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P R E S E R V A T I O N O F M A I N E F A R M L A N D

MAINE FOOD AND FARMLAND STUDY COMMISSION HEARINGS
HIGHLIGHTS AND WRITTEN TESTIMONY
UNIVERSITY OF SOUTHERN MAINE, PORTLAND
JUNE 9, 1978

Alton Benson, dairy farmer, Gorham

See Exhibit A, titled "Agricultural Advisory Committee Preliminary Report".

Farmlands complement tourism. The tourists do not come up to Maine to see developed land.

We had over 3000 guests visit our farm last year.

In the past 12 months, 18 dairy farms went out of the milk business in Maine.

The Milk Commission is needed.

I would not sell my development rights on my 500 acres. The next generation couldn't have the farmland appreciation as part of their income. I would favor legislation to allow farmers to sell their development rights. We need a multi-facet approach to get the most land under control as fast as we can.

Not much land has been lost in Gorham due to the Planning Board decisions.

Curtis Scammon, dairy farmer, Saco

We need Transfer of Development Rights (TDR) program. The ones that use private transfers are preferable to those that require large public expenditures.

If we could sell our development rights we could reduce our debt load.

Farming is going to be profitable in the future due to the energy situation. This assumes people will stay here.

If we can grow more local foods, we could reduce food cost and increase employment.

The "open market" TDR concept is needed on a township basis because the issue on a statewide level is not supported. We need enabling

legislation that allows communities to start TDR's. The drawback is that a developer will buy land in adjacent communities to avoid the TDR expense.

Mort Mather, farmer, Wells

There is very little good land. Most of the land is wet or ledgy. We must preserve our land in case the other states refuse to export food to us. TDR's could work wherever the pressure is.

State laws make our farmland soils the best for development.

Sweden has a law which prohibits all development of agricultural land. I would not sell my development rights, but strongly favor TDR's over zoning. TDR's could become a valued commodity which could appreciate in price just as land does now. Once the development rights are taken out of the farm, the land will sell at real farmland value.

I would favor a permanent building moratorium if it was possible and legal.

Dave Chase, Threshold to Maine RC&D

Farmer must be able to make money. Direct marketing has great potential in the Portland area.

Evan Richert, city planner, South Portland

See Exhibit B (memo).

Mark Eyerman, senior planner, Greater Portland Council of Government

See Exhibit C.

FmHA is the only Federal program which is not controlled locally. They operate outside of normal review channels.

Carol Brewster, Maine Land Advocate, Manchester

Inheritance tax relief is needed. Capital gains taxes like Vermont's are needed to reduce land transfer rates. Agricultural Districts are a good idea (like New York state)

Special incentives (like Martha's Vineyard) such as a foundation which would buy and sell land to younger people.

We could sell bonds for the purchase of farmland. This land then could be sold at reasonable rates back to young farmers.

Another approach is community land trusts. Community land trusts own the land and lease it back to young farmers.

We need to support 100% parity so that consumers, not taxpayers, pay for the food. A January Harris Poll indicates that people favor full parity by 5-1 ratio; further, 54% of all Americans are willing to pay 5% more for their food to insure parity. In the same poll, 87% saw the middlemen as being responsible for inflated food cost.

We should require corporations to register so that the state would be aware of corporate ownership of farmland.

The state should make funds available to create farmer-to-consumer cooperatives.

FmHA is now being used by developers to develop farmland.

The University should expand its work in organic farming methods.

Harry Gregori, Jr., planner, Greater Portland Council of Government

We plan on directing development of business and industry into existing urban centers. When economically feasible, we plan to preserve open lands.

The period 1949 to 1974 showed over a 70% reduction in cropland in Cumberland County. Although much of this land was lost to abandonment, some was lost to development.

Our policies will do no good if there is not a good market for farm produce or there is no demand for land by farmers or there isn't a willingness of government to make the appropriate compensations.

Twenty percent of the units built in the town of Gorham over the last two years were built on soils of statewide importance. In Falmouth, 1% of the homes were built on this type land.

Agricultural districts are hard to set up in zoning due to the scattered nature of the farmland.

We should encourage people to move back to the cities.

Silas Weeks, homesteader/economist, Eliot

TDR's will cost the new home owners, and will benefit all of those who eat. TDR's may push growth to areas that you want it.

Land trusts with a state revolving loan fund could help young people get set up in business.

Agricultural districts are good but should include other non-farmers. This becomes a "voluntary taking of your potential increase in property values".

The present current-use assessment law should get rid of the \$1,000 income requirement. This would encourage homesteaders, etc. This requirement is a very complicating feature.

Capital gains tax would be beneficial.

Small towns need to plan for higher density villages. We have to stop 2-3 acre zoning - this scatters growth and drives up housing costs.

The city could help by making it easier for developers to develop in the city, i.e. fewer permits. We should give developers bonuses for putting up cluster developments.

We should encourage domestic production. The money saved by having a garden can be used in the economy elsewhere. These small growers also help support the "necessary infra-structure for commercial agriculture".

The University should look at food processing possibilities.

Unidentified Speaker

There are a lot of soils in Maine that are suitable for development but not good for agriculture (i.e. sandy Sebago Lake area soils). A lot of growth should take place "out there".

Dave Chase

Many good agricultural soils, due to shape, size, location or stonyness, are good for housing but not for crops.

There is a high cost when you develop poorer soil.

Gary Ferguson, Sam Ely Community Services Corporation, Augusta

See Exhibit D.

AGRICULTURAL ADVISORY COMMITTEE PRELIMINARY REPORT

to the

Threshold to Maine RC&D Steering Committees

and the

Commission on Maine's Future

This report is preliminary in nature, and reflects the opinions of the Agricultural Advisory Committee members regarding the desirability and feasibility of various techniques of protecting agricultural land. Central to the Committee's thinking is that agricultural land will remain in production if the economic return to the farmer was competitive with other forms of work, thus making it more attractive to stay in farming or put land into production. The Committee felt it was not in a position to make viable recommendations regarding income support, but did feel it could suggest means of reducing the costs of doing business which would result in maintaining agricultural land in production.

The Committee examined two broad areas: taxation and land use controls. The preliminary findings of the Committee are outlined below.

1. Current Use Taxation.

The Committee believes property should be taxed on the basis of existing use as opposed to "highest and best" use. For example, agricultural land should not be taxed for its value as house lots unless a subdivision plan had been recorded. This shift would place a greater burden to residences and other improved sites or areas. To reduce this burden, a capital gains tax or land speculation patterned after the Vermont experience could potentially relieve this burden.

2. Public Purchase of Development Rights.

The Committee believes that if it is determined to be in the public interest to maintain an agricultural land base as well as open space at a local or state level, it would be advantageous for the government at the local, regional, or state level to purchase the farmers rights to develop his land. This would provide some compensation to the farmer, reduce his property tax by limiting his use of the land, and make the land less valuable and thus more available for purchase by succeeding farmers at a reasonable cost. This program could be financed through a capital gains tax as explained above, a bond issue, or an increase in the real estate transfer tax.

3. Transfer of Development Rights.

The TDR concept is very complex and requires a high degree of expertise and information to develop and implement at the local level. The Committee believes that the TDR concept could prove useful and equitable at the local level to protect and maintain agricultural land. Legislation should be enacted at the state level to enable and encourage committees to try to use the TDR system.

4. Housing and Zoning

The Committee believes that a major reason that agricultural land is going out of production is because the demand for space for housing focusses on agricultural land, thus increasing its price to a point completely out of range of its agricultural productivity. One way of relieving this pressure would be to encourage multi-family dwellings for middle income families through favorable zoning regulations and government housing programs. Multi-family housing suffers from a negative public attitude which would have to be overcome, but if adequately promoted it could absorb a significant part of the demand for housing.

The options discussed above are preliminary in nature, and deserve further study. The committee is now beginning to examine the options with greater specificity.

6/13/77

MEMO

UNDERLINED by Libby

June 12, 1978

TO: The File

FROM: Evan Richert, *Planning Director, So. Portland, Me.*

SUBJECT: Presentation to the State Task Force on Agriculture
(*Maine Food and Farmland Study Commission*)

As an employee and resident of one of this state's more urbanized communities, I would like to present a brief message for your consideration. It is this: the preservation of farmland will be futile until land in the urban centers is used much more efficiently. In your consideration of agriculture, measures to preserve farmland by discouraging growth in agricultural areas or by providing incentives to farmers can go only so far without a companion policy of encouraging growth in the state's village, urban, and metropolitan centers. To date, we've all failed in this.

Some urban expansion is inevitable. Our population and number of households are growing, and individually we demand more space than we used to. By the same token, many areas of developable land lie vacant in the village and urban centers of the state. In South Portland, one of the state's more densely settled cities, 36% of the land area--more than 2700 acres--is vacant. Much of this is not currently sewered and therefore is unusable. But, I estimate that, accounting for inaccessible and poorly drained land, naturally limited land in the sewer service area, and city-owned land, there still are between 900 and 1000 developable vacant acres in the city. This is not unusual. Nationally, according to the journal "Land Economics" 15% of the land area in 14 of the nation's largest cities is vacant and buildable. Add to these totals the acreage currently in use, with blighted and deteriorating buildings, and you have a very substantial supply of valuable land to meet a region's housing and industrial demands.

The tasks are to both defuse the pressure on agricultural lands, and to permit and encourage fuller use of the vacant land in village and urban centers. We have at our disposal 3 tools to achieve these: capital improvements policy, zoning policy, and property tax policy. The pressures can be defused--through a capital improvement policy that insists on using and re-using urban lands to best advantage. That means that, given a choice between extending a sewer line to open up 50 new acres of outlying land and improving a sewer line to permit the use of 10 or 20 acres of village or urban land, we should choose the latter. --Pressures can be defused through a zoning policy that recognizes the special opportunities for growth in village and urban centers. This means ridding ourselves of the delusion that the opposite of intensive growth is no growth. For the opposite of intensive growth is extensive growth. As long as towns and cities try to thwart growth through grids of large lots and long road frontages, the result will be extensive growth.

--The third, and in many respects the most important tool at hand to defuse pressures on farmland by encouraging the fuller use of urban land is also the least understood. It is the local power to tax property. But this will require a crucial modification of state and local tax law. In its present form, the local property tax accomplishes exactly the reverse of what we'd like. A writer in the Journal of Housing recently said: "If an enemy of society wanted to encourage blight and neighborhood instability and to drive business and residents beyond the city limits (into rural farm and woodlands), he might invent a system much like our present property tax." For in its present form, the property tax systematically penalizes those who put land to good social purpose, while reward-

ing those who speculate in land. It is a system which tolerates blight in the inner city while pushing new development to the hinterlands. It does so by disproportionately laying the tax burden on improvements, while in effect rewarding owners of vacant urban land for holding it out of use. The disincentives of the property tax in the full use of developable urban land are increasingly recognized as the key to both the shortages of sound housing and business development in the cities, and the sprawl which consumes acres of farmland and woodland.

There are well-established alternatives to our current property tax system-- particularly the so-called site value on land value tax. It is not my intention to go into detailed descriptions of these alternatives today, beyond pointing out to you that viable alternatives do exist in the realm of property taxation-- alternatives that represent progressive taxation, which tend to lessen the tax burdens of homeowners, which tend to relieve the pressures outlying farms and woodlands are experiencing while stimulating improvements in the urban centers. In coming months, I hope to have some more detailed data and proposals in this area to discuss with my community and with others who may be interested.

The overall point is this: The preservation of farmland and the improvement of urban land go hand in hand, and policies which address only on-half the problem will provide incomplete solutions.

ER: sl

Mr. Hutchinson and Members of the Commission

My name is Mark Eyerman. I am Senior Planner for the Greater Portland Council of Governments. In this capacity, I serve as Town Planner for the Town of Gorham. Gorham is a growing suburb of Portland, but one which has managed to retain a significant amount of agricultural activity. My comments today are personal opinions based on my experiences as a land use planner who is in the process of working with a community to try to do something about the farmland issue.

A quick look at land values in the Town of Gorham is a good example of the dilemma facing us. A reasonable value for good cropland in Gorham is in the range of \$300-400 per acre. By reasonable value, I mean the amount that a dairy farmer can invest in the land and make an economic return. On the other hand, the development value of that same acre may be \$1,000 to \$1,500 if it is suitable to be divided into house lots. And if this situation were viewed over time, I think we would find that this gap is widening.

I see two threats to the survival of serious agriculture in Cumberland County:

1. The question of farm economics and
2. The growing development pressure on rural and suburban communities.

Taken in combination, these two factors are the keys to keeping land in agricultural production.

On the issue of farm economics, I am not in a position to talk about increased production, marketing, etc. But there is one item affecting farm costs that I would like to call to your attention. This is property taxes and tax assessment policy. While the state "Farm and Open Space Tax Law" provides for current use assessment, there appears to be considerable misunderstanding about the program and a reluctance by landowners to become involved with the program. One item that should be reviewed is the penalty clause. The current provision provides no reward for keeping land out of development over the long run because of the increasing penalty burden. Some consideration should be given to a system which would reward the land owner who has farmed the land for a set period of time, say ten years.

We could discuss farm economics for a long time, but I would like to turn my attention to the question of development pressure. I feel that this side of the equation is neglected when we discuss farmland preservation. The pattern of development in Greater Portland has shifted to the more rural communities. This growth in the rural areas has a number of important impacts on agriculture:

1. Land costs are forced up as development increases and the economic return from "selling out" becomes more and more attractive.
2. Taxes often go up as newcomers demand a higher level of services than were previously provided by the community.
3. Dense residential development creates operating problems for the farmer as the new neighbors begin to complain about manure spreading or noise on Sunday mornings. And the problems with mini-bikes, snowmobiles, and the like increase.

What can we do? I would hope that one of the results of this commission's work would attempt to marshal the forces of state and local governments to guide development away from areas with significant agricultural resources and into existing centers or areas lacking in agricultural or forestry significance.

There are some specific activities which can possibly be used to do this. First, is the Site Location Act, under which all large scale development projects are reviewed. If the State had a policy on farmland preservation, the review criteria of this act could be expanded to include impact on agricultural lands.

Another area is in the various state-aid programs for capital expenditures. I think here of the highway programs and sewer programs which provide funding which can fuel the development pressure in rural areas. Again, if we had a farmland policy, expenditures which increase development pressure on farmlands could be minimized.

A third area of concern is the Farmer's Home Administration. The level of building activity in the rural areas of Cumberland County can be directly related to the availability of FmHA money. This is not to say that Farmer's Home is bad, but to say that this money should be used in a way which is not creating additional development pressure on agricultural lands.

These are just a few of the ways in which government is encouraging development in rural areas. I would hope that this Commission would take the first step in re-ordering our priorities and directing development away from our farmland resource.

On a final note, I would say that agricultural preservation and particularly the retention of future agricultural options may depend as much on what happens in our cities as on what happens on the farm. If our central cities and inner suburbs can be good places to live, with quality schools, and reasonable tax rates, the farmland preservation battle will be a much easier one. However, if the current pattern of decentralization continues, the struggle may be an impossible one in areas like Greater Portland.

TOWARD A POLICY OF FARMLAND PRESERVATION

Testimony submitted by Gary D. Ferguson,
Staff Coordinator
Sam Ely Community Services Corporation, Augusta
to the Maine Food and Farmlands Study Commission,
June 9, 1978

SUMMARY

- (1) While the conversion of agricultural land into non-farm use may not be as noticeable as in other more industrialized states, prime farmland (relative to Maine) is disappearing in the State of Maine. This is especially true for land located on the urban fringe.
- (2) The policy to address disappearing farmland by improving agricultural production and marketing currently embraced by the Maine Department of Agriculture will not singlehandedly save already threatened farmland acreage, especially in counties experiencing rapid urban development.
- (3) Farmland preservation policy recommended by the Commission should emphasize the preservation of currently endangered farmland at the urban fringe, where the existing incentives provided by the Farm and Open Space Tax Law may prove ineffective.
- (4) Recommended farmland preservation policy likewise should emphasize protection of land not actually used for farming but capable of serving as good farmland. The scope of the Farm and Open Space Tax Law should be expanded to include fallow farmland and currently forested agricultural land, provided that penalties for nonfarm development be severe and greater than those already established.
- (5) State tax statutes should be revised to permit reduced rates or exemptions for inheritance (death) tax applied to farmland and nonresidential farm estates, provided such farms continue to be used for defined agricultural purposes.
- (6) The provisions, benefits, and reasons for establishing the Farm and Open Space Tax Law and any forthcoming laws or recommendations should be brought before the people of Maine through an education awareness campaign. The results of the statewide Soil Conservation Service land classification program should be publicized to the citizens of the appropriate municipalities along with suggestions for preservation of the identified agricultural land.
- (7) Because preservation of agricultural land using economic incentives and penalties will probably be unable to compete with speculative "fair market" prices, farmers in areas now threatened by urban encroachment must possess social or personal commitment to the land. This commitment values farmland above personal financial gain available through sale of the land.

- (8) A recommended farmland preservation policy, having considered all available methods and strategies, should emerge as a comprehensive and multifaceted program not restricted to single piecemeal responses.
- (9) Long term lease-back of farmland acquired by municipalities or quasi-public nonprofit corporations (Community Land Trusts) should be investigated as a possible low cost method to assist new farmers, preserve farmland, and make full use of existing land.

EXTENDED REMARKS

(1) Somewhere, somehow farmland is disappearing in Maine. Drive in any direction from Portland, Lewiston, Augusta, Bath-Brunswick, Bangor, or any other urban concentration of people and the signs of conversion of farmland into non-farm uses become self-evident. Census data clearly indicates Maine is losing 236,004 acres of farmland between 1969 and 1974, but it is still unclear how and why this land has been lost.

It may be safe to suggest that problems of permanent conversion of agricultural land to non-farm use will be most acute in areas in direct confrontation with urban growth and expansion. The disappearance of farmland in other more rural areas may allow for a policy of reclamation of abandoned farmland left fallow or allowed to reforest. But urban encroachment will not permit second opportunities for reclamation of agricultural land threatened by permanent conversion into residential tract developments, shopping centers, trailer parks, parking lots, or industry. Policy-makers and the people of Maine must realize that a conscious decision must be made to either protect this land's agricultural, locational, scenic, and aesthetic uses for future generations or to allow it to fall prey to the unsatiated desires of urban sprawl.

(2) There is no single solution to the problem of disappearing farmlands. While the Maine Department of Agriculture program designed to conserve essential farmland in the state by promoting a strong agricultural economy is both useful and necessary, it alone may be unable to preserve Maine farmland. This is especially the case in counties experiencing rapid urban development. It is becoming increasingly difficult to generate situations where land will remain more valuable for farming than for other non-farm uses. Farm generated income has simply not kept pace with income potential from residential, commercial, or other non-farm uses of land. Even with concerted efforts to improve agricultural marketing and production, the economic incentive remains in the hands of the developer and expanding urban encroachment.

Too often the land most endangered receives the least consideration. Maine's good farmland is not restricted to rural outreaches where urban encroachment may be twenty or more years away and even nonexistent. A sizeable portion of Maine's farmland is located in southern counties in areas

rapidly becoming urban fringe. Even if the agricultural value of this land was dramatically increased through production assistance and improved marketing, this value could probably not compete with the "fair market" value tempting land owners. No amount of Department of Agriculture assistance will result in per acre values obtainable through commercial development. A policy of active farmland preservation is necessary if prime farmland now near the urban fringe is to be saved from transformation into urban expansion.

(3) Recommended farmlands preservation programs should emphasize the preservation of currently threatened urban fringe farmland. The California farmlands preservation program (known as the Williamson Land Act of 1965) has been able to attract approximately one quarter of the state farmland into the program. It has been unable, however, to preserve land immediately threatened by urban encroachment. This urban fringe farmland continues to be the nemesis of many farmland preservation efforts in many localities and states.

The rural landowner holding farmland not threatened by non-farm development for many years may find it economically enticing to participate in a compensated preservation program offering tax relief or payment for rights of development. This compensation may be the perceived maximum benefit to be gained from the land. So long as the situation remains unchanged and the farmland unthreatened by urban development, most landowners would find it to their economic advantage to participate in well constructed preservation programs offering appropriate economic incentives.

The farmland owner at the urban fringe is confronted by a different set of economic enticements. Despite possible assessment at "fair market" value, the urban fringe landowner may not perceive maximum benefit accruing from the economic incentives in preservation programs. The enticement to sell all or a portion of the farmland may outweigh any tax savings or other program incentives.

Rather than concede prime farm acreage to developers, local and state programs should foster the realization that this farmland has acquired a special community value, due to its scarcity and to its proximity to large consumer populations. The fringe land farmer has a locational advantage for distribution and marketing. Yet, many states and localities write off this farmer and concentrate their resources on "sure bet" farmers who will not be threatened by urban expansion for many years. Maine should recognize the importance of urban fringe farmland while there is still time remaining to do so.

(4) It is known from Census data that Maine lost over 236,000 acres of farmland between 1969 and 1974. Androscoggin County lost 9,500 acres while Aroostook County alone lost 112,905 acres. Most of this land was not permanently converted to non-farm use but was left to return to forestland or remains fallow. In urbanizing counties such as Androscoggin, the potential remains great that this land, as well as land actually farmed, will eventually be converted to urban, non-farm use.

The existing legislation embodied in the Farm and Open Space Tax Law requires that qualifying parcels earn a specified income for a specified amount of time before they can be admitted to the program. Exempting unused agricultural lands in areas threatened by urban encroachment only acts to provide an open invitation for continued conversion of potential agricultural land. The scope of the law should be expanded to include fallow farmland and currently forested agricultural land; provided that penalties for nonfarm development be severe enough to discourage participation by speculators or large land owners seeking tax shelters.

(5) A major constraint impeding the perpetuation of the family farm has been the burden caused by state inheritance (death) tax and federal estate taxation when farmland is passed from one generation to another. These combined taxes may theoretically erode up to 40% of the inherited farmland estate, creating a financial situation necessitating sale of all or a portion of the land.

Revision of the state inheritance tax statutes would go a long way to insure that farms passed on to descendants would not automatically be placed in severe financial difficulty because of the large inheritance tax levied against them. Revision could consist of a substantial reduction or total elimination of the levy on farmland and nonresidential farm related estate. Such a change would not affect taxes due on residences or nonfarm related estate property or land but would cover farmland, equipment, and structure valuations. Revision of inheritance tax statutes should include the institution of severe penalties to deter the inheritor from non-agricultural development of the land. These penalties could either be graduated, being steepest during the first year of inheritance, or permanent recapture penalties which would take effect when agricultural use was discontinued.

(6) Only about 5% of Maine's farmland, defined by the 1974 Census to be 1,523,696 acres, has been enrolled in the Farm and Open Space Tax Law. The vast majority of that land, 67,000 of 87,000 acres, is accounted for by three towns; Clinton, Benton, and Fort Fairfield. While participation may increase in rural areas as revaluation becomes more widespread, a concerted education awareness campaign appears to be needed to alert the people and landowners of Maine to the provisions, benefits, and reasons for establishing the law. Such an education awareness campaign should not be limited solely to this law, but should include any forthcoming laws or Commission recommendations to the 109th Legislature. Such a program should be administered by the University of Maine, the Department of Conservation, the State Planning Office, or another agency able to objectively pursue maximum participation in the Farm and Open Space Tax Law.

A concurrent dissemination and education task should be undertaken by the Soil Conservation Service, the Department of Conservation, the State Planning Office, or another related agency to publicize the results of the ongoing statewide Soil Conservation Service land classification survey. The identified farmland should be publicized to the citizens of the appropriate municipalities along with suggestions for its preservation.

(7) A survey of farmland preservation programs utilizing economic incentives for compensation (see Sam Ely Working Paper "Approaches to Farmland Preservation") suggests that when urban development pressures are intense, taxation or any other incentive/penalty fiscal measure can only act to slow and regulate the movement of land from farm to urban use. Fiscal incentives or penalties frequently appear to be simply too weak to combat the economic promise of development. Because such programs have difficulty in areas threatened by urban encroachment, successful programs to protect agricultural land must rely to a large measure on the social commitment of the farmer/landowner. This commitment must value farmland above personal financial gain available through sale of the land.

Most farmers already possess deep personal and social attachments or commitments to their land. Preservation programs aimed at the urban fringe areas need to reflect recognition of this existing commitment and endeavor to expand it through education awareness campaigns.

(8) The policies and program to be recommended by the Commission to the 109th Legislature should reflect careful examination of all existing methods and strategies for preservation. This careful study should arrive at the conclusion that no one single program or strategy will singlehandedly be able to provide adequate protection of farmland. British Columbia, Michigan, New York, and California have all experienced varying degrees of success with their programs- all multi-element in nature. The recommended program for Maine should likewise emerge as a comprehensive, multifaceted program, not restricted to piecemeal responses, whose component parts will reinforce and supplement each other. Such a program should combine methods of taxation compensation, uncompensated regulation, and acquisition into a single, coherent program.

(9) Long term lease-back of farmland acquired by municipalities or quasi-public nonprofit corporations (Community Land Trusts) should be investigated as a possible low cost method to assist new farmers, preserve farmland, and make full use of existing land.

Through the auspices of a municipality or a chartered Community Land Trust, land is purchased or accepted and title is held by the municipality or corporation. All rights, less the right to sell or develop beyond the specified state, are then leased back to private, qualified farmers through 99 year renewable and inheritable leases. The intent of the lease-back arrangement is to provide security and tenure to the individual who agrees to abide by the restrictions on use placed in the lease. Farmland preservation is promoted since farmland leased-back would be restricted to agricultural use. The corporation or municipality is spared assuming the role of landlord since they are responsible only for holding title and insuring that the use intentions agreed upon are carried out.

Farmers donating land to such a preservation program could receive first option to lease-back the land. Their donation of land would be appraised and lease fees would be deducted from the credited donation value. These credits could be passed on to descendants who would continue to draw on them until such time as they were exhausted. Heirs would then begin regular lease-fee payments. The Community Land Trust program is only involved with land; all barns, residences, equipment, and farm improvements remain private property. Property taxes continue to be collected from lease fees. This program enables a farmer to receive the benefits of tenure, security, use-right of the land, and inheritance while providing the community with effective protection against conversion of the land to non-farm use in perpetuity.

Preventing the conversion of good agricultural land to non-farm use will require a change in policy and a redirection in thought. It is hoped this testimony will assist in the pursuit of these endeavors.



A Sam Ely Community Services
Working Paper

APPROACHES TO FARMLAND PRESERVATION

A BRIEF SUMMARY AND ANALYSIS

by Gary Ferguson
June, 1978

APPROACHES TO FARMLAND PRESERVATION

Identifying the Problem

The problem should be simple to identify. Drive in any direction from Portland, Lewiston, Augusta, Bath-Brunswick, Bangor, or any other urban concentration of people and the signs of conversion of farmland into non-farm uses becomes self-evident. It is an unfortunate coincidence that the land best suited for farming appears to be most easily converted into shopping centers, residential tract developments, parking lots, roads, trailer parks, and industry.

As evident as the visual signs of conversion may be, statistics detailing the loss of agricultural land are wanting. It is known from Census data that Maine lost 236,004 acres of farmland between 1969 and 1974. Androscoggin County currently has 68,495 acres of farmland but has lost 9,500 between 1969 and 1974. But these figures do not describe the complete story of Maine agriculture. Much land remains fallow or is left to return to forestland. The exact figures on farmland lost permanently to non-farm uses remain to be precisely determined.

Yet even without precise figures farmland conversion has been repeatedly cited as a vital and pressing problem facing Maine. The Commission on Maine's Future flagged disappearing farmland as a major concern. The legislation creating the Food and Farmlands Study Commission specifically identified conversion as a serious problem requiring careful and direct attention.

While a strong agricultural policy emphasizing production and marketing may keep farmers apace with the economy, it alone cannot stave off the proliferating effects urban growth and expansion. The programs and strategies reviewed by this paper all attempt to provide the necessary supplemental assistance needed by states and localities to protect farmland from the pressures of development.

Current Farmland Preservation Programs

Farmland preservation planners and strategists are able to draw upon options for policy direction from one or more of three distinct categories of preservation techniques:

- (1) control of farmland through compensation (but not acquisition),
- (2) uncompensated control of farmland,
- (3) outright public acquisition of farmland or development rights.

Preservation through compensation is attained through the use of fiscal measures which either voluntarily induce or reimburse landowners for maintaining their land in a working farmland state. Policy makers who select tax compensation programs are drawn to the voluntary nature and usually indirect methods of reimbursement through reduced tax assessments and tax breaks characteristic of these programs. Administration tends to be less burdensome for compensation programs than for acquisition programs.

Uncompensated control programs tend to be mandatory rather than voluntary. They require little financial resource input and are easily instituted at the local level. Regulation or exemption from regulation characterize most programs emphasizing uncompensated control. Usually realized through the establishment of local zoning or special districting, these programs may range in degree of regulation from the strict, province-wide British Columbia system to rudimentary upgrading of local rural zoning classifications.

Traditionally, open space in America has been preserved under a policy of outright acquisition rather than protection by other methods. Today, there exist a variety of acquisition strategies that expand upon the concept of outright acquisition. These acquisition strategies include fee-simple

acquisition for direct sell-back or lease-back to interested farmers, less-than-fee-simple acquisition usually of the rights of further land development, and land-trades. The purchase of development rights (a less-than-fee-simple method) has become the most popular of these options in the past decade. Acquisition programs require considerable financial resources and necessitate costly administration but remain the only sure measures for insuring that farmland will be preserved in perpetuity.

These three categories of policy direction allow the policy maker wide discretion in tailoring farmland preservation programs that meet the needs of the community while acknowledging the fiscal and administrative realities of the state or locality.

Programs of Compensation: Taxation

Restructuring Property Taxes

All but a few states have enacted some form of property tax relief to assist in farmland preservation. Most of these tax relief programs share the desire to assess farmland at a reduced or "current use" rate which reflects agricultural use rather than potential "fair market" value. Through the provision of differential assessment incentives (reduced or current use assessment) the farmer is enticed into voluntary cooperation.

Strict differential assessment, frequently known as preferential assessment taxation, provide only for reduced or current use assessment but not for penalties to enforce compliance. Landowners are free to remove land from the program with no loss other than a return to normal assessment rates. This approach is not only unreliable for preserving land for extended periods of time, it also returns no income to the state and is hence likely to require continual financial input.

The state of New Jersey offers an example of deferred taxation whereby current use assessment is granted but a penalty for development of the land or withdrawal from the program, ranging from 1 to 5 years of the experienced tax savings, is levied. The adoption of recapture penalties for deferred taxation programs must balance the need for stringent disincentives to insure effective preservation with the realization that extremely severe penalties may dissuade landowners from participating in the program. The Maine Farm and Open Space Tax Law establishes tax liens on land entered in the program as a measure of enforcement. These liens are enforced in the same manner as real estate liens and hence become the responsibility of the owner. Removal of the land from the program by the signing owner or by any subsequent owner invokes the recapture penalty. Yet, it remains questionable whether these penalties will be able to blunt encroachment by developers willing to sacrifice this inconvenience to realize larger profits through farmland development.

The Williamson Land Act (also called the California Land Conservation Act) represents a third form of property tax adjustment. This Act serves as a contractual or restrictive agreement between the landowner and the local or county government in which the landowner pledges to refrain from further development of the land. In return, the farmer landowner receives reduced assessments on the land. The pledge is for a 10 year period and the penalty for noncompliance is a steep 12.5% of the fair market value of the land. The contractual agreement method permits municipalities to exercise a greater degree of control over land use decisions while enabling landowners to opt out the program only after the obligations of the contract have been fulfilled.

Although moderately successful (one quarter of California farmland is registered in the program), the California program has tended to attract large corporation participation in areas removed from existing urban encroachment.

Deferral of Taxes on Agricultural Improvements

A possible compensatory incentive for farmer landowners might be the initiation of an agricultural improvement deferral program. Farm improvements such as barns, milking parlors, silage storage bins, and other facilities are frequently taxed in the same fashion as are residences. This residential taxation on farm facilities acts as a disincentive to further capital investment. The deferral program would reduce or eliminate the tax on farm facility improvements. The expected outcome would be the promotion of needed construction of necessary facilities and increased farm viability. King County, Washington has proposed to extend this program to any farm property identified by the County as desirable for preservation in agricultural use. The program applies only to farm-related improvements and not residential improvements made by the landowner.

Exemption from Limited Improvement District Assessments

Often localities tax land on the expectation that development will occur at some point in the future. These assessments, called limited improvement district assessments, are levied to finance future construction of extended public sewer and water lines as well as other public services. Exempting landowners from the payment for services they will never use assists both the financial viability of the farm and the future capital outlays required by the municipality for the exempted area.

Inheritance Tax Relief

A major constraint impeding the perpetuation of the family farm has been the burden caused by state inheritance (death) tax and federal estate taxation when farmland is passed from one generation to another. These combined taxes may theoretically erode up to 40% of the inherited farmland estate, creating a financial situation necessitating sale of all or a portion of the land.

An inheritance tax relief program would act to reduce or exempt farms from normal inheritance tax burdens. Such programs would not affect tax due on residences or non-farm related estate property or land but are intended to cover escalating farmland, equipment, and structure valuations. Revisions of the inheritance tax statutes would include the institution of penalties to deter the inheritor from non-agricultural development of the land. These penalties might be steepest during the first year of inheritance and gradually decrease thereafter. The penalties act to preserve land that might otherwise have been subdivided or sold.

Capital Gains Tax

The capital gains tax approach is designed to slow, rather than permanently halt, speculation of farmland by acting as a disincentive to short term land holding. The approach employs a system of graduated penalties directed against short term landowners.

The 1973 Vermont Tax on Gains Law specifies that if land was bought and then resold within 6 years of purchase a capital gains tax must be paid on the profits from the sale. The tax is figured on a sliding scale which decreases markedly from the first to the sixth year. Resale within six

months results in a penalty tax of 70% of the profit while resale in the sixth year results in almost no penalty assessment. The most frequent criticism of this Vermont program has been directed toward the sliding penalty scale. Critics contend the scale declines too rapidly to discourage developers from short term land speculation.

The Land Speculation Tax Law of Montana has modified the Vermont program by providing stiffer tax rates and exempting from the scope of the law parcels of 50 acres or less used primarily as the taxpayers place of residence.

Uncompensated Preservation Methods

Zoning Ordinances

The King County, Washington report on options for farmland preservation cogently summarizes the overall value of preservation through municipal zoning: "While zoning has been the traditional means to regulate and control land use, it has proven to be much less effective in preserving agricultural lands. This is due in large part to the fact that agricultural zones have not been intended to be permanently kept for agricultural uses, but rather held as undeveloped land for a denser use. Generally, present zoning practices are not designed to preserve agricultural lands in perpetuity."

Amendment or adoption of zoning ordinances may assist in enhancing the viability of farming in some communities. One such possible ordinance revision would insure for the allowance of retail sale of farm produce in rural or agriculture zoned land. Ordinances may be tailored to reflect the growing necessity for farmers to dabble in cottage industry or other farm-related supplemental income.

Exclusive Agricultural Zones

One possible variation of traditional zoning practice is the establishment of agricultural zones or districts. These districts are designed to be exclusive agricultural zones where agriculture is regarded as the primary land use. Residential and industrial development within the specified zone is prohibited. If compliance is maintained, the municipality would be spared the responsibility and costs of extending public services into the defined district. Oregon, Hawaii, Florida, Georgia, and New York all have established some form of exclusive agricultural districting.

New York has passed legislation providing for the creation of "agricultural districts". Districts must encompass a minimum of 500 acres and each farmer in the district must voluntarily pledge to use land only for farming. Once established, farmers are granted "current-use" assessments and state income tax advantages. The land is protected from eminent domain by the state and from any unreasonable local ordinances affecting farming. The penalty for withdrawal is set at 5 years of saved back taxes. Over 100 districts and 1,000,000 acres of New York land has been placed into the program.

The agricultural integrity of particular areas may also be maintained through other forms of special purpose zoning. Flood control and watershed zones are often utilized in many sections of the country to both manage drainage and surface water runoff problems and to perpetuate agricultural zones. Though prevalent in the Western regions of the country, special zoning linking agriculture with water resource protection may have utility in the Northeast as well.

Exemption from Public Nuisance Law

Urban encroachment into agricultural areas in many sections of the country has generated another perplexing problem for the farmers- application of public nuisance law. Nonfarming neighbors offended by certain noxious farm odors or practices often have the right to take a farmer to court and force abatement of normal farm practices. Protection from public nuisance lawsuits has been extended to farmers participating in the New York program and has been considered in Washington. Usually exemption from nuisance law occurs within specified agricultural zones or preserves.

While public nuisance has tended not to be a concern in Maine, a public nuisance law is in existence and could be invoked with increasing regularity as urban development continues to encroach upon the agricultural domain.

Land Use Classification and Development Review

A number of states have expanded the concept of zoning to encompass a statewide classification system for land. Land classified as agricultural usually requires a special permit for development.

Hawaii has a long standing Land Use Law (1961) which classifies land as urban, rural, agricultural, or conservation. The Land Use Commission must issue a permit for any change of classification. A 1970 Vermont law created a state environmental board charged with hearing requests from developers and acting on permits for certain agricultural and open space land development. A Land Conservation and Development Commission in Oregon performs a similar function. The Oregon policy, known as Exclusive Farm Use Zoning, has been combined with a Farm Tax Deferral compensation system to broaden the scope and protection potential of the legislation. Land in Farm Use Zoning automatically

qualifies for tax breaks.

One of the most comprehensive farmland preservation programs in existence was created by the 1973 British Columbia Land Commission Act. The Commission was empowered to designate Agricultural Land Reserves based on the existing Canadian land classification system. This system delineates seven land types, four of which are different degrees of agricultural land. Enticement to the farmers was offered through an income assurance program which subsidizes the difference between farm costs and actual income. The British Columbia program also benefitted from a government freeze placed on development of agricultural land prior to the inception of the law.

Michigan has developed a program which borrows the subsidy element of the British Columbia program. By entering into a 10 year contractual agreement restricting development of the land, farmers can receive taxation relief when property payments exceed 7% of their income. Relief takes the form of income tax credits and a tax refund if no tax was paid.

Programs and Methods of Acquisition

Less-Than-Fee-Simple: Development Rights

Legal title to land consists of a number of rights which collectively define ownership. This list of rights includes right to possession, right to occupancy, right to develop, and any other conceivable rights inherent in ownership. Collectively these legal rights are known as fee-simple ownership. Less-than-fee-simple ownership refers to situations where a portion of these rights are not owned. Farmland preservation programs endeavor to purchase from the landowner the rights to develop the land beyond an agricultural state. The original landowner would retain the rights of

possession and occupancy and the ability to continue farming, but would be enjoined from all rights of development other than farming. The less-than-fee-simple ownership could be passed on to heirs or other landowners, but without the development rights. These rights would be held in perpetuity by the state, county, or locality, hence removing any potential for future non-farm conversion of land.

Development rights programs have been enacted in several states and counties. Under the 1974 Maryland Agricultural Land Preservation Foundation Act the state is granted the power to purchase or accept gifts of easements to restrict the use of agricultural land or woodlands. The 1973 Massachusetts Farmlands Assessment Act permits the state to have first option for the purchase of development rights. It also allows the state to grant preferential assessment to farmland facing development pressures. The Massachusetts bill, however, has never received adequate funding to permit any comprehensive acquisition of rights.

The Maine Farm and Open Space Tax Law empowers any municipality to accept or acquire through purchase scenic easements or development rights for the preservation of farmland or open space land. Acquisition terms must be for a minimum of 10 years. Municipalities have not been appropriated any money to carry out such an acquisition program. Farmers have not been given any enticements to participate in any voluntary donation of development rights program and would probably be redicent to do so without some form of financial or security related compensation.

Suffolk County in New York and King County in Washington have launched major development rights programs. In Suffolk County, the program received a

county appropriation of \$60 million to purchase the development rights of about 10,000 acres of endangered farmland. This program has experienced spirally land costs which have escalated as the County demand for farmland was perceived and acknowledged. To date, the County has spent most of its program money but has fallen short of acquiring all the land originally projected.

Fee-Simple Acquisition

Fee-simple acquisition entails the outright public purchase of farmland not merely the purchase of a portion of the landowner's rights. Purchased land is then returned to production either through resale or leasing to private farmers.

A sale-back strategy accomplishes the same goals of a development rights program but with a two step process rather than a single step. Land is first purchased by the municipality or state. Restrictions on the use of the acquired land are then written into the deed, effectively limiting the rights to development. The restricted land is then sold to selected, qualified farmers.

A lease-back strategy make take several forms. An approach proposed by the North Dakota Farmers Union, similar to the Saskatchewan provincial land bank, would create a Trust Lands Division within the state department of agriculture. Farmers desiring to transfer land to descendants or to new young farmers would sell their land to the Trust Division at the appraised agricultural value. The Trust Division would grant the farmer's descendants first option to lease the land from the Division. If no descendants were interested in a leasing arrangement, the farm would then be made available for lease to qualified young farmers. The proposed term of the lease is for

5 years and is renewable on a non-competitive basis. Lease fees would cover property taxes and at the end of each five year period the farmer would be granted the right to purchase the land at its current assessed agricultural value.

Another lease-back strategy utilized in California, Georgia, and now underway in Maine is use of the Community Land Trust. Through the auspices of a municipality or a chartered quasi-public nonprofit corporation, land is purchased or accepted and title is held by the municipality or corporation. All rights, less the right to sell or develop beyond the specified state, are then leased back to private, qualified farmers through 99 year renewable and inheritable leases. The intent of the lease-back arrangement is to provide security and tenure to the individual who agrees to abide by the restrictions on use placed in the lease. Farmland preservation is promoted since farmland leased-back would be restricted to agricultural use. The corporation or municipality is spared assuming the role of landlord since they are responsible only for holding title and insuring that the use intentions agreed upon are carried out.

Farmers donating land to such a preservation program could receive first option to lease-back the land. Their donation of land would be appraised and lease fees would be deducted from the credited donation value. These credits could be passed on to descendants who would continue to draw on them until such time as they were exhausted. Heirs would then begin regular lease-fee payments. The Community Land Trust program is only involved with land; all barns, residences, equipment, and farm improvements remain private property. Property taxes continue to be collected from lease fees.

This program enables a farmer to receive the benefits of tenure, security, use-right of the land, and inheritance while providing the community with effective protection against conversion of the land to non-farm use in perpetuity.

Land Trade

Acquisition through a land-trade option involves trading property currently owned in fee simple by the state, county, or municipality for desired agricultural land. Once acquired through trade, the land could then be resold or leased-back as noted under fee-simple methods. Funding is not a primary constraint for a land-trade option since the method depends on the availability of trading stock. Land trades have been common methods for obtaining scenic and park public lands in many states, including Maine and their utility for farmland preservation program are as yet untested.

Assessing the Options

Given such an array of strategies and programs, how should the State or an interested municipality proceed to implement an effective policy of farmland preservation? Policy determinations must necessarily be:

(1) reflective of the particular farmland conversion problems under consideration. Good farmland relegated low priority in Montana may be analogous to the same quality "prime" farmland in Maine requiring high priority. Urban encroachment may not pose problems to rural Aroostook County but may seriously threaten the land of many Southern Maine counties.

(2) reflective of the financial resources available to the State or localities. There may be nothing more pathetic or defeating than enacted preservation programs that never received the necessary financial appropriation.

Taxation compensation programs offering various tax incentives and penalties have received favorable participation in a number of states. This participation, however, has often come from the very speculators the program intended to combat. Programs in California and New Jersey have been used as successful tax loopholes by large corporations and speculators despite the existence of recapture penalties. Fiscal incentives or penalties frequently appear to be simply too weak to combat the economic promises of development. In his recent book on land use in America, Dr. Davis (Duke) argues that "where pressures are strong, taxation (or any other incentive/penalty fiscal measure) can only slow and regulate the movement of land from farm to urban use". The point of enticement or disincentive for farmer and developer may be beyond fiscal reality. Compensatory tax programs may only be temporary measures. Developers appear ready to pay existing recapture penalties found in state open space laws in order to reap the lucrative profits that blossom above and beyond any penalty fees.

The success of the Farm and Open Space Tax Law in Maine is still open to question. A report prepared by Richard Rothe states that approximately 87,000 acres of farmland has been enrolled in the program. Not immediately evident is the fact that 67,000 of those acres enrolled are from three towns; Fort Fairfield, Benton, and Clinton. In each instance, these towns had recently increased their property valuations to 100%. Rothe suggests that the program may experience considerable expansion once other towns embark on similar revaluations. It is unclear, however, that farmland on the urban fringe faced with conversion could be enticed into the program even with revaluation. The rewards offered by non-farm use conversion may be too great.

Uncompensated preservation methods appear to suffer from another series of problems. Successful programs reflect a need for strong regulation on the part of the administering government. The British Columbia program utilized both a province-wide moratorium on farmland development and province-wide regulation of designated agricultural lands. Public acceptance of statewide regulation of farmland remains uncertain. Maine and other coastal states have enacted statewide coastal zone management programs, yet the impact of farmland management programs would be more widespread and subject to criticism by every town in the State.

Municipal ordinances and zoning aimed at creating rural or agricultural zones continue to be cheesecloth in nature, full of numerous routes for exemption, variance, and appeal. Positive result could come from amendment of existing nuisance laws that may soon threaten the farmer. Municipalities could also amend ordinances to halt the extension of water and sewer services to outer fringe rural areas. Once in place, these systems act to encourage rapid development with little concern to the affects of conversion of agricultural land to non-farm use.

Programs of acquisition appear to be the only methods able to protect farmland in perpetuity. The trade-off for this protection, however, is program cost to the public. The financial resources necessary to implement a widespread fee-simple or development rights acquisition program may be beyond the reaches of the State. Such large public expenditures may be readily called into account by the citizenry. The experiences of Suffolk County with spirally land costs introduces yet another problem acquisition programs to confront.

Acquisition for lease-back through donation of land by farmers may avoid the pitfalls of massive public expenditure. Presently constraining

these programs is the lack of social commitment to viewing land as a finite resource. Most farmers already possess deep personal and social attachments or commitments to their land. Once agricultural policy reflects similar commitments to the endangered resource "land", these programs may appear enticing both to farmers and administrating governments.

The resolution of the problem "how to preserve our farmland from conversion to non-farm use" may require a three pronged approach. The first step would require that the State **analyze** and assess all the aforementioned programs and strategies for application to the particular problems inherent to the State. The second step would be to simultaneously institute a program of public education to alert the citizens to the importance and rationale for preservation of farmland resources. The final step entails the development of the comprehensive, multifaceted preservation program whose component parts will reinforce and supplement each other. Such a program should combine taxation compensation, uncompensated, and acquisition methods into a single coherent program. Together, a program consisting of inheritance tax relief, "current use" assessment, agricultural districting, exemption from nuisance law and future development assessments, voluntary donation of land for lease-back, and a campaign for public education may produce the protection of farmlands deemed necessary for our present purposes and for generations to come.