to landowner participants in the first phase, and specifying that the credits will not be paid in the second phase unless the local government adopts exclusive agricultural zoning (or in rural areas at least an agricultural preservation plan), the Wisconsin program is building a constituency favoring the imposition of land use controls. The step from individual contracts to areawide agricultural preservation plans and zoning ordinances not only increases the acreage protected but also reduces the problem of the potential for scattered development. The benefits of the Wisconsin program appear to be sufficient to result in widespread participation, and its costs are no greater than the tax expenditures made by the other states to provide an incentive for farmers to keep farming.

b. Mandatory State Programs

Four mandatory state programs were analyzed. The Vermont program requires that a permit be obtained from the state for certain types of development. The California Coastal Commission program, which is also a development permit program, requires local governments to adopt comprehensive plans and regulatory ordinances which meet criteria of the Commission. The Hawaii program involves zoning directly by the state.

The Oregon program is the most fully integrated and comprehensive in the country. It requires local planning and zoning consistent with state goals, which are mandatory statewide planning standards. The agricultural goal requires that agricultural lands be preserved and maintained for farm use. All Class I-IV soils (and in eastern Oregon, Class V and VI soils in addition) not committed to non-farm use must be zoned for agriculture according to general criteria set by the state. Cities must establish urban growth boundaries, within which new development must be contained and encouraged. Public facilities and services are to be provided at levels suitable for urban uses within urban growth boundaries, but few, if any, public services are to be provided outside the boundaries. Land in farm use zones qualifies for use value assessment for property tax and state inheritance tax purposes, is exempt from special levies of utility districts, and enjoys right-to-farm protection.

Although relatively few counties and cities have completed comprehensive plans which are in full compliance with the goals, nearly all counties have been working cooperatively with the state to revise land use plans and zoning ordinances. Sixty-seven percent of the land which is expected to be ultimately zoned agricultural has already been bought under agricultural zoning. In the Willamette Valley, where population pressure is by far the highest, 84 percent of the anticipated ultimate acreage is already in agricultural zoning.

Mandatory programs emphasizing control of land can be enacted if there is a strong consensus on the importance of protecting farmland. They treat all farmland owners uniformly and therefore avoid the central weakness of voluntary programs, that even if nearly all farmland owners join a voluntary program and remove their land from the development market, the remaining farmland may be developed, and, once developed, may result in intrusions which will cause problems for neighboring farmers and weaken the agricultural economy. Their coverage is likely to be much more complete than that of voluntary programs which rely on the initiative of landowners. If local controls are required by a mandatory state program, the burden of responsibility can be more easily borne by state or regional officials, who must treat all areas of the state in an equal manner and who are generally separated geographically, socially, and economically from individual petitioners for changes in land use.

Weaknesses in mandatory systems may result from the lack of clear legislative intent and strong political resolve to give priority to the protection of agricultural land, lack of clear and

strong criteria for granting exceptions from the general requirement to protect agricultural land, and from the relative lack of alternative sites for urban development.

Agreement is relatively easily reached on general principles or criteria which later must be interpreted for each specific case. To reach agreement on a mapped plan with clearly marked and unarguable boundaries between future land uses is much more difficult. Local participation is probably necessary, and the participation may be very time consuming, as specific details are studied and argued.

The Oregon program is most clear in its treatment of farmland as a natural resource to be preserved not only to maintain the strength of both the present and future agricultural economy, but also as an open space resource for future generations. The law is explicit that certain types of soils are to be preserved and contains no qualifying language suggesting that profitability or market demand for rural development should be a consideration.

Oregon's legislation and subsequent administrative and case law rulings have resulted in a specifically stated body of planning policies and procedures. This has relieved the courts of trying to interpret vague provisions in county or city zoning enabling legislation or "public welfare" provisions in state constitutions.

c. The Relationship between State and Local Programs

State programs are the key to agricultural protection for several reasons. A policy statement by the state legislature that agricultural land is a valuable natural economic resource which should be protected can provide a point of reference and an hospitable policy environment for local programs. In doing so, a state policy can make it possible to demonstrate the consistency of a local program with state objectives. It therefore makes the political and legal defense of local programs easier.

Second, a state program generally requires or enables some local planning to take agricultural land explicitly into account. Very often, once local people have the format for discussing the program of protecting agricultural land and the resources with which to measure and analyze their land base and develop plans, they will take effective action.

Third, even though a state program may fall far short of being a complete solution to the problem, it can provide a starting point which stimulates positive actions by local government.

Fourth, in the absence of a state program, many local jurisdictions, because of inertia, lack of leadership, or local political pressures, will not undertake agricultural protection programs. A state program can induce or require them to take action to protect farmland.

III. LEGAL AND CONSTITUTIONAL ISSUES

A. Agricultural Zoning

There are four major legal pitfalls that an agricultural zoning ordinance must avoid. First, it must be consistent with the authorization of the state enabling act. Many states limit the powers of local governments to those that are expressly delegated to them by the state legislature. Thus, it is advisable to amend state laws so as to authorize low-density agricultural zoning.

Second, most state laws require that local ordinances be in accordance with a comprehensive plan. Any municipality which is embarking on a farmland protection program should undertake a comprehensive planning study on which the program will be based. This study should analyze trends in agricultural use and the importance of farming to the municipality's economy, and include soil and open space studies and a review of state and regional policies concerning agriculture and agricultural land protection, as well as an examination of the factors such as projections of housing needs that would be considered in a traditional growth management study. The comprehensive plan should be amended to reflect the findings of these analyses and the new farmland policies.

Third, if an agricultural land regulatory program is properly authorized by enabling legislation and is in accordance with a comprehensive plan, the principal constitutional hurdle it will have to surmount is the challenge that it constitutes a taking without just compensation. Whether such a program relies on exclusive agri-

cultural zones or very large minimum lot sizes, it will often have the effect of significantly reducing the market value of the land so limited. Many states have framed the issue this way: if a zoning ordinance so restricts the uses to which land can be put that it cannot be used for any reasonably profitable purpose, it constitutes a taking and therefore violates the Fifth Amendment's command that no property shall be taken for public use without just compensation. Recently, in its decision in *Penn Central Transportation Co.* v. *New York*, the U.S. Supreme Court held that a zoning ordinance is constitutional if it is enacted pursuant to a public program adjusting the benefits and burdens of economic life to promote the common good, even though it reduces sharply the value of real property, especially where it permits the owner to continue to use the property as he has in the past. If a court finds the zoning ordinance constitutes a taking, it may enjoin it or, under appropriate circumstances, award damages to the owner for deprivation of his property rights, pursuant to Section 1983 of the U.S. Civil Rights Act.

Fourth, a municipality that seeks to prevent development of its agricultural land without making adequate provisions for all types of housing elsewhere, may run afoul of state anti-exclusionary zoning doctrines. Developed primarily in New Jersey, Pennsylvania, and New York, these principles require municipalities to take the regional welfare into account in shaping their land development regulations and to make provisions for accommodating their fair share of the regional demand for low and moderate income housing. Other state supreme courts may take similar positions, especially in the Northeast and Midwest where small, often parochial, municipalities have primary responsibility for land development regulations.

B. Tax Incentives

The principal constitutional issue that differential assessment programs raise is whether they violate the clauses found in many state constitutions that require taxes to be imposed uniformly. It has been answered both ways by the courts. At least half of the states have amended their constitutions specifically to permit differential assessment. The provisions of the various differential assessment laws vary widely from one state to the next and present a potentially rich mine for litigation, which is only beginning to be explored.

Because the estate tax incentives are of such recent vintage, there has been virtually no litigation involving them. The most probable major issue, other than statutory interpretation, will be whether or not these preferences violate the state's uniformity clause.

C. Comprehensive Growth Management Programs and Control of Public Water and Sewer Extensions

In the last twenty years many suburban municipalities have come to realize that the problems of guiding new development and protecting agriculturally and environmentally significant areas must be solved together using a comprehensive growth management program. The legal issues arising out of such programs and the use of the power of government to control the provision of water supply, sewerage, transportation, and other infrastructural systems are complex and largely unexplored. Courts in California and New York have upheld programs which either placed a limit on the total number of building permits that would be issued each year, or sought to key approval of subdivisions to the availability of sewers, schools, parks, major roads, and firehouses against attacks that they were not authorized by the enabling act, constituted a taking of property without just compensation, or interfered with the right to travel. Restrictions on water and sewer extensions have been upheld so long as they are temporary, in good faith, and seek to prevent a serious public health problem.

In summary, government officials and citizens concerned with the protection of agricultural land must remember that their primary objective must be to enable farmers to continue farming by protecting both the attractiveness of farming as a way of life and its profitability. Land development regulations and incentives deal with only a part of the overall problem and must be drafted to meet various legal and constitutional requirements. To increase their chances of success, they should be based on sound enabling legislation, developed through comprehensive planning and

policies which give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.

IV. RECOMMENDATIONS

A. The Goals of Protecting Farmland and Guiding Urban Growth Are Best Achieved Together Through the Use of a Comprehensive Growth Management System

If a community seriously wants to protect its farmland, it must find a way to deflect development away from productive agricultural land to areas where urban growth is most appropriate. To do this the community may wish to use one of several growth management approaches, combined with several of the techniques discussed in this Guidebook.

B. Farmland Protection Programs Should Be Many-Faceted: The Loss of Farmland Is the Result of Many Factors

Some factors, such as rising real property taxes and special assessments for water and sewer lines, reduce the desire and ability of farmers to keep farming. Others, such as high offering prices for farmland, lead directly to its sale. Effective programs will address most of the major factors that lead to the conversion of farmland.

C. The States Should Provide the Key to Saving Farmland

States should declare their commitment to protect good agricultural land because it is a vital and irreplaceable resource. These declarations will provide political and legal support for the efforts of local government to protect farmland. To provide stronger programs, states should establish criteria concerning urban growth, the protection of environmentally significant areas, and the protection of agricultural lands which local governments would be required to meet in planning and regulating land use.

D. It Is Essential to Act Early

The sooner a program for protecting farmland can be started, the better. If a community waits until development pressures become strong, farmers' and developers' expectations will have risen, along with land values, and it will be much more difficult, politically, to get an effective program started.

E. Programs Should Be Based on Accurate Information

Communities need accurate, up-to-date information on natural conditions, the importance of agriculture to their economies, land use and ownership, and future trends of urbanization in order to develop a farmland protection program that is well-conceived and legally defensible.

F. Advocates of Farmland Protection Programs Should Make Sure They Have Able, Dedicated Political Leadership

Effective programs must be tailored to local conditions. They often involve unfamiliar concepts and techniques that may be difficult for many farmers to accept. It takes astute, persuasive individuals to provide the leadership needed to design, enact, and implement an effective program.

G. Farmland Protection Should Involve More than Land Use Controls

While incentives, land use controls, and comprehensive growth management programs are important for any farmland protection program, other measures are necessary to maintain the economic viability of agriculture. Farmers need adequate credit, suppliers, service businesses, labor, marketing facilities, and storage and processing facilities.

H. Farmland Protection Programs Should Be Designed So that They Are Legally Defensible

Programs should be based on sound enabling legislation, developed through comprehensive planning and policies that give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection, and taking clauses of the United States Constitution.

CHAPTER 3

INCENTIVES: TAX RELIEF*

I. INTRODUCTION

Across the country, legislators have long understood that the capacity to earn a reasonable living from farming is the most important determinant in a farmer's decision whether or not to keep farming. Since taxes constitute a significant cost to farmers and are under government control, it is not surprising that legislatures have often turned first to tax relief as a tool for protecting farmland. In this chapter, we will examine the ways in which the real property tax, estate and inheritance taxes, and, in two instances, state income taxes, have been reshaped so as to reduce their impact on farmers.

Both the property tax and inheritance/estate taxes are *ad valorem taxes*. They are imposed on the assessed or appraised value of property, specifically here, farm real and personal property. As a general constitutional principle, the measure of property value for *ad valorem* tax purposes is fair market value. This is usually defined as the price a property would sell for in cash or terms equivalent to cash when offered for sale by a seller who is under no compulsion to sell to a buyer who is under no compulsion to buy. A central characteristic of farmland — and it is this characteristic that, more than any other, creates most of the economic, legal, and political problems which attend our efforts to protect farmland — is that it often has two values: one, its current use value as a factor in agricultural production, and the other, its exchange value as a site for residential, commercial, or industrial development. When considered as a factor for agricultural production, its value is related to its capitalized economic rent. Its economic rent is determined by such factors as soil quality, topography, accessibility to markets and transportation facilities, market conditions, and natural factors such as drought. This economic rent is capitalized at a rate which is related to capitalization rates of competing investments, property taxes, and investors' expectations concerning future farm income trends and the supply of agricultural land. When considered as a site for development, the value of agricultural land is determined by its promixity to developed areas, the availability of public water and sewer facilities, population growth and migration, topography and stability of soils, and generally by the demand for facilities of all types. The fair market value of farmland for which there is no development demand approximates its agricultural use value. In many farming areas, especially those near large cities, the fair market value of agricultural land is much greater than agricultural use value because developers are able to make a reasonable profit from their development even if they pay high prices for the land.

Many farmers have found that their real property taxes were going up because of the rising fair market value of their land and the increased fiscal burdens which attend suburbanization. Some farm estates have had liquidity problems that made it difficult or impossible to pay estate taxes that were measured by the fair market value of the land without selling some or all of the farm. In response to their complaints, the tax incentives which we will discuss here were enacted. They have two primary purposes: first, to reduce taxes for farmers, and second, as a consequence of that reduction, to lower the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales of farmland, and thereby keep more land in agricultural use. In the sections which follow we will analyze the general nature of the real property, income, and death tax incentives, and evaluate their effectiveness as a means for reducing the conversion of farmland to non-agricultural use.

II. PROGRAMS FOR REDUCING THE BURDEN OF REAL PROPERTY TAXES ON FARMERS

A. Types of Programs

At the present time, forty-eight states have laws which in one way or another seek to reduce the burden of real property taxes on farmers.[1] For purposes of analysis these laws are usually grouped into two major categories: differential assessment (consisting of preferential assessment, deferred taxation, and restrictive agreements) and circuit breaker tax credits.[2] Many of

* The principal author of this chapter was John C. Keene.

these states have adopted other techniques for preserving farmland as well, ranging from preferential valuation for death tax purposes to comprehensive sets of planning and zoning requirements. New York, Virginia, Illinois, and Minnesota have laws which enable qualifying farmers to create agricultural districts and receive special benefits such as protection against unnecessary regulation of farming practices and limitations on the levying of special assessments for the construction of water and sewer facilities and roads. (See Chapter 4). Others, such as California, Oregon, and Maryland, have agricultural land protection programs which are integrated with planning, zoning, and other techniques for managing urban growth. (See Chapter 10). Clearly, as the comprehensiveness and degree of integration of agricultural land protection programs increase, it becomes more and more difficult to isolate the impacts of differential assessment and income tax credits and to assess their individual contribution to protecting farmland.

1. Preferential Assessment

Seventeen states authorize preferential assessment of eligible agricultural land.[3] Under preferential assessment, eligible agricultural land is assessed for real property tax purposes at its agricultural or current use value, instead of its fair market value. Eligibility conditions are usually minimal, consisting only of the requirement that the land be in farm use. Some of the states require that land be in agricultural use for a few years in order to be eligible, and three set minimum requirements for farm income per acre. The assessor is directed to determine farm use value by capitalizing net farm income per acre, usually at a statutorily defined rate. The effect of preferential assessment is to reduce the farmer's taxes by the difference between what they would have been if based on a fair market value assessment and what they are, based on a current use value assessment.

2. Deferred Taxation

Twenty-eight states have adopted deferred taxation programs. Their principal feature is that, in addition to making current use value assessment

TABLE 3-1
STATES WITH PREFERENTIAL ASSESSMENT PROGRAMS AND YEAR OF ENACTMENT

Arizona	(1967)	Louisiana	(1976, 1979)
Arkansas	(1980)	Mississippi	(1980)
Colorado	(1967)	Missouri	(1975)
Delaware	(1968)	New Mexico	(1967)
Florida	(1959)	North Dakota	(1973)
Idaho	(1971)	Oklahoma	(1974)
Indiana	(1961)	South Dakota	(1967)
Iowa	(1967)	West Virginia	(1977)
		Wyoming	(1973)

available for eligible land, they require owners of participating land who convert it to ineligible uses to pay some or all of the taxes which they had been excused from paying as a result of that participation. This sanction is designed to deter landowners from converting their land and to recoup some of the revenue lost as a result of differential assessment. Eligibility requirements vary considerably from one state to another. Some, such as Texas, require that the owner be a natural person, not a corporation. Others require a minimum level of farm income per acre, previous agricultural use for a number of years, or a minimum length of tenure within the family applying for the tax benefit. Nebraska requires that, to be eligible, the land must be zoned exclusively for agricultural use. A few, such as Florida, terminate eligibility if the owner applies for a rezoning.

In most states, to establish the amount of taxes which are due upon termination of participation, the assessor determines both the fair market value and the agricultural use value of the land each year. If the land ceases to be eligible, the rollback taxes, which would have been imposed on the difference between the fair market value and the farm use value (the development value) for a statutorily prescribed period of years, become due. Thus, the effect is that taxes on development value are abated for the years of participation prior to the beginning of the rollback period and deferred for its length. The length of the rollback is typically between four

TABLE 3-2
STATES WITH DEFERRED TAXATION PROGRAMS

State		Rollback Period	Interest Rate	State		Rollback Period	Interest Rate
Alabama	(1978)	3	-	New York	(1971)	5	-
Alaska	(1967)	7	8%	North Carolina	(1973)	3	9%
Connecticut	(1963)	a	-	Ohio	(1974)	4	-
Hawaii 1	(1961)	-	10%	Oregon	(1963)	10	6%
Hawaii 2	(1973)	10	6,10%	Pennsylvania 1	(1966)	5	5%
Illinois	(1970)	3	5%	Pennsylvania 2	(1974)	7	5%
Kentucky	(1976)	2	-	Rhode Island	(1968)	a	-
Maine	(1971)	a	-	South Carolina	(1975)	5	-
Maryland	(1956)	a	-	Tennessee	(1976)	7	6%
Massachusetts	(1973)	4	a	Texas	(1966)	5	7%
Minnesota	(1967)	3	-	Utah	(1969)	5	-
Montana	(1973)	4	-	Vermont 1	(1969)	3	-
Nebraska	(1974)	5	6%	Vermont 2	(1971)	a	-
Nevada	(1975)	7	6%	Virginia	(1971)	5	6%
New Hampshire	(1972)	a	-	Washington	(1970)	7	10%
New Jersey	(1964)	2	-				

[a] This state has a land use change tax. See Table 3-3.

and seven years, but varies from two years in New Jersey and Kentucky to 20 years for Hawaii's dedication program. About half the states using this approach impose interest on the rollback taxes, often at below market rates. (See Table 3-2).

The six New England states and Maryland follow a somewhat different approach to deferred taxation (Table 3-3). In order to simplify administration, they have relieved assessors of the necessity of determining both fair market and agricultural land use value each year by enacting land use change taxes which simply make the deferred tax equal to a stated percentage of fair market value or the difference between fair market value and agricultural use assessed value in the year of sale. Massachusetts, Rhode Island, and Connecticut impose higher taxes on land which has been preferentially assessed for short periods of time in an attempt to deter rapid turnover of agricultural land. By contrast, Maine imposes taxes at a higher rate on land held for longer periods of time. Vermont has a capital gains tax which applies to all sales of land. This is discussed in Chapter 11.

Finally, several states charge an additional penalty if landowners fail to follow prescribed procedures. Washington, for instance, charges a penalty amounting to 20 percent of the rollback taxes due if an owner shifts the property to an ineligible use without having the statutorily required two years' notice.

3. Restrictive Agreements

New Hampshire and California have restrictive agreement programs for agricultural land. They differ from the other programs in that, as a condition of eligibility, landowners wishing to secure differential assessment must enter into enforceable agreements to keep their land in eligible use. Owners will not be released from contracts unless they meet certain stringent statutory criteria. Other states, such as Hawaii, Pennsylvania, and Washington, also require landowners to sign similar agreements but, in the event of a breach, only impose rollback taxes. Since these states do not prevent the landowner from converting his land, their programs have not been placed in the restrictive agreement category.

In addition to its deferred taxation program, New Hampshire has a discretionary easement program which relies on a type of restrictive

TABLE 3-3
STATES WITH LAND USE CHANGE TAXES

Maine: The tax is on the difference between fair market value at the date of withdrawal and agricultural use assessed value, at the rate of 10% for land in the program for 5 years or less, 20% for land in the program for more than 5 years but less than 10 years, and 30% for land in the program for more than 10 years. Me. Rev. Stat. Ann. § 1101-1118 (Supp. 1980).

Vermont: The tax is 10% of the fair market value at the time of conversion to a non-qualifying us- Vt. Stat. Ann. tit. 32, §§ 3751-3760 (Supp. 1980).

New Hampshire: Under one program, the tax is 10% of fair market value at the time of conversion. Under the restrictive agreement program, the tax is 12% of fair market value if conversion is during the first half of the contract term and 6% if in the second half. N.H. Rev. Stat. §§ 79-A:1 to 79-A:14 (Supp. 1980).

Massachusetts: The tax is on the sales price at the time of conversion at the rate of 10% if the land is converted after being differentially assessed for less than one year, and declining by 1 point a year to 1% for land differentially assessed for 10 years. The owner pays the higher of this tax or the rollback tax. Mass. Ann. Laws Ch. 61A, §§ 1-24 (Supp. 1980).

Connecticut: The tax is the same as Massachusetts' land use change tax. Conn. Gen. Stat. § 12-504a (Supp. 1980).

Rhode Island: The tax is similar to Massachusetts' except that it is at the rate of 10% for land which has been differentially assessed for up to six years and declines thereafter by 1 percentage point a year to 1% in the fifteenth year. R.I. Gen. Laws § 44-5-39 (Supp. 1980).

Maryland: The tax is a development tax equal to 10% of the difference between the agricultural assessment and the non-agricultural assessment. Md. Ann. Code art. 81, § 19 (b)(1)(B)(I)(Supp. 1980).

agreement. Owners of land which does not meet the criteria for the state's deferred taxation program may convey an easement on their land to their town or city that limits it to open space uses for at least ten years. In return, the town selectmen agree to a fixed assessment for the term of the easement which will be no greater than the highest per-acre valuation for open-space land set by the state's Current Use Advisory Board. The owner may secure release from the easement only if he can show extreme personal hardship. If he does, he must pay the land use change tax shown in Table 3-3.

California's complex, fairly well-integrated program for protecting agricultural land is analyzed at length in Chapter 10. Here we will discuss only its tax incentive features. Under the Williamson Act, which was passed in 1965, cities and counties were authorized to establish agricultural use value assessments. In return, the owners must agree to keep their land in agricultural use for at least ten years. These contracts are automatically extended for one year each year, unless one party gives the other notice of non-renewal, in which case they terminate at the end of ten years. After notice of non-renewal, the assessed value increases rapidly each year so that by the end of the seventh year, it is almost at the level where it would be if based on full market value. Over 16,000,000 acres of land, including about 44% of the privately owned farmland in the state, are now under Williamson Act contracts.

The passage of Proposition 13 has significantly reduced the attractiveness of Williamson Act incentives. Proposition 13 provides that real property shall be taxed at 1 percent of its fair market value in 1975, augmented each year by 2 percent to adjust for inflation. In recognition of the dramatic reduction in regular tax burden brought about by Proposition 13, the California legislature, in 1979, gave landowners under Williamson Act restrictive agreements the option of having their land assessed at current use value under the Williamson Act or by the method used generally pursuant to Proposition 13. There has not yet been a significant increase in the number of non-renewals for these contracts. It is possible however, that there may be fewer new contracts and more non-renewals because of the fact that Proposition 13 has decreased the tax incentives for participating in the Williamson Act program and reduced the taxes payable on notice of non-renewal.

4. Circuit Breaker Tax Credits

Michigan and Wisconsin have adopted a different approach for reducing the burden of real

property taxes on farmers. Instead of making available differential assessment of farmland and thereby reducing property taxes, they authorize an eligible owner of farmland to apply some or all the property taxes on his farmland and farm structures as a tax credit against his state income tax. These programs are called "circuit breakers" because they relieve the farmer from additional real property taxes once they exceed a given percentage of his income.

In Michigan, a farmer can credit the amount by which the real property taxes on his farm and farm buildings exceed 7 percent of his household income. If the credit exceeds his tax liability, he will receive a negative income tax payment for the difference. To be eligible, a farmer must meet certain requirements for acreage and gross annual income from agriculture and enter into a "farmland development rights agreement" restricting his land to agricultural use. The application for this agreement must be reviewed by the county and regional planning commissions and the soil conservation district agency and then be approved or rejected by the local governing body. Whatever the latter does, the State Land Use Agency may approve or reject the application. Land under agreement is protected against special assessment for sewers, water, light, and non-farm drainage facilities and may not have access to these facilities unless the full assessment is paid.

The state may relinquish the agreement if it determines that development of the land is in the public interest. The landowner pays no back taxes. The landowner may request relinquishment following the same procedures as those used to create the agreement. If the request is approved, he is liable for all income tax credits received plus 6 percent compound interest. If the agreement expires according to its terms, he is liable for the last seven years of credit without interest. If an owner knowingly converts the land to an ineligible use without first going through the procedures outlined above, he may be enjoined by the state or the local governing body, and subjected to a civil penalty for actual damages, not to exceed twice the land's fair market value at the time the application for the development rights agreement was approved.

Wisconsin's program also uses a form of real property tax credit against the state income tax. It is closely integrated with planning and zoning and the magnitude of the credit is related to the household income of the farmer, the magnitude of his real property taxes, and the extent of local zoning and planning activities. It is discussed in Chapter 10.

B. The Effectiveness of Differential Assessment

Differential assessment and circuit breaker real property tax credits were enacted to serve two principal objectives: first, to reduce the burden of real property taxes on the owners of farm property, and second, as a consequence of that reduction, to reduce the rate of conversion of farmland to non-farm uses by reducing the number of tax-motivated sales.

1. Effectiveness for Reducing Taxes of Farmers

The effectiveness of the program as a way of reducing taxes is measured by the percentage of farmers who obtain tax reductions and by the magnitude of those reductions. Differential assessment programs that have few eligibility conditions and grant agricultural use value assessment automatically to eligible farms will normally enjoy the highest rate of participation. As more and more eligibility conditions are imposed, such as application requirements, minimum gross farm income, minimum length of tenure within the family, planning and zoning requirements, and, ultimately, the requiring of entry into a stringent restrictive agreement, fewer and fewer farmers will be able and willing to participate. For instance, in Indiana, land in agricultural use is automatically assessed at current use value and all farmland participates. By contrast, the requirement of Nebraska's program that land be zoned for agricultural use has severely limited the availability of differential assessment because of the reluctance of counties to pass such zoning ordinances.[4]

The magnitude of the tax reductions enjoyed by participating farmers is determined by a complex set of interlocking factors. The greater the difference between the assessed value based on

agricultural use value and the assessed value based on fair market value and the greater the percentage which the fair market value of a farmer's land is of the total value of his land and buildings, the greater his tax reductions will be.[5]

Methods of assessment which produce relatively low current use values will generate more tax benefits than others. Assessors use one of three methods: capitalization of farm income, land value tables, and, in some states, comparable sales. If the statutory formula mandates a high capitalization rate, the current use value will be lower. If the land value tables which assign specific per acre assessed values to different kinds of farmland are set at a low level, or not adjusted periodically to take increases in land prices into account, they will produce relatively greater tax reductions. Often, comparable sales will include an element of development value, thereby producing a smaller tax reduction.

Rollback and land use change taxes reduce absolute tax benefits and therefore make deferred taxation programs less attractive. The longer the rollback period and the higher the interest rates on unpaid taxes, the lesser is the amount of tax reduction provided by a deferred taxation program for landowners who ultimately convert their land to an ineligible use.

While many states have data on the number of acres of farmland that are receiving differential assessment, few if any of those with eligibility conditions of varying degrees of stringency have determined the amount of land which theoretically could be eligible. Thus, we cannot actually measure the levels of participation for the various programs, nor is it possible in most states to determine accurately the actual magnitude of the reduction in taxes which owners of farmland are enjoying because of differential assessment. There is general agreement, however, that differential assessment does significantly reduce taxes for owners of eligible farmland.

If a county or township wishes to maintain municipal services at a steady level, it must raise the tax rate so as to compensate for lost tax revenues. The effect of this is to shift part of the burden of paying for municipal services to owners of ineligible real property within the taxing jurisdiction. California, Alaska, Vermont, and Minnesota (for the Twin Cities metropolitan area) have addressed this equity problem by authorizing state funding to local governments to cover some or all of the tax loss occasioned by differential assessment.

The tax credit approach, used by Michigan and Wisconsin, also places the burden of tax incentives on the statewide income tax base, and leaves the incidence of local real property taxes untouched. It also targets those with moderate income and relatively high property taxes as the primary beneficiaries of the program, instead of making the reduction available to all owners of farmland without regard to their need. Finally, the approach intrudes less significantly into the workings of the land market. The tax reductions provided are a function of household income and do not attach directly to the land, thereby tending to force its price up.

As a first conclusion then, differential assessment and circuit breaker tax credits are effective ways to reduce the taxes on farmland. Pure preferential assessment with no eligibility conditions except that the land be in farm use is the most effective way to achieve this objective. As more and more eligibility conditions are imposed, and as the magnitude of the tax benefit is reduced by methods of assessment, by imposition of rollback and land use change taxes, and by conditioning tax reduction on the level of household income, these approaches produce lower levels of participation and tax reduction, and therefore, become less effective means of reducing farmers' taxes.

2. Effectiveness for Preventing the Conversion of Farmland

The effectiveness of differential assessment and circuit breaker tax credit programs as means of protecting farmland is measured by the extent to which they bring about a reduction in the number of sales of farmland to buyers who will convert it to other uses. It should be noted at the outset that about 85 percent of the approximately 85,000[6] farm real estate transfers that take place each year are to buyers who expect to keep the property in agricultural or forestry use for at least five years.[7] These transfers occur in rural areas where agriculture is the primary occu-

pation and urban pressures are low. Here agricultural use value often approximates fair market value, and real property taxes are not rising rapidly.

Obviously, it is only in those areas where assessed values based on fair market value are significantly higher than those based on agricultural use value that differential assessment programs have any chance of actually reducing the number of farm sales. This differential occurs only where there is significant development pressure, and where local assessors otherwise would base their assessments on fair market value and not on farm use value. Indeed, several commentators have concluded that the rapid spread of differential assessment legislation across the country in the last two decades was intimately connected with the movement toward 100% valuation of property mandated by numerous court decisions and statutes.[8] Even today reassessment programs in states such as New York and North Carolina are inducing many farmers to enroll their properties in the state's differential assessment program.[9]

It goes without saying that tax incentives will be effective in reducing sales of farmland only in those instances where rising taxes are the principal motivation for placing a farm property on the market. They will have little impact where other reasons motivate the sale or transfer, such as transfers by estate sale, gift, or inheritance or sales by non-farmer and absentee owners. Approximately 61 percent of all transfers in recent years fell into these categories, and only 39 percent were by family farmers.[10] Of these last sales, many are made for non-tax reasons.[11] Two recent studies of the sale of farmland in New Jersey and in Baltimore County, Maryland, found that between 55 percent and 60 percent occurred between retirement and death or as part of an estate settlement.[12] These sales are motivated primarily by personal considerations such as the retirement or death of the farmer or the absence of a family member who is willing and able to take over the farm. Changes in rural areas resulting from the advance of suburbanization may make it more and more difficult to farm. Vandalism, complaints about farm odors, noise, dust, fertilizers and pesticides, and air pollution, and a shortage of farm labor, suppliers, and processors may all combine to force the farmers to sell out. High offering prices for farmland, especially near urban areas, may be so attractive to the farmer that he cannot let the opportunity to sell pass by.

In short, rising real property taxes are only one of many reasons why farmers sell. The consensus is that demographic considerations, high offering prices, and changing neighborhood conditions are much more important and pervasive causes for sales for non-agricultural development.[13] There are not enough data to permit an estimate of how many of the sales each year to buyers intending to convert the land to non-agricultural use are motivated primarily by excessive property taxes, but most analysts have concluded that they constitute only a small fraction of the total and occur primarily on the fringe of urbanized areas.

In order to be influenced by differential assessment, tax motivated sales must involve land which is eligible for the tax incentives under discussion. We have seen that while some state programs make all or almost all agricultural land eligible for differential assessment, others have established a variety of prerequisites which will remove varying percentages of farmland from the eligible category. No data exist on the extent to which these reduce participation. Also, some landowners involved in tax-motivated sales may not elect preferential treatment even though their land is eligible for it. In California, for instance, the evidence suggests that about half of owners of the most rapidly appreciating land, located in the rural-urban fringe, have not participated in the Williamson Act program, because they did not want to be locked in to current agricultural use.[14] (See Chapter 10.) Furthermore, real property taxes are deductible for federal income tax purposes, so that their actual economic impact on a farmer is reduced by a percentage equal to his marginal federal income tax bracket.

Finally, in most cases rollback taxes will not act as a significant deterrent to the sale of differentially assessed land. Effective tax rates on agricultural land average about one percent of fair market value,[15] although in the rural-urban fringe the rates may be somewhat higher. Rollback taxes are usually imposed only on the dif-

ference between fair market value and agricultural use value. The rollback period is typically about five years, although it varies from two to twenty years. In a situation where the effective real property tax rate is one percent and the rollback period five years, the rollback taxes would constitute five percent of the development value of the land. Even this amount is deductible for federal income tax purposes because it is classified as a tax, not a penalty.[16] In states where no interest is imposed on deferred taxes, they amount simply to an interest-free loan for the period of the rollback. Even where interest is charged on the deferred taxes, it does not constitute a penalty unless it is at a higher rate than the landowner would have to pay on a loan from customary commercial sources, and no state imposes interest at a rate equivalent to the rates prevalent in 1980.

Thus, in many cases, the net cost of the rollback tax will be small in relation to the capital gain realized from the sale of eligible land to non-agricultural uses and its deterrent effect minimal. The more soundly based rationale for deferred taxation provisions is that they increase tax equity by forcing landowners who are no longer promoting the public purpose of preserving agricultural land to pay the taxes deferred and thereby reduce the tax shift which results from differential taxation. This rationale has, however, an ironic twist: the extent to which it is served is inversely proportional to the effectiveness of deferred taxation for achieving its goal of deterring conversion of agricultural land to non-agricultural uses.

In short, differential assessment and circuit breaker tax credits are not, in themselves, effective techniques for reducing the rate of conversion of farmland to non-farm uses. Most sales are to other farmers. Many of those that are not occur in the fringes of urban areas, where other considerations such as high offering prices, demographic factors, and the disruptions of suburban development overwhelm rising property taxes as causes for the sale of farmland. Even where tax reductions may enable a farmer to keep farming, they often only postpone the sale a few years until he retires or dies.

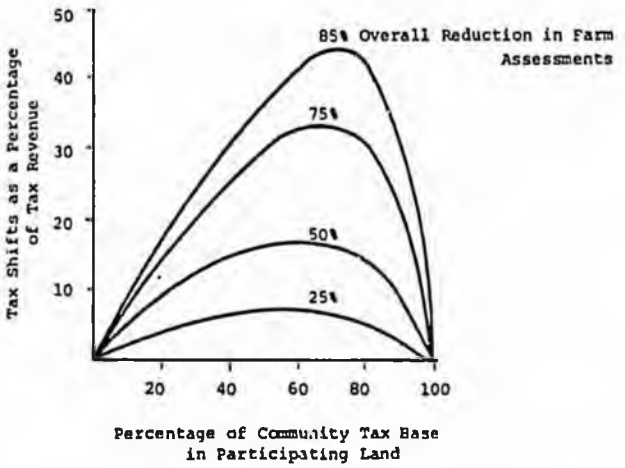
C. Broader Impacts of Differential Assessment on the Agricultural Land Market

The value of agricultural land is a function of its net farm income, real property taxes, and interest costs. If real property taxes are reduced by differential assessment, the net income increases and this increase is capitalized into a higher agricultural use value.[17] This results in a one-shot windfall to the owner at the time of reassessment. Of course, this would affect fair market value only if the adjusted agricultural use value were higher than the pre-existing fair market value. Higher land prices make it more difficult for young farmers to buy their own farms. Despite the rise in price, developers may find it economically feasible to hold land open for longer periods of time than would otherwise be possible. As a result, they may buy land earlier than they would if there were no reduction in taxes and thereby accelerate the transfer of farmland from the hands of family farmers to those of absentee owners whose primary interest is in land development, not farming.[18] To the extent that differential assessment makes it possible for some farmers to postpone selling until they retire and for developers to hold land undeveloped for a longer time, differential assessment may also encourage leap-frog development which not only accelerates the conversion of farmland in the more remote areas, but also produces a pattern of development which, in the eyes of many, is inefficient because it fails to utilize to the fullest extent existing suburban roads and water, sewer, and other public facilities.

Differential assessment is an inefficient way to soften the income squeeze that may lead some owners to sell to a developer. It benefits all eligible landowners, be they rich or poor, private citizens or corporations, farmers or speculators, in return for a supply response at the margin by a small number of prospective sellers who decide to postpone sales.[19]

In addition, differential assessment can cause significant shifts in the incidence of the real property tax. It reduces the assessed value of enrolled land. If local government expenditures are to be maintained at the same level, the local tax rate must be raised. Thus, all the other

FIGURE 3-1
RELATIONSHIP BETWEEN PERCENTAGE WHICH TAX EXPENDITURES ARE OF TAX REVENUES AND THE PERCENTAGE OF ORIGINAL COMMUNITY TAX BASE IN PARTICIPATING LAND



taxpayers—homeowners, businesses, and industries—will pay higher taxes. Figure 3-1 shows the possible magnitude of this shift. Deferred taxation will reduce the shift to the extent that back taxes are paid, as do subvention payments to local governments for tax losses. The circuit breaker tax credit approach, of course, avoids this problem completely because it involves only the state income tax and does not change the incidence of local property taxes.

Since all but a handful of states have adopted differential assessment laws, the real issue now is whether those already on the statute books should be amended, or whether this tax benefit should be made a part of a more comprehensive, integrated approach to agricultural land protection. Some states, such as Louisiana, have amended their tax laws so as to lighten the burden of real property taxes on farmers. It repealed the rollback tax and made all farm property eligible for the homestead exemption which effectively insulates farm buildings worth up to $75,000 from the real property tax.[20]

Even though tax reduction by either differential assessment and circuit breaker tax credits is not, by itself, an effective tool for reducing the rate of conversion of farmland to non-agricultural uses, it is an essential element of any comprehensive program for farmland protection. Tax reduction, by either differential assessment or tax credit, should be viewed as one of the appropriate benefits which are offered to landowners as an incentive for participation in such a program. Tax credits are preferable because, first, they can be designed to help those most likely to be experiencing an income squeeze because of rising real property taxes; second, they are not so likely to be capitalized into higher farmland values, and thus distort the agricultural land market; and third, they do not cause intra-jurisdictional shifts of the real property tax burden because they are funded from the statewide income tax.

III. DEATH TAX BENEFITS FOR FARMERS

In recent years, Congress and many state legislatures have instituted significant estate and inheritance tax reforms, many of which have benefited farmers and their families. The Tax Reform Act of 1976[21] was the most important of these, both because it made major changes in the federal estate tax law and because many states have incorporated some or all of its provisions into their own death tax laws. In this section, we will first analyze and evaluate the recent changes in federal estate tax law and then examine developments in death taxation in the states.

A. Federal Estate and Gift Tax Law

1. Recent Changes in the Law

The Tax Reform Act of 1976, as supplemented by technical corrections contained in the Revenue Act of 1978,[22] represented a major attempt by Congress to reshape many aspects of federal income, estate, and gift taxation. Of special interest here are the changes made in the estate and gift taxes.

a. Unified Credit and Marital Deduction

There was a substantial unification of the estate and gift tax provisions which had previously been treated as separate taxes. In the process of doing this, Congress raised the threshold at which estates become taxable by replacing the old $60,000 exemption with a unified credit that increased in four annual steps, so that by 1981, assets up to $175,625 can be transferred by gift or at death, free of any federal estate tax.[23] In addition, the marital deduction was raised to

allow the deduction from the adjusted gross estate of an amount equal to one half of the decedent's adjusted gross estate or $250,000, whichever is larger.[24] This means that a married person dying after 1980, who has made no taxable gifts during his lifetime and who leaves his estate to his wife, can pass an estate of up to $425,625 without having to pay any federal estate tax.[25] The unified credit and marital deduction are, of course, available to all estates, not simply those containing farm property. Taken together, they have the effect of exempting over 95% of all estates from federal estate tax liability.[26]

b. Special Estate Tax Provisions for Farm Estates

In addition to securing general tax reform, Congress also took steps to soften the impact of estate taxes on farm families. At the hearings on the Tax Reform Act, many witnesses testified that high estate taxes were forcing executors to sell part or all of farms after the death of the farmer because either the estate or his heirs did not have the liquid assets to pay death taxes.[27] Senator Mondale, for instance, emphasized the importance of the family farm and the need to protect it against the risk of non-liquidity.[28] Congress' principal response to these arguments was to enact two amendments to the estate tax, Section 2032A, which allows current use valuation of qualified farm real estate, and Section 6166, allowing deferral of the payment of taxes for five years after death and then payment of the taxes due in installments over the next 10 years, for qualifying farm estates. Since these two provisions are the heart of federal and state estate tax preferences for farmers, we will examine them in some detail.[29]

(1) Appraisal at Farm Use Value (Section 2032A)

The intended beneficiary of Congress' tax preferences in the agricultural area was the family farm. In concept, the family farm is owned by a family whose members supply a significant portion of the labor and control management decisions. A more precise and commonly accepted definition is that a family farm is any farm that annually uses less than 1.5 man-years of hired labor and is not operated by a hired manager.[30] Section 2032A contains detailed requirements which seek to limit eligibility for current valuation to *bona fide* farm families. They are:

1. The decedent must have been a citizen or resident of the United States at the time of his death;

2. The real property must be located in the United States and must have been in use as a farm at the time of decedent's death;

3. The decedent or a member of his family must have owned the property and used it for farming and must have materially participated in the operation of the farm for 5 out of the 8 years preceding decedent's death;

4. The real property must pass to a "qualified heir" (a decedent's ancestor, lineal descendant, lineal descendants of his grandparents, his spouse, the spouse of such descendants, and legally adopted children of the individuals in the above classes). Step-children are not qualified heirs.

5. Fifty percent or more of the adjusted value of the gross estate (the value of the gross estate determined without regard to Section 2032A reduced by deductions for funeral and administration expenses, claims against the estate, and unpaid indebtedness) consists of the adjusted value of farm real or personal property which was used for farming at the time of death.

6. Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of qualified farm real property.

7. All persons with an interest in the property must sign a written agreement making the election for preferential valuation and authorize the executor to file it.

If an estate meets all of these eligibility requirements it is then entitled to have the farm valued at farm use value according to the following formula:

$$FV = \frac{R - T}{I}$$

where,
FV = farm use value,

R = average annual gross cash rental (or, if proposed amendments pass, crop share rentals) for comparable land use for farming in the locality,

T = the average annual state and local real estate taxes for such comparable land, and

I = the average annual effective interest rate for new Federal Land Bank loans over the five most recent calendar years prior to decedent's death.

The interest rates vary from one Federal Land Bank district to another and, for 1980, ranged from 8.7 percent in the Houston, Texas district to 9.35 percent in the Sacramento, California district.[31] If rental rates are not available, other methods of valuation may be used, such as comparable sales. In no event may the reduction in the value of qualified real property in the estate exceed $500,000.

If, within 15 years of a decedent's death, the qualified heir or a member of his family fails to participate materially in the operation of the farm for a total of three years, stops using the property as a qualified farm, or sells it to a non-family member, he is liable for an additional tax which is designed to recapture the taxes saved by the application of Section 2032A. After the tenth year, the amount to be recaptured is reduced at the rate of 1 2/3 percent per month (or 20 percent a year) so that by the end of 15 years, none remains.

(2) Deferral of Payment of Taxes (Section 6166)

The Tax Reform Act of 1976 also enacted a new Section 6166 which enables the executor of an estate to defer payment of taxes attributable to the farm property for five years and then pay them in equal payments over a period of 10 years. For an estate to be eligible, the value of the decedent's interest in farm personal and real property (as reduced by Section 2032A valuation) must constitute at least 65 percent of the adjusted gross estate.[32] During the deferral period, the estate pays interest at the rate of four percent on the deferred taxes attributable to the first million dollars of farm property,[33] and interest at usual rates (now 12 percent) on the rest. This, too, was intended to assist eligible estates with problems of liquidity and is more favorable than the 10-year deferral at 12 percent interest which is available to closely held businesses under Section 6166A.

A final provision of the Tax Reform Act of 1976[34] would have changed the way in which capital gains for inherited assets would be computed by "carrying over" the decedent's cost basis to his heirs. This amendment could have inhibited the sale of inherited farm property by substantially increasing the tax on assets whose value had appreciated over many years. However, it was repealed by Section 401 of the Crude Oil Windfall Profits Tax Act of 1980.[35]

Sections 6166A, 2032A, and 6166 interact with each other and the other provisions of the estate tax in complex ways so that it is difficult to infer principles which describe the economic impact of these sections in a general way. As the value of the farm assumes a larger percentage of the adjusted gross estate, it qualifies for more tax benefits.[36]

2. The Effectiveness of Recent Estate Tax Reforms

Like differential assessment and circuit breaker tax credit programs, the provisions of the Tax Reform Act of 1976 that we are examining were enacted for two major reasons: to reduce estate taxes for families generally and for farmers specifically, and as a result of that reduction, to lower the rate at which farmland is converted to non-farm uses by reducing the number of farm estate sales caused by insufficient liquidity.

a. Effectiveness for Reducing Estate Taxes on Farms

The effectiveness of these reforms in reducing farm estate taxes is measured, first, by the number of farm estates which are enabled to reduce their federal estate tax liability and, second, by the tax savings enjoyed by those estates that are both able and willing to meet the often highly restrictive eligibility requirements of the Internal Revenue Code.

We have seen that the unified credit and marital deduction sections have the effect of exempting from the estate tax all estates below

FIGURE 3-2
STEPS IN COMPUTING ESTATE TAX

For those readers who are not familiar with the estate tax and how it is computed, the following is a simplified outline of the major steps involved.

1. Inventory the decedent's assets and determine their value. Decide whether to elect Section 2032A valuation.

2. Determine the liabilities.

3. Deduct estate administration expenses, legal fees, debts, and other deductible items to produce the adjusted gross estate.

4. Deduct the marital deduction.

5. Determine the tax on the taxable estate.

6. Deduct the unified tax credit to arrive at the taxes due.

7. Decide whether to elect to defer payment of taxes if the estate meets the requirements of Section 6166.

$175,625 and all estates below $425,625 that can take full advantage of the marital deduction. An estimated 70 percent of the nation's farms are exempted from federal estate tax liability by the operation of these two provisions.[37] Since some 28,500 estates involving farm real property are administered each year,[38] this means that about 8,500 of them will be large enough to be subject to the federal estate tax and therefore in a position to benefit from the special treatment accorded by Sections 2032A and 6166.

The next steps in evaluating the effectiveness of Sections 2032A and 6166 as a way of reducing farmers' estate taxes are, first, to estimate how many of the farm estates that would otherwise be large enough to be subject to the tax will meet the eligibility requirements of the two sections and, second, how many executors and heirs would, in fact, elect them. At the present time there are no data concerning either eligibility or election, so we can only speculate. It seems probable that a significant number of farm estates will be ineligible for these benefits because of the requirements, first, that there be material participation both by the decedent before death and by his heirs after death; second, that an heir will manage the farm; and third, that the value of the farm property exceed given percentages of the adjusted value of the gross estate. Furthermore, the prospect of having to continue farming for fifteen years in order to avoid liability for the taxes on development value may well deter many heirs from electing the tax provisions, especially those whose farms are close to urban areas where they would be increasingly subject to the adverse impacts of suburbanization.

Finally, we must consider size and significance of the tax reductions which estates may secure under the two sections. These savings can be substantial. For instance, if an estate had a value of $925,000 based on fair market value and consisted mostly of farm property, it might be able to take advantage of the maximum $500,000 reduction by use value appraisal allowed by Section 2032. If it were left to a spouse and qualified for the full marital deduction, it would escape all federal estate taxation.

The maximum tax reduction obtainable by the use of Section 2032A for one estate is $350,000. Only estates of over $5.5 million which are in the 70 percent tax bracket and take the full $500,000 reduction would enjoy a reduction of this size. It must also be noted that the estate tax on very large estates may be so high, because of the progressive nature of estate tax rates, that estates which contain farm property interests large enough to meet the requirements of Section 6166 may not contain enough liquid assets to pay the tax. For instance, if the adjusted gross value of an estate (after Section 2032A valuation) were $20 million, at least 65 percent, or $13 million, would have to be in farm property in order to qualify for Section 6166 deferral. Assuming a taxable estate of $10 million (after using the full marital deduction) we find that the tax would be about $6 million. Thus, if the farm constituted more than 70 percent of the adjusted gross estate, there would be too few liquid assets to pay taxes and either the heirs would have to pay them, or part of the farm would have to be sold.

In summary, farmers with a net worth ranging between $120.000 (the amount which could be passed tax-free to a spouse before 1976) and $425,000 will experience a significant reduction in estate taxes as a result of the unified credit and the enlarged marital deduction. A much smaller number of farm estates, probably less than 8,500

each year, will be big enough to be subject to estate tax liability and therefore potentially eligible for the benefits provided by Sections 2032A and 6166. Many would not in fact be eligible for or would not elect to take advantage of these sections, but those that would, could enjoy significant tax reductions.

b. Effectiveness for Reducing the Rate of Conversion of Farmland

As we have already indicated, one of the major arguments in support of Sections 2032A and 6166 was that farm estates were land poor—that they contain too few liquid assets which could be used to pay administration expenses and estate taxes. As a result, it is argued, many executors are forced to sell part or all of the farm, often to speculators or developers, thereby contributing to the decline in the supply of farmland and the demise of the family farmer.

Clearly, if a farm is purchased by a young farmer or by neighboring farmers, there is no loss of farmland. This occurs only when the land moves into the control of non-farmers. Furthermore, insufficient liquidity is only one of many reasons why executors sell farmland. The most important is that there is no heir able and willing to continue the farming operation. In rural-urban fringe areas, suburban development may have intruded to such an extent that it no longer appears feasible to continue the farming operation at the present location. Thus, the executor sells and the heirs use the proceeds to buy another farm farther out, if they wish to farm. Obviously, the tax benefits provided by Sections 2032A and 6166 would not have any effect on these kinds of situations.

The effectiveness of these two sections as a means of protecting farmland is measured by the extent to which they bring about a reduction in the number of estate sales of farmland that are made primarily because of insufficient liquidity to buyers who will convert the land to non-farm uses. We have already seen that only about 30 percent of farm estates are large enough to be subject to the estate tax. Those that are too small will obviously not be affected by these benefits. We have seen, too, that some 85 percent of farm sales are to buyers who expect to farm for at least five years. Such farms are not at risk of immediate conversion to non-farm use.

Next, we must estimate how many of the estates which are eligible for Sections 2032A and 6166 treatment will have liquidity problems that are serious enough so that some or all of the farm realty would be sold in the absence of the Section 2032A and Section 6166 tax preferences, but not so serious that they would be sold despite them.[39] Two studies shed some light on these questions. The first involved an analysis of 1973 estate tax returns by James D. Smith and Stephen Franklin.[40] They computed the ratio between (1) federal estate taxes and administrative costs and (2) liquid assets (not including life insurance) minus debts, which they regarded as a conservative measure of the estate's ability to pay estate taxes without forced liquidation of less marketable assets. They found that for estates in the size categories of $200,000 and over (which would be those potentially liable for estate taxes after 1976), between 80.2 percent and 84.5 percent were liquid, with ratios below 0.75. Between 11.5 percent and 14.3 percent of the estates in the various sales classes had potential liquidity problems with ratios in excess of 1.0.[41]

The second study involved an analysis of 64 large Iowa farm estates probated between 1970 and 1974.[42] This study defined insufficient liquidity as an "excess of total probate expenses and costs over total liquid assets," where total probate expenses included net indebtedness, net death taxes, and total estate settlement costs, and total liquid assets included the net value of stocks, bonds, checking accounts, promissory notes, saving accounts, certificates of deposit, and cash. The study found that 22 percent of the estates had a probate cost/liquid asset ratio in excess of 1.[43] One of the most interesting observations was that farmers take steps to increase their liquidity between the ages of 50 and 75, so that estates of older farmers are significantly more liquid than are those of working farmers in mid-career.

Neither study gave breakdowns of the data concerning estates with ratios higher than 1, so that we do not know what percentage had liquidity problems too serious to be solved by the tax preferences available under Sections 2032A and

6166. On the basis of the two studies, and in light of the various conservative assumptions made throughout this analysis, it seems reasonable to estimate that about 15 percent of large estates subject to the federal estate tax will have a serious, but not too serious, liquidity problem which can be significantly ameliorated by Sections 2032A and 6166 tax preferences. Each year some 1,300 (15 percent of 8,500) estates would fall into this category.

If the estimates are accurate that only 15 percent or so of farm estates large enough to be subject to the estate tax actually experience serious liquidity problems, it follows that for every farm estate large enough to be subject to estate tax liability that may be saved from partial or full liquidation by Sections 2032A and 6166, there are five or six others that will be able to take advantage of the significant tax savings they offer but that would continue in operation even if these benefits were not available. Death tax benefits, therefore, appear to be inefficient in solving the liquidity problems of a small fraction of our nation's large family farms, and they provide no assistance to the vast majority of smaller family farms.

In some regions, where large farms are typical, however, a substantial percentage of farm estates may benefit from the provisions of Sections 2032A and 6166. These benefits may have an effect on decisions to sell a significant number of farms in such regions. In addition, since only the large farmers are liable for federal estate taxes, the percentage of total farm acreage which is effected by the tax provisions will be larger than the percentage of farms whose estates are benefited by them.

In conclusion, Congress may have promised a lot more than it gave with Sections 2032A and 6166. Only a small fraction of the nation's family farms will be big enough to be eligible for the benefits. Only a fraction of large farm estates have the liquidity problems which Congress sought to alleviate, while the rest will be able to avail themselves of the advantages. Many of the executors of eligible estates will find the restrictions imposed by Sections 2032A and 6166 so onerous—especially the back-tax payments imposed if the farm is sold to a non-qualified heir—that they will choose not to avail themselves of them. Others, especially those with larger estates, will have such serious liquidity problems that even substantial tax reduction and deferral will not forestall partial or full liquidation. Still others would be bought by farmers for farm use. Also, tax burdens are only one of many reasons why farms are sold after the death of their owners. Tax benefits will have little impact where sales are made for non-tax reasons. In short, only a small percentage of farm estates will actually benefit from Section 2032A.[44]

3. Broader Impacts on Agricultural Land Markets and Farm Structure

While the tax preferences provided by Sections 2032A and 6166 undoubtedly will make it possible for a small number of wealthy farm families to keep their farms intact after the death of the principal farmer, they promise to have other, poorly anticipated effects which are detrimental to the continued prosperity of the family farmer. First, to the extent that these preferences do reduce forced sales by estates, they will drive up the price of farmland and restrict the supply available for purchase by young farmers desiring to enter agriculture.[45] Second, families who elect Section 2032A valuation and Section 6166 deferral are locked in for a period of 15 years by their desire to avoid the disastrous consequences of triggering the recapture of the taxes saved by Section 2032A valuation, termination of the Section 6166 or 6166A deferral option, and the greater potential capital gains tax liability.[46] This will tend to reduce further the amount of land that is being offered for sale. Third, as we have demonstrated in the analysis above, these estate tax preferences make farmland a relatively more attractive investment by providing significant tax preferences to those able to avail themselves of them, thus enticing wealthy non-farmers to invest in farm real estate, and thereby further driving up farmland prices.[47] Fourth, existing farmer-owners have a tax-subsidized advantage which enables them to bid higher for adjoining land than non-land-owning buyers such as young farmers who are trying to get started.[48] Fifth, the special valuation is not available for transfers

TABLE 3-4
ESTIMATE OF NUMBER OF FARMS WITH SERIOUS LIQUIDITY PROBLEMS THAT WOULD ELECT SECTIONS 2032A AND 6166 TREATMENT EACH YEAR

	Number	Percent of Eligible Farms	Percent of Total Number Probated
Total Number of Farm Estates Probated Each Year	28,000		100%
Farms Large Enough to Be Liable for Federal Estate Tax	8,500	100	30
Farms with Liquidity Problems Likely to Be Ameliorated by Sections 2032A and 6166	1,300	15	4.6

during lifetime, thus limiting farmers' flexibility in planning their estates.[49]

In sum, instead of assisting the "family farmer," these estate tax amendments promise to have the effect of strengthening the competitive position of the wealthy families who can take advantage of them,[50] and making it more difficult for young family farmers to get started by restricting the supply of land and raising its price both because of scarcity and the capitalization of farm estate tax preferences.[51]

B. State Death Tax Incentives for Farmers

A few states had enacted special provisions designed to soften the impact of their inheritance and estate taxes on farm estates before 1976. Oregon, for instance, permitted farms which were zoned for exclusive farm use to be appraised at their farm use value for Oregon inheritance tax purposes. Many other states authorized the state tax commissioner to agree to installment payment of death taxes if he was persuaded that timely payment would subject the estate to undue hardship, such as partial liquidation of an operating farm. In an effort to simplify the administration of estates, a few states had adopted the federal estate tax law definition of the taxable estate for state estate tax purposes and then set the state estate tax equal to the maximum state death tax credit[52] available under federal law. Finally, most states had adopted "pick-up" taxes which ensured that if the state death taxes on a particular estate were less than the allowable state death tax credit, a tax would be imposed which would pick up the balance of the credit. In most states, this would happen only for very large estates, because for smaller estates most state death tax rates are higher than corresponding federal rates.[53]

The passage of the Tax Reform Act of 1976 triggered a spate of activity across the nation as many state legislatures were pressed to make available to farmers and closely held businesses the kind of tax benefits which were provided in Sections 2032A and 6166 of the Internal Revenue Code. The movement proceeded apace to simplify the administration of estates by piggybacking the state estate tax on federal estate tax law.

1. Appraisal at Farm Use Valuation

As of late 1980, sixteen states[54] use the federal estate tax law to define the taxable estate for state estate tax purposes, and, in most cases, impose a state estate tax in the amount of the permissible state death tax credit. (South Carolina uses the pre-1976 rules for determining the taxable estate and therefore does not include Section 2032A.) For all of these states this means that farms qualifying for Section 2032A treatment

will have their state estate taxes reduced in the same way as their federal taxes are reduced. In addition, eight states added provisions to their death tax laws that were identical to or closely modeled after Section 2032A.[55] Four others and Puerto Rico permit preferential valuation of eligible farmland but do not follow either of the first two approaches.[56]

Michigan's statute ties eligibility for preferential valuation (as does Oregon's) to participation in its Farmland Open Space Preservation Program.[57] The farm must be devoted primarily to agricultural use and be eligible as farmland under the Farmland and Open Space Preservation Act, and the heir must have executed a farmland development rights agreement. The farm real and personal property must constitute 50 percent of the adjusted value of the estate and the farm real property must constitute 25 percent of this adjusted value. The decedent must have owned, and materially participated in the management of the estate for five out of the eight years immediately preceding his death. Half of the clear market value of eligible farm property is exempt from inheritance tax, and taxes on the other half can be deferred for 10 years without penalty or interest. Ten years after the heir signs an agreement, the 50 percent exemption becomes permanent if the agreement is still being satisfied.

In 1980, Puerto Rico amended its estate tax law so as to allow a deduction of 100 percent of the value of farm properties if the deceased had received more than 50 percent of his income from the farm during the three years preceding his death. The taxes which would have been imposed on the farm property constitute a first lien on the property which becomes due if the farm ceases to be an active unit of production within ten years of the decedent's death. If the land is still in active production at the end of ten years, the taxes are abated and the property becomes exempt from the payment of estate taxes.[58]

The state laws allowing preferential valuation of farm property have all been passed so recently that only fragmentary evidence is available about the frequency of use, tax savings, overall tax losses, administrative problems, and so forth, involved in the approach. What has been said of the strengths and weaknesses and the various impacts of Section 2032A at the federal level also applies to these state programs.

TABLE 3-5
STATE DEATH TAX BENEFITS FOR FARMERS

States Using Federal Definition of Taxable Estate, thus Incorporating Section 2032A

Alabama	Florida	New Mexico
Alaska	Georgia	New York
Arizona	Minnesota	North Dakota
Arkansas	Missouri	Utah
Colorado	Montana	Vermont
		Virginia

States Having Provisions like Section 2032A in their Death Tax Law

California	Kansas	Tennessee
Delaware	Kentucky	Washington
Illinois	Mississippi	

States with Other Forms of Farm Use Valuation

Connecticut	Michigan	Puerto Rico
Maryland	Oregon	

2. Deferral of Payment of Taxes

Six states, California, Kansas, Michigan, Minnesota, New York, and Wisconsin, have either incorporated Section 6166 into their state death tax laws or adopted substantially similar provisions.[59]

Many states allow extensions for all types of estates for varying periods of time simply on the basis of a finding of undue hardship.[60] For instance, Vermont's law allows the commissioner of revenue to extend payment up to five years without interest if he finds undue hardship, or with interest at the rate of 1/2 of 1 percent per month if he finds "good cause" has been shown. Tennessee's allows the commissioner to agree to payment in installments if he finds that payment of the taxes on the due date would necessitate the

sale of any portion of the estate at a sacrifice or at an inadequate price.[61]

C. Conclusions

As we have indicated in the analysis of Section 2032A, both the concept and the detailed application of preferential valuation of farmland for death tax purposes are flawed. First, it is not particularly effective in reducing the rate of conversion of farmland resulting from estate liquidity problems. Second, it has undesirable and counter-productive side effects. Thus, it would be unwise for states simply to adopt such provisions by themselves. Still, as with differential assessment, these tax incentives have a place in a comprehensive agricultural land protection program which includes effective measures for preventing the conversion of farmland. The tax benefits afforded by Section 2032A evaluation are appropriate incentives to induce participation in the programs. In fact, in creating an integrated agricultural land protection program, states should eliminate many of the present eligibility requirements and simply make the benefits available to estates which are subject to strong, lasting land use controls as a result of the program. In addition, there is considerable support across the country for making federal and state death taxes uniform by simply making state death taxes equal to the tax credit allowed by Section 2011 of the Internal Revenue Code.[62] The broader advantages achieved thereby of simplifying estate planning and administration would, in the judgment of many, more than compensate for the specific disadvantages of Section 2032A.

The option provided by Section 6166 to pay estate taxes in installments is available to closely held businesses, as well as to farms. Its focus is considerably broader than Section 2032A. Yet, if an estate has serious problems of liquidity, its executor should be allowed to pay the taxes in installments, whether or not farm property or a closely held business is involved. This would avoid giving a special tax benefit to farm property and the rise in land value which would result from the capitalization of tax advantages. It seems preferable to the Section 6166 approach.

TABLE 3-6
TAX INCENTIVE PROGRAMS WHICH ARE LINKED TO DIRECT CONTROLS OF LAND USE

1. Programs for Reducing the Impact of Real Property Taxes

Nebraska: Differential assessment is available only in areas which a county has zoned for agricultural use.

California and New Hampshire: (Program 2) An owner must enter into an enforceable restrictive agreement in order to be eligible for differential assessment.

Michigan: An owner must sign a farmland development rights agreement in order to be eligible for real property tax credits against his state income tax.

Wisconsin: An owner must enter into a restrictive agreement or land must be zoned for agricultural use (or in rural counties must be part of an agricultural preservation plan) in order for owner to be eligible for real property tax credits.

2. State Inheritance Tax Incentives

Michigan: The land must be subject to a farmland development agreement in order to be eligible for preferential valuation for estate tax purposes and deferral of estate taxes.

IV. INTEGRATION OF TAX INCENTIVES WITH OTHER APPROACHES TO FARMLAND PROTECTION

Tax incentives, like most other techniques, are not, by themselves, effective tools for reducing significantly the rate of conversion of agricultural land. However, when included as part of an integrated, multi-faceted agricultural lands program they provide economic benefits which may make the program economically attractive and equitable. Table 3-6 summarizes the steps which states have taken to link tax incentives with other elements of their farmland programs.

Citizens and policy makers who are interested in strengthening agricultural land protection programs must understand that tax incentives

should be linked with effective direct controls over land development such as restrictive agreements or exclusive agricultural zoning. The availability of these tax benefits may determine whether or not an effective protection program is politically acceptable.

CHAPTER 3 FOOTNOTES

1. Of the remaining two states, Kansas has amended its Constitution to permit differential assessment but has not enacted implementing legislation. Georgia has no program.

2. Differential assessment has been the subject of numerous books and articles. See, e.g., International Association of Assessing Officers, *Use-Value Farmland Assessment: Theory, Practice and Impact* (Chicago, IAAO, 1974); Regional Science Research Institute, *Untaxing Open Space* (Washington, D.C.: U.S. Government Printing Office, 1976); John C. Keene, "Differential Assessment and the Preservation of Open Space," 1978 *Urban Law Annual* 11 (1978); Neal Roberts and H. James Brown, eds., *Property Tax Preferences for Agricultural Land* (New York: Allanheld, Osmun & Co., 1980) (Hereafter cited as *Property Tax Preferences* (1980)); Richard W. Dunford, "A Survey of Property Tax Relief Programs for the Retention of Agricultural and Open Space Lands," 15 *Gonz. L. Rev.* 675 (1980); Steven David Gold, *Property Tax Relief* (Lexington, Mass.: Lexington Books, 1980); Earleen H. Cook, "Taxation, Urbanization, Zoning and the Vanishing Farm," Bibliography P-217 (Monticello, Ill.: Vance Bibliographies, April 1979).

3. The statutory citations for the various state laws discussed here can be found in Chapter 11, "Legal and Constitutional Issues."

4. Letter from Larry D. Worth, Property Tax Division, Nebraska Department of Revenue, Lincoln, Neb., July 7, 1980.

5. See John C. Keene, *op. cit.*, n. 2, pp. 25-38 for a more detailed analysis of these factors.

6. See Table 16, Farm Real Estate Market Developments, 1979 (U.S. Economics, Statistics and Cooperatives Service CD 84).

7. Ibid., Table 37.

8. See, e.g., John Brigham, "The Politics of Tax Preference," in *Property Tax Preferences* (1980), n. 2, pp. 77-117.

9. Letter from James F. Dunne, Division of Equalization and Assessment, New York Executive Department, Albany, N.Y., June 3, 1980; D.F. Newman and E.C. Pasour, Jr., "Agricultural Use Valuation in North Carolina, 1978-79" (North Carolina State Univ., 1980), pp. 13-20.

10. Table 24, Farm Market Real Estate Developments, 1979 (CD 84).

11. See, e.g., *Untaxing Open Space*, n. 2 at pp. 49-66 for an analysis of the various reasons for selling.

12. George E. Nagle, Jr. and Donn A. Derr, *A Preliminary Analysis of the Data on Participants in the New Jersey Farm Real Estate Market, 1966-70* (New Brunswick, N.J., 1972) and George E. Peterson, *Tax Policy and Land Conversion at the Urban Fringe* (Washington, D.C.: The Urban Institute, 1975).

13. See Robert E. Coughlin, "Differential Assessment and the Conversion of Land to Urban Uses," in *Property Tax Preferences* (1980), *supra*, n. 2, p. 55.

14. Helen F. Ladd, "The Considerations Underlying Preferential Tax Treatment of Open Space and Agricultural Land," in *Property Tax Preferences (1980), supra*, n. 2, p. 20; I. Hansen and S.L. Schwartz, "Landowner Behavior at the Rural Urban Fringes in Response to Preferential Property Taxation," 51 *Land Economics* 341-354 (1975).

15. U.S. Department of Agriculture, "Farm Real Estate Taxes" (1976) (RET-17), at 5 (1977).

16. I.R.C. § 164(a)(1).

17. See Neal Roberts, "The Big Giveaway Called Differential Assessment," in *Property Tax Preferences* (1980), *supra*, n. 2, p. 8.

18. Helen F. Ladd, *op. cit.*, n. 14, p. 19.

19. Ibid., p. 18.

20. Communication from Representative James Martin, Louisiana House of Representatives, November 1980.

21. P.L. 94-455.

22. P.L. 95-600.

23. I.R.C. § 2010.

24. I.R.C. § 2056A.

25. His estate would take the marital deduction of $250,000, leaving $175,625, the amount insulated from tax by the tax credit.

26. In the 1976 hearings before the Senate Committee on Finance several witnesses emphasized that each year less than 5% of the estates would be subject to federal estate taxation under the new rules. *Revision of Federal Estate Tax Law*, Hearings Before the Senate Committee on Finance, 94th Congress, 2nd Session 22,40,174 (1976), hereafter referred to as *Senate Hearings*. A recent Internal Revenue Service study of estate tax returns filed in 1977, *Estate Tax Returns* (Publication 764, December 1979) confirms these findings. It shows that of the 200,747 estates for which returns were filed, 4,524 exceeded $1 million, 31,772 exceeded $300,000, and 59,553 exceeded $200,000. In 1976 and 1977, there were approximately 1.9 million deaths each year. (1978 *Statistical Abstract of the United States*, Table 101.) Thus, 1/4 of one percent of those dying had estates of over $1 million, 1.67% had estates over $300,000, and 3.1% had estates of over $200,000. Since all estates of $175,625 or less and estates of $425,625 or less entitled to take full advantage of the marital deduction are exempt from estate tax, it can be conservatively stated that at least 97% of all estates are not liable for federal estate taxes. See Roland L. Hjorth, "Special Estate Tax Valuation for Farmland and the Emergence of a Landholding Elite Class," 53 *Wash. L. Rev.* 609 (1978).

27. See Senate Hearings, *supra*, n. 26, *passim*.

28. *Ibid.*, p. 2.

29. For exhaustive analyses of these amendments, see Donald H. Kelley, "Estate Tax Reform and Agriculture," 7 *U. Toledo L. Rev.* 897 (1976); Comment, "The Family Farm and Use Valuation - Section 2032A of the Internal Revenue Code," 1977 *Brig. Y. L. Rev.* 353 (1977); Comment, "An Analysis of the 'Actual Use' Valuation Procedure of Section 2032A," 56 *Nebr. L. Rev.* 860 (1977); Boyd K. Dyer, "Estate Tax Savings and the Family Farm: A Critical Analysis of Section 2032A of the Internal Revenue Code, 11 *U. Cal. D.L. Rev.* 81 (1978); Tom Normand, "Special Use Valuation of Farmland for Estate Tax Purposes: Arrangements for Material Participation," 30 *Baylor L. Rev.* 245 (1978); Stephen F. Matthews and Randall Stock, "Section 2032A: Use Valuation of Farmland for Estate Purposes," 14 *Id. L. Rev.* 341 (1978); Note, "Estate Planning for Farmers and Ranchers Under Section 2032A," 55 *Denver L.J.* 347 (1978); James D. Cox,

"Estate Planning for Farmers After the Reform Act of 1976," 14 *Wake For. L. Rev.* 577 (1978); Roland L. Hjorth, *op. cit., supra,* n. 26; T. Hayward Carter, Jr., "The Application of Section 2032A to the Valuation of Timberland for Federal Estate Tax Purposes," 29 *S.C. L. Rev.* 577 (1978); Charles A. Sisson, "Tax Reform Act of 1976 and Its Effect on Farm Financial Structure," 39 *Agric. Fin. Rev.* 83 (1979); Charles Davenport, "The Influence of Tax Policy on Agriculture, X *Tax Notes* 603 (April 28, 1980); John T. Allen, Jr., "Washington Saves the Farm? The Peculiar Remedy of I.R.C. Section 2032A," 56 *Taxes* 205 (1978); Larry B. Ward, "Planning for Farmers after the 1976 Tax Reform Act and the Revenue Act of 1978," *Thirteenth Annual Institute in Estate Planning* (New York, M. Bender, 1979) pp. 12-1 to 12-31; II *Estate Planning in Depth* (Philadelphia, American Law Institute, Fifth Ed. 1979) pp. 631-734; Hocky, 219-3rd *Tax Management*, "Estate Tax Payments and Liabilities," Wash., D.C., Tax Management, Inc., 1979); J. Streng, 11-8th Tax Management, *Estates, Gifts and Trusts - Planning* (Washington, D.C., Tax Management, Inc., 1979); Donald H. Kelley, "Valuation of Farm and Ranchland After the Tax Reform Act," 1 *Ag. L.J.* 75 (1979); Martin Begleiter, "Section 2032A: Did We Save the Family Farm?," 29 *Drake L. Rev.* 15 (1980).

30. Peter M. Emerson, *Public Policy and the Changing Structure of American Agriculture* (Congressional Budget Office Background Paper, 1978), p. 11.

31. See Rev. Rul. 80-179, 3 *CCH Fed. Est. and Gift Tax Rpts.*

32. I.R.C. § 6166; Edwin T. Hood, Linda L. Charlstrom, and Peter W. Brown, "Special Elections: The Use of Sections 6166, 6166A and 303 of the Internal Revenue Code," 47 *U.M.K.C.L. Rev.* 485 (1979).

33. I.R.C. § 6601 (j)(2).

34. I.R.C. § 1023.

35. P.L. 96-223, §§ 401 (a) and (b). It should be noted that the cost basis of property receiving § 2032A treatment is only stepped up to the agricultural use value for capital gains tax purposes. Then the difference between this value and the fair market value at death will be subject to capital gains taxation which it could escape if no § 2032A election were made. See Martin Begleiter, *op. cit., supra* n. 29, at p. 72.

36. For instance, if the value of the farm exceeds 35 percent of the gross estate or 50 percent of the taxable estate, and meets the other eligibility requirements for Section 6166A, the executor may elect to pay the estate taxes attributable to the farm interest in equal installments over ten years, while paying interest at 12 percent annually on the unpaid balance of the tax. (I.R.C. Sections 6166A, 6621). If the value of the farm real and personal property is at least 50 percent of the adjusted value of the gross estate and the value of the farm real property is at least 25 percent of the adjusted value of the gross estate, and the estate meets the other eligibility requirements for Section 2032A, the executor may elect to have the farm real property valued at farm use value instead of fair market value. If the value of the farm interest (valued at farm use value if Section 2032A treatment is elected) is at least 65 percent of the adjusted gross estate, and the estate otherwise meets the requirements of Section 6166, the executor may elect to defer payment of the tax attributable to the farm interest for five years after the date of death and then pay the tax in equal installments over a period of ten years, while paying interest at the rate of 4 percent on the unpaid taxes attributable to the first million dollars on farm interest, and 12 percent on taxes on the balance of the farm interest.

37. America's farms are divided for statistical purposes into seven classes, according to their volume of sales: Class 1A: $100,000 and over; Class 1B: $40,000 to $99,999; Class II: $20,000 to $39,999; Class III: $10,000 to $19,999; Class IV: $5,000 to $9,999; Class V: $2,500 to $4,999; and Class VI: $1,000 to $2,999. In 1978, the average proprietor's equity for each class was as follows: Class 1A: $894,422; Class 1B: $387,375; Class II: $240,098; Class III: $164,770; Class IV: $142,146; Class V: $110,296; Class VI: $89,158. *Balance Sheet of the Farming Sector, 1979 (Supplement),* Agricultural Information Bulletin No. 430 (Economics, Statistics and Cooperatives Service, February 1980), Table 32. After increasing these averages by 30 percent to account for the increase in value since 1978, I estimate that all the farms in Class 1A would be large enough to be liable for federal estate tax; three quarters of those in Class 1B, because many of the owners would be able to take advantage of the marital deduction; one half of those in Class II because, while the average value is only $240,098, some might be worth more than $425,000, and others would not be able to use the marital deduction; one quarter of those in Class III, on the assumption that some allowance should be made for farms owned by single people worth more than $175,000 and one tenth of those in Class IV. I believe these estimates are on the high side. An insignificant number of Class V and VI farms are large enough to be subject to the estate tax.

Adjusting for changes since 1978 by adding twice the average yearly change between 1974 and 1978 to the 1978 figures, I estimate that the above estimates produce the following number of farms in each category:

Class 1A:	
farms with sales over $200,000	70,500
farms with sales from $100,000 to $99,000	139,000
Class 1B	320,250
Class II	161,500
Class III	70,000
Class IV	26,500
	787,750

This represents 30.2 percent of the total farms shown in the table from which these data come. Economics, Statistics and Cooperatives Service, *Farm Income Statistics*, 1979 (Statistical Bulletin 627, October 1979, Table 1D). Thus, I estimate approximately 70 percent of American farms are too small to be subject to the estate tax.

38. See Tables 600 and 611, "Agricultural Statistics" (Economics, Statistics and Cooperatives Service, 1979). This figure covers transfers by inheritance, administrators', executors', and other sales in the settlement of estates, and gifts. It therefore overstates the number of transfers by reason of death alone. It is the average of the last four years' figures. IRS data showing actual use of § 2032A and 6166 by estates with farm property will not be available for some time.

39. A former commissioner of the Internal Revenue Service, Jerome Kurtz, and a leading tax law scholar, Stanley S. Surrey, have questioned the existence of liquidity problems for most large farm estates. See Kurtz and Surrey, "Reform of Death and Gift Taxes: The 1969 Treasury Proposals, the Criticisms and a Rebuttal," 70 *Columbia L. Rev.* 1365, 1396-1400 (1970).

40. See *Senate Hearings, supra* n. 32, pp. 28-29, 206-211.

41. *Ibid.*, p. 28.

42. Contemporary Studies Project, "Large Farm Estate Planning and Probate in Iowa," 59 *Iowa L. Rev.* 794 (1974), hereafter referred to as the Iowa Study.

43. *Ibid.*, p. 929.

44. See Martin Begleiter, *op. cit., supra,* n. 29.

45. Roland L. Hjorth, *op. cit.*, n. 26, pp. 612-613; Charles A. Sisson, *op. cit.*, n. 29, pp. 83, 89.

46. Roland L. Hjorth, *op. cit.*, n. 26, at pp. 630-639, 655-658; Charles A. Sisson, "The Tax System and the Structure of American Agriculture, Part III," IX *Tax Notes* 419, 420-421 (1979); Bruce L. Gardner and James W. Richardson, eds., *Consensus and Conflict in U.S. Agriculture* (College Station, Texas: Texas A & M Univ. Press, 1979) p. 12.

47. See also, Charles A. Sisson, *op. cit.*, n. 46, p. 420; Peter M. Emerson, *Public Policy and the Changing Structure of American Agriculture*, (U.S. Congressional Budget Office, 1978) p. 52. See Martin Begleiter, *op. cit., supra,* n. 29, for an example of how a practicing physician could arrange with the wife of his first cousin twice removed to manage a farm in Iowa and still meet the "material participation" requirement.

48. Charles A. Sisson, *op. cit.*, n. 46, *supra*, p. 420; Stephen F. Matthews, *op. cit.*, n. 29, at p. 347.

49. See Roland L. Hjorth, *op. cit.*, n. 26, *supra*, p. 613.

50. See Bruce L. Gardner, *op. cit., supra,* n. 47 at p. 12., and Martin Begleiter, *op. cit., supra,* n. 29.

51. Charles A. Sisson, *op. cit., supra,* n. 29, p. 89, and n. 46, pp. 421, Roland L. Hjorth, *op. cit., supra,* n. 26 and Boyd K. Dyer, *op. cit., supra,* n. 29, pp. 112-113; Bruce L. Gardner, *op. cit.*, n. 46, at p. 11.

52. I.R.C. § 2011. In the Revenue Act of 1926, Congress enacted provisions permitting state inheritance and estate taxes actually paid with respect to transfers of property included in the federal gross estate to be credited against any federal estate tax due on the estate. The credit was initially limited to 80 percent of what was then known as the basic tax under the 1939 Internal Revenue Code, but it is now subject to specific percentages of the federal estate tax set out in Section 2011 of the Internal Revenue Code as follows:

TABLE FOR COMPUTATION OF MAXIMUM CREDIT FOR STATE DEATH TAXES

(A) Taxable estate equal to or more than—	(B) Taxable estate less than—	(C) Credit on amount in column (A)	(D) Rates of credit on excess over amount in column (A)
			Percent
$ 40,000	$ 90,000	$	.8
90,000	140,000	400	1.6
140,000	240,000	1,200	2.4
240,000	440,000	3,600	3.2
440,000	640,000	10,000	4.
640,000	840,000	18,000	4.8
840,000	1,040,000	27,600	5.6
1,040,000	1,540,000	38,800	6.4
1,540,000	2,040,000	70,800	7.2
2,040,000	2,540,000	106,800	8.
2,540,000	3,040,000	146,800	8.8
3,040,000	3,540,000	190,800	9.6
3,540,000	4,040,000	238,800	10.4
4,040,000	5,040,000	290,800	11.2
5,040,000	6,040,000	402,800	12.
6,040,000	7,040,000	522,800	12.8
7,040,000	8,040,000	650,800	13.6
8,040,000	9,040,000	786,800	14.4
9,040,000	10,040,000	930,800	15.2
10,040,000	.....	1,082,800	16.

A credit is especially valuable for an estate because it allows a dollar-for-dollar reduction of the federal estate tax liability by an amount equal to the maximum permissible state death tax credit. The effect is to shift tax revenue from the federal government to the state without any increase in the death tax liability of the decedent's estate.

53. See "Survey of State Death Tax Systems," 14 *Real Property, Probate and Trust J.* 277-401 (1979).

54. Ala. Code tit. 51, ch. 19, §§ 432 to 499(1); Alaska Stat. §§ 43.31.011 to 43.31.430; Ariz. Rev. Stat. §§ 43.1501 to 43.1535; Ark. Stat. Ann. §§ 63-101 to 63-151; Colo. Rev. Stat. §§ 39-23.5-101 to 39-23.5-117 (Supp. 1980); Fla. Stat. Ann. §§ 198.01 to 198.44; Ga. Code, tit. 91, §§ 91A.5701 to 91A.5705; Minn. Stat. Ann. § 291.075 (Supp. 1980); Mo. Rev. Stat. §§ 145.010-145.350; Montana Session Laws of 1979, ch. 705, §§ 1 to 12 (S.B. 508); N.M. Stat. Ann. §§ 7-7-1 to 7-7-2 (Supp. 1980); N.Y. Tax Law & 954a (Supp. 1980); N.D. Cent. Code §§ 57-37.1-01 to 57-37.1-21; S.C. Code § 12-15-10 to 12-15-1670; (This law incorporates the pre-1976 federal estate tax law and as a consequence does not make § 2032A treatment available. Amendatory legislation to correct this has been introduced); Utah Code Ann., tit. 59, §§ 59-12-1 to 59-12-55; Vt. Stat. Ann., tit. 32, §§ 7401 to 7497; Va. Code §§ 58-238.1 to 58-238.16 (Supp. 1980).

55. Cal. Rev. and Tax Code, § 13311.5; Del. Code, tit. 30, § 1314. See 1 CCH State Inheritance, Estate and Gift Tax Rpts., ¶ 1805; ch. 56, Laws of 1979; Ill. Stat. Ann., ch. 120, § 385 (Smith-Hurd Supp. 1980); Kan. Stat. Ann. Art. 15. §§ 79-1501 to 79-1530, (1980 Supp.) Ky. Rev. Stat., §§ 140-300 to 140-360, as amended by ch. 138 §§ 4 to 12 (1978 Regular Session Laws); Miss. Code tit. 27, § 27-9 (Supp. 1980); Tenn. Code Ann. § 30-1621, L. 1978, ch. 731, § 11; Wash.: ch. 209, §§ 26 to 34, 46th Legis., First Extraordinary Session.

56. Conn. Gen. Stat., § 12-349 (West Supp. 1980); Md. Ann. Code, Art. 81, § 154 (Supp. 1980); Mich. Comp. Laws Ann., § 205.202d (Supp. 1980); Ore. Rev. Stat., § 118.155 (Repl. 1975), as amended by ch. 553, § 12, Ore. Laws of 1979; Laws of P.R. Ann. tit. 13, ch. 402 § 5058 (1980 Supp.).

57. Mich. Comp. Laws § 205.202b (Supp. 1980).

58. Laws of P.R. Ann. tit. 13 ch. 402 § 5058 (Supp. 1980).

59. Cal. Rev. & Tax Code, § 14181 (Supp. 1980); Kan. Stat. Ann. Art. 15 (Supp. 1980); Mich. (Supp. 1980) Comp. Laws Ann. § 205.202, § 206.203 ans § 205.221; Minn. Stat. Ann. § 291.11 Subdiv. 1 (a)(Supp. 1980); N.Y. Tax Law. Art. 26 (Supp. 1980); Wis. Stat. Ann. § 72.22 (Supp. 1980).

60. See "Survey of State Death Tax Systems," (*supra* n. 53).

61. See Tenn. Stat. Ann. § 30-1627 (Supp. 1980).

62. See "Effect of the Tax Reform Act of 1976 on State Taxation of Decedents' Estates," 14 *Real Property, Probate and Trust J.* 523-539 (1979).

The Connecticut General Assembly 04316

OLR SELECTED REPORT 80-55

JOINT COMMITTEE ON LEGISLATIVE MANAGEMENT
OFFICE OF LEGISLATIVE RESEARCH

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April 14, 1980

FROM: Office of Legislative Research
David Keith Leff, Research Attorney

RE: Oregon's Agricultural Lands Protection Program

You have asked for a background report concerning Oregon's statewide planning program as it relates to zoning for the protection of agricultural lands.

SUMMARY

Oregon has a state agency responsible for developing and enforcing statewide planning goals. State agencies and local governments must comply with these goals by incorporating them into their plans of development and by adopting appropriate zoning, subdivision and other ordinances. One of the statewide goals concerns agriculture. This goal requires that all agricultural lands, mainly defined by use of the U.S. Soil Conservation Service Soil Capability Classification System, be inventoried before decisions can be made about their ultimate use. Once inventoried, those lands suitable for agriculture must be protected through use of local comprehensive plans and exclusive farm use (EFU) zoning.

EFU zoning restricts land uses to farming and compatible nonfarm uses within the zone. Land EFU zoned must have divisions of land reviewed for compliance with statewide goals. State agencies and local governments are forbidden to restrict farming practices on EFU land, and such land is also given a differential property tax assessment.

OREGON'S LAND USE PROGRAM

State Planning and Local Power

Oregon's agricultural land protection program is an integral part of the statewide planning program. This Planning Program was established in 1973 (S.B. 100) when the Land Conservation and Development Commission (LCDC) was created to administer a statewide land use program and review the development plans of cities, counties, state agencies and special districts. The LCDC is empowered to set mandatory planning standards, known as goals, with

These goals are not used as regulations for particular parcels of property, but rather a standard against which all local land use decisions are gauged. A failure to conform local plans or decisions to the goals may lead to invalidation of the plans or decision, by LCDC or the courts. While some goals contain only generalized policy statements (energy and transportation goals), others such as the urbanization and agricultural goals contain specific procedures to be followed.

Finally, an important aspect of the program is the appeals process by which local governments, state agencies and affected citizens can appeal a local or state government action affecting land-use to LCDC if it is alleged to violate the statewide planning goals. Since November 1, Oregon has had a new three member Land Use Board of Appeals to hear land use cases. The Board acts as a court on question of interpretation of law, and as a hearing officer to LCDC on questions of land use policy interpretation. LCDC has the final word on interpretation of land use policy. Land use decisions are ultimately appealable to the Oregon Court of Appeals.

PROTECTION OF AGRICULTURAL LANDS

State Policy

Agriculture is the second largest industry in Oregon, and recorded gross sales of $1.25 billion in 1978. The agricultural lands protection policy is based on a statutorily established Exclusive Farm Use Zone (EFU) and Statewide Planning Goal 3, "Agricultural Lands." The EFU Zone provides farmers with tax and other benefits and limits activity which might be detrimental to agriculture.

Oregon law establishes an agricultural land use policy of four basic elements (Oregon Rev. Stat. § 215.143). First, agricultural land is declared an efficient means of preserving resources and a physical, social, aesthetic and economic asset to the people of the state. Second, preservation of a maximum amount of such land in large blocks is found necessary to maintain the state's agricultural economy. Third, because of conflicts in uses, increases in community services costs, and loss of open space in urban areas, expansion of development into rural areas is determined to be of public concern. Finally, EFU zoning which limits rural development, is found to justify incentives and privileges offered to owners of rural lands.

Statewide planning Goal 3 elaborates this policy by requiring that agricultural lands be preserved and maintained for farm use consistent with existing and future needs for agricultural products, forest and open space. It also requires that such lands be inventoried and protected through use of the EFU.

Definition of Agricultural Lands

Goal 3 defines agricultural lands by reference to the Soil Capability Classification System of the U.S. Soil Conservation Service as well as other lands suitable for farming based on soil fertility, climatic conditions, availability of water and other factors. Agricultural lands, as defined by the goal, must be inventoried before any decisions can be made about their ultimate use. A significant aspect of the agricultural land definition is that it is not limited to "prime farmlands," but covers virtually all agricultural land because the agricultural economy of Oregon is believed dependent on other than prime lands. The definition is based upon scientific data, not upon current trends in agricultural economics or the individual management skills of the farmer.

Once farmlands have been inventoried, it is decided whether the land is actually available for farm use or has been committed to nonfarm uses based upon surrounding development, parcelization, available services and other factors. Agricultural land is to be preserved by local comprehensive plans and EFU zoning. Exceptions for particular lands are made in the development or revision of the local comprehensive plan. Excepted from the agricultural lands goal are lands no longer available for farm use because they have been physically developed upon, or because the land has been irrevocably committed to urban or rural uses.. Also excepted are lands needed for future nonfarm uses if determined by the local comprehensive plan to be needed for either an urban or rural nonfarm use. The plan must specifically justify this type of exception.

Permitted Uses in the EFU

The EFU Zone is used in rural farm areas and allows a wide variety of nonfarm uses. EFU Zones do not limit land use exclusively to farming. The primary purpose of the EFU Zone is to insure compcompatible development and allow farming to take place free from interference. Farm uses which are encouraged in the EFU Zone are broadly defined. Farm use means the current employment of land, including lands under buildings, supporting farming practices to obtain a money profit by raising, harvesting and selling crops or by feeding, breeding, managing and selling livestock, poultry fur-bearing animals, or honeybees. Farming also includes dairying and the sale of dairy products or any other agriculture or horticultural use or animal husbandry. (Oregon Rev. Stat. § 215.203).

Several nonfarm uses may be established as of right in an EFU Zone. These include schools, churches, forestry uses, utility facilities, and farm dwellings and buildings. Several nonfarm uses may be established in an EFU Zone with approval of the local governming body or its designate. Nonfarm uses which are permitted with local approval include commercial activities in conjunction with farm use, public and private parks, golf courses, home occupations, and boarding of horses.

Single family residences not used in conjunction with a farm must also be specially approved. However, in order for the local governing body to approve such dwellings, it must make findings that the proposed dwelling is compatible with farm uses and the statutory agricultural lands policy, that it does not interfere seriously with accepted farming practices on adjacent lands, does not materially alter the stability of the overall land use pattern of the area, and is situated upon land generally unsuited for production of crops and livestock.

In considering the unsuitability of the land, the terrain, adverse soil or land conditions, drainage, vegetation, and the location and size of the tract must be taken into account. The local government is authorized to impose other conditions it considers necessary. This procedure for siting single family residences recognizes that small areas in farm zones may accommodate a rural dwelling on a small lot without affecting the basic farm character of the area. However, the strictures mandated by statute for siting such a dwelling insure that nonfarm development has a minimal impact on the farm zone.

If an existing nonfarm use in an EFU Zone is unintentionally destroyed by fire, other casualty or natural disaster, a county may allow the use to be reestablished to its previous nature and extent.

Land Divisions

The statewide Agricultural Lands goal does not establish a minimum lot size in EFU Zones. Such a requirement is believed impractical because farm acreage needs in Oregon vary from large wheat ran to small intensive farm operations. If a local minimum lot size is set, Goal 3 requires that it provide acreage needed to continue or create a viable farm unit. Thus, minimum lot size would be based upon the type of farming practiced in the area. Such lot sizes can be used to limit the amount of agricultural land lost to production, by requiring large minimum acreages for farms, and lessen the amount of land needed for nonfarm uses by allowing or requiring small lots for residences.

By statute, the governing body of a county may by ordinance or regulation require that any proposed division of land included within an EFU Zone resulting in the creation of one or more parcels of land of 10 or more acres be reviewed and approved or disapproved by the governing body of the county. If a proposed division of land would result in the creation of one or more parcels of land of less than 10 acres it must be reviewed by the county governing body. If the governing body initiates a review proceeding, it may not approve the proposed subdivision unless it finds that the parcelization is in conformity with the statutory agricultural lands use policy.