2. Agricultural Land Preservation

DETAILED TECHNICAL ANALYSIS

SAMPLE ORDINANCE
Davis, California Right to Farm and Farmland Preservation
see Section 2.8

One of the most serious side effects of suburban sprawl is the loss of farmland, open space, and the natural scenery. Oftentimes development of "greenfields" (previously undeveloped land) is less costly than development of brownfields or "grayfields" (previously developed land).[1] In economic terms, some of the cost of greenfield development is externalized, or borne by the public, rather than internalized, or borne by private developers. These external costs include new infrastructure, inefficient use of existing infrastructure, loss of character, and fragmentation of habitat and farmland.

Because of this, public programs are necessary to preserve land, support farming as an industry, and redirect growth. Agricultural and preservation programs recognize that local agricultural activity is a valuable economic and cultural resource. Local farms not only provide fresh, inexpensive agricultural products, but they also provide jobs and they have the potential to create spin-off business, such as agro-tourism. In 1995, the agricultural industry was estimated to have contributed about $700 million to the State's gross domestic product (GDP).[2] Moreover, farms generate tax revenue while requiring relatively little in terms of municipal services, limiting the need for future tax increases.

Also, preserving the natural scenery itself has potential economic benefits. The Hartford region is renowned for its beautiful countryside. That beauty not only lends charm to the region, but serves as an economic asset that attracts residents, tourists, employers, and investors. If the visual quality of those areas becomes diminished by sprawl, then one of the region's most important economic assets is compromised.

Although farmland preservation eliminates land from the local tax roles or reduces the value of that land area, the value of property in the vicinity of an open space preserve tends to be higher, partially making up for the reduced valuation of the preservation. Also, agricultural use is actually more fiscally beneficial for a municipality than residential use. Single-family housing generates more municipal costs than revenue, whereas farmland generates more revenue than costs. By preserving land for agricultural use and reducing the amount of residential development in the community, a municipality may have an easier time keeping costs and revenues in balance.

In addition to the transfer of development rights (TDR) and village development, which are discussed in other chapters of this report, there are numerous other programs that can be used for agricultural preservation. This chapter provides an overview of the various different preservation options and examines their potential for the Hartford region.

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[1] Brownfields are former industrial or commercial sites that may have soil contamination resulting from former industrial and/or commercial activities. Grayfields are vacant and/or underutilized commercial sites that have a reduced commercial viability due to their size, design, or location.

[2] State of Connecticut, Department of Agriculture, Connecticut Food Policy Council, *Economic Contribution of Farmland*, <www.foodpc.state.ct.us/economic_contribution_of_farmland.htm>, visited March 4, 2002.

It is important to emphasize that the strategies presented in this chapter should be used in combination. Tax programs, right-to-farm regulations, cluster development, purchase of development easements, and transfer of development rights can be used concurrently, as each addresses different issues. Tax programs and right-to-farm protections are useful where there are active farms striving to remain in business. Cluster development and other land-focused techniques can be useful whether or not there are active farms.

Agricultural land preservation raises the question of State versus local roles and responsibilities. In Connecticut, virtually all of these programs would be implemented at the local level, but the State could play a key role by continuing to fund easement purchase programs and passing enabling legislation for new preservation techniques.

2.1 SMART GROWTH REGULATIONS AND INCENTIVES

TAX PROGRAMS

Development pressure increases land values. In the short term, the increase in value can be a financial benefit to farmers by generating greater equity. Farmers can borrow against that equity to make improvements to the farm operation. In the long term, however, the local government typically reassesses the property at the higher value, resulting in a larger tax obligation. Also, development elsewhere in town may increase the need for municipal services and schools, resulting in townwide tax increases for all property owners, farmland and non-farmers alike. Such tax increases can upset the delicate financial balance of a farm. Tax breaks can be extremely helpful in maintaining the financial viability of farming operations.

Connecticut — along with most other states — has a differential tax assessment program for farms. Public Act 490 allows farmland (as well as forest land and other open space) to be assessed at its use value, rather than its market value. The "use value" is based on the site's existing agricultural, forest, or open space uses. "Market value" is based on the full development potential of the site, as determined by the real estate market (a function of location, demand, etc.), the site's physical characteristics, and the applicable zoning and environmental regulations.[3]

These differential tax programs are not burdensome since farms pay more in property taxes than they receive in municipal services. Since 1986, the American Farmland Trust has performed Cost of Community Services (COCS) studies in more than 70 communities throughout the United States. The COCS studies have found that for every dollar of tax revenue generated by residential development, the median cost to provide municipal services to residential areas is $1.15. By way of comparison, for every dollar of tax revenue generated by farms, forest, and open space, the median cost for municipal services is $0.27.[4] A 1986 COCS study in Hebron, CT found that residential development costs $1.06 per dollar of

[3] American Farmland Trust, *Farmland Information Center*, <farmlandinfo.org/fic/tas>, visited November 29, 2001.

[4] American Farmland Trust, Press Release: *Conserving Farms and Ranches Makes Tax Sense for Hays County Citizens*, June 27, 2000, <www.farmland.org>, visited March 4, 2002.

revenue, whereas farmland, forest, and open space properties cost $0.36.[5] Use-based taxation for farmland allows farmers to pay taxes at a level that reflect the lower costs that they impose on the local government.

RIGHT-TO-FARM ORDINANCES

Local right-to-farm ordinances are intended to protect farmers from the harmful effects of nuisance lawsuits. In many areas, new residential and commercial development projects are built on former pieces of farmland adjacent to active farms. At first, new residents and employers are drawn to these new development projects partly by the charm of the surrounding rural landscape.

After living there, however, the new residents and employers realize that the farm operations that they once found charming actually create dust, odor, noise, and other side-effects. Farm operations run from before dawn to well after dark. Dust and animal odors from the farm operation may be detected in adjacent residential areas. Farm machinery makes noise, especially during months when crops are planted, maintained, and harvested. Despite the fact that the State Department of Environmental Protection (DEP) heavily regulates the use of fertilizers and other chemicals on farms, nearby residents may be concerned over the use of such substances near their homes.

In reaction to these perceived nuisances, residents and employers sometimes file anti-nuisance lawsuits, which may cripple or shut down the farm operation. The lawsuit may claim that the farm operation in question constitutes a private nuisance, a public nuisance, or both. In legal terms, a “private nuisance” is any activity that interferes with an individual’s reasonable use or enjoyment of her or his property. A “public nuisance” is an activity that threatens the public health, safety, or welfare, or damages community resources, such as public roads, parks, and water supplies.

A right-to-farm ordinance can help protect pre-existing farming operations by discouraging rural residents from bringing forth nuisance lawsuits. Such an ordinance documents the importance of farming to the locality and may require that property sellers place prospective buyers on notice that certain agricultural practices are reasonable activities to expect in the area.

The State of Connecticut has adopted legislation declaring that "no agricultural or farming operation, place, establishment or facility, or any of its appurtenances, or the operation thereof, shall be deemed to constitute a nuisance" (Conn. Gen. Stat. § 19A-341). While the State's statute helps protect farmers already involved in a lawsuit, it does little to help farmers avoid legal action in the first place. Strengthening the State law or implementing supplementary local laws can provide farmers with additional protections. Importantly, the State statute does not state that municipalities are allowed to adopt right-to-farm ordinances.

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[5] State of Connecticut, Department of Agriculture, *Frequently Asked Questions About Public Act 490*, updated February 1, 2002, <www.state.ct.us/doag/business/490q.htm>, visited March 4, 2002.

Town of Woodstock's Right-to-Farm Ordinance

The Town of Woodstock adopted a right-to-farm ordinance in June 2000. As the basis for its legislation, the Town did not cite the State's right to farm law, but some of the generic municipal powers regarding land use regulations, as enumerated in Conn. Gen. Stat. § 7-148. Woodstock's ordinance declares that no agricultural operation that has been active for more than one year without a substantial change shall be deemed to be a nuisance due to alleged objectionable:

- "Odor"
- "Noise"
- "Dust"
- "Use of chemicals" (provided that such use conforms to practices approved by the State DEP and the Department of Health Services)
- "Water pollution" (except drinking water supplies, provided that the related activities conform to practices approved by the State DEP)

At the same time, the ordinance clearly states that it does not protect nuisances that result from "negligence or willful or reckless misconduct". This provision has the effect of raising the bar for the burden of proof in nuisance suits. It is not enough for the plaintiff to prove that he or she suffers a private nuisance, which is a relatively easy standard to meet. Something as minor as early-morning tractor noise can be deemed to interfere with the reasonable enjoyment of one's property. Under Woodstock's right-to-farm ordinance, however, the plaintiff must actually demonstrate that the farmer has been negligent, willful, or reckless in their operation.

The Woodstock ordinance provides a few other useful insights. First, the list of generic municipal powers enumerated in Conn. Gen. Stat. § 7-148 — as cited in the Woodstock ordinance — do not clearly support a municipality's authority to adopt right-to-farm provisions. The provisions cited address a municipality's authority to prohibit and abate nuisances [§ 7-148(c)(7)(e)], to protect the natural environment [§ 7-148(c)(8)], and to adopt lawful regulations and ordinances in furtherance of the powers listed in § 7-148 [§ 7-148(c)(10)]. These provisions are only loosely related to the concept of a right-to-farm ordinance, suggesting that the Woodstock ordinance may be vulnerable to legal challenge. CRCOG should encourage the State to adopt enabling legislation that clearly allows municipalities to adopt local right-to-farm ordinances.

Second, it is important that a right-to-farm ordinance (and the State enabling legislation) be constructed in such a way that it does not open the door to abuse by farmland property owners. While lawful farm operations should be protected, the ordinance should be clear that farms are still required to comply with environmental regulations, health regulations, town zoning regulations, and other relevant federal, State and local laws. Careful consideration should be given to the issue of accessory farm uses. Should such accessory uses — from temporary farm worker housing, to farm retail markets, to agro-tourism — be protected under the right-to-farm laws? By protecting accessory farm uses, the right-to-farm law could reduce the government's ability to control the types of activities that occur on a farm and the impacts that result from those activities.

Third, while the State and the Woodstock statutes both help protect farmers already involved in a lawsuit, they do little to help farmers avoid legal action in the first place. CRCOG's

recommendation to the State, in considering right-to-farm enabling legislation, should be that the municipalities be allowed to:

(1) *Require* developers to attach right-to-farm notices to their property deeds as a condition of discretionary development approvals; and

(2) *Require* property sellers to notify prospective buyers of the presence, importance, and appropriateness of farm activity in the community and of potential off-site impacts associated with agricultural activity.

BUFFERING

Related to the idea of a right-to-farm ordinance, buffering can help prevent both nuisance lawsuits and land use conflicts, by maintaining a greater distance between farms and new development. Through subdivision and/or zoning regulations, new residential or commercial development in rural areas can be required to maintain landscaped buffers along their edges, particularly along property lines abutting farmable pieces of open space. Buffering provisions usually proscribe a minimum width. Some municipalities also require vegetation, fencing, berms, or a combination thereof.

In order to be effective in reducing impacts associated with noise, dust, odor, and fertilizer/chemical use, buffers need to be relatively wide and densely planted. This suggests that they are most effective where lot sizes are large. In many rural areas of Connecticut, parcels have been carved up into small- to moderate-size parcels of less than 20 acres. Buffers on such sites may not be effective in preventing or reducing impacts on the residences. Moreover, wide buffer requirements on smaller properties may limit the ability to build up to allowable densities, triggering additional variance applications.

AGRICULTURAL DISTRICTS

Some states have adopted legislation that permits farmland property owners to voluntarily designate their properties as "agricultural districts" that provide them with a bundle of protections and benefits. Depending on the particular state statutory language, properties located in agricultural districts may be protected from eminent domain, growth-inducing infrastructure development (e.g., roads and sewers), and purchase of land for public purposes. Property owners may also receive tax rebates or enhanced right-to-farm protections. In exchange, farmers agree to maintain their properties in agricultural production for a pre-determined amount of time, with penalties for early withdrawal. Currently, Connecticut *does not* allow property owners to establish agricultural districts.

An agricultural district program can be managed by either State or local agencies. If the program is managed at the State level, the State can use the district designation to impose limitations on local plans or actions with regard to those properties. For example, the program in New York State protects properties within the agricultural districts from "unreasonable

local regulations" and requires local government to take into account the purpose of the agricultural district when making local land use decisions.[6]

PURCHASE OF DEVELOPMENT EASEMENTS

Selling off the development easement on a piece of farmland is an effective way of permanently preventing development. The development easement is the bundle of use and development rights that are permitted under the local zoning regulations, with the exception of agricultural uses. After the development easement is sold off, farming would continue to be permitted on the property. The purchasing entity is a government agency, a foundation, or a non-profit organization (i.e., a land trust), whose intent is to hold the development easement in perpetuity.

The purchase of development easements may be an attractive option for owners. The sale of the easement may provide the landowner with a cash outlay that can be used to finance additional farm-related operations or retire outstanding debts. In addition, the sale of the easement would effectively reduce the value of the land itself, resulting in a lower potential tax assessment, lower estate transfer taxes, or other tax benefits.[7] Moreover, the landowner for personal or family reasons may wish to preserve the farm in perpetuity, and the sale of the development rights allows the landowner to achieve preservation in financially lucrative ways (as compared to outright donation).

Through the purchase of development easements, as compared to fee-simple purchases, the property partially remains under private ownership, which has several advantages. First, the purchasing entity pays less for the development easement that would have been necessary for fee simple[8], suggesting a more efficient use of public foundation or land trust funds. Second, the owner of the deed-restricted land is responsible for the ongoing maintenance of the property, not a government or non-profit entity. Third, the property stays on the local tax roles, albeit at a lower assessed value.

In some cases, the purchasing entity can use the development easement to recuperate some of the costs involved with a fee-simple purchase. For example, after New Jersey's State Agricultural Development Committee (SADC) purchased 190 acres of farmland for preservation purposes in the Township of Holmdel in Monmouth County, the SADC sold off the land and agricultural use rights, while holding on to the development easement. The restricted agricultural land was purchased by a local farmer interested in expanding his nursery operations.

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[6] American Farmland Trust, *Farmland Information Center*, <farmlandinfo.org/fic/tas>, visited November 29, 2001.

[7] Connecticut Forest and Park Association, "Cultivating a Legacy: Farmland Preservation in Connecticut," *Connecticut Woodlands Magazine*, Spring/Summer 2001, reprinted at the web site of the Connecticut Farm Bureau, <www.cfba.org/fpc1>, visited March 4, 2002.

[8] "Fee simple" is defined as the absolute ownership of land, giving the owner the sole authority to use and control the parcel. "Fee simple" is in contrast to an "easement", which is defined as a right or privilege that a party may have in another's land. For example, a "right of way" is a type of easement that allows a party to travel across a portion of another person's property.

Federal Farmland Protection Program

The Natural Resources Conservation Service (NRCS), through the Farmland Protection Program, provides matching funds to help purchase development rights to keep productive farmland in agricultural use. Working through existing programs, the NRCS, a department of the U.S. Department of Agriculture (USDA), partners with State, tribal, or local governments to acquire easements or other interests in land from landowners. The NRCS can provide up to 50 percent of the fair market easement value.

Connecticut Department of Agriculture's Farmland Preservation Program

Under its Farmland Preservation Program (created pursuant to Conn. Gen. Stat. § 22-26aa, et. seq.), the State of Connecticut currently utilizes State funding for the purchase of development easements on active farmland. The program targets active farms with a high percentage of prime farmland and those farms that are located in established farm communities.[9] The program allows the State to combine resources with local government, the federal government, and/or non-profit organizations in order to purchase development easements.[10] In summer 2001, the Farmland Preservation Program received a $623,500 grant from the NRCS.[11]

Connecticut Department of Environmental Protection's Open Space and Watershed Land Acquisition (OSaWLA) Grant Program

The OSaWLA Grant Program provides financial assistance to local municipalities and non-profit land conservation organizations for acquiring "land or permanent interests in land" for open space purposes, as well as to water companies for acquiring land that is eligible to be classified as Class I or II water supply property.[12] Grants may be used to acquire open space that is valuable in terms of natural resources, recreational opportunities, or "agricultural heritage". For municipalities and non-profit organizations, the maximum grant amount for farmland would be 50 percent of the fair market value.[13]

Through a permanent development easement, land that is protected through the grant program must "remain forever predominantly in its natural and open condition for the specific conservation, open space or water supply purposes for which it was acquired."[14] The easement is required to include a provision that the property will be made available to the general public

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[9] Connecticut Forest and Park Association, "Cultivating a Legacy: Farmland Preservation in Connecticut," *Connecticut Woodlands Magazine*, Spring/Summer 2001, reprinted at the web site of the Connecticut Farm Bureau, <www.cfba.org/fpc1>, visited March 4, 2002.

[10] Conn. Gen. Stat. § 22-26cc(e), (g), and (i).

[11] Working Lands Alliance, *Weekly Update*, vol. 1, no. 15, June 8, 2001. <www.workinglandsalliance.org/whatnew.htm>, visited March 4, 2002.

[12] Conn. Gen. Stat. § 7-131d.

[13] The grant amount would be increased to 65 percent for "distressed communities" and "targeted investment communities," as determined by the Department of Environmental Protection. State of Connecticut, Department of Environmental Protection, *Open Space and Watershed Land Acquisition Grant Program (Conn. Gen. Stat. § 7-131d to 7-131k, inclusive), Spring 2002*, <www.dep.state.ct.us/rec/opensp31.htm>, visited March 4, 2002.

[14] Conn. Gen. Stat. § 7-131d.

for appropriate recreational purposes. However, for properties where development rights were purchased (as opposed to fee simple purchase), the property may be exempted from this requirement where general access would be disruptive of agricultural activity.[15]

Payments in Lieu of Open Space

In 1990, the Connecticut legislature authorized the creation of fee-in-lieu of open space funds by Connecticut municipalities. Many municipalities in the Hartford region have provisions for such funds. The statute states that "any municipality which provides in regulations, adopted pursuant to Conn. Gen. Stat. § 8-25, for the payment of a fee or the fair market value of land transferred in lieu of any requirement to provide open space, shall deposit any such payments in a fund which shall be used for the purpose of preserving open space or acquiring additional land for open space or for recreational or agricultural purposes".[16] This tool is another way in which a Connecticut municipality can raise funds for the purpose of purchasing development rights on farmland or open space properties.

EXCLUSIVE AGRICULTURAL ZONING

Ideally, one of the easiest and most effective ways to preserve agricultural land would be to establish *exclusive* agricultural zones, where nearly all other uses, including residential and commercial, would be prohibited. However, municipalities should be extremely careful when contemplating such an approach. In regions where the agricultural industry is in decline, the rezoning of a parcel for *exclusive* agricultural use could effectively eliminate all economic use of the land. Elimination of a site's total economic value is considered a regulatory taking under common law, but the courts have not specifically addressed the question of whether exclusive agricultural zoning in a region with declining agricultural use would be considered a taking.

In the Hartford region, it is uncertain whether the agricultural industry could be considered to be in decline. Certainly, the general trend for decades has been the closure of farm operations (due to corporatization of farming, competition from western farm and ranch operations, the decline of the family farm, suburbanization development pressures, etc.). Fallow fields have gradually become reforested over time, and nowadays, many fields and woodlands are now being carved up for development. Connecticut had about 440,000 acres of farmland in 1982, but 360,000 acres in 1997, a decline of 18 percent over a 15-year period.[17]

At the same time, there are many active agricultural operations throughout the region, from dairy farms, to lucrative shade tobacco plantations, to small-scale orchards, to growers specializing in field crops, to nursery operations growing sod, trees, shrubbery, or flowers for landscaping. Some Connecticut crops (in particular, shade tobacco) may generate land values greater than the value associated with residential zoning. The Connecticut River Valley is considered to have the ideal combination of climate and soils for growing shade tobacco.

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[15] State of Connecticut, Department of Environmental Protection, *Open Space and Watershed Land Acquisition Grant Program (Conn. Gen. Stat. § 7-131d to 7-131k, inclusive), Spring 2002*, <www.dep.state.ct.us/rec/opensp31.htm>, visited March 4, 2002.

[16] Conn. Gen. Stat. § 8-25b.

[17] American Farmland Trust Information Center Library, <www.farmlandinfo.org/fic/states/connecticut.html>, visited July 12, 2002.

Municipalities in the Hartford region should be aware, therefore, that an initiative for exclusive agricultural zoning would very likely be subject to legal challenge, with uncertain outcomes.

UPZONING OR LARGE-LOT ZONING

An upzoning initiative (when allowable development densities are reduced under the law, but not completely eliminated) are generally defensible under common law, provided that it done for a legitimate public purpose and done with the intent of protecting the general health, safety, and welfare of the public.

If reduced density zoning is pursued for the purpose of agricultural preservation, then the remaining lots would have to be large enough, such that they would still be farmable. In Holmdel Township in Monmouth County, New Jersey, agricultural land had been subject to intense development pressure over a period of 30 years. Many of the remaining farms are surrounded by subdivisions, and some of the larger property holders (Lucent Labs, the Township, the County) lease out land to farmers. These rented out pieces are generally on the order of 50 to 100 acres, with additional surrounding woodlands that serve as buffers between the farmed areas and adjacent uses.

This and similar examples suggest that 50 acres might be the minimum land area necessary for a farm. Instituting minimum lot sizes of this magnitude might be problematic in many parts of the Hartford region, because large farms have gradually been subdivided over time into moderate-sized farm parcels of less than 20 acres. If towns wish to consider large-lot zoning, the minimum lot size should be tailored to the pattern of existing farms, (i.e., 15-acre, 20-acre, or larger lots, as opposed to the predominant one- to two-acre zoning). Because of current one- to two-acre zoning in most places, towns may be still be able to downzone to moderate-size lots (e.g. 10 acres or more), even if larger 50-acre parcels are not achievable.

Aside from large-lot zoning, there are a number of additional zoning changes that could help protect and support agricultural activity. As noted, requirements of forested buffers around the edges of a subdivision can help limit the impacts of agricultural operations on new residents, reducing the likelihood of nuisance suits. In agricultural areas, the zoning regulations should allow accessory structures — such as farm worker housing, barns, temporary farm stands, and farm markets — that go hand in hand with an agricultural business.

CLUSTER DEVELOPMENT

Cluster development (also called "open space zoning" or "conservation zoning" in Connecticut) can be considered as an alternative to large-lot zoning, because it potentially results in a less drastic depletion of property rights. While reduced density zoning is fraught with contention, it might be more feasible to require cluster development in order to maintain large areas of undisturbed open space. Take, for example, a property of 100 acres in size and with two-acre zoning. Assuming that about 20 percent (or 20 acres) of the property would be set aside for roads, conservation easements, drainage easements, and common open space areas, the property would be able to accommodate 40 housing units on the site with the original zoning.

- Rezoning with large 20-acre lots would reduce the yield to five units, a sharp cut in property rights, and the subdivided lots may still be too small to sustain farming.
- Rezoning with more moderate-sized five-acre lots would result in 20 housing units, but with a cluster requirement, those units could be grouped together on one end of the site on 10 one-acre and 10 two-acre sites, for a total development area of about 45 acres (30 acres for housing lots, plus 15 acres for roads, easements, and open space). The remaining 55 acres would remain untouched and would provide a large area where farming could continue to take place.

From this point of view, moderate downzoning — combined with required cluster development — can be as effective or more effective in terms of farmland preservation as large-lot zoning, and moreover, it would tend to have less impact on property values.

Cluster development in a rural area does raise issues of wastewater disposal. If the base zoning has minimum lot sizes or two to three acres or more, the clustered lots can be reduced to one to two acres in size and still accommodate individual septic systems. However, where base zoning is for one-acre to two-acre lots, clustering would yield even smaller lots and may therefore require some form of collective disposal. If sewer is not available, then innovative techniques like package treatment plants, combined septic systems, or constructed wetlands may be necessary.

Because these disposal systems would have to be placed in the open space preserve beside the clustered development area, they would potentially inhibit the ability of that open space area from being used for ongoing agricultural activity, depending on the amount of land area needed for wastewater disposal.

TRANSFER OF DEVELOPMENT RIGHTS

Programs for the transfer of development rights (TDR) are discussed extensively in Chapter 3. Some TDR programs have been effective in preserving agricultural land, particularly in areas where market-based sending and receiving areas have been established; where there has been a public entity actively purchasing rights (i.e., Long Island Central Pine Barrens); or where receiving areas have extremely strong real estate pressures that create a market for developments rights (i.e., Montgomery County, Maryland).

FINANCIAL ASSISTANCE FOR ENVIRONMENTAL PROTECTION

Environmental protection may be an expensive undertaking for a farmer, as it could reduce tillable acreage or require changes in farming techniques. In order to continue protecting farmland, while also protecting the natural environment, numerous State and federal programs have been established to provide financial assistance to farmers in order to help them conserve the natural resources on their lands. There are several programs available through the NRCS, a department of the U.S. Department of Agriculture (USDA). These include:

- *Environmental Quality Incentives Program*. “Provides assistance to farmers and ranchers in complying with Federal, State, and tribal environmental laws, and encourages environmental enhancement."

- *Agricultural Management Assistance*. "Provides cost share assistance to agricultural producers to voluntarily address issues such as water management, water quality, and erosion control by incorporating conservation into their farming operations."
- *Wildlife Habitat Incentives Program*. "A voluntary program for people who want to develop and improve wildlife habitat primarily on private land."
- *Wetland Reserve Program*. "A voluntary program offering landowners the opportunity to protect, restore, and enhance wetlands on their property."
- *Conservation Technical Assistance*. Among many other tasks, this program helps farmers "comply with the Highly Erodible Land (HEL) and Wetland (Swampbuster) provisions of the 1985 Food Security Act, as amended." The program "makes HEL and wetland determinations and helps land users develop and implement conservation plans to comply with the law."[18]

Another federal program available to farmers is the Conservation Reserve Program, which is offered through the Farm Service Agency, another department of the USDA. This program makes annual payments to farmers if they take acreage out of production that is located in or near wetland or that is subject to erosion.[19] The State's Environmental Assistance Program provides financial incentives to improve waste management — particularly manure disposal and the use of manure as soil fertilizer — on farms.[20]

"OPTIONS REVIEW" FOR DEVELOPERS

Where farmland or open space is being considered for development, there may be unexplored preservation options. Persons or organizations who may have the resources or interest in preserving a site may not be aware of development proposals until it is too late. In some communities (Southampton, NY, for example) developers are required to consult with public agencies and local non-profit organizations working on farmland preservation prior to coming forward with subdivision or site plan applications.

This creates the opportunity to explore ways to protect the entire site or portions of the site for preservation, for the purpose of farmland use and/or natural resource conservation. When making strategic decisions, many public agencies and non-profit organizations focusing on farmland preservation consider the eminent risk of development. If it comes to their attention that a parcel is the subject of a development proposal, that parcel may be bumped to the top of their preservation priority list.

2.2 COMPLEMENTARY ACTIONS

Many of the smart growth strategies discussed throughout this manual would be complementary of agricultural preservation efforts. In particular, strategies for encouraging village development, as discussed in Chapter 4, would help preserve open space by clustering

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[18] Natural Resources Conservation Service, <www.nrcs.usda.gov/programs>, visited April 16, 2002.

[19] Farm Service Agency, <www.fsa.usda.gov/pas/default.asp>, April 16, 2002.

[20] State of Connecticut, Department of Agriculture, Environmental Assistance Program, *Farm Waste Management*, <www.state.ct.us/doag/business/agtech/agtechfw.htm>, April 16, 2002.

housing and related commercial uses in compact nodes. In Chapter 3, the recommendation for a regional TDR program could go a long way toward protecting farmland and open space.

In addition, there are many "growth management" strategies that could help protect agricultural areas from development. Growth management strategies are designed to control the timing, phasing, location, and character of development and are used extensively throughout the country. But before growth management can be used in Connecticut, the State legislature would have to take the initiative by passing enabling legislation. CRCOG would have to play a key role in working to get such legislation approved, as well as working with local governments on implementation.

URBAN GROWTH BOUNDARIES

Urban growth boundaries (UGBs) are being used throughout the western United States, where incorporated cities and towns are surrounded by vast areas of unincorporated county land. They are used to great effect in the Portland, Oregon metropolitan area, under the administration of a regional governing body. In that region, areas inside the UGB are given priority in terms of public improvements (roads, water, sewer, schools) and are zoned for higher-density development. Meanwhile, development in areas outside the boundary is limited by the relative lack of services and very large-lot zoning.

Barring the establishment of some form of regional planning authority and/or a regional tax-sharing program, the creation of a *regional* growth boundary in the Hartford region would be difficult, if not impossible, to implement and is not currently recommended. While a regional boundary is not practical under the current system of government, UGBs may be feasible in developing rural areas on the outskirts of the region. That is, within an existing town, a UGB may be drawn around an existing hamlet or village center, and the growth boundary can be used to steer development into and around the hamlet and away from rural areas.

The most simple and legally defensible approach is to use the UGB as the basis for public investments and improvements. For example, the municipal government could adopt a policy not to extend particlar urban services outside the UGB. All major roadway improvements, water and wastewater facilities, school infrastructure investments, etc. would be focused within the boundary. This would make commercial and industrial development outside the boundary difficult and residential development there somewhat less desirable. These types of UGBs have been used in Florida for more than two decades.[21]

An even stronger approach would be for the municipality to reduce the allowable density of land areas outside the UGB, while zoning areas within the boundary for higher densities. From a legal point of view, because of property rights protections, local government cannot *prevent* all development or economic use of land outside of the UGB. However, rezoning and limits on urban service extensions are legitimate uses of the local police power, however politically contentious.

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[21] Center for Urban Transportation Research, College of Engineering, University of South Florida, *State Transportation Policy Initiative, Phase I: Transportation, Land Use, and Sustainability*, 1994, <www.fccdr.usf.edu/projects/tlushtml/>, visited May 2002.

IMPACT FEES

Impact fees are used throughout the country to impose upon developers and newcomers the cost of public facilities and services needed for new development. Impact fees have been used extensively for many years in the southern and western United States, where rapid growth can lead to dramatic increases in public needs practically overnight. More recently, the Vermont and Rhode Island legislatures have adopted laws allowing municipalities to charge developers impact fees. In Vermont, one of the motivating factors for the new legislation was the explosive growth that occurred in Chittenden County (Burlington area) in the 1990's. Although Hartford has not been experiencing rapid growth pressures, impact fees could nonetheless be used to charge developers for the full cost of their projects.

Often, development in suburban areas involves the extension of water and sewer lines, the construction of new schools, increases in fire, police, and emergency response facilities and staff, and so on. In Connecticut, such public services are almost entirely paid for through property tax revenues. Predictably, as development continues to occur, public service needs increase and property tax rates tend to increase as well.

By charging developers the cost of new infrastructure needs, property tax increases can be kept under greater control. In addition, it encourages developers to use existing infrastructure in developed areas more efficiently before undertaking the cost of building new infrastructure. That is, the impact fees charged for greenfield development can potentially divert some development back into brownfields or other built-up areas.

Currently, impact fees are not permitted in Connecticut. Other states throughout the country have made extensive use of impact fees, and there is already a significant amount of federal and state case law that has evolved on the topic. The U.S. Supreme Court, in various decisions, has affirmed the validity of using impact fees and other exactions in conjunction with new development. However, the Court has determined that any such impacts fees or exactions must be directly related to the impact in question and must be roughly proportionate in size to the impact.[22] In Rhode Island, where five communities have already adopted local impact fees since 2000, the State enabling law requires local government to develop an impact fee structure that assigns cost for facility expansions on a pro-rated basis to new housing units. This requirement is intended to ensure that the fees imposed are proportional to the impacts.

CONCURRENCY REQUIREMENTS

Concurrency requirements are similar in principal to impact fees, although they address the timing of development rather than the cost. Concurrency requires that the necessary public facilities and services needed for a development project be available *prior* to the completion and occupation of that project.

The State of Florida was the first place to develop and implement the concurrency concept. In 1985, the Florida legislature adopted the Local Comprehensive Planning and Land Development Regulation Act, which requires local government to make sure that specific

[22] For more information, see *Nollan v. California Coastal Commission, 483 U.S. 825 (1987)*, which established the rule that there must be an "essential nexus" between the impact and the impact fee/exaction. See also *Dolan v. City of Tigard 512 U.S. 687 (1994)*, which established the rule that there must be a "rough proportionality" between the impact fee/exaction and the impact.

public facilities and services (i.e., roads, water, sewers, parks, and stormwater facilities) will be available to meet the demands created by new development projects. Concurrency is also required for State facilities, such as State highways.

Government agencies keep track of the available capacity of public facilities and services, and they are responsible for establishing "level of service" standards for those facilities and services. As development applications come forward, governing bodies review those applications — in a process called "concurrency review" — to determine whether enough capacity is available to meet the needs of the proposed project. If a project is determined to be "concurrent," a Certificate of Concurrency is issued, which reserves the appropriate capacity for the project.

If a project is determined not to be "concurrent," the applicant can either (1) scale down the size of the project; or (2) work with the local government to determine a way to eliminate the deficiencies of the project. One option is for the developer to agree to complete or pay for a capacity improvement. For example, if the concurrency review determines that there is not adequate roadway capacity to handle the traffic related to a proposed project, the developer may agree to improve the roadway(s) or intersection(s) that would be impacted.[23]

One of the problems that arose with concurrency in its early years of implementation was that it actually seemed to fuel the process of suburban sprawl. Developers started gravitating toward rural and suburban locations, where they could be sure that there was more than enough capacity in public systems to handle the impacts of their projects. One result of that trend was the Florida Department of Transportation modified its roadway level of service standards for State highways, such that they were more stringent in suburban and rural areas.

Also, recognizing the difficulty of meeting level of service standards and increasing system capacity in densely developed urban areas, the State's Department of Community Affairs sought ways to relax standards for major cities and to allow more innovative solutions to capacity limitations. For example, for projects resulting in traffic impacts, cities like Miami took into account the availability of transit to reduce the need for difficult or costly roadway capacity improvements.[24]

PROMOTE AGRICULTURE AS A BUSINESS

Agricultural land preservation can partly be furthered through policies that bolster the local agricultural industry. Agriculture, after all, is a business enterprise and can benefit from business incentives and economic development strategies. Local government can help market local agricultural products and provide added revenue for farms through roadside farm stands, farmers markets, and agro-tourism.[25] Towns can also provide farmers with information about

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[23] Leon County, Florida, *Concurrency Fact Sheet*, February 23, 1997, <www.co.leon.fl.us/growth/concur.htm>, visited May 2002.

[24] Edward A. Mierzejewski, Ph.D., P.E., Deputy Director of the Center for Urban Transportation Research, *Transportation Concurrency and Level of Service — an Evolving Paradigm*. Source: Floridians for Better Transportation, <www.bettertransportation.org>, visited May 2002.

[25] Agro-tourism refers to farm-related activities and entertainment intended to draw tourists and visitors. The prototype for agro-tourism is the Napa Valley wine country in northern California. In conjunction with grape and wine production, the vineyards and wineries there have established tourist facilities and activities, such as guided tours, wine tasting, wine sales, on-site gourmet eateries and delis, and gift

land preservation programs, tax and estate planning, and farmland assessments and can also provide farmers with valuable technical and financial information.

In promoting agriculture as a business, towns should reach out to farmers and local farm bureaus in order to better understand their needs and concerns. It is critical to understand what factors are pushing farmers and farm operations out of town, and what actions on the part of the local government can help them stay in business. Towns should also reach out to residents in order to promote the benefits of the agricultural economy — jobs, tax revenue, and fresh farm products.

2.3 FISCAL AND ECONOMIC IMPACTS

The fiscal and economic impacts of each individual technique discussed above are different. Tax programs, right-to-farm regulations, and agricultural districts have not been studied extensively for their economic impacts. Because these programs are intended to assist farmers, rather than preserve farmland, no discernable impact on land value would be expected.

Farmers and property owners may be reluctant to sell development easements or accept large-lot zoning, precisely because those techniques could affect the value of their land. Once an easement is sold, farmers may lose potential future equity value. Nevertheless, the sale of a development easement does not completely erase the value of a property, and the agricultural value of the land may actually increase as a result of its permanent preservation. Moreover, the reduced value would also be likely to result in a lower tax assessment, resulting in a potential financial benefit for the farmer. Large-lot zoning, depending on the extent of the reduced zoning yield, may not necessarily decrease property values. If the local real estate market places a premium on larger lots, farm owners (as a group) may actually break even or benefit from the large-lot change.

From the municipality's point of view, farming may be the preferable land use. In most towns, farms result in a net gain in tax revenue to the town. That is, they pay more in taxes than they require from the town in service- or facility-related expenditures. In contract, residences tend to be a net drain on municipal coffers. Thus, it is in the town's best long-term interest to spend money on the purchase of development rights in the short term, because it has the potential to lead to a more stable long-term fiscal situation for the municipality.

shops. Many places have also developed banquet facilities for parties, weddings, business functions, and other similar events. Wineries are not the only form of agro-tourism. Farms that offer hayrides and horseback riding, allow visitors to pick-their-own produce, and sell locally grown and homemade products on-site (from baked goods, to canned goods and preserves, to cut flowers) also provide a form of agro-tourism. "Dude ranches", "farm experience" vacations, and farm-based bed-and-breakfasts, where a portion of the food offered to guests would be produced on the premises, are other types of agro-tourism.

2.4 IMPLEMENTATION STRATEGIES

TAILORED PROGRAM

Agricultural preservation strategies must be tailored to the existing conditions in the community. Tax programs, right-to-farm regulations, purchase of development easements, and agricultural districts can be extremely helpful in rural areas, as a way of preserving existing farm operations or promoting the expansion of agricultural business. In communities experiencing intense development pressure, strategies that target land preservation are more appropriate.

In addition, municipalities need to keep in mind that no single program will be sufficient unto itself. *The preferred approach is to piece together several different strategies* that help protect farmland and bolster farming activities in a coordinated fashion. For example, some towns in the Hartford region are large enough that they have both rapidly developing suburban areas, as well as undeveloped rural areas and open spaces. Therefore, various strategies, each addressing different pieces of the development puzzle, could all be utilized simultaneously.

Optionally, the local government can provide developers with the flexibility to choose which preservation programs would work best for their properties. In Southampton, Long Island, for example, developers are required to make a good faith effort to develop a conservation-based site plan that seeks to preserve open space and resource areas. To demonstrate their good faith effort, they are required to meet with one or more local non-profit environmental protection organizations, to record the outcomes of their meetings, to present to the planning board how they have addressed the concerns raised during those meetings, and to demonstrate how those concerns were taken into account in developing the site's conservation program.

TIMING

Initiatives for farmland preservation often fail because they are initiated too late in the process of suburbanization. When towns are primarily rural in use and character, farmers and property owners feel no immediate pressure to protect farmland from development. However, once the suburbanization process has begun and residents begin to clamor for open space protection, farmers become resistant to preservation for financial reasons, and developers and speculators enter the debate in opposition to "new" restrictions on development.

When towns are predominantly rural in use, it may be easier to implement some simple but significant preservation strategies. In particular, rezoning to larger lots may be more feasible in this early stage. Early on, reduced density zoning in a rural area would have less of a negative impact on property values, because the housing market is not well-established and the overall demand for housing is still relatively low. Offering lots of five acres or more in size may actually be to the land owner's advantage, because large lots are typically in greater demand in rural areas. There is anecdotal evidence that reduced density zoning can actually increase property values. For example, in Virginia Beach, Maryland, rural areas were

downzoned from five- to 15-acre lots, and some appraisals in those rural areas increased markedly after the rezoning.[26]

The purchase of development easements is another strategy that can be more easily implemented in the early stages of suburbanization. Land is relatively less expensive in these early stages. Also, because the land is not eminently in danger of being developed, the purchasing entity can take more time to seek out matching funds from other government agencies, foundations, or non-profit organizations. Also, there may be an opportunity at this early stage to purchase large, contiguous tracts of farmland (which are more commercially viable for agriculture), rather than small, fragmented pieces.

Whereas rezoning and the purchase of development easements may be more feasible at this early stage of suburbanization, TDR would not be appropriate yet. The housing market is not advanced enough, and most likely, the municipal government would not have the resources to administer such complex programs. Cluster development would be feasible and could be extremely useful during these early stages in protecting not only farmland, but scenic vistas as well. That is, housing clusters can be set back and screened from scenic rural byways, allowing areas visible from the roadside to remain agricultural in character.

PUBLIC OUTREACH

Adoption and implementation of farmland preservation requires a public education and outreach campaign to explain the benefits and allay fears of property devaluation. The outreach effort must be used to identify the different constituents, their needs, and areas where they may be willing to compromise. When farmland preservation is debated at the local level, there are typically three main groups that come forward as interested parties: (1) farmers and property owners, (2) developers and speculators, and (3) residents and environmental and open space civic groups.

Farmers and Property Owners

Farmers and property owners are typically resistant to techniques that might devalue their land. While many farmers, if money were no object, would prefer to continue farming and to preserve their land for generations to come, they are forced to work within the parameters of the highly competitive agricultural economy. Farmers are often trying to cope with the following factors simultaneously:

- Small-scale farms in the northeastern U.S. have a difficult time competing with the larger commercial operations and the year-round cultivation periods of western and southern farms. New England farms may have a difficult time staying in business.
- Often, farmland is a farmer's single greatest financial asset, and a farmer may be counting on the sale of the property to pay off debts or plan for retirement.
- The children of farmers often have little or no interest in continuing to farm, preferring to work in more lucrative blue-collar or white-collar service professions. Although a farmer may be willing to continue working until retirement, she or he may

[26] "Rural Land Value Report Due; Jurisdictions Cite Increases Despite Lower Densities," *Leesburg Today*, August 9, 2000. <www.leesburg2day.com>, visited November 30, 2001.

at that time want their children (who are not farmers) to enjoy the financial windfall from the sale of the real estate.

Farmers and property owners are typically more open to free-market approaches like the sale of development *easements*, which would allow them to recover some of the equity value of their land. Farmers are also generally more willing to consider proposals for TDRs or cluster development than a downzoning.

Developers and Speculators

In contrast, many developers are fond of neither downzoning, nor alternative techniques like cluster development or TDR programs. The development community in suburban Connecticut, as in many other parts of the country, tends to believe that the housing market will be able to absorb virtually nothing other than detached, single-family homes on one-acre, two-acre, or larger lots. Developers often claim that there is no market for TDRs and that smaller-lot homes in a cluster development would not be marketable.

In reality, if the TDR program's receiving area is strategically sited, there could be an extremely strong market for development rights, and changing demographic trends (more seniors, more single-person households, more single-parent households) suggest that there is a market for smaller-sized houses on smaller lots with more amenities. Chapters 3 and 4 discuss these issues in greater detail.

There are some innovative developers as well who are interested and willing to build more compact housing, with open space preserves and an emphasis on high-quality architectural and neighborhood design. Based on successful models of "neo-traditional" neighborhood like Kentlands, Maryland and Celebration, Florida, these developers recognize that there is an untapped market for smaller, more compact housing, with shared open space and significant view and design features — even in suburban areas. These developers, instead of being resistant to TDR and cluster strategies, are often quite supportive.

Residents and Civic Groups

Residents and local civic organizations are typically the most vocal proponents of open space preservation. Reacting to the negative consequences of sprawl, residents often feel that open space preservation would help maintain their high quality of life, the quality of the natural environment, the visual quality of the landscape, and their property values. According to a January 2000 survey conducted by the UConn Center for Survey Research and Analysis, 91 percent of Connecticut residents agree that preserving farmland in rural areas is important and 90 percent agree that it is important to maintain farmland for future generations.[27]

At the same time, residents disagree as to the exact *tools* that should be used. As with landowning farmers, landowning residents are often concerned that rezoning would result in a loss of equity value. Some people have a difficult time understanding how TDR programs and cluster development work, and they may be wary of greater government regulation. To some residents, the more compact development that would result in a TDR receiving zone or a

[27] State of Connecticut, Department of Agriculture, Connecticut Food Policy Council, *Farmland*, <www.foodpc.state.ct.us/farmland_preservation.htm>, visited March 4, 2002.

cluster residential development seem out-of-character with the rural surroundings. Residents may have a difficult time visualizing what high-density development would look like and how it could fit into the rural context.

If appropriately designed, high-density development will be not out of character with a rural area. Compact, mixed-use, pedestrian-oriented villages have been a common form of development in rural areas for centuries. This development style is not a departure from tradition, but actually a way to avoid sprawl, protect open space, and return to more traditional patterns. To counteract misperceptions, residents should be shown examples of both traditional New England villages and neo-traditional development (built to a higher density than people realize), which are often extremely popular places to live. Chapters 4 and 6 include discussions of strategies for achieving higher-density, neo-traditional development.

2.5 IMPLICATIONS AND RECOMMENDATIONS

Currently, Connecticut municipalities already have a number of legal tools on hand for preserving agricultural land. State law allows municipalities to undertake purchase of development rights (PDR) programs, transfer of development rights (TDR) programs, and cluster development; rezoning is a right inherent in the zoning laws of the State; and the State offers differential tax assessment for farm properties.

One of the biggest impediments to the use of these tools in the Hartford region is the political volatility of the subject. In order to build political acceptance for innovative preservation techniques, municipalities need to engage in a concerted educational campaign, as noted in Section 2.4.

Additional regulatory and financial tools would be helpful as well. With a greater number of strategies to choose from, towns would be able to piece together a multi-faceted program that is tailored to their needs. CRCOG should work with State officials to move toward enabling legislation for UGBs, impact fees, and concurrency requirements. These are extremely powerful tools that could not only help preserve farmland, but also provide real incentives for infill development in urban and suburban areas, encouraging more efficient patterns of development and stemming the tide of sprawl. Just as preservation initiatives at the local level may encounter political opposition, so might CRCOG's efforts at State level. There would be concern about the loss of property value and fear that impact fees and concurrency requirements would stand in the way of growth. CRCOG should be prepared to educate legislators as to the merits of these preservation techniques.

CRCOG should continue working with other non-governmental organizations to lobby for additional funding in the State budget for the purchase of development easements. Purchase programs are politically attractive in that they compensate property owners for the loss of their property rights, but they are also the most expensive option for the public sector. This suggests that funding for the Farmland Preservation Program is vulnerable to cuts in lean years, and persistent advocacy will be necessary in order to ensure that funds are available on an ongoing basis. CRCOG should also work with the State to develop incentives for local towns, foundations, and non-profit agencies to come up with matching funds for federal and State preservation monies.

2.6 RESOURCES FOR MORE INFORMATION

American Planning Association. *Planning Advisory Service Report Number 479: The Principles of Smart Development*. Chicago: American Planning Association, 1998.

American Farmland Trust, *Farming on the Edge*. Washington, D.C.: American Farmland Trust, March 1997.

American Farmland Trust, *Purchase of Agricultural Conservation Easements: What Works*. Washington, D.C.: American Farmland Trust, January 1996.

American Farmland Trust, *Saving American Farmland: What Works*. Washington, D.C.: American Farmland Trust, January 1997.

Arendt, Randall. *Growing Greener: Putting Conservation into Local Plans and Ordinances*. Washington D.C.: Island Press, 1999.

National Governors Association, Center for Best Practices. *Private Lands, Public Benefits: Principles for Advancing Working Lands Conservation*. Washington, D.C.: National Governors Association, 2001.

Pruetz, Rick. *Saved by Development: Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights.* Burbank, CA: Arje Press, 1997.

NON-PROFIT ORGANIZATIONS

American Farmland Trust
Northeast Regional Office
One Short Street, Suite 2
Northampton, MA 01060
Phone: (413) 586-9330
Fax: (413) 586-9332
<www.farmland.org>

Connecticut Farm Bureau
510 Pigeon Hill Road
Windsor, CT 06095
Phone: (860) 298-4400
Fax: (860) 298-4408
<www.cfba.org>

Connecticut Land Trust Service Bureau
55 High Street
Middletown, CT 06457
Phone: (860) 344-0716

Connecticut Rural Development Council
Northwestern Connecticut Community College
Park Place East
Winstead, CT 06098
Phone: (860) 738-6413

Fax: (860) 738-6431
<www.ruralct.org>

Land Trust Alliance
New England Field Office
5 Strong Avenue, Suite 6
Northampton, MA 01060
Phone: (413) 587-0300
Fax: (413) 587-0302
<www.lta.org>

Trust for Public Land
Connecticut Field Office
383 Orange Street
New Haven, CT 06511
Phone: (203) 777-7367
Fax: (203) 777-7488
<www.tpl.org>

Working Lands Alliance
c/o Hartford Food System
509 Wethersfield Avenue
Hartford, CT 06114
Phone: (860) 296-9325
Fax: (860) 296-8326
<www.workinglandsalliance.org>

GOVERNMENT AGENCIES

Farm Service Agency
United States Department of Agriculture
1400 Independence Ave., S.W., STOP 0506
Washington, DC 20250-0506
Phone: (202) 720-7809
<www.fsa.usda.gov/pas/default.asp>

Farm Service Agency
CT Office
88 Day Hill Road
Windsor, CT 06095-1726
Phone: (860) 285-8483

Natural Resources Conservation Service
United States Department of Agriculture
P.O. Box 2890
Washington, DC 20013
Phone: (202) 720-4525
Fax: (202) 720-7690
<www.nrcs.usda.gov>

Natural Resources Conservation Service
CT Office
16 Professional Park Road
Storrs, CT 06268-1299
Phone: (860) 487-4011

Rural Information Center
National Agricultural Library
10301 Baltimore Avenue, Room 304
Beltsville, MD 20705
Phone: (301) 504-6856
<ric@nal.usda.gov>

State of Connecticut
Department of Agriculture
765 Asylum Avenue
Hartford, CT 06105
Phone: (860) 713-2500
Fax: (860) 713-2514
<www.state.ct.us/doag>

State of Connecticut
Department of Environmental Protection
79 Elm Street
Hartford, CT 06106
Phone: (860) 424-3001
Fax: (860) 424-4153
<dep.state.ct.us >

ACADEMIA

Center for Applied Rural Innovation
Institute of Agriculture and Natural Resources
University of Nebraska, Lincoln
Lincoln, NE 68588
Phone: (402) 472-1772
<www.ianr.unl.edu/rural>

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Peddle, Michael. *Farmland Protection Policy: The Effects of Growth Management Policies on Agricultural Land Values*. Washington, D.C.: American Farmland Trust, January 1997.

Pruetz, Rick. *Saved by Development: Preserving Environmental Areas, Farmland and Historic Landmarks with Transfer of Development Rights.* Burbank, CA: Arje Press, 1997.

Pruetz, Rick. *Saved by Development Supplement*. Distributed at the 2000 Conference of the American Planning Association, April 2000.

"Rural Land Value Report Due; Jurisdictions Cite Increases Despite Lower Densities," *Leesburg Today*, August 9, 2000. <www.leesburg2day.com>, visited November 30, 2001.

2.8 SAMPLE ORDINANCE

The sample ordinance presented herein is the right-to-farm ordinance adopted by the City of Davis, California in 1995. Davis is a rural town with a strong historic center and a major university, and is located on the I-80 corridor, halfway between Sacramento and San Francisco. Because of sprawl development encroaching from both cities, Davis has been subject to intense development pressure since the mid-1980's. Davis's right-to-farm ordinance is notable, because it includes provisions that require existing property sellers to notify prospective buyers of the existence of agricultural activity in the area. Moreover, as a condition of approval of a discretionary development permits (i.e., subdivision approvals, use permits, rezoning, planned development applications), the City requires a right-to-farm notice to be attached to the property title as a deed restriction. By integrating the right-to-farm protections in the actual deed, new property owners would have a more difficult time bringing suit against alleged agricultural nuisances.

In reviewing the Davis ordinance, readers should also note that additional farmland protection strategies were folded into the ordinance. Buffers measuring 150 feet are required for new development abutting designated agricultural and open space areas. Even wider setbacks of 500 feet are recommended (although not required) in order to comply with County-recommended aerial spray setbacks. Such agricultural buffers can be utilized in Connecticut as well, but because lot sizes tend to be smaller in Connecticut than in rural California and because aerial spraying is less common, narrower setback requirements would be more appropriate.

CITY OF DAVIS, CALIFORNIA

ORDINANCE NO. 1823: AN ORDINANCE AMENDING THE CITY OF DAVIS CODE TO PROVIDE A RIGHT TO FARM AND FARMLAND PRESERVATION REQUIREMENTS

The City Council of the City of Davis Does Ordain as Follows:

SECTION 1.

Chapter 30 is added to the Davis Municipal Code to read as follows:

CHAPTER 30: RIGHT TO FARM AND FARMLAND PRESERVATION

Article I. Right to Farm

Section 30-10. Purpose

It is a goal of the City of Davis General Plan to work cooperatively with the Counties of Yolo and Solano to preserve agricultural land in the Davis planning area which is not otherwise identified in the General Plan as necessary for development. It is the policy of the City of Davis to preserve and encourage agricultural land use and operations within the City of Davis and Yolo and Solano counties, and to reduce the occurrence of conflicts between agricultural and non-agricultural land uses and to protect the public health. One purpose of this law is to reduce the loss of agricultural resources by limiting the circumstances under which agricultural operations may be deemed a nuisance.

It is also the policy of the City of Davis to provide purchasers and tenants of non-agricultural land close to agricultural land or operations with notice about the City's support of the preservation of agricultural lands and operations. An additional purpose of the notification requirement is to promote a good neighbor policy by informing prospective purchasers and tenants of non-agricultural land of the effects associated with living close to agricultural land and operations.

It is further the policy of the City of Davis to require all new developments adjacent to agricultural land or operations to provide a buffer to reduce the potential conflicts between agricultural and non-agricultural land uses.

Implementation of these policies can be strengthened by establishing a dispute resolution procedure designed to amicably resolve any complaints about agricultural operations that is less formal and expensive than court proceedings.

Section 30-20. Definitions.

For the purpose of this chapter, the following terms shall have the following meanings:

Agricultural land. Those land areas of Yolo County specifically zoned as Agricultural Preserve (A-P), Agricultural Exclusive (A-E), and Agricultural General (A-1), as those zones are defined in the Yolo County Zoning Ordinances, those land areas of Solano County specifically zoned Exclusive Agricultural (A-40), as those zones are defined in the Solano County Zoning Ordinances, and those land areas of the City of Davis specifically zoned as Agricultural (A), Planned Development or any other zoned land as defined by the Davis Municipal Code where the land use on the land within the city limits is agricultural.

Agricultural operations. Any agricultural activity, operation, or facility including, but not limited to, the cultivation and tillage of the soil, dairying, the production, irrigation, frost protection, cultivation, growing, harvesting, and processing of any commercial agricultural commodity, including timber, viticulture, apiculture or horticulture, the raising of livestock, fur-bearing animals, fish or poultry, agricultural spoils areas, and any practices performed by a farmer or on a farm as incidental to or in conjunction with such operations, including the legal application of pesticides and fertilizers, use of farm equipment, storage or preparation for market, delivery to storage or to market, or to carriers for transportation to market.

Agricultural processing facilities or operation. Agricultural processing activity, operation, facility, or appurtenances thereof includes, but is not limited to, the canning or freezing of agricultural products, the processing of dairy products, the production and bottling of beer and wine, the processing of meat and egg products, the drying of fruits and grains, the packing and cooling of fruits and vegetables, and the storage or warehousing of any agricultural products, and includes processing for wholesale or retail markets of agricultural products.

Property. Any real property located within the city limits.

Transferee. Any buyer or tenant of property.

Transferor. The owner and/or transferor of title of real property or seller's authorized selling agent as defined in Business and Profession Code Section 10130 et. Seq., or Health and Safety Code Section 18006, or a landlord leasing real property to a tenant.

Transfer. The sale, lease, trade, exchange, rental agreement or gift.

Section 30-30. Deed Restriction.

As a condition of approval of a discretionary development permit, including but not limited to tentative subdivision and parcel maps, use permits, and rezoning, prezoning, and planned developments, relating to property located within one thousand (1000) feet of agricultural land, agricultural operations or agricultural processing facilities or operations, every transferor of such property shall insert the deed restriction recited below in the deed transferring any right, title or interest in the property to the transferee.

Right to Farm Deed Restriction

The City of Davis, Yolo and Solano Counties permit operation of properly conducted agricultural operations within the City and the Counties.

You are hereby notified that the property you are purchasing is located within 1000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful

agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but are not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents and/or the operations of machinery (including aircraft) during any 24 hour period.

One or more of the inconveniences described may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides and fertilizers occur in farming operations. Should you be concerned about spraying, you may contact either the Yolo or Solano County Agricultural Commissioners.

The City of Davis' Right to Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with law. Should a farmer, agricultural processor or other person not comply with appropriate state, federal or local laws, legal recourse is possible by, among other ways, contacting the appropriate agency.

In addition, the City of Davis has established a grievance procedure to assist in the resolution of disputes which arise between the residents of the City regarding agricultural operations.

This Right to Farm Deed Restriction shall be included in all subsequent deeds and leases for this property until such time as the property is not located within 1000 feet of agricultural land or agricultural operations as defined by Davis City Code Section 30-20.

Section 30-40. Notification to Transferees.

Every transferor of property subject to the notice recorded pursuant to Section 30-30 shall provide to any transferee in writing the Notice of Right to Farm recited below. The Notice of Right to Farm shall be contained in each offer for sale, counter offer for sale, agreement of sale, lease, lease with an option to purchase, deposit receipt, exchange agreement, rental agreement, or any other form of agreement or contract for the transfer of property; provided that the Notice need be given only once in any transaction. The transferor shall acknowledge delivery of the notice and the transferee shall acknowledge receipt of the notice.

The form of Notice of Right to Farm is as follows:

Notice of Right to Farm

The City of Davis, Yolo and Solano Counties permit operation of properly conducted agricultural operations within the City and the Counties.

You are hereby notified that the property you are purchasing/leasing/renting is located within 1000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but are not limited to, noise, odors, fumes, dust, smoke,

burning, vibrations, insects, rodents and/or the operation of machinery (including aircraft) during any 24 hour period.

One or more of the inconveniences described may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides and fertilizers occur in farming operations. Should you be concerned about spraying, you may contact either the Yolo or Solano County Agricultural Commissioners.

The City of Davis' Right to Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with law. Should a farmer, agricultural processor or other person not comply with appropriate state, federal or local laws, legal recourse is possible by, among other ways, contacting the appropriate agency.

In addition, the City of Davis has established a grievance procedure to assist in the resolution of disputes which arise between the residents of the City regarding agricultural operations.

This notification is given in compliance with Davis City Code Section 30-40. By initialing below, you are acknowledging receipt of this notification.

_____ _____

Transferor's Initials Transferee's Initials

The failure to include the foregoing notice shall not invalidate any grant, conveyance, lease or encumbrance.

The notice required by this Section 30-40 shall be included in every agreement for transfer entered into after the effective date of this chapter, including property subject to the deed restriction cited in Section 30-30.

Section 30-50. Agricultural Buffer Requirement.

In addition to the right to farm deed restriction and notice requirement, the City of Davis has determined that the use of property for agricultural operations is a high priority. To minimize future potential conflicts between agricultural and non-agricultural land uses and to protect the public health, all new developments adjacent to designated agricultural, agricultural reserve, agricultural open space, greenbelt/agricultural buffer, Davis greenbelt or environmentally sensitive habitat areas according to the land use and open space element maps shall be required to provide an agricultural buffer/agricultural transition area. In addition, development limits or restricts opportunities to view farmlands. Public access to a portion of the agricultural buffer will permit public views of farmland. Use of nonpolluting transportation measures meets the policy objective of the Davis General Plan. The agricultural buffer/agricultural transition area shall be a minimum of one hundred fifty (150) feet measured from the edge of the agricultural, greenbelt or habitat area. Optimally, to achieve a maximum separation and to comply with the five hundred (500) foot aerial spray setback established by the counties of Yolo and Solano, a buffer wider than one hundred fifty (150) feet is encouraged.

The minimum one hundred fifty (150) foot agricultural buffer/agricultural transition area shall be comprised of two components: a fifty(50) foot wide agricultural transition area located contiguous to a one hundred (100) foot wide agricultural buffer located contiguous to the agricultural, greenbelt, or habitat area. The one hundred fifty (150) foot agricultural buffer/transition area shall not qualify as farmland mitigation pursuant to Article III of this Chapter.

The following uses shall be permitted in the one hundred (100) foot agricultural buffer: native plants, tree or hedge rows, drainage channels, storm retention ponds, natural areas such as creeks or drainage swales, railroad tracks or other utility corridors and any other use, including agricultural uses, determined by the Planning Commission to be consistent with the use of the property as an agricultural buffer. There shall be no public access to the one hundred (100) foot agricultural buffer unless otherwise permitted due to the nature of the area (e.g., railroad tracks). The one hundred (100) foot agricultural buffer shall be developed by the developer pursuant to a plan approved by the Parks and Community Services Director or his/her designee. The plan shall include provision for the establishment, management and maintenance of the area. The plan shall include the use of integrated pest management techniques. An easement in favor of the City shall be recorded against the property which shall include the requirements of this article or, at the developer's discretion, the property shall be dedicated to the City in fee title.

The following uses shall be permitted in the fifty (50) foot agricultural transition area: bike paths, native plants, tree and hedge rows, benches, lights, trash enclosures, fencing and any other use determined by the Planning Commission to be of the same general character as the foregoing enumerated uses. There shall be public access to the fifty (50) foot agricultural transition area. The fifty (50) foot agricultural transition area shall be developed by the developer pursuant to a plan approved by the Parks and Community Services Director or his/her designee. Once the area is improved and approved by the Parks and Community Services, the land shall be dedicated to the City and annexed to a lighting and landscaping assessment district to pay for the maintenance of the area. The City shall maintain the agricultural transition area once the land is improved, dedicated and annexed.

Article II. Dispute Resolution

Section 30-100. Properly Operated Farm Not a Nuisance.

Agricultural operations shall not be considered a nuisance under this chapter unless such operations are deemed to be a nuisance under California Civil Code Sections 3482.5 and 3482.6. Agricultural and agricultural processing operations shall comply with all state, federal and local laws and regulations applicable to the operations.

Notwithstanding any other provision of this Chapter, no action shall be maintained under this Chapter alleging that an agricultural or agricultural processing operation has interfered with private property or personal well-being or is otherwise considered a nuisance unless the plaintiff has sought to obtain a decision pursuant to the agricultural grievance procedure provided in Section 30-110 (Resolution of Disputes) or a decision has been sought but no decision is rendered within the time limits provided in said section. This subsection shall not prevent any party or person from proceeding or bringing a legal action under the provisions of other applicable laws without first resorting to this grievance procedure.

Section 30-110. Resolution of Disputes.

The City of Davis shall establish a grievance procedure to settle any disputes or any controversy that should arise regarding any inconveniences or discomfort occasioned by agricultural operations which cannot be settled by direct negotiation of the parties involved. Either party shall submit the controversy to a hearing officer as set forth below or to Community Mediation Services, if agreed to by the parties, in an attempt to resolve the matter prior to the filing of any court action.

Any controversy between the parties shall be submitted to the hearing officer within ninety (90) days of the later of the date of the occurrence of the particular activity giving rise to the controversy or the date a party became aware of the occurrence.

The effectiveness of the hearing officer for resolution of disputes is dependent upon full discussion and complete presentation of all pertinent facts concerning the dispute in order to eliminate any misunderstandings. The parties are encouraged to cooperate in the exchange of pertinent information concerning the controversy and are encouraged to seek a written statement from the agriculture commissioner as to whether the activity under dispute is consistent with adopted laws and regulations and accepted customs and standards.

The controversy shall be presented to the hearing officer by written request of one of the parties within the time limit specified. Thereafter the hearing officer may investigate the facts of the controversy but must, within twenty-five (25) days, hold a meeting to consider the merits of the matter and within five (5) days of the meeting render a written decision to the parties. At the time of the meeting both parties shall have an opportunity to present what each considers to be pertinent facts. No party bringing a complaint to the hearing officer for settlement or resolution may be represented by counsel unless the opposing party is also represented by counsel. The time limits provided in the subsection for action by the hearing officer may be extended upon the written stipulation of all parties in a dispute.

Any reasonable costs associated with the functioning of the hearing officer process shall be borne by the participants. The City Council may, by resolution, prescribe fees to recover those costs.

Article III. Farmland Preservation

Section 30-200. Purpose and Findings.

The purpose of this chapter and this article is to implement the agricultural land conservation policies contained in the Davis general plan with a program designed to permanently protect agricultural land located within the Davis planning area for agricultural uses.

The City of Davis City Council finds this chapter and this article are necessary for the following reasons: California is losing farmland at a rapid rate; Yolo and Solano county farmland is of exceptional productive quality; loss of agricultural land is consistently a significant impact under CEQA in development projects; the Davis general plan has policies to preserve farmland; the City of Davis is surrounded by farmland; the Yolo and Solano county general plans clearly include policies to preserve farmland; the continuation of agricultural operations preserves the landscape and environmental resources; loss of farmland to development is irreparable and agriculture is an important component of the city's

economy; and losing agricultural land will have a cumulatively negative impact on the economy of the City and the counties of Yolo and Solano.

It is the policy of the City of Davis to work cooperatively with Yolo and Solano Counties to preserve agricultural land within the Davis planning area beyond that deemed necessary for development. It is further the policy of the City of Davis to protect and conserve agricultural land, especially in areas presently farmed or having Class 1, 2, 3 or 4 soils.

The City of Davis City Council finds that some urban uses when contiguous to farmland can affect how an agricultural use can be operated which can lead to the conversion of agricultural land to urban use.

The City Council further finds that by requiring conservation easements for land being converted from an agricultural use and by requiring a 150 foot buffer, the City shall be helping to ensure prime farmland remains an agricultural use.

Section 30-210. Definitions.

Advisory committee. The City of Davis Planning Commission shall serve as the advisory committee.

Agricultural land or farmland. Those land areas of the county and/or city specifically classed and zoned as Agricultural Preserve (A-P), Agricultural Exclusive (A-E), or Agricultural General (A-1), as those zones are defined in the Yolo County Zoning Ordinance; those land areas classed and zoned Exclusive Agriculture (A-40), as defined in the Solano County Zoning Ordinance; and those land areas of the City of Davis specifically classed and zoned as Agricultural (A), Agricultural Planned Development or Urban Reserve where the soil of the land contains Class 1, 2, 3 or 4 soils, as defined by the Soil Conservation Service.

Agricultural mitigation land. Agricultural land encumbered by a farmland deed restriction, a farmland conservation easement or such other farmland conservation mechanism acceptable to the City.

Farmland conservation easement. The granting of an easement over agricultural land for the purpose of restricting its use to agricultural land. The interest granted pursuant to a farmland conservation easement is an interest in land which is less than fee simple.

Farmland deed restriction. The creation of a deed restriction, covenant or condition which precludes the use of the agricultural land subject to the restriction for any non-agricultural purposes, use, operation or activity. The deed restriction shall provide that the land subject to the restriction will permanently remain agricultural land.

Qualifying entity. A nonprofit public benefit 501(c)(3) corporation operating in Yolo County or Solano County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. The following entities are qualifying entities: Yolo Land Conservation Trust and Solano Farm and Open Space Trust. Other entities may be approved by the City Council from time to time.

Section 30-220. Agricultural Land Mitigation Requirements.

Beginning on November 1, 1995, the City of Davis shall require agricultural mitigation by applicants for zoning changes or any other discretionary entitlement which will change the use of agricultural land to any non-agricultural zone or use.

Agricultural mitigation shall be satisfied by:

Granting a farmland conservation easement, a farmland deed restriction or other farmland conservation mechanism to or for the benefit of the City of Davis and/or a qualifying entity approved by the City of Davis. Mitigation shall only be required for that portion of the land which no longer will be designated agricultural land, including any portion of the land used for park and recreation purposes. One time as many acres of agricultural land shall be protected as was changed to a non-agricultural use in order to mitigate the loss of agricultural land; or

In lieu of conserving land as provided above, agricultural mitigation may be satisfied by the payment of a fee based upon a one to one replacement for a farmland conservation easement or farmland deed restriction established by the City Council by resolution or through an enforceable agreement with the developer. The in lieu fee option must be approved by the City Council. The fee shall be equal to or greater than the value of a previous farmland conservation transaction in the planning area plus the estimated cost of legal, appraisal and other costs, including staff time, to acquire property for agricultural mitigation. The in lieu fee, paid to the City, shall be used for farmland mitigation purposes, with priority given to lands with prime agricultural soils and habitat value.

The land included within the 100 foot agricultural buffer required by section 30-50(c) shall not be included in the calculation for the purposes of determining the amount of land that is required for mitigation.

It is the intent of this program to work in a coordinated fashion with the habitat conservation objectives of the Yolo County Habitat Management Program, and, therefore, farmland conservation easement areas may overlap partially or completely with habitat easement areas approved by the State Department of Fish and Game and/or the Yolo County Habitat Management Program. Up to 20% of the farmland conservation easement area may be enhanced for wildlife habitat purposes as per the requirements of the State Department of Fish and Game and/or Yolo County Habitat Management Program; appropriate maintenance processing or other fees may be required by the habitat program in addition to the requirements set forth herein.

Section 30-230. Comparable Soils and Water Supply.

The agricultural mitigation land shall be comparable in soil quality with the agricultural land whose use is being changed to non-agricultural use.

The agricultural mitigation land shall have adequate water supply to support the historic agricultural use on the land to be converted to nonagricultural use and the water supply on the agricultural mitigation land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation.

Section 30-240. Eligible Lands.

The agricultural mitigation land shall be located within the Davis planning area as shown in the Davis General Plan. The criteria for preferred locations or zones for agricultural mitigation land shall be determined by the Davis City Council after receiving input from the advisory committee, Yolo and Solano counties, Woodland, Dixon, the Davis Open Space Committee, the Natural Resources Commission and Yolo and Solano Farm Bureaus. In making their determination, the following factors shall be considered:

The zones shall be compatible with the Davis general plan and the general plans of Yolo and Solano counties.

The zones shall include agricultural land similar to the acreage, soil capability and water use sought to be changed to non-agricultural use.

The zones shall include comparable soil types to that most likely to be lost due to proposed development.

The property is not subject to any easements or physical conditions that would legally or practicably preclude modification of the property's land use to a non-agricultural use.

The advisory committee shall recommend to the City Council acceptance of agricultural mitigation land of twenty (20) acres or more by a qualifying entity and/or the City, except that it may consider accepting smaller parcels if the entire mitigation required for a project is less, or when the agricultural mitigation land is adjacent to larger parcels of agricultural mitigation land already protected. Contiguous parcels shall be preferred.

Land previously encumbered by a conservation easement of any nature or kind is not eligible to qualify as agricultural mitigation land, unless the conservation easement meets the requirements of Section 30-220(f).

Section 30-250. Requirements of Instrument; Duration.

To qualify as an instrument encumbering agricultural mitigation land, all owners of the agricultural mitigation land shall execute the instrument.

The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the agricultural mitigation land.

The instrument shall prohibit any activity which substantially impairs or diminishes the agricultural productivity of the land, as determined by the advisory committee.

The instrument shall protect the existing water rights and retain them with the agricultural mitigation land.

The applicant shall pay an agricultural mitigation fee equal to cover the costs of administering, monitoring and enforcing the instrument in an amount determined by City Council.

The City shall be named a beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualifying entity.

Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the City in perpetuity. Except as provided in subsection (h) of this Section, the qualifying entity or the City shall not sell, lease, or convey any interest in agricultural mitigation land which it shall acquire.

If judicial proceedings find that the public interests described in Section 30-200 of this chapter can no longer reasonably be fulfilled as to an interest acquired, the interest in the agricultural mitigation land may be extinguished through sale and the proceeds shall be used to acquire interests in other agricultural mitigation land in Yolo and Solano Counties, as approved by the City and provided in this Chapter.

If any qualifying entity owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City of Davis.

Section 30-260. City of Davis Farmland Conservation Program Advisory Committee.

The Davis Planning Commission shall serve as the Davis Farmland Conservation Advisory Committee.

It shall be the duty and responsibility of the Planning Commission to exercise the following powers:

- To adopt rules of procedure and bylaws governing the operation of the advisory committee and the conduct of its meetings.
- To recommend the areas where mitigation zones would be preferred in the Davis planning area.
- To promote conservation of agricultural land in Yolo and Solano counties by offering information and assistance to landowners and others.
- To recommend tentative approval of mitigation proposals to City Council.
- To certify that the agricultural mitigation land meets the requirements of this chapter.

Any denial from the advisory committee may be appealed to City Council.

The Natural Resources Commission shall monitor all lands and easements acquired under this Chapter and shall review and monitor the implementation of all management and maintenance plans for these lands and easement areas. The Natural Resources Commission shall provide advice to the Planning Commission on the establishment of criteria for the location of agricultural mitigation lands.

All actions of the Planning Commission and the Natural Resources Commission shall be subject to the approval of the Davis City Council.

Section 30-270. Annual Report.

Annually, beginning one year after the adoption of this Chapter, the City Planning Director shall provide to the Advisory Committee an annual report delineating the activities undertaken pursuant to the requirements of this Chapter and an assessment of these activities. The report

shall list and report on the status of all lands and easements acquired under this Chapter. The Planning Director shall also report to the Natural Resources Commission.

Article IV. Violation

Section 30-300. Violation.

Any person or entity who violates any provision of this chapter shall be deemed guilty of an infraction and, upon conviction thereof, shall be punished by a fine not exceeding the maximum prescribed by law. In addition, any person or entity who violates any provision of Article I of this chapter shall be liable to the transferee of the property for actual damages. In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorney's fees.

Article V. Precedence

Section 30-400. Precedence.

This Chapter shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith.

SECTION 2. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this ordinance. The Davis City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

PASSED AND ADOPTED by the City Council of the City of Davis, State of California, this 15th day of November 1995, by the following vote:

AYES: KANEKO, PARTANSKY, SKINNER, WOLK, ROSENBERG.
NOES: NONE.
ABSENT: NONE
ATTEST: BETTE RACKI, CITY CLERK

Source: Center of Excellence for Sustainable Development, <www.sustainable.doe.gov/greendev/codes.shtml>, visited April 16, 2002.