AGRICULTURE AND RURAL AREA STUDY

ANALYSIS OF RURAL LAND USES

TASK 2.C.

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INTRODUCTION

In performance of Task 2(b) of the Scope of Services, FLC set forth a general framework for a local government's approach to agriculture and rural preservation. Specifically, we identified and described the range of tools typically employed by communities around the country to protect rural areas. In performance of Task 2(c), FLC has attempted to cull from that list of tools those that seem most applicable to Miami-Dade County and those that best reflect the dynamic of the rural, urban, and environmental concerns inherent to the Study Area. Here, we explore the practical application of several of these tools as they have been successfully employed in five communities from around the country:

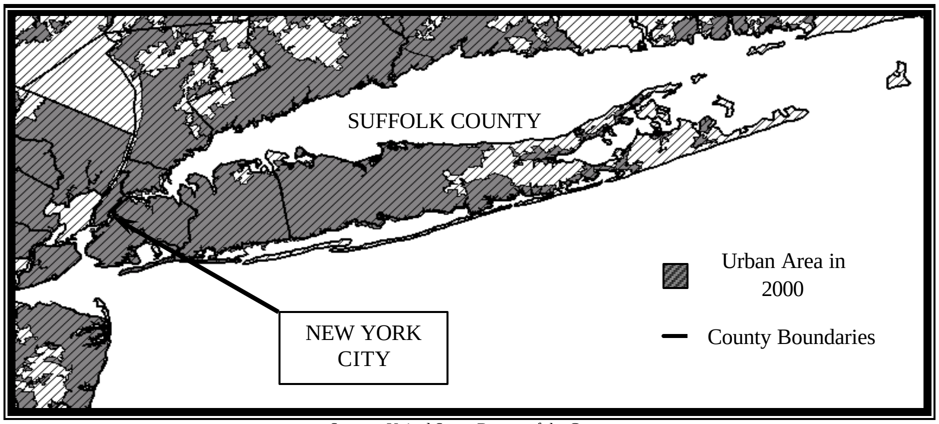
1. Suffolk County, New York;
2. Lancaster County, Pennsylvania;
3. Virginia Beach, Virginia;
4. Montgomery County, Maryland; and
5. Yolo County, California.

These communities were carefully chosen based on the nature of the programs themselves, but also based on the likelihood of their successful implementation in Miami-Dade County.

So far, the Citizens' Advisory Committee (CAC) has indicated a reluctance to adopt agricultural zoning provisions that are not supplemented by economic incentives intended to preserve property values and, where possible, the potential for the property owner to realize reasonable economic gains. Accordingly, FLC has looked to communities that have not only demonstrated marked success in their programs, but that have provided the opportunity for rural property owners to realize some monetary return within the context of a larger preservation program.

We believe that the key to a successful preservation program is to identify an approach that reflects the values and needs of the community in which it is adopted. To that end, we intend for this report to provide a basis for discussion of programs that may either replace or augment Miami-Dade County's existing agricultural policies, including its Severable Use Rights program and the land use policies set forth in its Comprehensive Development Master Plan. Based on CAC comment and the input received at the Visioning and Design Charrette held in December 2002, the Consultant Team (the "Team"), pursuant to Task 2(d) of the Scope of Services, will assemble a final recommended "preferred development scenario." The agricultural preservation programs described in this report provide concrete policy approaches that will inform that final recommendation. The intent, simply put, is to bring the tools discussed generally in Task 2(b) into the context of real-world application in Task 2(c).

SUFFOLK COUNTY, NEW YORK



Source: United States Bureau of the Census

Suffolk County is located on the eastern portion of Long Island in New York State and has been the highest grossing agricultural county in New York for more than two decades.[1] There are 705 farms on 32,500 acres of farmland in Suffolk County. Cash receipts for farming in Suffolk County totaled $180,178,000 in 2001.[2] The leading products sold are nursery and greenhouse, vegetables, potatoes, poultry and poultry products, and fruit and berries.[3] Presently, 10 million square feet of land is used for greenhouses.[4] Given its proximity to New York City, Suffolk County endures significant pressure for urban development.[5]

PRIMARY PRESERVATION TOOL: Purchase of Development Rights

Suffolk County established the first county purchase of development rights (PDR) program in the nation in 1972. The PDR program in Suffolk County has preserved 9,000 to 10,000 acres.[6] As of 1998, Suffolk County had spent approximately $60 million purchasing development rights.[7] Suffolk County's goal is to preserve 20,000 of the 32,500 acres of farmland in the County in large blocks of land.[8] If the 20,000-acre goal were reached, it would preserve one-third of the agricultural land that was available at the beginning of the PDR program in 1972.[9] Currently the average price of development rights is $20,000 per acre, but the price for development rights has gone as high as

[1] AMERICAN FARMLAND TRUST, SAVING AMERICAN FARMLAND: WHAT WORKS 84 (1997).
[2] NEW YORK AGRICULTURAL STATISTICS SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, SUFFOLK COUNTY FARM STATISTICS (2000).
[3] *Id.*
[4] Telephone Interview with Roy Fedelem, Principal Planner, Suffolk County Planning Department (November 5, 2002).
[5] Stephen M. Jones & Roy Fedelem, *Suffolk County Agricultural Protection Plan*, Suffolk County (visited Nov. 21, 2002) <http://www.co.suffolk.ny.us/webtemp3.cfm?dept=11&id=474>.
[6] *Id.*
[7] FARMLAND INFORMATION CENTER, STATUS OF LOCAL PACE PROGRAMS (2002)
[8] Fedelem, *supra* note 4.
[9] NEW YORK AGRICULTURAL STATISTICS SERVICE, *supra* note 2.

$120,000 per acre. The County estimates that it will take at least $200 million to reach its goal of preserving 20,000 acres.[10]

The Farmland Protection Board manages the PDR program. The Farmland Protection Board is comprised of representatives from Suffolk County and the towns in Suffolk County. The County's planning department, real estate division and law department assist with the administrative details of the PDR program, such as negotiating the purchases and drawing up the legal documents. There is no one department or individual within the County dedicated solely to administering the PDR program and advancing agricultural interests within the County.[11]

Funds were first appropriated to the PDR program in 1976, with the first purchases occurring in 1977.[12] Initially the PDR program was funded from the County's capital budget, but in hard times agricultural preservation funding was usually one of the first things to be cut.[13] While Suffolk County still funds part of its PDR program through appropriations from the capital budget, the bulk of the funding currently comes from the County's sales tax, local bond initiatives, state grants and matching money from towns within the County.[14]

In 1998 Suffolk County voters approved $20 million in bond funding for the PDR program,[15] and another $21 million in bond funding in 2001.[16] One-quarter percent of Suffolk County's sales tax also funds purchasing development rights. In 1999 voters extended the dedicated one-quarter percent sales tax to 2013.[17]

Stretching Funds Further

The County's funds are supplemented by money from New York State. Suffolk County applies to New York State for funds from two separate grant programs: funding from a voter approved state bond act passed in 1996 and New York State's Environmental Protection Fund. The 1996 bond provides money to acquire open space, protect water resources, acquire public parkland, and protect farmland.[18] The Environmental Protection Fund, established in 1993, had $12 million for statewide farmland protection programs in 2002.[19]

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[10] Telephone Interview with Roy Fedelem, Principal Planner, Suffolk County Planning Department (November 21, 2002).
[11] *Id.*
[12] AMERICAN FARMLAND TRUST, *supra* note 1, 84.
[13] Fedelem, *supra* note 4.
[14] FARMLAND INFORMATION CENTER, supra note 7.
[15] Linda E. Hollis & William Fulton, *Open Space Protection: Conservation Meets Growth Management*, Brookings Institution, 66 (April 2002), *available on-line at* <http://www.brookings.edu/dybdocroot/es/urban/publications/hollisfultonopenspace.pdf>
[16] *News Briefs*, FARMLAND PRESERVATION REPORT (Street, MD.), Nov./Dec. 2001, at 6.
[17] Hollis, *supra* note 15, 66.
[18] ABOUT THE BOND ACT, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION *available on-line at* <http://www.dec.state.ny.us/website/bondact/index.html>
[19] *Id*.

In addition to the state funds, several of the towns in Suffolk County stretch the County's money further by matching the investment made by the County.[20] The towns raise part of the matching funds through bonds. Two Suffolk County towns passed bond referenda on November 6, 2001 that will generate $7 million in matching funds for the County.[21]

Suffolk County prioritizes its purchases based in part on the price of the development rights. In negotiating the sale of development rights property owners can be persuaded to lower the offering price in return for tax savings. Landowners who sell development rights below established rates benefit from federal tax deductions because the amount discounted from the established rate is treated as a donation.[22]

Strategically Applying Funds

In order to increase the return on its investment, Suffolk County ranks the property of the applicants based upon the established goals adopted by the County. Among the factors used to rank the properties are: the proximity of the land to preserved farm properties, vistas the farm provides, the quality of the soil, the value of the development rights per acre, and the development pressure the farm is facing.[23]

Suffolk County has no zoning authority and makes no effort to influence the zoning decisions of its towns.[24] Suffolk County, however, has reached agreements with some of its towns to limit the types of structures that can be built in agricultural areas.[25] If the County recommends against the construction of a particular structure, towns will usually follow the County's recommendation even though the towns are under no legal obligation to do so.[26]

OTHER PRESERVATION TOOLS

Municipal Programs

Municipalities within Suffolk County also engage in agricultural preservation efforts. Suffolk County dedicates a 2% real estate transfer tax to funding town initiatives to preserve agricultural and open space. These funds are only available to towns whose voters have approved the transfer of money from the County.[27] In addition to these funds, the Town of Riverhead in Suffolk County administers a TDR program separately from the County's PDR program.

State TDR Program

Adding to the milieu of agricultural preservation programs in Suffolk County the State of New York created the Central Pine Barrens Joint Planning and Policy Commission in 1993 to manage a regional TDR program, which is again administered

[20] Fedelem, *supra* note 4.
[21] *News Briefs*, *supra* note 16.
[22] AMERICAN FARMLAND TRUST, *supra* note 1, 94.
[23] Fedelem, *supra* note 4.
[24] *Id*.
[25] AMERICAN FARMLAND TRUST, *supra* note 1, 96-97.
[26] Fedelem, *supra* note 10.
[27] Fedelem, *supra* note 10.

separately from County and town efforts. The Commission adopted a comprehensive land use plan, designating a 55,000 acre Core Preservation area and a 47,500 acre Compatible Growth area within Suffolk County. [28] Agricultural uses that do not involve material alteration of native vegetation are allowed within the Core Preservation area. Landowners in the Core Preservation area are given development rights that they can transfer to the Compatible Growth areas. These TDRs are called Pine Barrens Credits.[29] The Pine Barrens Credit allows development in Compatible Growth areas at a greater residential density than would be allowed under the current zoning of the municipality or, alternatively, will allow more intense development of certain eligible nonresidential properties. [30]

The Joint Commission established an entity called the Pine Barrens Credit Clearinghouse to facilitate the transfer of the Pine Barrens Credits and to purchase the Credits from property owners who wish to sell them. The Clearinghouse issues Pine Barrens Credits pursuant to an adopted allocation formula and monitors their use in receiving areas. Receiving areas were specifically designated in the comprehensive land use plan adopted by the Joint Commission, and additional receiving areas may be authorized by the individual towns of Brookhaven, Riverhead and Southampton.[31]

Peconic Land Trust

The Peconic Land Trust is a private entity that acts as the agent of the County and its towns by negotiating the price and terms of easements with farmers that are interested in selling development rights to either Suffolk County or one of the towns in Suffolk County. The Peconic Land Trust conducts the negotiations for 70-80 % of the sale of development rights in Suffolk County.[32] In addition to the negotiations, the Trust also shepherds the easement through the various steps of the local government approval process and explains the different financing options available to the landowners.[33]

The Trust has developed a relationship with Suffolk County farmers by listening to the problems, aspirations and goals of each individual farmer. By listening, the Trust is frequently able to find some compromise that will preserve the agricultural land, while addressing the farmer's concerns. For example, farmers in Suffolk County frequently desire to keep some of their property for the benefit of their children. When negotiating the easement, the Trust takes this into consideration and reserves several acres of the land for the farmer's family. In this scenario, 80-90 % of the agricultural land has been preserved, and the needs of the farmer have been addressed.

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[28] Hollis, *supra* note 15, 66.
[29] *Id*.
[30] Central Pine Barrens Joint Planning and Policy Commission, *Pine Barrens Credit Program Handbook: A User's Guide to the Central Pine Barrens Transferable Development Rights Program* (October 1995) *available at* <http://pb.state.ny.us/pbc/pbc_handbook.htm>
[31] *Id*.
[32] Telephone Interview with Hoot Sherman, Director of Public Projects, Peconic Land Trust (November 21, 2002).
[33] *Id*.

The relationship that has developed between the Trust and farmers is an important element to the success of the County's PDR program. Farmers in Suffolk County have not always viewed their experiences with local governments positively. Having the Trust as an intermediary allows farmers to feel more confident in the negotiations.[34]

Notable State Program

Property Tax Relief:

New York has a circuit breaker law to reduce taxes for farmers.[35] Circuit breaker programs allow for farmers to take tax credits for part of their local property tax bill. The cost of the tax credit is distributed among all the taxpayers in the state. The New York program, adopted in 1996, provides farmers who earn at least 2/3 of their total household income from farming with relief from local school taxes levied on agricultural land and buildings. Farmers receive a full credit for up to 250 acres of farmland and a fifty percent credit for more than 250 acres. The amount of credit also depends on a family's income.[36]

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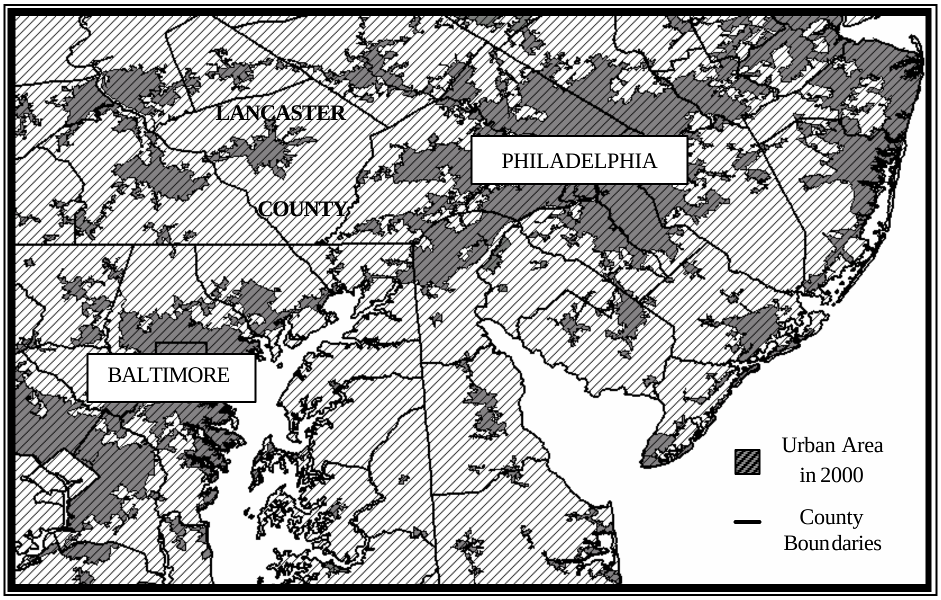
[34] Sherman, *supra* note 32.

[35] AMERICAN FARMLAND TRUST, *supra* note 1, 159.

[36] TOM DANIELS, WHEN CITY AND COUNTY COLLIDE: MANAGING GROWTH IN THE METROPOLITAN FRINGE 155-156 (Island Press 1999).

LANCASTER COUNTY, PENNSYLVANIA



Source: United States Bureau of the Census

Lancaster County, the leading agricultural county in the Northeast,[37] is located 60 miles from Philadelphia, the nation's fourth largest city.[38] In 2000, the County grossed $725,791,000 in cash receipts for crop and livestock products. Milk cows and production, layers and egg production, cattle and calves on hand, and corn and wheat led the list of agricultural activities.[39] Lancaster County has 391,836 acres of land dedicated to agriculture.[40] Concurrently it is one of the fastest urbanizing areas in Pennsylvania.[41] Even with the strong orientation towards agriculture in the County, the development pressure has driven the price of land far higher than its value for agricultural purposes.[42]

PRIMARY PRESERVATION TOOL: Purchase of Development Rights

Despite the tremendous growth pressure, Lancaster County leads the country in the number of acres preserved for agriculture. Lancaster County's primary preservation tool is its purchase of development rights program. As of July 2002, Lancaster County's PDR program had preserved 55,009 acres of agricultural land. 9,944 acres were protected between July 2001 and July 2002. The average cost of development rights per

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[37] Thomas L. Daniels, *Using LESA in a Purchase of Development Rights Program: The Lancaster County, Pennsylvania Case, in* A DECADE WITH LESA: THE EVOLUTION OF LAND EVALUATION AND SITE ASSESSMENT 196 (Frederick R. Steiner, James R. Pease & Robert E. Coughlin eds., 1994).

[38] *Lancaster Moves to Top Spot in Ranking*, FARMLAND PRESERVATION REPORT (Street, MD.), JUL/AUG 2002, 3.

[39] STATISTICAL SUMMARY AND PENNSYLVANIA DEPARTMENT OF AGRICULTURE ANNUAL REPORT, UNITED STATES DEPARTMENT OF AGRICULTURE *available on-line at* <http://www.nass.usda.gov:81/ipedb/>

[40] *Lancaster Moves to Top Spot in Ranking*, *supra* note 38, 3.

[41] Daniels, *supra* note 37, 196.

[42] AMERICAN FARMLAND TRUST, *supra* note 1, 71.

acre in Lancaster County was $1809. $7.5 million is currently available for agricultural preservation.[43]

Lancaster County established its PDR program in 1980.[44] Initially the County purchased development rights for either a 25-year term or in perpetuity.[45] However, since 1987, the County has acquired no 25-year term development rights, and recently the county abolished this option. Presently, the County is in the process of the changing all of the easements that were established with 25-year terms into easements to remain in effect in perpetuity. However, after 25 years a landowner can still ask the County to sell the development right back to them. If the County finds that the land is no longer viable for agricultural use, then the County will sell the development easement back to the landowner for the price of the easement on the market at the time the landowner makes the request.[46]

The County requires farms to have a conservation plan for the property before the County purchases the easement. In addition, the farm must be zoned for agriculture and the farm must not be in a growth area. Lancaster County has no zoning power, so the townships in Lancaster County determine whether farms are zoned agricultural or are in a growth area.[47]

The County's Agricultural Preserve Board administers the PDR program. There are two entities within the County called the Agricultural Preserve Board. The first is a nine-member body of appointed officials who make determinations on County easements. The second is a County department with 5 ½ staffers that manages the day-to-day activities of the PDR program, as well as other ancillary agricultural preservation programs.

The Lancaster County PDR program is funded through a variety of sources, on the county, state and federal level. The County raises funds for the PDR program through bond issues. In 1999 voters approved a bond issue for $25 million. This was the second highest bond issue for agricultural preservation in Pennsylvania. At one time, Lancaster County also funded the PDR program through appropriations from the capital budget, but funds have not been available in recent years. In difficult economic times, appropriations proved to be unreliable, as agricultural preservation was one of the first appropriations to be cut from the capital budget.[48]

Just over 50% of the funding for the PDR program comes from the State of Pennsylvania. The State previously funded agricultural preservation programs in Lancaster County through appropriations, but as with County funds, these funds have not

[43] *Lancaster Moves to Top Spot in Ranking*, *supra* note 38, 4.
[44] FARMLAND INFORMATION CENTER, *supra* note 7.
[45] Daniels, *supra* note 37, 198.
[46] Telephone Interview with Matthew Knepper, Farmland Preservation Specialist, Agricultural Preserve Board, Lancaster County Pennsylvania (November 4, 2002).
[47] *Id*.
[48] *Id*.

been available as of late.[49] Instead, the State funds agricultural preservation in Lancaster County through a variety of other methods. Part of the money comes from state legislation called Growing Greener. The Growing Greener program was approved by the Pennsylvania legislature in 1988 and the first easement was purchased in December of 1989. Growing Greener funds are used not only for agricultural preservation, but other programs such as brownfield development. Growing Greener is financed by surplus landfill tipping fees. The money from Growing Greener enables the State and county governments to purchase development rights from owners of quality farmland. Even though Growing Greener is a state program, offers for conservation easements are made by county boards.[50]

To be eligible for the funds in Growing Greener, the State requires farmland to be located in an Agricultural Security Area (ASA) 500 acres or more in area. There are 111,000 acres of farmland in ASAs in Lancaster County. The ASA protects farmers from nuisance suits, non-agricultural zoning, and eminent domain and condemnation proceedings. Lancaster County facilitates instructing farmers on the benefits of ASAs and helps them with the applications, and maintains records on ASA.[51] Like Lancaster County, the state also requires the farmland selling development rights to have a conservation plan, and before state money can be used approval from the State must be sought.

Pennsylvania also dedicates 2 cents of every dollar from the state cigarette tax to agricultural preservation. This dedicated portion of the cigarette tax raises approximately $23 million a year of which Lancaster County receives approximately $3 to 4 million. Finally, the State also funds agricultural preservation programs with funds from bonds. Pennsylvania's governor campaigned on a $1 billion bond referendum for environmental programs among which was listed farmland preservation.[52]

Recently, the County received funding from the federal government for agricultural preservation through the Farmland Protection Program (FPP). The FPP funding will be used to buy conservation easements from three farms. The money was unexpected to some degree, because of the lack of clarity in the process for obtaining FPP funds, and the high degree of competition for the funds. The money has been given to the State, which will give it to the County.[53]

Stretching the Funds Further

The County uses bargain sales and installment purchases to stretch its funding further.[54] Bargain sales appeal to farmers because selling development rights below value to the County allows the farmer to claim a tax deduction on the difference between

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[49] *Id*.

[50] GROWING GREENER, PENNSYLVANIA BUREAU OF FARMLAND MANAGEMENT (November 7, 2002) *available on-line at* <http://sites.state.pa.us/PA_Exec/Agriculture/G2/apply.html>

[51] Knepper, *supra* note 46.

[52] *Bond Measure Likely, 25-acre Bill Opposed*, FARMLAND PRESERVATION REPORT (Street, MD.), OCT. 2002, 1.

[53] Knepper, *supra* note 46.

[54] *Id*.

the value of the development rights and the amount for which the development rights were sold. In recent years the Lancaster Farmland Trust has helped the County Agricultural Preserve Board by sharing the cost of preserving a farm that was in urgent need, "but was three of four years out" from reaching the top of the County list. The applicant agreed to a discount of 20 percent in exchange for accelerating the process.[55]

The Lancaster County Agricultural Preserve Board has also developed a public-private partnership with the Lancaster Farmland Trust. The partnership enables the Trust to assign an easement to the County in an advance acquisition arrangement that commits the County to reimbursing the Trust the purchase price and related expenses.[56]

Aside from bargain sales, the County engages in two types of installment purchases. There is a traditional installment purchase, where the County simply pays the farmer the value of the easement in five installments. There is also an installment bond program where the County pays part of the cost of a zero coupon bond, and then pays the farmer the tax deductible interest on the bond every year, and the full value of the bond at the end of the bond's term.[57]

Strategically Applying the Funds

Lancaster County used its comprehensive plan as the basis of a local growth management program. The plan identified areas that would be protected for farming and areas where growth would be encouraged. It included policies designed to conserve natural resources and provide affordable housing and adequate pubic services.[58] As stated above, the County has no zoning authority. In order to accomplish its goals, the County worked with its cities and townships to develop urban growth boundaries that set a limit on the extension of sewer and water lines for the next 20 years. To further this strategy, the County purchases development rights near existing development, where the easement costs are typically more expensive. Despite the increased costs, the urban growth boundary strategy is likely to protect much more farmland than just the number of acres placed under farmland preservation easements.[59]

In Lancaster County more than 270,000 acres of farmland are located in agricultural zoning districts, as opposed to ASAs alone, in 35 different townships.[60] While the model agricultural zoning ordinance that Lancaster County created for its municipalities provides for one non-farm lot for every 50 acres,[61] generally municipalities allow one non-farm lot per 25 acres. Agricultural zoning has enabled Lancaster County to avoid leapfrog development jumping over the preserved farms in urban growth boundaries and surrounding preserved farms not within the urban growth

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55 *Counties Find Ways to Help Urgent-Need Cases*, FARMLAND PRESERVATION REPORT (Street, MD.), NOV/DEC 2001, 3.

56 *Id*.

57 Knepper, *supra* note 46.

58 AMERICAN FARMLAND TRUST, *supra* note 1, 32.

59 Daniels, *supra* note 37, 198.

60 RANDALL ARENDT ET AL., RURAL BY DESIGN: MAINTAINING SMALL TOWN CHARACTER 295 (Planners Press 1994).

61 AMERICAN FARMLAND TRUST, *supra* note 1, 59.

boundary.[62] Coupling zoning with the PDR program allows farmers to retain their equity in the land, and gain a source of cash that can be used to adapt their operations to changing conditions.[63]

Although the County has no zoning powers, it still works to influence the zoning decisions of local governments. Local master plans are reviewed to determine if they are consistent or inconsistent with County policies. If the plans are inconsistent, negotiations are conducted to bring about a greater degree of consistency. Local governments engage in this process on a purely voluntary basis.[64]

The PDR program in Lancaster County uses the Land Evaluation and Site Assessment (LESA) system to establish a ranking order for the sale of development rights.[65] Pennsylvania state government developed the ranking system used by Lancaster County.[66] The LESA ranking determines whether a farm should be considered for purchase of development rights and the order in which the farms will be appraised for development rights value. These determinations are made based on the quality of the land for farming (land evaluation) and development pressure (site assessment). Originally, Lancaster County weighted the LESA evaluation system with 70 percent for development pressure and 30 percent for land quality. This weighting reflected Lancaster County's strategy of discouraging the extension of sewer and water lines into good faming areas by protecting farms fairly close to development.[67] The weighting of the ranking system, however, has been recently changed to 60 percent for development pressure and 40 percent for land evaluation. This weighting gives valuable agricultural land more consideration.[68]

Lancaster County protects its investment by working to preserve the agricultural economy within the County. For example, the County takes advantage of agriculture's central role in the make-up of Lancaster County, by working with other agricultural organizations to develop an agricultural tourism market. Representatives from the Agricultural Preserve Board, the local visitor's bureau, and the Lancaster Farmland Trust, to name a few, sit on an agricultural tourism committee which helps to guide and develop agricultural tourism in Lancaster County.[69]

OTHER PRESERVATION TOOLS

Local Government and the Lancaster Farmland Trust

Currently, three municipalities and the Lancaster Farmland Trust administer TDR programs exclusive of the County PDR program.[70] Manheim Township, for instance, has

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[62] Daniels, *supra* note 37, 198.
[63] AMERICAN FARMLAND TRUST, *supra* note 1, 71.
[64] ARENDT, *supra* note 60, 35.
[65] Daniels, *supra* note 37, 197.
[66] Knepper, *supra* note 46.
[67] Daniels, *supra* note 37, 197.
[68] Knepper, *supra* note 46.
[69] Telephone Interview with Matthew Knepper, Farmland Preservation Specialist, Agricultural Preserve Board, Lancaster County Pennsylvania (November 20, 2002).
[70] *Id*.

something akin to a hybrid PDR/TDR program. The Township purchases many of the development rights available on the market or accepts them as gifts. The Township then keeps the development rights in a revolving fund to be sold or else retires the development rights.[71]

Other Notable State Programs

Land Trust Reimbursement Grant Program:

The Lancaster Farmland Trust benefits from funding from Pennsylvania's Land Trust Reimbursement Grant Program. The Land Trust Reimbursement Grant Program reimburses land trusts up to $5000 for acquisition expenses incurred in acquiring agricultural conservation easements. Costs include legal services, appraisals, title work and surveys.[72]

Clean and Green:

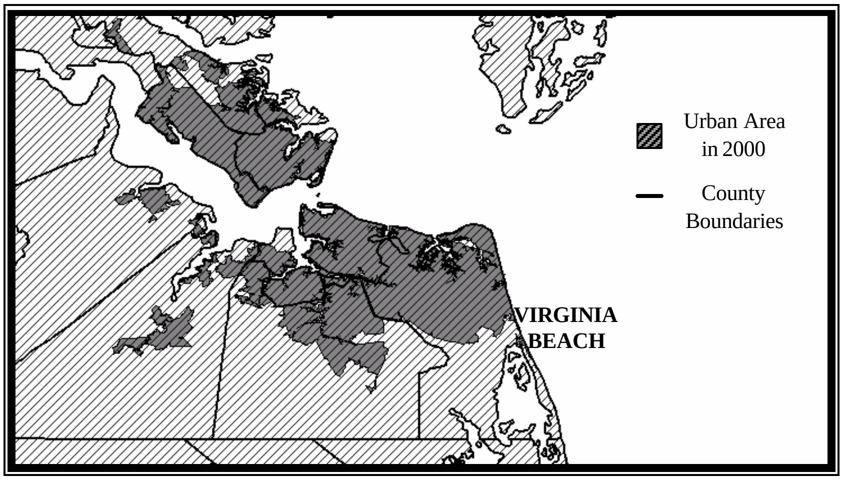
Pennsylvania's Clean and Green program gives farms a preferential tax assessment by assessing the use value of the farm. This usually results in a 50% reduction in assessed taxes.[73]

[71] RICK PRUETZ, SAVED BY DEVELOPMENT: PRESERVING ENVIRONMENTAL AREAS, FARMLAND AND HISTORIC LANDMARKS WITH TRANSFER OF DEVELOPMENT RIGHTS 275 (Arje Press 1997).

[72] *Counties Find Ways to Help Urgent-Need Cases*; *supra* note 56; *see also* LAND TRUST GRANT PROGRAM, PENNSYLVANIA BUREAU OF FARMLAND PRESERVATION, *available on-line at* <http://www.agriculture.state.pa.us/farmland/cwp/view.asp?a=3&Q=119766&farmlandNav=|>

[73] Knepper, *supra* note 46.

VIRGINIA BEACH, VIRGINIA



Source: United States Bureau of the Census

The City[74] of Virginia Beach is located in the southeastern corner of Virginia on the shores of the Atlantic Ocean. As of 1997, there were 29,958 acres of farmland in the City, representing approximately 19% of the total land in Virginia Beach. In 1997 the total cash receipts for agricultural products equaled $13.4 million. Wheat, beans, corn, and hogs are among the highest grossing agricultural enterprises in the City.[75] Development pressure is coming from within Virginia Beach itself and its neighboring city of Chesapeake. The development pressure comes not only in the form of housing demand, but a need to maintain and upgrade roads running through agricultural areas for urban and suburban commuters.[76]

PRIMARY PRESERVATION TOOL: Purchase of Development Rights

The PDR program in Virginia Beach has preserved 6,350 acres of farmland at a cost of $4,500 to $30,000 per acre. There are approximately 2000 acres of development rights waiting to be processed.[77] In May 2001, the City celebrated saving 5,000 acres, a quarter of its goal of 20,000 acres.[78]

Lacking assistance from the state of Virginia on agricultural preservation, the City of Virginia Beach started a PDR program. The PDR program is called the Agricultural Reserve Program. Funding for the program began in 1995, and the first closing was

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[74] Although it is called the City of Virginia Beach, Virginia Beach can also be considered a county. Princess Anne County and the City of Virginia Beach merged on January 1, 1963 to form the City of Virginia Beach. VIRGINIA BEACH CITY: U.S. CENSUS OF AGRICULTURE, VIRGINIA AGRICULTURAL STATISTICS SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE (1999). For the purposes of this paper, the City of Virginia Beach will be considered a county.

[75] VIRGINIA BEACH CITY: U.S. CENSUS OF AGRICULTURE, *supra* note 74.

[76] Telephone Interview with Melvin Atkinson, Rural Communities Coordinator, Department of Agriculture, Virginia Beach (November 20, 2002).

[77] *Id*.

[78] *Virginia Programs Exclude "Wealthy" Farms*, FARMLAND PRESERVATION REPORT (Street, MD.), JAN 2001, 4.

made in 1997. The PDR program buys perpetual easements, but gives the farmer the option of coming back to the City after 25 years and asking to buy back the development rights. There is no obligation on the part of the City to sell back the development rights after 25 years. The PDR program is a voluntary program, leaving the decision to farmers when they want to sell the development rights on their land. Unlike Lancaster County, Virginia Beach does not require farmers to do conservation plans before purchasing development rights, because the City does not want to affect the profitability of the farming.[79]

The Rural Community Coordinator administers the PDR program in Virginia Beach and works out of the City's Department of Agriculture. Other departments, such as the planning department and law department, do ancillary work for the PDR program, but the bulk of the administration is done by the Rural Community Coordinator. An Agricultural Advisory Committee reviews all applications before a request is made to the Virginia Beach City Council to purchase the development rights. The Agricultural Advisory Committee reviews the application to see if it complies with the standards listed in the PDR program ordinance. If the application does not comply with the standards in the ordinance, then the application is not submitted to the Virginia Beach City Council.[80]

The primary source of funding is a voter approved 1.5-cent real estate transfer tax.[81] The tax raises $3.5 million dollars a year for the agricultural preservation program. In addition to the funds raised by the tax, the program also receives $300,000 a year from the City's general funds. Initially, part of a new cell phone tax was allocated to the program, but the revenues from the cell phone tax go into the general fund, and there is no guarantee of allocation. Like Lancaster County, Virginia Beach also has been awarded FPP funds, but unlike Lancaster County, Virginia Beach returned the money to the federal government because of the unacceptable conditions required of the farmers in exchange for the money. For example, Virginia Beach was not comfortable requiring farmers to make a conservation plan in exchange for using FPP funding to purchase the development rights.

Stretching the Funds Further

Similar to Lancaster County, Virginia Beach uses installment purchases to stretch its dollars.[82] The City purchases zero-coupon bonds payable in 30 years at approximately 10 cents on the dollar.[83]

Currently, the City of Virginia Beach does not rank farmland before it purchases development rights because the City has enough money to meet the supply of development rights offered by local farmers. In fact, the healthy financial state of the

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[79] Atkinson, *supra* note 76.
[80] VIRGINIA BEACH, ZONING CODE, APPENDIX J: AGRICULTURAL RESERVE PROGRAM
[81] Telephone Interview with Melvin Atkinson, Rural Communities Coordinator, Department of Agriculture, Virginia Beach (November 5, 2002).
[82] *Virginia Programs Exclude "Wealthy" Farms*, *supra* note 78, 4.
[83] AMERICAN FARMLAND TRUST, *supra* note 1, 100.

Agricultural Reserve Program led Virginia Beach to take $5 million from the program to fund other open space programs throughout the City.

If the situation should arise where funds are not available, there is a provision within the PDR ordinance that calls for ranking farmland. Virginia Beach created its own ranking system. The ranking system takes into account the quality of the farmland (35%), the circumstances supporting agriculture (25%), the likelihood of non-farm use (20%), the environmental quality (15%), the historic and scenic values, and application frequency (5%).[84]

Strategically Applying the Funds

Development pressure is presently controlled on agricultural lands by an urban service boundary that surrounds the urban lands in the City of Virginia Beach. The urban service boundary has been in place since 1979. A transitional area or buffer exists between the urban growth boundary and the rural areas where development is allowed but the developer has to pay the costs of all extensions according to standards developed by the City. Outside of the urban service area, approximately 98 % of the land is zoned for agricultural uses.[85]

The agricultural zone has three different densities. One lot per fifteen acres is allowed for land with soil that has poor drainage; one lot per five acres is allowed for the soil with the best drainage; and one lot for ten acres is allowed for soils in between. These density categories stem from Virginia Beach’s concern over septic systems. Soils that drain well can handle more septic systems, so housing density can be increased. This zoning system seems antithetical to farmland preservation, because the best soils have the highest potential for development. However, the increased number of lots permitted on the best soils increases the value of the development rights, and provides a greater incentive for people on the best soils to apply to sell their development rights to Virginia Beach.[86]

In addition to its agricultural preservation activities, the Virginia Beach Department of Agriculture works to enhance the economic vitality of the City's agricultural industry.[87] The department works on marketing, agricultural promotion, and agricultural business development.[88]

The degree of trust between the farmers and City is credited for the success of the program. In addition, the scenic rewards of the program and the financial benefits of growth management technique are also cited by individuals living within the City. The initial success of the program has generated continued support for the program.[89]

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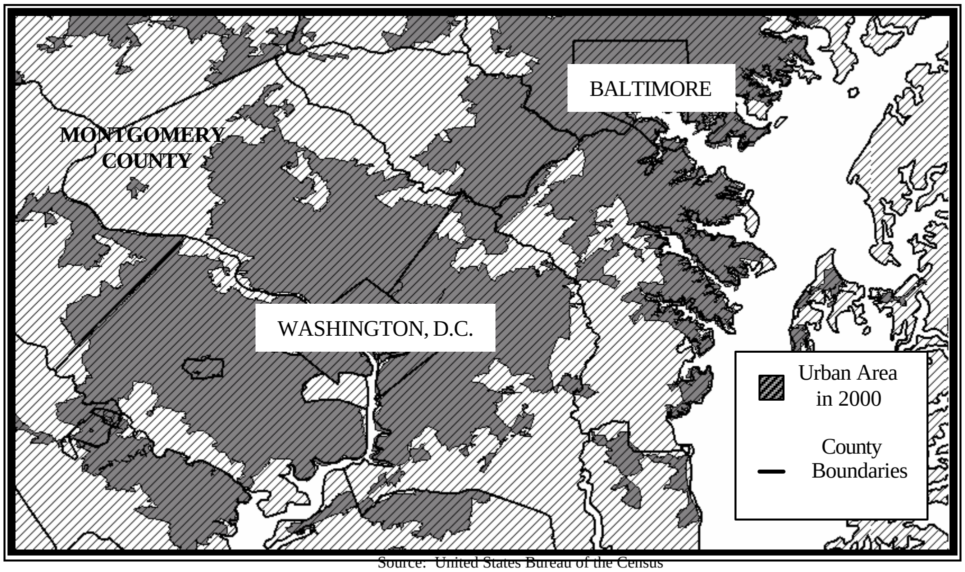
[84] VIRGINIA BEACH, ZONING CODE APPENDIX J: AGRICULTURAL RESERVE PROGRAM
[85] Atkinson, *supra* note 76.
[86] *Id*.
[87] VIRGINIA BEACH AGRICULTURE, CITY OF VIRGINIA BEACH (visited Nov. 14, 2002) <http://www.vbgov.com/dept/agriculture/>
[88] Atkinson, *supra* note 76.
[89] *Id*.

MONTGOMERY COUNTY, MARYLAND



Source: United States Bureau of the Census

Montgomery County is located in Maryland directly to the north of Washington, DC. There are approximately 77,266 acres of farmland in Montgomery County and 526 full-time farms.[90] The majority of Montgomery County farms are family-run operations, many reaching back several generations.[91] The agricultural sector adds $283 million a year to the local economy.[92] The largest crops in Montgomery County are corn, soybeans, and wheat. Hogs and cattle comprise the largest portion of livestock inventories in Montgomery County.[93] In recent years, development pressure has increased as demonstrated by an increase in the conversion of land to non-agricultural uses.[94] In addition, the price of land for development purposes is generally far higher than its price for agriculture.[95]

PRIMARY PRESERVATION TOOL: Transfer of Development Rights

Since its inception in 1981, Montgomery County has preserved 41,270 acres through its transfer of development rights program.[96] The program is presently administered by the Agricultural Services Division of the County's Department of Economic Development. The Agricultural Services Division assists farmers in utilizing the TDR program and tracks the number of TDRs severed and available. The County's

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90 MONTGOMERY COUNTY 2001 AGRICULTURAL PROFILE, UNITED STATES DEPARTMENT OF AGRICULTURE.

91 AGRICULTURAL SERVICES DIVISION, MONTGOMERY COUNTY *available on-line at* <http://www.montgomerycountymd.gov/siteHead.asp?page=/content/ded/index.htm>

92 JEREMY CRISS, FARMLAND PRESERVATION OPTIONS IN MONTGOMERY COUNTY MARYLAND: TRANSFERABLE DEVELOPMENT RIGHTS *available on-line at* <http://www.farmlandinfo.org/fic/ft/ohio/criss.html>

93 MONTGOMERY COUNTY 2001 AGRICULTURAL PROFILE, *supra* note 90.

94 LEAGUE OF WOMEN VOTERS, AGRICULTURE IN MONTGOMERY COUNTY, *available on-line at* <http://www.bcpl.net/~lwv/mont/agrfact.html#tdr>

95 AMERICAN FARMLAND TRUST, *supra* note 1, 71.

96 *Lancaster Moves to Top Spot in Ranking*, *supra* note 38, 4.

goal for the TDR program is to add roughly 200 acres in each of the next 7 years to bring the total of TDR protected land in Montgomery County to 42,701 acres.[97]

The County's Plan for the Preservation of Agricultural Land and Open Space (Plan), adopted in 1981, recommended using the transfer of development rights and agricultural protection zoning to protect agriculture in Montgomery County. Agricultural zoning was recommended to prevent the continued fragmentation of the land, while the transfer of development rights was included to compensate landowners for the resultant equity loss in land value caused by down sizing.[98] Together the two techniques have been used to preserve farmland, while simultaneously protecting land values.[99]

The Plan established a 110,000-acre Agriculture Reserve,[100] where residential density was limited to one dwelling unit per twenty-five acres. This density was based on a county study that found that this was the minimum density that could support a farm family on a cash crop, direct-market basis. In addition, the density was believed to avoid depriving landowners of the economic use of their property,[101] and to protect farms from encroaching development.[102]

91,591 acres of the Agricultural Reserve, representing approximately 33 % of the County's total land area, was designated as a Rural Density Transfer (RDT) zone.[103] In order to offset the impact of the agricultural zoning, landowners received one development right for each five acres of land they owned. This created approximately 18,319 TDRs[104] available for transfer from the RDT zone that property owners could sever from the property and sell on the open market.[105] When the property owner severs TDRs, an easement is placed upon the entire property, forever limiting development on the tract to at most one house per twenty-five acres regardless of future zoning or annexation by the municipality. To date approximately 60% of the TDR easements have been sold.[106]

The market demand for TDRs comes from developers building in areas planned for development and designated in community master plans as "receiving areas". Developers purchase the severed TDRs when they wish to exceed the permitted density in the receiving area. Each TDR allows one additional dwelling unit above the base zone density allowed in the TDR receiving area.[107] Receiving areas were not designated in the 1981 Plan so that appropriate densities could be determined and coordinated with the

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97 LEAGUE OF WOMEN VOTERS, *supra* note 94.
98 CRISS, *supra* note 92.
99 AMERICAN FARMLAND TRUST, *supra* note 1, 260.
100 PRUETZ, *supra* note 71, 213.
101 *Id*.
102 *Task Force: Maryland Counties Must Get Tough with Zoning*, FARMLAND PRESERVATION REPORT (Street, MD.), SEPT 2001, 2.
103 CRISS, *supra* note 92.
104 ARENDT, *supra* note 60, 148.
105 PRUETZ, *supra* note 71, 212.
106 LEAGUE OF WOMEN VOTERS, *supra* note 94.
107 CRISS, *supra* note 92.

other planning goals of communities within the County. The goal is for the eventual market absorption of all TDRs created in the RDT zone sending area by the receiving areas in the County.[108]

Strategic Aspects of the Program

To foster the TDR program, Montgomery County worked to create an appropriate environment for agricultural development. At the same time the County instituted the TDR program, the County adopted nuisance regulations and implemented a capital improvement plan. The capital improvement plan banned sewers and water extensions into the RDT, and rural roads were not to be improved except for maintenance.[109] Land uses in the Agricultural Reserve also were strictly limited to agricultural uses or uses related to agriculture.[110] Outside of the RDT, Montgomery County created a 26,000 acre cluster zone that acts as a buffer zone between the RDT and suburban areas.[111] 40% of the cluster zone was farmland at the time of its designation.[112]

Part of the County's success stems from the County's accommodating administrative environment. One person manages Montgomery County's TDR program.[113] No additional staff is required because the TDR process is part of the existing master plan, subdivision, and zoning processes.[114] In addition to the administrative conveniences of the TDR program, the Agricultural Services Division (Division) of the County has become a central resource for farmers. The Division helps farmers compare different programs available to them, and promotes the needs of farmers at local, state and federal levels.[115] The Division works to provide farmers with information on technological advancements, cooperative arrangements, foreign trade opportunities, and marketing ideas, while increasing the public's awareness of the value and economic impact of agriculture.[116] The Division even goes so far as to market the farm products produced in Montgomery County. As an additional benefit for the farmers and the Division itself, the Division shares a building with several other public and private farm organizations.[117] As a result of these numerous efforts, a strong and successful relationship has developed between the farming community and the Division.[118]

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[108] CRISS, *supra* note 92.
[109] Melissa Banach & Denis Canavan, *Montgomery County Maryland: A Transfer Development Rights Success Story* 122, PLOWING THE URBAN FRINGE: AN ASSESSMENT OF ALTERNATIVE APPROACHES TO FARMLAND PRESERVATION (Hal Hiemstra & Nancy Bush wick, eds., 1989).
[110] LEAGUE OF WOMEN VOTERS, *supra* note 94.
[111] PRUETZ, *supra* note 71, 213.
[112] LEAGUE OF WOMEN VOTERS, *supra* note 94.
[113] ARENDT, *supra* note 60, 299.
[114] Banach, *supra* note 109, 118 & 120.
[115] F. Kaid Benfield, Jutka Terris and Nancy Vorsanger, MONTGOMERY COUNTY AGRICULTURAL RESERVE: THE COUNTRY'S LARGEST FARMLAND PROTECTION PROGRAM, SOLVING SPRAWL: MODELS OF SMART GROWTH IN COMMUNITIES ACROSS AMERICA, *available on-line at* <http://www.nrdc.org/cities/smartGrowth/solve/mont.asp>
[116] AGRICULTURAL SERVICES DIVISION, *supra* note 91.
[117] AMERICAN FARMLAND TRUST, *supra* note 1, 262.
[118] Banach, *supra* note 109.

While the 1981 Plan had specific and clear objectives that helped to protect the TDR program from legal challenges, the implementation of the TDR program was open-ended in nature and proved to be flexible enough for the fine-tuning of incentives and regulations as master plans were completed within the County.[119] The County started the TDR program with a pilot program, before instituting it throughout the County's planning jurisdiction.[120] When the TDR program was implemented throughout the County, it was discovered there were not enough receiving areas. This caused demand for the development rights to be low.[121] To this day incorporated municipalities within the County do not participate in the TDR program.[122] Montgomery County addressed the lack of demand for TDRs with a TDR bank, but in the end Montgomery County worked through these problems and the TDR program proved to be popular enough that the bank was eliminated.[123] Another method Montgomery County used to address the lack of demand for TDRs was adjusting density in receiving areas. Some communities have a minimum density bonus that receiving site projects must use[124] and development standards have been established in the zoning ordinances to allow an optional increase in density if TDRs are purchased.[125] The TDR program was also helped once the County started its PDR program (discussed below) because the PDR program cut the number of development rights, thereby increasing demand on the market.[126]

OTHER PRESERVATION TOOLS

Montgomery County ranks second only to Lancaster County in the number of acres of preserved farmland.[127] While the vast majority of the County's preserved acres are a result of the TDR program, Montgomery County and the state of Maryland also employ several other farmland preservation programs. These other preservation programs currently protect approximately 12,500 acres within the County, and by the year 2008 they are projected to cover an additional 14,800 acres. When combined with the projected number of acres preserved by the TDR program, an estimated 70,000 acres of land will be protected in Montgomery County by 2008.[128] Currently 53,269 acres,[129] more than half of the County's 93,000 acres of viable farmland, is preserved through the transfer of development rights program or other easement purchase initiatives.[130]

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119 Banach, *supra* note 109, 123
120 *Id.* at 116
121 AMERICAN FARMLAND TRUST, *supra* note 1, 260.
122 PRUETZ, *supra* note 71, 213.
123 ARENDT, *supra* note 60, 168.
124 *Id.* at 148.
125 Banach, *supra* note 109, 118
126 AMERICAN FARMLAND TRUST, *supra* note 1, 261.
127 *Lancaster Moves to Top Spot in Ranking*, *supra* note 38, 4.
128 LEAGUE OF WOMEN VOTERS, *supra* note 94.
129 AG FACTS, MONTGOMERY COUNTY *available on-line at* <http://www.montgomerycountymd.gov/siteHead.asp?page=/content/ded/index.htm>
130 AGRICULTURAL SERVICES DIVISION, *supra* note 91.

County Programs

Agricultural Easement Program:

The Agricultural Easement Program has preserved 6,268 acres in Montgomery County.[131] To augment its TDR program, the County purchases the development rights of land within areas zoned Rural, Rural Cluster, and Rural Density Transfer or lands that qualify for an approved Agricultural Preservation District under the Maryland Agricultural Land Preservation Foundation program (discussed below). Unlike the TDR program, the farmer is required to implement a soil and water conservation plan within five years of the County purchasing the development rights.[132]

PDR funds have been strategically applied to create a buffer around the Agricultural Reserve, permanently protecting lands and diminishing development pressure on the agricultural area. 90% of the funds used for the PDR program have been used to purchase easements within 1/2 mile from the Agricultural Reserve boundary line.[133]

Legacy Open Space:

The goal of Legacy Open Space is to protect 1,500 acres of at-risk farmland and rural open space in the Agricultural Reserve. In 2000 Montgomery County began Legacy Open Space as ten-year program with $33 million in local seed money. Funding to date has come from general obligation and park bonds,[134] but there are plans for state and nonprofit funds to be used.[135]

Notable State Programs

Maryland Environmental Trust:

The Maryland Environmental Trust (MET) program has preserved 2,086 acres in Montgomery County.[136] Under the MET program, property owners donate easements to the state in exchange for tax benefits. In order to receive the tax benefits the easements must be perpetual. Farmers receive a 100% local and state property tax credit for 15 years; reduced inheritance and estate taxes; and the right of the donor to deduct up to 30% of adjusted gross income annually until the value of the gift is exhausted.[137]

Maryland Agricultural Land Preservation Foundation:

The Maryland Agricultural Land Preservation Foundation (MALPF) program has preserved 2,074 acres in Montgomery County.[138] MALPF cooperates with local political subdivisions in an effort to slow urban encroachment by establishing agricultural preservation districts. Once in a district, a landowner is eligible to apply to the MALPF to sell an agricultural land preservation easement to the state, which will preserve the

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[131] *Sonoma, Berks, Lancaster Gain Most Acres; Top 12 Named,* FARMLAND PRESERVATION REPORT (Street, MD.), JUL/AUG 2001, 2.

[132] LEAGUE OF WOMEN VOTERS, *supra* note 94.

[133] CRISS, *supra* note 92.

[134] LEAGUE OF WOMEN VOTERS, *supra* note 94.

[135] Hollis, *supra* note 15, 67.

[136] *Sonoma, Berks, Lancaster Gain Most Acres; Top 12 Named*, *supra* note 131, 2.

[137] LEAGUE OF WOMEN VOTERS, *supra* note 94.

[138] *Sonoma, Berks, Lancaster Gain Most Acres; Top 12 Named*, *supra* note 131, 2.

land in perpetuity for agricultural use.[139] The landowner applies to the MALPF and to the County Agricultural Preservation Advisory Board to form an agricultural district and then applies to sell the easement to MALPF. The minimum property size for the creation of an agricultural district is 100 acres in one or more contiguous farms. Montgomery County may offer a supplemental payment of no more than 15% of the state easement offer to the applicant. A soil and water conservation plan must be implemented within 10 years of the purchase of development rights. Although the easement is perpetual, the landowner may apply to buy it back after 25 years. The State and county must agree that "profitable farming is no longer feasible" if the easement is to be sold back to the farmer.[140]

Funding for MALPF comes from two sources. First, a portion of the State's property transfer tax funds MALPF. The property transfer tax is assessed on all real property transfers. Second, funding comes from an agricultural land transfer tax, which is imposed on all transfers of title in agricultural land taken out of production. MALPF receives two-thirds of the amount collected by each county. The remaining one-third is retained by the local jurisdiction for agricultural land preservation purposes. A county that has a certified local agricultural land preservation program may retain 75% of the agricultural transfer tax collected.[141]

Rural Legacy Program:

The Rural Legacy Program has preserved 1,571 acres in Montgomery County.[142] The Rural Legacy Program aims to protect 225,000 acres over 15 years at a cost of $600 million. Funds come from the property tax and general obligation bonds and allow local governments to purchase property or buy interests in real property in designated Rural Areas.[143]

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[139] GENERAL INFORMATION, STATE OF MARYLAND, *available on-line at* <http://www.mda.state.md.us/geninfo/genera21.htm>

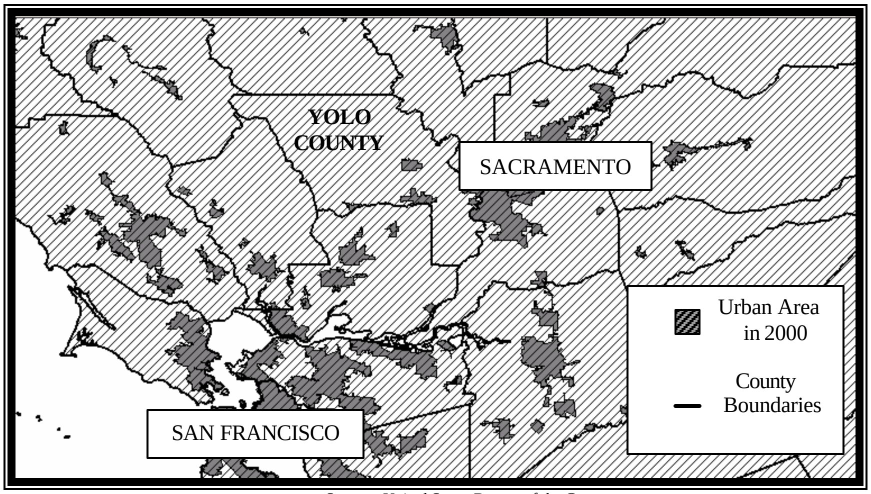
[140] LEAGUE OF WOMEN VOTERS, *supra* note 94.

[141] MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION, DEPARTMENT OF AGRICULTURE, STATE OF MARYLAND, *available on-line at* <http://www.mda.state.md.us/agland/main.htm>.

[142] *Sonoma, Berks, Lancaster Gain Most Acres; Top 12 Named*, *supra* note 131, 2.

[143] LEAGUE OF WOMEN VOTERS, *supra* note 94.

YOLO COUNTY, CALIFORNIA



Source: United States Bureau of the Census

Yolo County is located northeast of the San Francisco Bay area, and directly west of Sacramento. The gross value of agricultural production in 2001 was $288,579,000. Tomato processing, wine grapes, hay, alfalfa, rice and seed crops were the top grossing products.[144] The soil in Yolo County is considered some of the best soil in California.[145] There is a long history of family farms in the area that has led to a strong relationship between the farming community and the County. In fact, many farmers serve on County agricultural committees.[146] In addition to the development pressure from Yolo County's own cities, the development pressure is increased by the proximity and easy commute to Sacramento and the San Francisco Bay area.[147]

PRIMARY PRESERVATION TOOL: The Williamson Act

The preservation program in Yolo County is unlike any of the agricultural preservation programs described above. Presently Yolo County does not have a TDR program and its PDR program is inactive. Instead, Yolo County has made a commitment to agricultural preservation in its comprehensive plan, which the County supports through zoning and the application of state legislation known as the Williamson Act. The County controls growth by making sure that its zoning ordinance and comprehensive plan are as tightly coordinated as possible. Ninety-seven percent of the land in the County is zoned agricultural, and approximately 65% of that land is in an agricultural preservation district with Williamson Act contracts.[148]

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[144] SUMMARY OF COUNTY AGRICULTURAL COMMISSIONERS' REPORTS, 2001, *UNITED STATES DEPARTMENT OF AGRICULTURE*

[145] Telephone Interview with Mitch Sears, Open Space Planning, City of Davis (November 22, 2002).

[146] Telephone Interview with Lance Lowe, Associate Planner, Yolo County Planning Department (November 5, 2002).

[147] Telephone Interview with Catherine Kelly, Yolo Land Trust (November 5, 2002).

[148] Lowe, *supra* note 146.

The Williamson Act was passed in 1965 to protect farmland and open space from urban development. Under contracts with participating local governments, landowners agree to restrict their land uses to agricultural uses or open space in exchange for lower tax assessments.[149] Local governments receive an annual payment of forgone property tax revenues from the state via the Open Space Subvention Act of 1971.[150]

Participating property owners sign a 10-year contract with a county that renews annually. In return for signing the contract, the farmer's lands are assessed for property tax purposes at a rate consistent with their actual use. The Williamson Act is estimated to save agricultural landowners from 20% to 75% in property tax liability each year. The contract obligates the property owner and any successive owners to the terms of the contract. Only property owners within an agricultural preserve may seek to enter into a Williamson Act contract.[151]

As of 1998 farmers can now take advantage of a Super Williamson Act where the farmers can realize even greater savings.[152] The state legislation creates Farmland Security Zones. Land restricted by a Farmland Security Zone contract is valued for property assessment purposes at 65% of its Williamson Act valuation or lower. In addition, new special taxes for urban-related services must be levied at an unspecified reduced rate unless the tax directly benefits the land or living improvements. Besides the financial benefits received by the farmer entering a Farmland Security Zone contract, cities and special districts that provide non-agricultural services are generally prohibited from annexing land enrolled under a Farmland Security Zone contract. Like the Williamson Act, the benefits of a Farmland Security Zone are limited to lands within an agricultural preserve. In addition to being in the agricultural preserve, the land must be on California's Important Farmland Series map. In return for the benefits conferred, farmers enter into a minimum 20-year contract that renews annually and restricts land to agricultural and open space uses.

Yolo County has incorporated the Williamson Act and the Super Williamson Act into its zoning ordinance and created agricultural preserve districts. The ordinance creating the agricultural preserves in Yolo County contains regulations supplementing the regulations in the Williamson Act. Yolo County's agricultural preserve district regulates permitted, accessory, and conditional uses, as well as dimensional regulations for buildings. The ordinance also limits the subdivision of land to those subdivisions that will serve an agricultural purpose.[153]

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[149] WILLIAMSON ACT PROGRAM, DIVISION OF LAND RESOURCE PROTECTION, STATE OF CALIFORNIA *available on-line at* <http://www.consrv.ca.gov/dlrp/LCA>.
[150] BASIC CONTRACT PROVISIONS, DIVISION OF LAND RESOURCE PROTECTION, STATE OF CALIFORNIA *available on-line at* <http://www.consrv.ca.gov/dlrp/LCA/basic_contract_provisions/index.htm#What is the California Land Conservation (Williamson) Act.>.
[151] *Id*.
[152] FARMLAND SECURITY ZONES, DIVISION OF LAND RESOURCE PROTECTION, STATE OF CALIFORNIA *available on-line at* <http://www.consrv.ca.gov/dlrp/LCA/farmland_security_zones/index.htm>
[153] Lowe, *supra* note 146.

Restrictions apply to farmers within the agricultural preserve district even though the farmer may not have entered into a Williamson Act contract.[154] Therefore landowners in the agricultural preserve district who are not in a Williamson Act contract face all of the restrictions of the Williamson Act without realizing any of the benefits. This provides a strong incentive for landowners to enter into or stay in Williamson Act contracts.[155]

OTHER PRESERVATION TOOLS

County Programs

Intergovernmental Agreements:

Another aspect of Yolo County's ability to preserve agriculture has been the County's ability to control development pressure within the County. In the past five years, development pressure has not been as great within the lands of the County because development has been directed into existing urban areas.[156] Several mechanisms have contributed to this. The City of Davis, the largest city in Yolo County, is land banking to create a greenbelt that will act as an urban growth boundary.[157] For its part, the County has limited its authority to develop the areas outside of cities, by entering into referral agreements with the cities in the County. In the referral agreement cities are given control over development proposals that come to the County, but are located in the unincorporated fringes near a city's borders. If the County approves a development in violation of the referral agreement, then Yolo County forfeits the revenue currently shared with cities generated by city expansion.[158]

Mitigation Fee Ordinance:

The conversion of agricultural land to non-agricultural uses does not occur much within the zoning jurisdiction of Yolo County. However, there is growing concern about the downturn in the agricultural economy in Yolo County. Recently, several canneries and a farmer's cooperative have gone out of business. This has caused agricultural land in Yolo County to become available on the open market. The fact that the land is available on the open market is a sign of weakness in the agricultural economy, as agricultural land usually does not reach the open market in Yolo County. How this land is used will have a big impact on how the County develops.[159]

Should agricultural land start to be converted to non-agricultural uses, Yolo County has a mitigation fee ordinance that would work to protect agricultural lands. This agricultural preservation tool was developed by the LAFCO (discussed below) in Yolo

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[154] *Id*.
[155] Kelly, *supra* note 147.
[156] Lowe, *supra* note 146.
[157] PUTTING ACTION INTO THE OPEN SPACE ELEMENT:TECHNIQUES FOR PRESERVING OPEN SPACE AND FARMLAND, GOVERNOR'S OFFICE OF PLANNING AND RESEARCH, 6, *available on-line at* <http://ceres.ca.gov/planning/open_space/opn_spc.pdf>.
[158] Alvin D. Sololow, FARMLAND POLICY IN CALIFORNIA'S CENTRAL VALLEY: STATE, COUNTY, CITY AND INTERGOVERNMENTAL ROLES *available on-line at* <http://www.farmlandinfo.org/fic/I-pubs.html>
[159] Kelly, *supra* note 147.

County and the City of Davis during a previous period of high development pressure.[160] Yolo County adopted its mitigation fee ordinance in 1999.[161] The mitigation fee ordinances adopted by Yolo and the City of Davis are unique in California, and indeed in the country.[162]

Before a zoning change from agricultural to nonagricultural use is permitted the mitigation fee ordinance requires developers to either purchase development rights on agricultural lands or provide the municipality with funds to purchase development rights. For every acre of agricultural land that is converted to another use, an easement or some similar mechanism is required to be granted in perpetuity, or an in-lieu fee for the development rights of an acre of agricultural land must be paid.[163]

There have been no conversions of agricultural lands to nonagricultural uses in Yolo County and as a result the County's mitigation fee ordinance has gone unused.[164] The City of Davis, on the other hand, has had the opportunity to employ its mitigation fee ordinance.[165] Initially, developers bought development rights themselves and gave them to the City. As of late, however, developers have simply been paying in-lieu fees. Given the option of receiving in-lieu fees or development rights purchased by developers, paying in-lieu fees is preferred because the developer is less likely to be concerned with following the overall farmland preservation strategy.[166] The City of Davis has preserved 1100 to 1200 acres with the mitigation fee program and currently has $600,000 in available funds. In total, the mitigation fee ordinance has raised $900,000 over the past ten years.[167]

State Programs

<u>LAFCO</u>

A third party called a Local Agency Formation Commission (LAFCO) also monitors the development of land in Yolo County. LAFCOs are public bodies created by the State of California to bring about more orderly growth patterns in California's urbanizing communities. LAFCOs can supplement state law with their own policies and guidelines for development in a county. In Yolo County, the LAFCO has taken a strong position in favor of agricultural preservation. The LAFCO in Yolo County guides city annexation efforts away from prime agricultural land, forbids cities from annexing land under Williamson Act contract, and seeks the mitigation of farmland loss.[168]

Yolo Land Trust

The Yolo Land Trust, working with the Yolo County Farm Bureau, oversees most easement transactions within the County. The Trust has preserved 5,000 acres of

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[160] *Id*.
[161] Lowe, *supra* note 146.
[162] Kelly, *supra* note 147.
[163] AMERICAN FARMLAND TRUST, *supra* note 1, 103.
[164] Telephone Interview with David Daly, Senior Planner, Yolo County (November 18, 2002).
[165] Sears, *supra* note 145.
[166] Kelly, *supra* note 147.
[167] Sears, *supra* note 145.
[168] *Id*.

agricultural land over the past 7 years. Before farmers started to sell their development rights the Trust needed to work through a learning curve within community, but after the first few transactions activity picked up. The Trust considers the key to its success to be the trust that farmers have in the Trust. The grounds for the good relationship stems from the fact that the Trust's board is made up of rangers and farmers who speak the language and understand the issues of the agricultural community.[169]

Generally easements cost the Trust 30-42% of the price of the land. Rangeland usually goes for $300 per acre, while row cropland usually goes for between $750 and $3000 an acre.[170]

Part of the funds used by the Trust to purchase development rights come from the funds raised by the City of Davis' mitigation fee ordinance. The Trust, however, has a difficult time using the mitigation fee funds, because the City of Davis has attached certain policy goals to the money, which can interfere with the farming practices of some farmers.[171]

The Land Trust gets most of its money from the California Farmland Conservation Program (CFCP). The CFCP, started in 1996, is a statewide grant-funding program that supports local efforts to establish agricultural conservation easements and planning projects for the purpose of preserving important agricultural land resources. The CFCP provides grants to local governments and qualified non-profit organizations like the Yolo Land Trust.[172] Money for the CFCP program came from statewide propositions, which raise the funds through bonds.[173]

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[169] *Id*.
[170] Kelly, *supra* note 147.
[171] *Id*.
[172] OVERVIEW OF CFCP & AGRICULTURAL CONSERVATION EASEMENTS, DIVISION OF LAND RESOURCE PROTECTION *available on-line at* <http://www.consrv.ca.gov/dlrp/CFCP/overview/index.htm>
[173] FREQUENTLY ASKED QUESTIONS: CFCP, DIVISION OF LAND RESOURCE PROTECTION *available on-line at* <http://www.consrv.ca.gov/dlrp/CFCP/FAQ/aboutCFCP.htm>

FACTORS TO CONSIDER IN DEVELOPING AN AGRICULTURAL PRESERVATION PROGRAM

Each of the programs discussed above are tailored to benefit the regions they are meant to effect. While each program is unique, it became apparent in developing this report that there are common themes that run throughout the programs that Miami-Dade County, and any local government, must consider when developing an agricultural preservation program.

Local governments creating an agricultural preservation program should consider…

1. *…using a mix of agricultural preservation tools.*
   - Each of the counties discussed in this paper use a mix of agricultural preservation tools to preserve farmland. In some cases, agricultural preservation tools cannot work unless they are combined with other agricultural preservation tools. For example, unless an area is zoned with the appropriate densities, a market for TDRs will not develop.
   - In other cases, agricultural preservation tools can effectively supplement other agricultural preservation tools. Lancaster County supplements its PDR program with agricultural zoning to stop inefficient urban development, while the County works to purchase development rights and permanently preserve the land.

2. *…incorporating another government's agricultural preservation tools.*
   - In Yolo County two pieces of state legislation, the Williamson Act and the Farmland Security Zones, lie at the heart of the County's agricultural preservation program.
   - Lancaster County will not buy development rights from a landowner unless the land is located in one of the state of Pennsylvania's Agricultural Security Areas.

3. *…intergovernmental cooperation.*
   - Yolo County has entered into referral agreements with cities located within the County. The referral agreements control urban growth by ceding a certain degree of the County's power to approve development close to the boundaries of the cities.
   - On the other hand, Montgomery County has been unable to convince the incorporated municipalities within its boundaries to participate in the County TDR program, causing Montgomery County to lose out on the benefits from the increased demand created if the incorporated municipalities participate.

4. *…creating formal and informal relationships with other agricultural groups.*
   - In Suffolk and Yolo counties, the local land trusts play a central role in acquiring development rights for the counties and the municipalities within the counties. In Suffolk County especially, the Peconic Land Trust plays a necessary role as an intermediary between farmers and the local government.

- The Agricultural Services Division of the Department of Economic Development in Montgomery County benefits from sharing a building with other entities involved in supporting agriculture because they can more easily share resources, have access to one another, and develop relationships between staff.

5. *…who will administer the program.*
   - Lancaster and Montgomery counties, the two most successful agricultural preservation programs in the nation, have specific departments within the county that administer the agricultural preservation program.
   - In Lancaster County a County department called the Agricultural Preservation Board manages the agricultural preservation program. The Agricultural Preservation Board works as a part of the County's planning department, but is considered a distinct department.
   - In Montgomery County the Agricultural Services Division administers the agricultural preservation program. The Agricultural Services Division is located within the County's Department of Economic Development. Locating the agricultural preservation program in the Department of Economic Development orients the program to protecting agriculture as an economic use, as opposed to simply a land use.

6. *…the comprehensiveness of the program.*
   - The Agricultural Services Division engages in numerous activities to help make the agriculture sector in Montgomery County more profitable. The Agricultural Services Division keep farmers abreast of advances in technology and shifts in the agricultural economy; markets farm products produced in the County; promotes the needs of farmers at local, state and federal levels; and does public outreach on the importance of agriculture in the County. Preserving the agricultural economy goes a long way to preserving agricultural land use.
   - Virginia Beach also places the profitability of its farmers at the forefront of its agricultural preservation program, but Virginia Beach takes a hands-off administrative approach to preserving the profitability of its farmers. Virginia Beach works to maintain the profitability of its farmers by not requiring farmers to change their farming practices or create conservation plans in return for receiving the City's money for the farmer's development rights.

7. *…how to efficiently administer the program.*
   - When the TDR program was created in Montgomery County, no additional staff were required to administer the agricultural preservation program because the TDR program was built into the county's existing subdivision, zoning, and master plan processes.

8. *… the legal environment.*
   - An agricultural preservation tool used in one state will not necessarily be legally authorized in another. The County's final programs will be based on programs that are authorized and legally-defensible under Florida law.

9. *…designing flexibility into the program.*
   - Montgomery County's highly successful TDR program was not the result of luck on the first draw, but rather the result of a deliberate intent to incorporate flexibility into the TDR program. The County understood hitches were likely to occur in the implementation of its agricultural preservation program. The flexibility allowed Montgomery County to adjust the program to create an effective demand for TDRs. In addition, foreseeing that the demand for TDRs might be a problem, a TDR bank was created. The TDR bank was eventually eliminated, as the program was adjusted and the problems with demand for TDRs were solved.

10. *…developing clear and specific goals.*
   - Suffolk County and Virginia Beach both have the goal of protecting 20,000 acres of land. Montgomery County has a goal of protecting 70,000 acres of land. Both Virginia Beach and Montgomery County have identified the general areas that will be preserved. These clear and specific goals gives voters the opportunity to understand that there will not be an indefinite appeal for money; help shield the agricultural preservation program against successful legal challenges; and allow the farmer to make investments in the farmland with greater ease, by guiding development away from lands that are intended for agriculture.
   - Instead of having exact numbers, Yolo County and Lancaster County use the master planning process as an opportunity to state their commitment to agricultural preservation, and lay out the details of their agricultural preservation programs.

11. *…strategically applying the program.*
   - Lancaster County ranks available development rights to determine which purchases will go furthest to accomplishing the goals of the agricultural preservation program. Those farms facing the greatest development pressure and with the highest quality of land will be the primary candidates for receiving PDR funds because of the County's goal of creating greenbelts around developing areas. As was mentioned above, zoning supplements the PDR program by protecting the lower ranked lands from development until the property is ranked high enough to receive funding. If the PDR program did not strategically use its ranking system to guide its purchases and zoning to protect the land that was not purchased, the County would not be able to achieve its stated goals.
   - Montgomery and Lancaster counties focus on controlling capital improvements, such as water and sewer lines, within agricultural areas.

12. *…funding options.*
   - Certain programs, like TDRs and mitigation fee ordinances do not create as great a concern for public funds because they are funded through private dollars, although the administration of the program may involve public funds.
   - If a PDR is considered, then funding becomes a priority. While the Virginia Beach program is currently partially funded with appropriations from the capital budget, appropriations are generally are unreliable. Both Lancaster County and

Suffolk County stopped funding their PDR programs with appropriations when the counties experienced difficult economic times. The challenge with PDR programs is to find a secure and predictable source of funding.

13. *…funding sources.*
   - Suffolk County dedicates a ¼ percent of its sales tax to agricultural and open space preservation, and raises money through bonds. Suffolk County also raises money for the agricultural preservation efforts of its towns through a dedicated portion of the County's real estate transfer tax.
   - On a local level, Lancaster County funds its PDR program with bonds. Lancaster County also can count on receiving state assistance for its agricultural preservation programs because the state has dedicated the surplus landfill tipping fee to agricultural preservation, as well as raising funds through bond referenda.
   - Virginia Beach funds its agricultural preservation program through a dedicated portion of the real estate transfer tax.
   - Montgomery County receives money from the state for its PDR program and from a dedicated portion of the real estate transfer tax and an agricultural transfer tax.

14. *…how to stretch funds further.*
   - Lancaster County uses traditional installment purchases, bond-financed installment purchases, bargain sales, and donations to stretch its funds further. Lancaster County also has partnered with the local land trust to speed acquisition of certain lands by having the land trust cover the costs under an agreement whereby the County commits to reimburse the trust for the purchase price and related expenses.
   - Suffolk County stretches its funds by combining its money with money from the state and other local governments.

15. *…the exclusiveness of the program.*
   - In an effort to protect the profitability of farming, Virginia Beach specifically avoids attaching any obligations to its easements that do not have to do with agricultural preservation.
   - Funds raised by the City of Davis' mitigation fee ordinance are currently underused, because of the City has attached conditions requiring farmers to change farming practices.
   - However, in Lancaster County, the most successful agricultural preservation program in the country, both the County and the state require the landowner to create a conservation plan for the land in return for receiving money for development rights.

16. *…the long term.*
   - Lancaster County allows a landowner to purchase back the development rights to their land after 25 years, if the landowner can show that the land is no longer viable for agriculture.
   - Virginia Beach also allows a landowner to request the City to sell the development rights back to the landowner after 25 years.

17. …the key to success: getting and keeping the trust of the farming community.

- Four different individuals interviewed for this paper from four different municipalities, responded with the exact same answer to the question of what the key to success was in an agricultural preservation program: <u>earning the trust of the farming community</u>. Without the trust of the farming community agricultural preservation efforts will not be successful.

CONCLUSION

The foregoing discussion and analysis of the agricultural preservation programs employed by other local governments will be used in conjunction with the other Tasks to craft a recommendation for Miami-Dade County in Task 2(d). While the ultimate recommendation for Miami-Dade County must be tailored to the specific needs of the County, the information garnered from this Report will aid in building upon the successes of other communities, while avoiding the pitfalls that were experienced. This Report will also help to gauge the comprehensiveness of the final recommendation.

As a final note, an appendix is attached to this Report that includes a comparative table of the programs discussed above. The table includes the core aspects of each of the programs discussed above. The table is intended to assist in the comprehension of the information in this Report by allowing the reader to quickly compare the different programs.

APPENDIX: COMPARATIVE TABLE

	COUNTY'S PRIMARY PRESERVATION TOOL					OTHER PROGRAMS WITHIN COUNTY			
	Preservation Tool	*Funding*	*Stretching Funds Further*	*Primarily Administered By*	*Farmland Permanently Preserved*	*County*	*State*	*Cities and Towns*	*Land Trusts*
Suffolk County	PDR	Appropriations, bonds, ¼ % of the sales tax, state grants.	Bargain sales, matching dollars from towns and state.	County Planning Department, assisted by Peconic Land Trust	9,000 –10,000 acres since 1976.	Transfer of 2% real estate transfer tax to towns for agricultural preservation.	- Pine Barrens Credit Program (state created TDR program) - Circuit Breaker Law	Town TDR Programs	Peconic Land Trust – negotiates easements for local governments.
Lancaster County	PDR	Bonds, state grants, FPP	Bargain sales, installment purchases (regular and bond financed), partnership with local farmland trust.	Agricultural Reserve Board	55,009 acres since 1980.	- Agricultural tourism program. - Resource center for marketing, lobbying, and education.	- Agricultural Security Areas - Land Trust Reimbursement Program	Township TDR Programs	Lancaster Farmland Trust – leverages funds from county for preservation. And uses state funds
Virginia Beach	PDR	Appropriations, 1.5-cent real estate transfer tax.	Bond financed installment purchases.	Department of Agriculture	6,350 acres since 1997.	- Resource center for marketing, lobbying, and education.	N/A	N/A	N/A
Montgomery County	TDR	N/A	N/A	Agricultural Services Division in Department of Economic Development	41,270 acres since 1981	- PDR Program - Legacy Open Space - Resource center for marketing, lobbying, and education.	- MET - MALPF - Rural Legacy Program	N/A	N/A
Yolo County	Zoning and Planning	N/A	N/A	County Planning Department	N/A	- Mitigation Fee Ordinance - Intergovernmental Agreements	- Williamson Act - Farmland Security Zones	- Mitigation Fee Ordinance - Intergovernmental Agreements	Yolo Land Trust – negotiates easements for local governments.