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PRESERVATION OF MARYLAND FARMLAND: A CURRENT ASSESSMENT

Craig A. Nielsen†

This Article examines various programs in Maryland, both local and state-wide, to promote the preservation of agricultural land. The author demonstrates the need for such programs and concludes that in order for them to be successful, all levels of government within the state must cooperate and commit themselves to adequate funding and intelligent land-use planning.

I. INTRODUCTION

The subject of agricultural preservation has received recent national attention. In Maryland steps have been taken to preserve agricultural land, but it is too early to assess whether these efforts will be successful. The public is becoming increasingly aware that farmland is a valuable natural resource deserving preservation. This awareness, however, threatens those farm owners who regard their land not as a public resource but as a commodity to be held and sold as they wish.¹ Accordingly, the issue of farmland preservation must be viewed from more than one perspective. At the state level,

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1. Land-use control is an emotional issue. Near urban centers where concern over land scarcity is greatest, frequent clashes occur between conservationists and landowners. Those who advocate strict land-use controls to conserve land as a resource often ignore the rights of landowners. Indeed, public attitudes toward land and its ownership are moving away from the concept that land is a mere commodity to be exploited by the landowner as he sees fit. It has been suggested that this growing public awareness should make landowners realize that they will not be free to sell or otherwise dispose of their land "in the freewheeling ways of our frontier heritage." E. BOSSELMAN & D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL*, 314-16 (Council on Env'tl Quality 1971). The right of a property owner to deal with property as he wishes, however, has been held to be a natural right subject to few limitations. *Goldman v. Crowther*, 147 Md. 282, 307, 128 A. 50 (1925). This right is part of our legal tradition: The third absolute right, inherent in every Englishman, is that of property: which consists in the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. . . . So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community.

¹ W. BLACKSTONE, *COMMENTARIES* 139.

preservation is seen as essential to Maryland's agricultural economy and its scenic beauty. At the local government level, where development imposes heavy financial burdens for increased public services, farmland preservation is viewed as a means of curbing costly uncontrolled growth through planned development and restrictive land-use controls. Farm owners, however, generally oppose such regulation, even when confronted with urban fringe development pressures that may make farming less attractive. They regard efforts by state and local governments to restrict their land use as a threat to a farm owner's right to sell his land for its optimum development potential, and thus past efforts by state and local governments have generally been ineffective to dissuade farm owners from selling their land for residential development.

The most recent expression of Maryland's commitment to preserve agricultural land is the establishment of the Maryland Agricultural Land Preservation Foundation.² This agency of the Maryland Department of Agriculture administers a voluntary program for the purchase of development right easements from farm owners. The Foundation affords an opportunity for local governments to coordinate their land-use plans with each other and with the state in order to develop a workable comprehensive plan to promote the economic development of Maryland. The effectiveness of this program, however, will depend upon the extent of participation and cooperation by local governments and farm owners.

The state program is not the only one addressing agricultural preservation. In Maryland most of the conversion of agricultural land to residential or industrial use occurs in counties adjoining the Baltimore-Washington corridor. These counties are aggressively seeking new ways to preserve farmland. Several have enacted local laws designed to compensate farm owners for the sale of development rights.³ Other counties⁴ have adopted involuntary measures without compensation by zoning agricultural land to restrict its development for nonagricultural use.

Many other states⁵ are exploring various methods to preserve farmland, but there is disagreement as to the best course to pursue.

2. MD. AGRIC. CODE ANN. §§ 2-501 - 2-515 (Supp. 1978).

3. CALVERT COUNTY, MD., CODE art. 5, §§ 273-282 (Supp. 1970); HOWARD COUNTY, MD., CODE art. 14, Title 15, Subtitle 5, §§ 15.501-15.510 (1977). These are voluntary programs to guide growth and to encourage the preservation of agricultural land.

4. *E.g.*, BALTIMORE COUNTY, MD., CODE art. 3, art. 1A §§ 1A01.01-1A01.2 (Supp. 1975); CARROLL COUNTY, MD., CODE art. 7, art. 6, 6A (1976); FREDERICK COUNTY, MD., CODE art. 11, ch. 40, § 40-62B.2 (Supp. 1975). These utilize local zoning to control unplanned development and preserve agricultural land.

5. *E.g.*, CAL. GOV'T CODE §§ 51220, 51230 (West Supp. 1979) (providing for zoning and voluntary agreements with farm owners to preserve agricultural land); HAW. REV. STAT. §§ 205-1, 205-2 (1976 & Supp. 1978) (Hawaii is the only state to have

Some programs are voluntary; others are mandatory. Typically, voluntary programs are legally and financially complex. When faced with the threat of local government measures to restrict land use, a farmer may be forced to make a choice of participating in a voluntary preservation program without knowing whether his decision is financially sound. Furthermore, because preservation programs are so new, there is insufficient information to gauge their effectiveness.

This article seeks to explain why preservation programs were created, what they seek to accomplish, and why their effectiveness is uncertain. It will explore the various methods, both state and local, by which Maryland is attempting to save its farmland. Discussion and analysis of these methods will be in the contexts of their legislative histories and the author's interpretation of their statutory requirements.

II. HISTORICAL BACKGROUND

The General Assembly of Maryland has long recognized the need to encourage preservation of agricultural land. For example, Maryland was the first state to enact a differential assessment law for agricultural land designed to encourage farm owners to continue to farm by providing for a lower property tax assessment to reduce the tax burden on farm owners.⁶ Farmland had previously been assessed at its full market or development value. Maryland also adopted a "roll back" tax⁷ to discourage conversion of agricultural

adopted statewide zoning; urban, rural, agricultural and conservation zones); MASS. GEN. LAWS ANN. ch. 132A, §11A, 11B (West Supp. 1978) (program for purchase of easements on farmland to restrict development); N.J. STAT. ANN. §4:1B-1 (West Supp. 1978) (authorizes the creation of a demonstration program to preserve agricultural land through purchase of development rights from farm owners); N.Y. AGRIC. & MKTS. LAW §300 (Consol. Supp. 1978) (creates a voluntary program by establishing districts to preserve agricultural land); OR. REV. STAT. §215.243 (1977) (state policy to create exclusive farm zones to protect agricultural activities and to plan for orderly growth near urban areas); WIS. STAT. ANN. §91.01 (West Supp. 1978) (provides for farmland agreements and planning and zoning to preserve farmland). In addition, bills have been drafted for introduction in the legislatures of Ohio, S.B. 480 (1979), and Virginia, H.B. 997 (1979), for the creation of programs to preserve agricultural land. Virginia proposes to adopt Maryland's program. Letter from Ohio Department of Agriculture to Alan R. Musselman (Nov. 30, 1978); Letter from Loudoun County, Va., Department of Planning and Zoning to Craig A. Nielsen (Dec. 19, 1978).

6. MD. ANN. CODE art. 81, §19(b) (1975 & Supp. 1978). This differential assessment law has been adopted by approximately 42 states. Council on Environmental Quality, *Untaxing Open Space* 2 (1976) [hereinafter *Untaxing Open Space*]. Maryland's statute does not clearly provide the criteria for determining which lands qualify for farm use assessment, but delegates that responsibility to the State Department of Assessments and Taxation. These criteria presently appear in Departmental Regulation 9 (1974) (uncodified). See generally Currier, *An Analysis Of Differential Taxation As A Method Of Maintaining Agricultural And Open Space Land Uses*, 30 U. FLA. L. REV. 821 (1978).

7. MD. ANN. CODE art. 81, §19(b)(2)(B)(i) (1975 & Supp. 1978).

land to other uses by levying a tax on persons who develop agricultural land that had previously enjoyed the differential agricultural use assessment.⁸

Proponents of agricultural preservation in Maryland cite the significant contribution of agriculture to the state's economy as justification for the state's involvement in preservation. There has been much discussion regionally and nationally concerning both the effect of agricultural land loss upon our economy⁹ and food supply,¹⁰ and the social implications of its conversion to residential use.¹¹ In addition, farmland preservation is important to those who wish to preserve open land for aesthetic or recreational purposes. This is especially true in the metropolitan areas of Baltimore and Washington, on whose urban fringes agricultural land is quickly disappearing.¹²

This loss of farmland can be demonstrated statistically. In 1978, Maryland agricultural production supplied approximately 55% of the state's agricultural needs and provided employment for 38,000

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8. *Id.* The "roll back" tax formula is an amount equal to two times the difference between the tax applicable to the land if assessed at its full value in the year development is to commence and the tax applicable to the land if assessed on the basis of the most recent agricultural use assessment. One weakness of this tax is that it is not levied unless farmland is developed within a period of three years after the last day of the most recent taxable year in which that land was assessed on the basis of agricultural use. Furthermore, it does not appear that all counties have enforced the roll back tax. Memorandum from William V. Karson, Jr., Department of Fiscal Services, to members of the Senate Committee to Finance Agricultural Land Preservation, exhibit E (Dec. 31, 1977).
 9. *Proposed Enactment of the National Agricultural Land Policy Act: Hearings on H.R. 5882 before the Subcommittee on Family Farms, Rural Development, and Special Studies of the House Comm. on Agriculture, 95th Cong., 1st Sess. 20 (1977)* (statement of Hon. James Jeffords). At this hearing it was indicated that eighteen states had adopted programs for the acquisition of development rights and that at the municipal, county and substate regional level, forty local units in nineteen states were exploring ways to preserve agricultural land. *Id.* at 63 (statement of John Vincent Helb); *Obstacles to Strengthening Family Farm System: Hearings before the Subcommittee on Family Farms, Rural Development, and Special Studies of the House Comm. on Agriculture, 95th Cong., 1st Sess. (1977)*.
 10. M. Cotner, *Land Use Policy and Agriculture: A National Perspective* (U.S. Dep't of Agric. 1976). O. Krause & D. Hair, *Trends in Land Use and Competition for Land to Produce Food and Fiber*, in *Perspectives on Prime Lands 1* (U.S. Dep't of Agric. 1974). Farmland losses may not be critical on the national level, but such losses are important at the local level.
 11. M. Cotner, *Land Use Policy and Agriculture: A State and Local Perspective* (U.S. Dep't of Agric. 1977); COUNCIL ON ENV'T'L QUALITY, *SUBDIVIDING RURAL AMERICA* (1976).
 12. D. Miner, *Farmland Retention in the Washington Metropolitan Area* (Metrop. Wash. Council of Gov'ts 1976); Address by Secretary Vladimir A. Wahbe, Department of State Planning before a Joint Committee of the Maryland House Environmental Matters Committee and House Ways and Means Committee (Feb. 12, 1975).

persons.¹³ In 1945 agricultural land accounted for 4,233,971 acres, or 67% of the total land in Maryland; by 1969, this figure had dwindled to 2,780,518 acres or 44%.¹⁴ If this trend continues, it is predicted that by 2000 the figure will drop to 1,238,595 acres or 19.6%, for an acreage loss since 1969 of more than 1.5 million acres, or an average yearly loss of 50,000 acres.¹⁵

A review of past legislative proposals relating to land use indicates that the present state agricultural preservation program represents a compromise, balancing the interest of state and local government and landowners. A number of the bills introduced were for the purpose of establishing more stringent land-use controls, rather than for the sole purpose of preserving agricultural land. They were rejected by the legislature largely because of objections by local governments to the state's involvement in local land-use affairs, and the objections of farmers who feared both state regulation and the possible adverse effects of such programs on the value of their land.

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13. COOPERATIVE EXTENSION SERVICE, MD. AGRL-ECON. 26 (1978). In 1977 Maryland's net farm income was \$101.7 million. *Id.* at 8. In addition, many other industries depend on Maryland agriculture. Address by Richard Parsons, Chief, Marketing Division, Maryland Department of Agriculture to the Maryland Industrial Development Financing Authority, "Agriculture's Input to Maryland's Economy" (April 13, 1977). Some states are not as self-sufficient as Maryland. For example, Massachusetts imports approximately 85% of its food supply. Address of Maryland Secretary of Agriculture, Young D. Hance, before the Maryland House Ways and Means Committee on Senate Bills 679 and 680 (March 31, 1978).
14. FINAL REPORT OF THE COMMITTEE ON THE PRESERVATION OF AGRICULTURAL LAND, to the Secretary of Agriculture, Maryland Dep't of Agric. 15 (1974) [hereinafter referred to as THE FINAL REPORT]. Maryland occupies approximately 6.3 million acres of land. There are 15,163 farms in Maryland, comprising 2,634,395 acres, U.S. DEPT. OF COMMERCE, 1 1974 CENSUS OF AGRICULTURE XIII.
15. *Id.* The following chart indicates the number of lost acres by region if 1949 to 1974 trends continue to the year 2000.

PROJECTED AGRICULTURAL LAND BY REGION

<i>Region</i>	<i>Acres 1974</i>	<i>Acres 1990</i>	<i>Acres 2000</i>
Western Maryland	289,201	126,276	14,600
Frederick	232,676	165,067	120,100
Metropolitan Baltimore	490,348	227,727	61,800
Suburban Washington	188,102	36,402	-51,240
Southern Maryland	221,850	89,823	4,760
Upper Eastern Shore	617,558	500,517	416,740
Lower Eastern Shore	396,908	261,985	175,200
State Totals	2,436,643	1,407,797	793,200

MD. DEP'T OF AGRIC., DEP'T OF HEALTH AND MENTAL HYGIENE, & DEP'T OF STATE PLANNING, THE EFFECTS OF LARGE LOT ZONING ON THE DEPLETION OF AGRICULTURAL LAND 8 (1977).

In 1967, a commission was appointed to study and develop a long-term plan for the preservation of prime agricultural land.¹⁶ The commission was further charged with considering a reduced property tax on farmland. The commission devoted all of its energies to studying and recommending changes in the agricultural assessment law but failed to propose any plan for the preservation of agricultural land. The commission's recommendations, however, greatly influenced enactment in 1969 of amendments to the Maryland Farmland Assessment Law.¹⁷

Several bills introduced during the 1972 and 1973 sessions of the Maryland General Assembly dealt with a wide range of state land-use issues. Senate Bill 254 (1972) proposed a statewide program for the transfer of development rights in order to preserve agricultural land. It stressed planning as a means of curbing costly residential sprawl. The bill provided for the creation of planning districts to be designated by local authorities consistent with an adopted local master plan and permitted farm owners in a district to sell their development rights to developers. Thereafter, development of that farmland would have been precluded, but the developer would have been permitted more intensive land uses in areas where development had been planned and designated by the local government.

House Bill 341 (1973) and Senate Bill 362 (1973) similarly encouraged more effective land-use planning, management, and development. Both bills provided for the creation of a state land-use agency to designate, after consultation with local government, areas of critical state concern. Additionally, Senate Bill 362 provided for designation of prime agricultural land. These bills would have required local governments to designate areas regarded locally as worthy of protection and to adopt regulations within six months restricting development of land within those areas. If a local government failed to do so, the state land-use agency would have intervened to adopt such regulations. Neither bill provided for compensation, however, and farmers feared that if their land were so designated and its development restricted, their land values would be reduced.¹⁸ Senate Bill 728 (1973) directed the Department of State Planning, in cooperation with other state agencies, to develop mandatory minimum land-use guidelines to be used by political subdivisions in adopting regulations for all local land-use plans. None of these bills was enacted; in each case local governments objected to the potentially greater state control over local land use.¹⁹

16. The Commission was appointed in response to H.J.R. 20 (1967).

17. INTERIM REPORT OF THE COMMITTEE ON THE PRESERVATION OF AGRICULTURAL LAND, to the Secretary of Agriculture, Maryland Dep't of Agric., Subcommittee V Report, 11-12 (1973) [hereinafter referred to as THE INTERIM REPORT].

18. *Id.* at 15.

19. *Id.* at 16.

In 1973, the Maryland General Assembly again expressed its concern over farmland preservation by adopting a Joint Resolution directing the Secretary of Agriculture to undertake a comprehensive study to facilitate the development of a long-range plan for the preservation of agricultural lands.²⁰ This resolution recited that agricultural preservation is important to the state's economy and that proper planning is necessary to preserve farmland in the face of high taxes and the increasing pressure on farm owners to convert farms for development.

As a result, an eighteen-member Committee on the Preservation of Agricultural Land was appointed. After a year's study, it made the following recommendations:

- (1) The Maryland Farm Land Assessment Law should be continued in its present form.
- (2) Federal and state estate law should be modified to permit valuation of farms on the basis of agricultural use value as long as they are continued in farming.
- (3) State legislation should be prepared and introduced to enable Maryland farmers to form agricultural districts and to sell easements to the State of Maryland for keeping land in agriculture.
- (4) A goal should be established as to the amount of agricultural land to be preserved in Maryland.
- (5) All planning and zoning bodies in Maryland should be requested to recognize the importance of proper planning for non-agricultural development as an important technique for the preservation of agricultural land.²¹

The Report of the Committee on the Preservation of Agricultural Land urged that the differential farm assessment law be retained because it has been "effective in slowing the rate of transfer of agricultural land to other use."²² The report concluded, however, that the farmland assessment law alone would prove inadequate to prevent the future loss of valuable agricultural land.

The Maryland Farmland Assessment Law has had a stormy history.²³ It continues to enjoy popular support, however, even

20. S.J.R. 43 (1973).

21. THE FINAL REPORT, *supra* note 14, at 50-52. Since the issuance of THE FINAL REPORT, federal and Maryland estate and inheritance tax laws have been modified to provide in certain instances for the valuation of agricultural land on the basis of its agricultural use instead of its fair market value. I.R.C. § 2032A; MD. ANN. CODE art. 81, § 154 (Supp. 1978).

22. THE FINAL REPORT, *supra* note 14, at 50.

23. The statute providing for the differential assessment of agricultural land was passed by the General Assembly, ch. 9, 1955 Md. Laws, but vetoed by the

though the efficacy of differential assessment as the exclusive means of preserving agricultural land has been questioned.²⁴

In 1974, Senate Bill 715 was introduced and enacted. This created Maryland's agricultural preservation program on a voluntary basis and without districts. It also established the Maryland Agricultural Land Preservation Foundation for the purpose of acquiring easements on farm and woodland by purchase or gift.²⁵ The program was never funded, however, and was thus inadequate to implement the objective of the statute. The Foundation was powerless to do more than accept easement donations. Only easements in perpetuity were to be acquired, and there was no requirement to consult with local governments to determine whether easement acquisitions were consistent with local plans. Only one easement was donated to the Foundation during the three years the statute remained in effect.²⁶

The General Assembly has also considered other legislative proposals designed to preserve agricultural land. In 1975, House Bill 18 was introduced. It incorporated certain provisions recommended by the Committee on the Preservation of Agricultural Land, but it was not enacted.²⁷

During the 1975 interim, recommendations of a joint committee of the House Ways and Means Committee and the Environmental Matters Committee were incorporated into legislation and intro-

Governor (April 28, 1955). The bill (H.B. 729) was repassed over the Governor's veto by the House and Senate to be effective June 1, 1956, and codified as MD. ANN. CODE art. 81, § 19(b) (1957). The statute, however, was held to be unconstitutional as contrary to art. 15 of the MARYLAND DECLARATION OF RIGHTS. *State Tax Comm. v. Gales*, 222 Md. 543, 161 A.2d 676 (1960). The legislature promptly rewrote § 19(b) of art. 81. 1960 Md. Laws, ch. 52, effective June 1, 1960. 1960 Md. Laws, chs. 64 and 65 proposed constitutional amendments to articles 15 and 43 of the DECLARATION OF RIGHTS ratified Nov. 8, 1960. *Supervisor of Assessment v. Alsop*, 232 Md. 188, 191, 192 A.2d 484, 485 (1963); The Farmland Assessment Law was further amended in 1969 as the result of a commission report. See text accompanying note 16 *supra*.

24. A report by the Council on Environmental Quality found that differential assessment probably deterred only one percent of all farmers from selling their land for development. Differential assessment may be helpful in slowing the conversion of agricultural land to other uses, but it alone will not be effective to prevent the conversion of agricultural land for development in view of the increased demand and price for land near suburban areas. *Untaxing Open Space*, *supra* note 6, at 9.
25. MD. AGRIC. CODE ANN. §§ 2-501 - 2-508 (Supp. 1978).
26. Minutes of the Maryland Agricultural Land Preservation Foundation at 1 (Feb. 9, 1977).
27. House Bill 18 received an unfavorable report and was sent to the Legislative Council for study. It provided for agricultural districts of five hundred or more acres in which development would be restricted. But the potential existed that an owner could be petitioned into such a district against his will. C. Riley, *Preservation of Agricultural Land*, 6 U. OF MD. LAW FORUM 31 (1976).

duced during the 1976 session as House Bill 783.²⁸ The principal provisions of the committee's draft bill were the following:

- (1) A voluntary system of agricultural districts, with agricultural advisory boards in the counties of the state.
- (2) A system for purchase of agricultural easements by the state. The value of easement would be the difference between fair market value and agricultural value of land, or the asking price, whichever is lower.
- (3) Time limits before easement could be offered for sale, with initial payments of not more than 29% to the seller of the easement, with the remainder of the value being paid in ten annual installments.
- (4) Procedures for termination of agricultural districts and the repurchase of easements which have been sold to the state.²⁹

House Bill 783 abandoned the concept of a mandatory system of agricultural districts in favor of a voluntary program, as recommended by the Committee on the Preservation of Agricultural Land.³⁰ Consideration was given to funding the purchase of easements by allotting a portion of the Program Open Space³¹ funds to an Agricultural Preservation Fund. Because this funding mechanism could not be agreed upon, the bill received an unfavorable report.³² The bill raised serious questions, however, as to the cost and goals of any agricultural preservation program.

Realizing that local zoning and the differential tax assessment were inadequate to provide for preservation, and rejecting as too costly the fee simple purchase of agricultural land, in 1977, the General Assembly enacted Senate Bill 297. This statute represented

28. JOINT SUBCOMMITTEE ON THE PRESERVATION OF AGRICULTURAL LAND, 1975 REPORT TO THE LEGISLATIVE COUNCIL OF MARYLAND 378 (1975).

29. *Id.*

30. *Id.*

31. Program Open Space is a designated funding source for use by state and local governments in the acquisition and preservation of open space land throughout Maryland. This program has been in existence since 1969 and is funded by proceeds from the sale of state bonds and from the state transfer tax of one-half of one percent which is imposed upon the consideration paid upon the transfer of real property. MD. NAT. RES. CODE ANN. §§ 5-901 - 5-910 (Supp. 1978); MD. ANN. CODE art. 81, § 278A (Supp. 1978).

32. The use of funds from Program Open Space was strongly objected to by local county governments, which did not want their share of funds from this program, used to purchase parks and recreational areas in their counties, diverted to the Agricultural Preservation Foundation's fund for easement acquisition on agricultural land. Address by F. Bentz & F. Miller, "A Plan for Identifying and Protecting Prime Agricultural Land," 16th Annual Meeting of the American Society of Agricultural Engineers (June 27-30, 1976).

a change in state policy.³³ Its program is voluntary and thus satisfactory to farmers. It guarantees compensation for any easements for development rights purchased by the Foundation.³⁴ The program appears satisfactory to local governments as well because it requires local government approval for district establishment and for the sale of any easement to the Foundation. Additionally, local governments retain control over local planning and land-use decisions. This program, being both cost-effective and politically acceptable, may therefore become a successful method for the preservation of agricultural land.³⁵

III. ANALYSIS OF MARYLAND STATEWIDE FARMLAND PRESERVATION PROGRAM

The effectiveness of the Maryland Agricultural Land Preservation Program depends upon the cooperation of local governments. The statute creating the Foundation provides for its administration by a Board of Trustees and mandates each county's governing body to appoint an Agricultural Preservation Advisory Board.³⁶ Each Advisory Board consists of five members, three of whom must be owner/operators of commercial farms earning at least fifty percent of their income from farming. The Foundation does not interfere

33. SENATE FINANCE COMMITTEE FLOOR REPORT ON S.B. 297, 1 (1977).

34. The Committee on the Preservation of Agricultural Land held hearings throughout the state on the question of the best method to preserve agricultural land. Six hearings were held from March 27 through April 10, 1974. There was strong interest in agricultural preservation. An opinion poll form was circulated in an attempt to determine preferences for agricultural preservation techniques. Two hundred five forms were returned. Ninety-two percent favored continuation of the Maryland Farmland Assessment Law, and ninety-one percent recommended that additional measures be adopted to preserve Maryland farmland. All reports indicated a strong preference for voluntary agricultural districts and voluntary agricultural districts with easements. THE FINAL REPORT, *supra* note 14, at 48-49.

35. *But see* REPORT OF MARYLAND DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT, THE MARYLAND ECONOMY STATUS AND OUTLOOK, 1976-1977, at 134-36. This report questioned the need to preserve agricultural land in Maryland, especially in light of the cost of acquiring development rights easements (\$2 billion). It urged that current tax laws alone were effective to encourage the preservation of agricultural land and that attempts to create agricultural districts should be resisted because they would limit development.

36. The Foundation's Board of Trustees is a policy making body. One of the Board's chief functions has been to adopt regulations for the creation of districts and to adopt guidelines for agricultural land from which easements may be purchased. The Board's initial year has been necessarily taken up with organization, administration, and the drafting of regulations to implement decisions. ANNUAL REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY, MARYLAND AGRICULTURAL PRESERVATION FOUNDATION 1 (1978). The concept of agricultural preservation receives strong support in Maryland, both from farm organizations, such as the Maryland Farm Bureau and the National Grange, and from planners and local government officials who are concerned with uncontrolled suburban development. The Executive Director of the Agricultural Land Preservation Foundation

with the local governments' traditional control over planning, zoning, and land use, and Advisory Board and local government approval of the Foundation's easement acquisition is mandatory.³⁷ The local advisory boards' duties are as follows:

- (1) To advise the county governing body with respect to the establishment of agricultural districts and the approval of purchases of easements by the Foundation within the county;
- (2) To assist the county governing body in reviewing the status of agricultural districts and land under easement;
- (3) To advise the Foundation concerning county priorities for agricultural preservation;
- (4) To promote preservation of agriculture within the county by offering information and assistance to farmers with respect to establishment of districts and purchase of easements; and
- (5) To perform any other duties as assigned by the county governing body.³⁸

The statute creating the Maryland Agricultural Land Preservation Foundation is complex in its scheme of establishing districts and purchasing easements. The statute authorizes the Foundation to purchase easements on farmland in agricultural districts only for one or more of the following reasons: to provide a source for future supply of agricultural products for Maryland citizens; to provide for the control of urban development and costly suburban sprawl; and to

spent the greater part of 1978 speaking to farm groups and to local governments in Maryland about the state farmland preservation program. As with any new program there has been some skepticism regarding the present agricultural preservation program and some local groups have indicated that they wish to study the matter further. Farmers who have responded to the state program are cautious of government regulation. In addition, there has been some interest by speculative developers, especially those developers faced with local zoning regulations restricting development. The greatest interest in agricultural preservation has been shown in the Baltimore-Washington area, and one of the most important current objectives of the agricultural preservation program is to inform the public of the merits of this program and to obtain broad citizen participation. Interview with Alan Musselman, Executive Director, Maryland Agricultural Preservation Foundation (Dec. 20, 1978).

37. Counties have exclusive jurisdiction over planning and zoning. MD. ANN. CODE art. 66B, § 4.01, 7.02 (1978), and MD. ANN. CODE art. 25A, § 5(x) (Supp. 1978) (for chartered counties). SENATE FINANCE COMMITTEE FLOOR REPORT ON S.B. 297, *supra* note 33, at 5.

38. MD. AGRIC. CODE ANN. § 2-504.1(c) (Supp. 1978). All counties have appointed agricultural preservation advisory boards. Baltimore City is not included in this statute because it has had no agricultural land since 1954. SENATE FINANCE COMMITTEE FLOOR REPORT ON S.B. 297, 8 (1977).

provide for the protection of agricultural land and woodland as open space areas to protect scenic and aesthetic values.³⁹ The statute prescribes basic guidelines to be followed by the Foundation and local governments but does not address certain difficult questions concerning agricultural preservation. For example, it does not specify how many acres of agricultural land should be preserved, nor does it specify their location.⁴⁰ If the Board of Trustees were to decide to purchase easements on land near urban areas in order to create buffer zones or readily available open space for city dwellers, such purchases would tend to deplete fund sources more rapidly because of the higher cost of acquiring easements on more expensive land in urban rather than in rural areas. Presumably, when districts are established and farm owners offer easements, the Board of Trustees and local governments will be in a better position to solve this problem.

The procedure for establishing an agricultural preservation district is carefully outlined in the statute. One or more owners of qualifying land may file a petition to establish an agricultural preservation district.⁴¹ Filing is presumably to be done with the clerk of the county commissioners or council. To qualify, a district must consist of one hundred or more contiguous acres,⁴² the soils of which must be of a certain capability,⁴³ and all land within the

39. MD. AGRIC. CODE ANN. § 2-501 (Supp. 1978).

40. THE FINAL REPORT OF THE COMMITTEE ON THE PRESERVATION OF AGRICULTURAL LAND spoke in terms of preserving from 1.5 to 2.0 million acres of agricultural land without estimating the cost of such a program. THE FINAL REPORT, *supra* note 14, at 51. A pilot New Jersey program was established and designed to operate in one county whose total land is only nine percent of Maryland's land area. It was projected that New Jersey's program to preserve agricultural land would cost \$5 million. SENATE FINANCE COMMITTEE, 1976 INTERIM REPORT TO THE MARYLAND GENERAL ASSEMBLY 165-67. In testimony before the Senate Finance Committee, it was estimated that approximately two million acres of Maryland farmland should be preserved and that such a program would cost \$1 billion plus the cost of the administration of the fund. *Id.* at 168. In addition, questions were raised that remain unresolved concerning whether some areas of the state should have a priority over others in the agricultural preservation program. As of this writing, it is uncertain what the cost of Maryland's agricultural program will be or how many acres of farmland should be preserved.

41. MD. AGRIC. CODE ANN. § 2-509 (Supp. 1978).

42. Foundation regulations determine minimum district size requirements. CODE OF MARYLAND REGULATIONS [hereinafter "COMAR"] 15.17.01.03C(2). Smaller areas may be included that are characterized by special capabilities. Foundation regulations were distributed to all local governments, state agencies, and interested persons for comment. After a public hearing, they were adopted January 12, 1979.

43. Foundation regulations establish soil qualifications. These soil qualifications include USDA Soil Capability Groups I, II, and III or USDA Woodland Classes 1 and 2. Exceptions may be provided for certain soils of lower capability or for areas of "existing, extensive, specialized production." COMAR 15.17.01.03C(1)(b) (1979).

district must be actively devoted to agricultural use. The petitioner must also agree to maintain the land in agricultural use for at least five years, subject to certain limitations.

The petition is referred to the local agricultural preservation advisory board and to the local planning and zoning agency for a report as to the advisability of establishing the requested district. In determining whether to recommend district establishment, the local advisory board must take into consideration regulations adopted by the Agricultural Preservation Foundation as to a farmland's capacity for productivity, size, and location. Land may not be included in a district unless the land is used primarily for the production of food or fiber, or is of such open space character or productive capability that continued agricultural production is feasible. In addition, farmland qualifying criteria provide that the majority of the land area of any district shall have certain soil capabilities to ensure continued production. The aforementioned minimum district size requirement for district establishment is considered necessary to furnish enough land to guarantee continued agricultural production. There is, however, no minimum size requirement for land sought to be added to any established district so long as the added farmland is contiguous to such a district.⁴⁴ Finally, a district may not be established within a ten-year water and sewage district unless it is outstanding in productivity and is of significant size.⁴⁵ Presumably, "significant size" means acreage well in excess of the one hundred acre minimum.

The Board of Trustees has broad rule-making authority to provide for the type and size of farmland to be included in a district. This rule-making authority provides needed flexibility because different types of agricultural land, such as lands used for orchards or dairy farming, may each have a different critical mass of required acreage for the continuation of agricultural production. Additionally, natural agricultural areas and thus preservation districts, may cross boundaries of political subdivisions.⁴⁶

A district may not be created without county approval, and counties must follow precise statutory procedures and Foundation regulations in establishing districts. These procedures and regulations also prescribe the type of farmland and farm-related activities that may be encouraged or permitted within a district. Therefore, the

44. COMAR 15.17.01.03C(1).

45. COMAR 15.17.01.03D. Each county governing body is required to adopt sewer and water plans for that county. Ten-year plans indicate the direction of county growth. MD. ANN. CODE art. 43, §387C (1978).

46. Legislative history indicates that the Board of Trustees of the Foundation was intended to have considerable flexibility with respect to district standards, acreage, location requirements, and the productivity of land to be included therein. SENATE FINANCE COMMITTEE REPORT ON S.B. 297, *supra* note 33, at 9.

power of the Foundation to approve district establishment and to purchase easements may be frustrated by a county's failure to conform to statutory requirements and Foundation regulations for the establishment of a district.

The criteria as to the quality of farmland to be included within a district and the size and location of districts are intended to be sufficiently broad to permit local advisory boards to enjoy flexibility in selecting farmland that may be unique to a region.

Petitions to establish an agricultural preservation district are referred to the local planning and zoning agency in order to ascertain whether the proposed district will be compatible with state and local plans and programs. This mechanism allows local governments to plan the location of districts from which easements may be purchased. If a local governing body approves a petition, it is forwarded to the Agricultural Land Preservation Foundation for final approval.⁴⁷ After Foundation approval, the petitioners are required to execute an agreement, to be recorded among the county land records, to retain their land in the district for a minimum five year term.⁴⁸

An agricultural preservation district may be established only if a county governing body has adopted an ordinance to permit and to promote normal agricultural activities within that district.⁴⁹ For example, such an ordinance must permit all types of farming, day and night operation of machinery used in the production or primary processing of agricultural products, and all other normal agricultural operations. Furthermore, the Agricultural Land Preservation Foundation encourages local governments to relax local regulatory requirements that interfere with agricultural production and to adopt ordinances to protect and preserve the agricultural character of the district.⁵⁰ The farm owner's district agreement (restricting the

47. MD. AGRIC. CODE ANN. § 2-509 (Supp. 1978) provides specifically for the period of time that petitions must be reviewed by local governing bodies and the Foundation for district establishment.

48. MD. AGRIC. CODE ANN. § 2-509(b)(7) (Supp. 1978).

49. *Id.* § 2-509(c)(4).

50. Farmers complain that they have been harassed and threatened with nuisance suits by nonfarm residents who move into agricultural areas expecting tranquility and wishing to enjoy the scenic and aesthetic qualities for the rural environment free from agricultural operations. New residents object to such normal farm operations as chicken houses, hog farms, dairy farms, such practices as spreading manure over farmland, and the operation of farm machinery during evening hours. Residents have also complained that grain drying operations pollute the air. The inclusion of farmland within an agricultural preservation district may lessen the likelihood of nuisance complaints or nuisance suits against farmers. Although the term "nuisance" does not have a precise definition, courts in deciding whether a particular farm activity is a nuisance will look to local conditions, local ordinances, and health regulations to determine if a claimed activity is compatible with permitted local uses. W. PROSSER, *THE LAW OF TORTS* 592, 627 (3d ed. 1964). See also *Air Lift*,

use of the land to agriculture) is intended to encumber that farmland and to preclude any subsequent purchasers or devisees from developing that farm for residential or commercial purposes.⁵¹ Inclusion in a district, however, does not prevent an owner from selling his land subject to such an encumbrance.

An agricultural preservation district may continue in effect indefinitely, or may be terminated at the request of a farm owner after five years or in the event of severe economic hardship.⁵² Earlier alteration or termination of a district may occur only upon the recommendation of the local governing body after consultation with the local agricultural preservation advisory board and the county planning and zoning body. This may occur if the agricultural use of the land has changed so that it no longer meets Foundation criteria.⁵³

Farmland must be located within a preservation district in order for its owner to sell an easement to the Foundation,⁵⁴ and the owner

Ltd. v. Board of County Comm'rs of Worcester County, 262 Md. 368, 278 A.2d 244 (1971). In Carroll and Worcester Counties zoned agricultural districts, local laws provide that agriculture is the preferred use. CARROLL COUNTY, MD., CODE art. 7, §3-23A (1976); WORCESTER COUNTY, MD., CODE art. 24, §1-201(a) (Supp. 1972). This may insulate farm operators from nuisance suits. Local ordinances should promote farming activities by lessening government's regulatory impact. In addition, those moving to or near an agricultural district will be more aware of the farm uses permitted and less likely to complain about normal agricultural operations. However, counties cannot adopt standards applicable to agricultural preservation districts for noise and air quality that fall below standards adopted by the State Department of Health and Mental Hygiene. MD. ANN. CODE art. 43, §§ 697, 705, 828 (1971 & Supp. 1978). See also Department of Health and Mental Hygiene Regulations: COMAR 10.18.01, Air Quality Standards; COMAR 10.20.01, Noise Pollution; noise regulations provide for an exemption for agricultural field machinery when used and maintained in accordance with manufacturer's specifications. Although there are no regulations governing odors, odors may constitute "air pollution" as defined by COMAR 10.20.01.01.

51. Although the statute does not so mandate, the Foundation provides in its district agreement form that development of land for residential, commercial, or industrial purposes is prohibited. Upon notice to the Foundation, however, a farm owner who originally petitioned to have his farmland included in a district is permitted to convey one acre or less for his use or for each of his children for residential development. In addition, a farm owner is permitted to construct a certain number of dwellings for tenants engaged in farm operations on the farm. COMAR 15.17.01.03.
52. MD. AGRIC. CODE ANN. §2-509(a)(7) (Supp. 1978). The Foundation has defined the term "severe economic hardship" to mean "a state of financial peril of a landowner as evidenced by bankruptcy proceedings, the results of natural disaster or farm owner/operator disability, or as determined by the Board of Trustees on a case-by-case basis." The Foundation must have the concurrence of the local governing body to terminate a district.
53. COMAR 15.17.01.03F.
54. There are other state programs that acquire easements. The Maryland Environmental Trust may acquire easements for the preservation of agricultural land but it was not created expressly for that purpose. MD. NAT. RES. CODE ANN. §§ 3-201 - 3-210 (Supp. 1978). The Environmental Trust program to acquire conservation easements began in 1974. Since that date, the Environmental Trust has received twenty-nine easement donations restricting 7,126 acres of cropland, woodland, waterfront, and other open space areas in 17 counties. Easement sites

must make an offer in writing to sell the easement. The offer is contained in an application, which must specify an asking price at which the owner is willing to sell the easement, as well as a description of the property.⁵⁵ The Foundation may not approve an easement application without first referring it to the local governing body of the county in which the land is located and obtaining its approval.⁵⁶ In determining whether it should approve the purchase of an easement, the county governing body consults its local agricultural preservation advisory board. The local board is then required to consider criteria and standards established by the Agricultural Land Preservation Foundation, current local regulations applicable to agricultural preservation, local patterns of land development, and any locally established priorities for the preservation of agricultural land. In addition, a hearing on any easement acquisition by the Foundation may be requested by the applicant, the county governing body, or the local preservation advisory board, and if requested, the hearing must be held.

In considering whether to approve applications by farm owners, the Foundation may approve only those applications that meet statutory standards. Additionally, applications for easement acquisitions may be approved for purchase only in a specific order consistent with a specified formula.⁵⁷ Acceptance by the Foundation of an offer to sell a development rights easement may be conditioned

range in size from two to 1,680 acres. Together, private individuals and public agencies have preserved 7,000 acres in the area of Sugar Loaf Mountain, Maryland. *The Daily Record*, Jan. 6, 1979, at 1, col. 1. In addition, the Maryland Historic Trust purchases easements, but for the preservation of historic and cultural properties, not for the preservation of agricultural land. MD. ANN. CODE art. 41, § 181A (1978).

55. An application form for selling an easement is provided in the Foundation's regulations, COMAR 15.17.01.04B. Easements may be donated to the Foundation, COMAR 15.17.01.04O. Forms for district establishment and district agreements are also provided.
56. Local governments must plan effectively for district establishment in order to accommodate future development while providing for agricultural preservation. The Foundation may not purchase easements on agricultural land that is not within a district. MD. AGRIC. CODE ANN. § 2-509(d) (Supp. 1978).
57. MD. AGRIC. CODE ANN. § 2-510(e) (Supp. 1978). The formula determines which offers the Foundation may accept. The Foundation may purchase easements only in specified order based upon a price per acre proportionate difference formula. This formula is to ensure that offers that the Foundation accepts will not be based on the cheapest and least desirable land.

Presently, funding is the major problem with Maryland's program to preserve agricultural land. This will probably remain so in light of present economic conditions and the anticipated tightness in the Maryland budget. The Senate Finance Committee Floor Report indicated that funding for the Agricultural Preservation Program should come from a special fund instead of general funds because of annual budgeting and economic pressures that usually effect the general fund. The Report estimated that a minimum of \$10 to \$15 million annually will be required to preserve two million acres. The Report contemplated the creation of buffer zones through easement acquisition and

upon terms, contingencies, or other conditions not contained in the original offer. The Foundation is required, however, to notify all landowners whose offers have been rejected and to specify reasons for its rejection. A landowner whose offer has been rejected for any reason other than insufficiency of funds may not reoffer an easement on the same land and on the same terms until two years after the date of the initial offer.⁵⁸

The price that the Foundation may pay for an easement is fixed by a statutory formula: the asking price, or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower. This value is determined by the Foundation based upon one or more Foundation appraisals and an appraisal by the farm owner if he wishes. The statute also provides for appeals and for arbitration as to the value of easements.⁵⁹

suggested that these zones may cause nearby agricultural land to be self-preserving. The Report contemplated, therefore, that easements will not have to be purchased on all of the two million acres. The Report concluded that initially the fund for the purchase of easements should be increasing at a rate necessary to allow for planning in the early stage of the program. Senate Finance Committee Floor Report of S.B. 297, at 3. Ideally, once the program is operational, funds should be made available in proportion to the development pressures on agricultural land. The Senate Finance Committee released a package of bills in an attempt to solve funding problems. It was estimated that \$15 million would be raised if these bills were enacted; most were not enacted. Senate Bill 679 (1978), however, enacted as 1978 Md. Laws, ch. 820, codified as MD. NAT. RES. CODE ANN. § 5-903 (Supp. 1978), authorized the use of a portion of the state's share of funds from Program Open Space by the Agricultural Preservation Foundation for easement acquisition, with two million dollars being designated for Fiscal Year 1979. Senate Bill 761 (1977), not enacted, would have authorized counties to elect to transfer their portion of Program Open Space funds to the Maryland Agricultural Preservation Fund for the purchase of easements in their counties. Finally, Senate Bill 680, passed by the legislature but vetoed by the Governor, provided funding derived from a ten percent roll back tax on land that had received agricultural use assessment and that had been converted to nonagricultural use. This vetoed bill was redrafted to remove its constitutional infirmity and was reintroduced as S.B. 942 during the 1979 Session of the General Assembly. As of this writing, the bill has been passed and sent to the Governor for his signature. H.B. 575 and S.B. 941, also introduced in 1979, would have provided an additional source of funding for the state agricultural preservation program; the legislature, however, rejected both bills. The Foundation presently estimates that annual funding requirements for the acquisition of easements will range from \$10 to \$15 million. 1979 Report to the General Assembly, Maryland Agricultural Land Preservation Foundation, at 11.

58. MD. AGRIC. CODE ANN. § 2-510(K)(2) (Supp. 1978).

59. Since the Agricultural Preservation Program is voluntary, easement appraisals must be performed in a manner agreeable to both farm owners and the Foundation. If they are unable to agree, an appraisal may be appealed to the appropriate County Board of Review. MD. ANN. CODE art. 81, § 248 (Supp. 1978). In addition, there are other statutes providing for review of Foundation decisions. MD. AGRIC. CODE ANN. § 2-509(7)(i) (Supp. 1978) provides for judicial review of the Foundation's decisions to release a landowner from a district upon a determination of severe economic hardship. MD. ANN. CODE art. 41, § 250 (Supp. 1978) provides for declaratory rulings on regulations adopted by the Foundation and that such rulings are subject to judicial review. MD. ANN. CODE

When a development rights easement is sold to the state, a deed containing covenants subjecting the property to use restrictions is recorded among the land records of the appropriate county. The farm owner agrees to keep his farmland in agricultural use, and the easement prohibits residential and commercial development.⁶⁰ The purchase of an easement by the Foundation, however, does not give the public any right of access to a farm owner's land, although the Foundation has the right to make inspections,⁶¹ upon notice to the farm owner, to ensure compliance with the terms of the easement. As indicated, a farm owner may sell his farm subject to the easement.⁶²

Although the statute does not specifically indicate, it was the intent of the legislature that easements sold to the Foundation will

art. 40, § 40A(c) (Supp. 1978) authorizes the Joint Standing Committee on Administrative, Executive, and Legislative Review to investigate and review regulations adopted by the Foundation. In addition, appeals may be made to the Secretary or the Board of Review of the Department of Agriculture in a proper case. MD. AGRIC. CODE ANN. § 2-401 - 2-405 (1974 & Supp. 1978).

60. After an easement is sold or after land is included in an agricultural district, that land may not be developed for commercial or residential purposes. A landowner who originally sold an easement or who petitioned to be included in a district, however, may build one dwelling for himself or convey one acre or less for each of his children. This may be done only once. MD. AGRIC. CODE ANN. § 2-513(b) (Supp. 1978). This exception may cause problems in counties that have adopted large lot zoning where a conveyance of one acre or less may not be permitted under current zoning regulations. Also, the one acre limitation may conflict with regulations adopted by the Department of Health and Mental Hygiene relating to solid waste management facilities requirements. MD. ANN. CODE art. 43, § 387C (Supp. 1978); COMAR 10.17.08 (1971).

61. COMAR 15.17.01.04N (1979).

62. These restrictive easements have been held to be in the nature of equitable easements or servitudes. *Hardesty v. State Roads Comm'n*, 276 Md. 25, 343 A.2d 884 (1975). If deeds restricting development rights are not carefully drawn, enforcement problems may result. Care must be taken in describing the interest to be conveyed. It has been held that enforcement problems may result in the absence of privity of estate and privity of contract. *Hollander v. Central Metal and Supply Co.*, 109 Md. 131, 71 A. 442 (1908). A grantee's power to assign or grant an easement in gross may be restricted. See generally RESTATEMENT OF PROPERTY §§ 489, 491 (1944). The absence of certain technical words may also affect an easement's enforceability as an encumbrance, binding future landowners. *Maryland & Pennsylvania R.R. v. Silver*, 110 Md. 510, 73 A. 297 (1909). See *Meade v. Dennistone*, 173 Md. 295, 196 A. 330 (1938), with respect to the enforcement of covenants and their binding effect on landowners. However, MD. REAL PROPERTY CODE ANN. § 2-118 (Supp. 1978) provides assistance to drafters of easements restricting the use of water or land for certain conservation purposes, including farmland preservation. It provides that these restrictions of property, drafted and executed as required for deeds or wills as appropriate, will create an enforceable incorporeal property interest. The statute further provides for the inheritability and assignability of conservation easements in gross and for the extinction and release of conservation easements generally. In the case of trusts for charitable purposes, it also provides for the passing of any interest in property to the Maryland Environmental Trust or the Maryland Historical Trust, where the maker has indicated a clear intention to subject that interest to public use for conservation or historic purposes, but has failed to specify a grantee, donee, or beneficiary, or where a grantee, donee, or beneficiary is not legally capable of taking that interest.

be held in perpetuity.⁶³ Easements may be terminated, however, for a limited number of reasons, after consultation with local governments: if profitable farming as defined by the Foundation is no longer feasible; or, if a land owner so requests, twenty-five years after purchase, but only upon approval of a local governing body of the county where the land is located. If termination is approved, the farm owner must then repurchase the easement from the state, paying the difference between the fair market value and the agricultural value at the time of termination.

As of the date of this writing, no districts have been established and no easements have been purchased.⁶⁴ It is evident that the success of the state program will depend on the public support and participation of local governments.

IV. COUNTY AND LOCAL PRESERVATION PROGRAMS IN MARYLAND

The state program is not the only one designed to preserve agricultural land. Local governments are now actively trying to preserve it.

63. There may be both federal and state tax implications in selling or donating an easement for development rights to the Agricultural Preservation Foundation. Since an easement is regarded as a separate property interest for tax purposes, its sale to the Foundation presumably may allow a farm owner to reduce the basis of his land. See I.R.C. § 1011 *et. seq.* *Macht v. Dep't of Assessments*, 266 Md. 602, 296 A.2d 162 (1972), holds that rights in land, such as easements, may be separately valued and assessed. Furthermore, since the sale of an easement will presumably reduce the fair market value of a farm, federal estate tax liability may also be reduced. See I.R.C. § 1014. There may be no federal estate tax advantage, however, if farmland qualifies for valuation at its agricultural use. See *id.* § 2032A. Additionally, the appraised value of an easement donated to the Foundation in perpetuity may be deducted for federal income tax purposes as a charitable contribution. *Id.* § 170. It is unclear, under present interpretations, whether donations not in perpetuity will be allowed by the IRS for purposes of a charitable contribution. If the value of such a gift can be determined, however, gifts of such interest should be recognized as charitable contributions.

Both the selling or donating of an easement to the Foundation may also reduce the property tax assessment on land from which an easement is sold because its market value would be based upon its agricultural use. The transfer of development rights to the Foundation, however, would appear to have little effect on the property tax assessment of farmland already assessed at its agricultural use pursuant to MD. ANN. CODE art. 81, § 19b(1) (Supp. 1978). There are other potential benefits for farm owners who sell or give an easement to the Foundation. MD. ANN. CODE art. 81, § 12E-1 (1975) enables any county or city to provide tax credits of up to 75% of the county, county school, municipal or special district property taxes imposed upon real property. These tax credits, however, may only be granted to farm owners who permanently grant an easement to the Foundation. It is uncertain whether these tax credits may be granted for sales of easements not specifically granted in perpetuity but which may be terminated after 25 years, MD. AGRIC. CODE ANN. § 2-514 (Supp. 1978).

64. Money may be disbursed from the Agricultural Preservation Fund for the purchase of agricultural land preservation easements beginning with fiscal year 1979. MD. AGRIC. CODE ANN. § 2-505(c) (Supp. 1978).

Local governments in the Baltimore-Washington suburban area have adopted programs to preserve prime agricultural land primarily in an effort to check the effects of scattered urban sprawl. These local programs are independent of the state program and involve the fee simple purchase of agricultural land or development right easements, restrictive agricultural zoning, and transfer development rights. Some of these programs are voluntary and offer compensation to landowners for development rights; others do not. Counties with rapidly growing areas need an immediate solution to growth problems and cannot afford to wait to see if the voluntary state program will be effective. If the state program for the purchase of easements proves effective, however, it will serve to supplement local farmland preservation programs.

Because there is no single acceptable method of preserving agricultural land, Maryland counties are experimenting with various methods of preservation. For example, in the face of increasing pressures for residential development, Calvert County has adopted large-lot zoning because of inadequate water and sewage facilities. This, however, has proven only moderately effective in slowing down the conversion of agricultural land to more intensive uses.⁶⁵ Consequently, an ordinance has been enacted authorizing the county to implement a transfer development rights system. It is hoped that implementation of this system will divert development away from prime agricultural and forestry land.⁶⁶ The transfer development rights system seems attractive, but remains unproven.⁶⁷ The system is a voluntary program with compensation to owners like the state program, but unlike the state program it involves no cost to taxpayers. In order to participate, an owner of productive farm or forestland in Calvert County petitions the Calvert County Agricultural Preservation Advisory Board, a five member board appointed by the County Commissioners, to incorporate his land in an agricultural preservation district.⁶⁸ If the petition is approved, the farmland remains in the district for a minimum of eight years, thereby assuring that farming or forestry will remain the predominant use. Only three residential building lots may be

65. Letter from Planning Director of Calvert County to Mr. Edwin L. Thomas, Director, Comprehensive State Planning (June 17, 1976), *reprinted in THE EFFECTS OF LARGE LOT ZONING ON THE DEPLETION OF AGRICULTURAL LAND*, *supra* note 15, at B14.

66. CALVERT COUNTY, MD., CODE art. 5, §§ 273-282 (Supp. 1970); Letter of Calvert County Commissioners to Landowners and Farm Owners in Calvert County (May 26, 1978), describing the county transfer development rights program.

67. M. BENNETT, *TRANSFER OF DEVELOPMENT RIGHTS: PROMISING BUT UNPROVEN NEW APPROACH TO LAND USE REGULATION* (Penn. Env'tl Council, 1976). See also Costonis, *Development Rights Transfer: An Exploratory Essay*, 83 YALE L.J. 75 (1973), for a general discussion of the development rights concept.

68. CALVERT COUNTY, MD., CODE art. 5, § 274 (Supp. 1970).

subdivided within the district and agriculture is thereby protected.⁶⁹ Local ordinances will be enacted to protect normal and efficient agricultural and forestry practices. The county's power to take property by eminent domain is limited, and special assessments may not be levied for the support of any public service, including water and sewer service, thereby protecting agricultural land from the impact of fiscal regulation.

An owner of land in a Calvert County preservation district generally has the right to one development option per acre. The price of this option may be bargained for, sold, and conveyed to any person, including presumably, another property owner whose land is located in a district zoned agricultural A-1. An A-1 district is designated by the County Commissioners as a transfer zone, an area to which development rights may be transferred. In this transfer zone, the density of land for residential purposes may be increased. Persons wishing to increase that density must own property in that transfer zone and must purchase five development rights for each additional single family residential building lot from a landowner in an agricultural preservation district.⁷⁰ The density of a transfer zone may not, however, exceed one dwelling per acre. Landowners may elect not to sell development rights options, but if they do sell them, the land so optioned is restricted indefinitely to agricultural or forest use by the recording of a deed with covenants encumbering the land and binding subsequent purchasers.⁷¹ Calvert County's agricultural districts have no definite size. The minimum acreage initially required, however, is three hundred acres of contiguous land or five hundred of noncontiguous land, and its districts generally coincide with existing physical barriers such as streams, valleys, and roads.⁷²

The Calvert County transfer development rights program has received widespread public support because it is a voluntary program to preserve prime farmland and yet promote orderly growth. In theory, development will be guided toward designated transfer zones where land is marginally productive.⁷³ Although untried, the program is attractive for cost considerations; no public money will be involved, and the price of development rights will be negotiated between buyer and seller.

The transfer development concept had been recommended for statewide use.⁷⁴ It also has been criticized because it is not known

69. *Id.* at § 274(d)(4).

70. *Id.* at § 278.

71. *Id.* at § 280.

72. *Id.* at § 274(d)(2).

73. Calvert County, Md., Agricultural Preservation Program, News Release (October 2, 1978).

74. Senate Bill 254 (1974) proposed a statewide development rights plan, but was not adopted by the legislature.

how active the development rights market will become. If demand is low, the value of development rights may not be sufficient to encourage farm owners to participate, especially if they may realize larger profits by selling their land to developers. A further problem will arise if a transfer zone landowner does not wish to participate in the transfer development rights program, but chooses to leave his land as an open space area. If insufficient eligible landowners participate, the value of development rights will be lower.⁷⁵ Finally it is uncertain what effect the development rights program will have on the county tax base or if the development right itself will be taxed.⁷⁶

Another significant county program for the preservation of farmland is the one enacted by Howard County.⁷⁷ The goal of this program is to preserve a minimum of 20,000 acres to ensure the future production of agricultural products and the protection of farmland.⁷⁸ The program authorizes the county executive to accept donations of land, and to purchase land or easements for development rights. The Howard County Agricultural Land Preservation Board makes recommendations to the county executive on the purchase of easements. The Board is further charged with developing criteria for the establishment of districts within which land or development rights may be purchased. In order for acreage to be eligible for easement purchase, it must consist of fifty contiguous acres, at least two-thirds of which must be productive agricultural land, and must be capable of development to a higher density. The county is prepared to pay the development value, after appraisals, for easements to be held in perpetuity. The county may also purchase land in fee simple and lease it to the seller for a term of twenty years. The following priorities have been established for easement purchases under Howard County's local program:

- (1) Easements should be purchased on land which is subject to substantial development pressures.

75. S. Ishee, *Purchase of Development Rights as a Means of Regulating Land Use* 9-11 (April 28, 1978), paper presented at Conference on the Use of Development Rights for Agricultural Land Retention, Ellicott City, Maryland; THE FINAL REPORT, *supra* note 14, at 47.

76. See MINN. STAT. ANN. § 272.16 (West 1969 & Supp. 1979), which provides for the separate assessment and taxation of interests in land, such as mineral rights, and easements.

77. HOWARD COUNTY, MD., CODE art. 14, Title 15, subtitle 5, §§ 15.501-15.510 (1977).

78. *Id.* at § 15.501. See generally The Work Force for the Preservation of Howard County Farmland, Report 1976, relating to the importance of agricultural industry in Howard County and the county's preservation program. The program will be financed through the sale of general obligation bonds and from funds received from the county transfer tax. *Id.* at 28; 1978 Md. Laws, ch. 496.

- (2) Easements should be purchased on land which is contiguous to properties included in the program.
- (3) Easements should be purchased on land outside of the Ten Year Water and Sewer District.
- (4) In addition, any criteria established by the State for use in their Agricultural Land Preservation Program shall also be evaluated.
- (5) The purchase of such easements should be consistent with and supportive of the intentions and policies of the county general plan.⁷⁹

Other counties where development pressures have become acute seem reluctant to rely upon voluntary programs with compensation to landowners to restrict growth. Again, cost may be a consideration. Certain counties have zoned land to create agricultural districts in order to restrict a landowner's ability to sell for development. Frederick County has adopted a one-acre minimum lot size and permits only a three lot subdivision within its agricultural zone with a very limited number of permitted uses.⁸⁰ Carroll and Baltimore Counties have created agricultural zones of 180,000 and 119,000 acres respectively.⁸¹ Montgomery County has adopted a rural zone

79. HOWARD COUNTY, MD., CODE art. 14, Title 15, subtitle 5, § 15.506(b) (1977).

80. Frederick County is under great development pressure. Sixty-five percent of the county is in the agricultural zone, and ninety percent of the county is undeveloped. The three-lot subdivision limit applies regardless of the number of acres owned. Address of James Shaw, Assistant Planning Director, Frederick County, Baltimore County Agricultural Preservation Workshop (Feb. 6, 1979).

81. In Carroll County, agriculture is a \$37 million industry. The county's agricultural district had permitted uses within the district that were not compatible with agriculture. Present restrictive zoning will allow only those uses that promote agriculture. Moreover, it is hoped that restricting residential subdivisions generally to one lot for each six to twenty acres will avoid fragmentation of the agricultural district. The location of this district is outside designated water and sewer areas. The county hopes to participate in the state program for easement acquisition, but seems unable to rely solely upon voluntary programs to control growth. CARROLL COUNTY, MD., CODE art. 6, § 6.6 (1976); CARROLL COUNTY PLANNING AND ZONING COMMISSION, MASTER PLAN, REPORT NO. 1, NO. 2 AND NO. 3 (January 1978).

Baltimore County plans to steer development from farmland through the use of resource conservation agricultural zones, which restrict subdivision development to approximately twenty units per one hundred acres. This district is characterized by active farming, prime soils, and extensive wooded areas. Letter from Baltimore County Planning Director to Edwin L. Thomas, Director, Comprehensive State Planning B-11 (July 23, 1976).

Nearby Harford County has adopted an agricultural zone that generally restricts development to one two-acre lot per ten acres. HARFORD COUNTY, MD., CODE art. 7, § 7.0011(a) (1977). Worcester County's recently adopted A-1 agricultural district effective September 23, 1978, is intended to encourage and to protect that county's farms and their economic productivity. Lot sizes vary from 40,000 square feet for single family dwellings to five acres for other uses and structures. WORCESTER COUNTY, MD., CODE art. 24, § 1-201(a), (b) (Supp. 1972).

minimum lot size of five acres or more, depending on soil conditions, and is experimenting with a transfer development rights program to preserve agricultural land in the Olney area of that county.⁸²

V. PRESENT PROBLEMS AND THE PRESERVATION PROGRAM'S SOLUTIONS

A. *Impediments to Farming*

By definition, creation of preservation districts will help preserve agricultural activities. Currently, farm owners are threatened with the effects of suburban development. They are faced not only with the current trend of local governments to zone agricultural land to decrease its development potential in order to control growth, but also with the effects of such growth on farming and the rural environment.⁸³ Typically, a farmer who wants to farm does not want the use of his land restricted by zoning to decrease its value. He wishes to keep his options open regarding the use of that land: to be able to continue farming, but also to be able to sell, if necessary, to any person for the most money. Although development pressure in rural areas may increase the value of farmland, it also makes farming less desirable for those farmers who may wish to continue farming, and ultimately may force them to sell their land.⁸⁴

The high cost of land and increasing costs of labor and farm equipment also discourage farmers from staying in agricultural production. In Maryland, in 1978, farmland prices increased 13% or more compared with the national average of 9%.⁸⁵ High farmland prices make it difficult for farmers to buy or lease prime agricultural land. Landowners have more to gain by selling their land for

82. In Montgomery County, rural zoning is intended to encourage agriculture and conservation and not merely to require large residential lots. In that county, conversion of agricultural land remains a serious problem as urbanization continues to consume farmland. County officials expect that growth will occur in "corridors" of development and hope that through zoning and restrictions on water and sewer connections agriculturally oriented "wedges" will be preserved. Accordingly, the county's program to preserve farmland depends upon its ability to concentrate growth within the corridors. Letter from Chairman of the Maryland-National Capital Park and Planning Commission to Vladimir A. Wahbe, Secretary, Maryland Department of State Planning (June 16, 1976); *Olney Master Plan*, at 67 (Staff Draft) (June 1978). See also MONTGOMERY COUNTY OFFICE OF ECONOMIC AND AGRICULTURAL DEVELOPMENTS, FARMLAND DISCUSSION PAPERS 1, 2 & 3 (January 1979), which discuss the importance of the agricultural industry and agricultural preservation in the county. On February 6, 1979, planning officials from Montgomery and seven other counties met at the Baltimore Metropolitan Agricultural Preservation Workshop to discuss methods and exchange ideas concerning the preservation of Maryland farmland.

83. D. Miner, *Farmland Retention in the Washington Metropolitan Area*, *supra* note 12, at 8.

84. *Id.* at 9.

85. COOPERATIVE EXTENSION SERVICE, MD. AGRI-ECON., *supra* note 13, at 9.

residential development than leasing or selling it for farm use. Unfortunately, farmers and developers are competing for the same land; the best land for development is also the best for agriculture because of drainage and soil characteristics. In addition, the high cost of land may also make farmers reluctant to commit themselves to a long-term state or local agricultural preservation program that restricts the use of the land because many farmers regard the land's development value as their only source of security upon retirement.

Besides the increased value of farmland, urban sprawl has other negative effects on farm production and the ease with which farmers may farm. When growth is rapid and unplanned, suburban residential development has created scattered or "leapfrogging" sprawl throughout the rural environment. If planning has been insufficient, roads and other facilities to support residential development are located in a manner that destroys the rural community, including its support facilities: farm supply stores, farm machinery repair shops, and stockyards, all of which are essential to enable farmers to market their product and to continue farming.⁸⁶ In addition, leapfrogging sprawl has an effect on the attitudes of farmers toward farming and causes what some studies call the "impermanence syndrome", a farmer's belief that future farming will be undesirable if not impossible because of development pressures. As non-farm residents move into a once-rural area, remaining farmers receive complaints or threats of nuisance suits about farm odors, dust, and noise from farm operations, reinforcing their belief that continued agricultural production will not be permanent, thus increasing the impetus to sell farmland for development.⁸⁷ Furthermore, in these areas of transition from agriculture to residential development, non-farm residents predominate, and farmers lose their political influence over local government.⁸⁸ Nonresidents may press for zoning changes to restrict the development use of farmland to preserve it for its aesthetic, scenic, or open-space value, in spite of the opposition of farmers who may wish to sell their land later for its development value. The creation of preservation districts is intended to protect farm owners from these effects of suburban development.

86. See THE FINAL REPORT, *supra* note 14, at 11-14.

87. D. BERRY, E. LEONARDO & K. BIERI, THE FARMER'S RESPONSE TO URBANIZATION: A STUDY OF THE MIDDLE ATLANTIC STATES 13 (Regional Sci. Research Inst. 1976).

88. *Id.* at 17. See also R. COUGHLIN & D. BERRY, SAVING THE GARDEN: THE PRESERVATION OF FARMLAND AND OTHER ENVIRONMENTALLY VALUABLE LAND (1977). This study provides useful information on the effects of urbanization on the rural environment.

B. *The Limitations of Zoning*

If the State program to preserve agricultural land is to be successful, it is essential for local governments to plan effectively for the establishment of agricultural preservation districts as part of a local land-use plan providing for future growth. When agricultural districts are established and easements acquired, farmland preservation will result. This preservation will be more permanent than zoning, which is subject to change. In the past, planning and zoning have been ineffective as tools for guiding development and preserving farmland.⁸⁹ Zoning changes and unplanned development have caused rapid suburban growth and economic and environmental problems. This has meant that local governments find it increasingly difficult to meet the demands for public services, such as sewers, water, fire, and police. Unplanned development, therefore, is a burden to taxpayers. Local governments should be made more aware of the cost of sprawl as well as the costs of the various types of development.⁹⁰ Frequently citizens seeking zoning changes are more knowledgeable than their opponents or even zoning officials. This imbalance often leads to undesirable results. If public officials were better informed and effective planning were used in conjunction with land-use controls, both the cost burden and the harmful environmental effects of development would be minimized.⁹¹

Maryland is similar to most other jurisdictions regarding the control local county governments may exert over local land use.⁹² The pattern of land-use development is thus determined by local authorities who adopt comprehensive plans and enact zoning ordinances, typically specifying the type of land use permitted within a district, the type of housing allowed, and the density and degree of industrialization. In addition, although all Maryland counties have adopted some type of general comprehensive land-use plans to direct growth, these plans have often failed to be

89. THE FINAL REPORT, *supra* note 14, at 25; MARYLAND DEPARTMENT OF STATE PLANNING, MARYLAND PLANNING AND ZONING LAW STUDY COMMISSION, FINAL REPORT 1 (1969).

90. Real Estate Research Corporation, *The Costs of Sprawl, Detailed Cost Analysis* (1974). This report was prepared for the Council on Environmental Quality, and other federal agencies. This study points to the high cost of unplanned residential development upon local government, and should be useful to local decision-makers who are faced with pressure of residential development. Its major conclusion is that "for a fixed number of households, sprawl is the most expensive form of residential development in terms of economic costs." *Id.* at 7. This study further indicates that better planning will reduce all types of governmental costs. It was cited by Frederick County, Maryland officials as a major justification for enacting a restrictive agricultural zoning ordinance to control costly unplanned growth.

91. *Id.* at 3.

92. See note 37 *supra*.

implemented.⁹³ Land owners and developers frequently petition local governments for a change in zoning, requesting permission to use land in a manner inconsistent with local plans and zoning. Plans soon become eroded when more changes are requested, thereby resulting in scattered development and no plan at all.

The lack of proper planning coupled with indiscriminate granting of exceptions to zoning further frustrates local land-use controls, especially if the exceptions granted cause a substantial change in a neighborhood. Maryland's zoning law provides general criteria for zoning changes, and courts have indicated that zoning is not static, and that it may be changed in accordance with the court-made doctrine of the change or mistake rule.⁹⁴ Although it is acknowledged that thoughtful planning is vital for effective land-use controls and that zoning should be done in accordance with local plans, there is no legal requirement in Maryland that the zoning and the plan be consistent.⁹⁵ This has caused a great deal of confusion over the content, form, and even the purpose of local land-use plans. Even if local governments plan effectively and zone in accordance with an adopted land-use plan, local decision-makers may be reluctant to zone in strict conformity with any plan to direct future development if that zoning will substantially reduce a property owner's use and enjoyment of his property. Presently, it is not entirely clear how far a local government may restrict an owner's use and enjoyment of his property before that action will be judicially determined to be a "taking" in the constitutional sense, requiring the payment of compensation to the owner.⁹⁶

93. MARYLAND DEPARTMENT OF STATE PLANNING, MARYLAND PLANNING AND ZONING LAW STUDY COMMISSION (1969) (a summary of land use plans and procedures of Maryland counties and Baltimore City).

94. *E.g.*, MD. ANN. CODE art. 66B, § 4.05 (1978); *Stratatakis v. Beauchamp*, 268 Md. 643, 652, 304 A.2d 244, 249 (1973); *Wakefield v. Kratt*, 202 Md. 136, 141, 96 A.2d 27, 30 (1953).

95. *Pattey v. Board of County Comm'rs of Worcester County*, 271 Md. 352, 317 A.2d 142 (1974); *Nottingham Village v. Baltimore County*, 266 Md. 339, 292 A.2d 680 (1972). *But see* CAL. GOV'T CODE § 65860 (West Supp. 1978). The legal relationship between comprehensive planning and zoning is fixed by statute in California. The discrepancy between land-use plans and zoning ordinances led to the enactment of a statute that mandates that county and city ordinances shall be consistent with the adopted general land-use plan for that county or city. Furthermore, any resident or property owner within that county or city may bring an action to enforce compliance with this statute. R. Calalano & J. Dimento, *Mandating Consistency between General Plans and Zoning Ordinances: The California Experience*, 8 NAT. RESOURCES LAW. 455 (1975).

96. It is difficult to determine when government restriction of private property through zoning will be held to be a "taking" constitutionally requiring compensation. C. ANTIEAU, 1 MODERN CONSTITUTIONAL LAW § 3.2 (Supp. 1978). Courts tend to deal with these situations on a case-by-case basis. If, however, an ordinance has a real or substantial relation to the protection of the public safety, health, or morals it will most likely be sustained. *Id.* § 3.7. Frederick County, Maryland, has adopted Maryland's most restrictive agricultural zoning ordinance. As of the date of this writing, no suits have been filed to challenge this

These problems are inherent in local government restriction of the development potential of agricultural land. Although a number of Maryland counties have adopted rural development zones which provide for low-density housing, this zoning was not intended for the sole purpose of preserving agricultural land.⁹⁷ Furthermore, a recent study indicates that exclusive reliance on large-lot zoning does not reduce the conversion of agricultural land, even though development density is reduced.⁹⁸

There are other weaknesses inherent in relying upon zoning as the exclusive means of preserving farmland. Farmers may be encouraged to sell their land for development in anticipation of a county's policy to restrict the use of farmland. Additionally, if their land is presently in an agricultural zone, they may be encouraged to petition for a rezoning for more intensive uses, since landowners have nothing to lose and local governments may be sympathetic because of the potential for tax increases when farmland is converted.

Theoretically, if local zoning is adopted in accordance with a well-developed plan, and if landowners are satisfied, the county's only job should be zoning enforcement. Unfortunately, few counties have well-developed plans. Thus, it is essential that considerable thought go into any local land-use plan. Local governments should be encouraged to adopt programs within these plans for the establishment of agricultural districts to promote the preservation of agricultural lands in order to prevent unplanned development. In addition, counties should stay informed and meet with the officials of other counties to coordinate plans because development in one county may have an effect on the land-use in a neighboring county. Furthermore, local and regional planning concerning farmland preservation should take place within the framework of a general plan established by the state. At present this requirement does not

ordinance. There is a trend on the part of courts to uphold land use regulation, such as zoning ordinances to preserve agricultural land, if they are a part of a statewide or regional planning effort. F. BOSSELMAN, D. CALLIES & J. BANTA, *THE TAKING ISSUE* 323 (Council on Env'tl Quality 1973). Counties near urban areas are facing increased development pressures, and if those counties develop regional plans to preserve agricultural land to control that development, courts may even sustain the most restrictive agricultural zoning ordinances. In short, farm owners may face increasing attempts by local governments to restrict development of prime agricultural land through zoning. Maryland House Bill 550 (1979) and Senate Bill 442 (1979), however, would require local governments to compensate property owners for any decrease in their land's value caused by zoning. If enacted, these bills would make local governments reluctant to use their zoning authority. See generally Sax, *Takings, Private Property and Public Rights*, 81 *YALE L.J.* 149, 153-58 (1971).

97. EFFECTS OF LARGE LOT ZONING ON THE DEPLETION OF AGRICULTURAL LAND, *supra* note 15, at 2.

98. *Id.* at 1-5.

exist, allowing the danger that local planning and zoning decisions may address only the problems within their jurisdictional units.

C. State Land-Use Planning

By developing a state land-use plan, and including the preservation of farmland as an element of it, the State of Maryland could exert considerable influence even though land-use control is entrusted to local governments.⁹⁹ The state already influences local land-use decisions, and it is responsible for the loss of prime agricultural land when locating highways and power plants and other capital projects.¹⁰⁰ Adoption of a state land-use plan involving agricultural preservation would serve to alert other state agencies as to the location of prime agricultural land. This awareness may prove helpful when these agencies adopt regulations that have an impact on local land use. Finally, adoption of a state land-use plan would increase the ability of local governments to preserve farmland by alerting them to the potential locations of future state capital projects.

99. State development plans should consider local plans to promote effective land-use control and to preserve agricultural land. The leading state agency in this regard is the Maryland Department of State Planning, MD. ANN. CODE art. 88C, §1-13 (Supp. 1978). The Department was created to advise and assist the Governor, the General Assembly, and governmental agencies at all levels in the matter of broad comprehensive planning. In addition, the Department is charged with functioning as an advisory consultative and coordinating agency. Its functions are to: "(1) harmonize its planning activities with the planning activities of departments, agencies or instrumentalities of State or local government; (2) render necessary planning assistance; (3) stimulate public interest and participation in the development of the State; (4) coordinate the plans and programs of all State departments, agencies and instrumentalities; and (5) coordinate the State programs with the federal government." *Id.* §1. The Department studies all proposed capital projects, develops a state capital program, and prepares the annual capital budget. It also serves as the state's intergovernmental coordinating agency with respect to relations between the federal government and the state and local governments concerning the location and management of federally assisted projects. The Department also assists and advises local governments in planning. It plans to adopt a comprehensive land-use plan for Maryland. This plan is presently in draft form, but when it becomes final it will be important to the future growth of the state because it will help strengthen the local governmental planning process. Department of State Planning, *State Planning in Maryland 1977*. Additionally, MD. ANN. CODE art. 78D, §§1-25 (1975 & Supp. 1978) provides for the creation of the Regional Planning Council to serve as a consultative and coordinating agency between the state and urban counties in the Baltimore area to promote effective planning.

100. The federal government is also responsible for the conversion of agricultural land to other uses resulting from decisions to locate federally financed capital projects. The United States Department of Agriculture and the Council on Environmental Quality have adopted policies to request federal agencies to consider the preservation of agricultural land as a planning component. The Environmental Protection Agency (EPA) has also adopted a policy to promote the protection of environmentally significant agricultural lands. EPA encourages the protection of prime agricultural land when offering assistance to local governments for sewer and water projects. In addition, the Surface Mining

VI. AGRICULTURAL PRESERVATION IN OTHER STATES

Although the success of the various methods adopted by Maryland and its county governments for preserving Maryland's agricultural land is uncertain, reference to programs adopted in other states indicates high financial cost of programs to preserve agricultural land.¹⁰¹ For example, Suffolk County, New York, adopted the first program created for the purpose of preserving agricultural land. That county's prime agricultural land, is under severe pressure for residential development. Accordingly, a plan was developed authorizing the county executive to solicit offers to sell development rights on agricultural land. It was proposed that \$45,000,000 would be needed over a three-year period beginning in 1974 at a rate of \$15,000,000 per year, for the purchase of easements based upon competitive bidding. To guarantee continued commercial agricultural operation on any land purchased, it was recommended that the land for development right purchase constitute a minimum of 200 acres and be bounded by roads or open spaces to provide a buffer between that farm activity and any residential or commercial use. On September 29, 1977, the first two contracts were signed for the sale of development rights — 131 acres for \$356,975 and 80.3 acres for \$261,900.¹⁰²

Control Reclamation Act of 1977, 30 U.S.C. §§ 12-1, 1260(d)(i), 1272, requires mining operators to restore prime agricultural land to its natural state after that land has been mined. The Act also enables persons who have an interest that is or may be adversely affected by surface mining operations to petition to have an area designated as unsuitable for surface mining operations. In a proper case, these persons may petition to have surface mining operations terminated on prime agricultural land. There has also been legislation introduced in Congress to study ways to preserve agricultural land. HR 5882, 95th Cong., 2d Sess. (1978), proposed the establishment of an Agricultural Land Review Commission and provided for a demonstration program to offer technical and financial assistance to state and local governments to carry out pilot projects for agricultural land preservation. A fifty million dollar fund was provided for this demonstration program. This bill was not enacted, but a similar one has been introduced this year. HR 2551, 96th Cong., 1st Sess. (1979). It will require all federal agencies to consider the preservation of agricultural land in planning any project and require these agencies to conduct any project consistent with state or local agricultural land preservation programs. Even if this bill does not become law, it is expected that the federal government will continue to be involved in providing incentives to state and local governments to promote agricultural land preservation. W. Fletcher, *Agricultural Land Retention*, (Agric. Land Retention Cong. Research Service, 78-117 Env., 42-49 1978); Letter from Administrator, Env. Protection Agency to Asst. Administrators, EPA Policy to Protect Environmentally Significant Agric. Lands (Sept. 8, 1978).

101. *Local Law Relating to the Acquisition of Development Rights in Agricultural Lands, Suffolk County, N.Y. Local Law 19-1974* (1974); J. Klein, REPORT TO THE SUFFOLK COUNTY, NEW YORK LEGISLATURE 4 (1973).

102. *Id.* at 6. See also C. Peterson and C. McCarthy, *Farmland Preservation by Purchase of Development Rights: The Long Island Experiment*, 26 DEPAUL L. REV. 447 (1976); D. Newton & M. Boast, *Preservation by Contract: Public Purchase of Development Rights in Farmland* 4 COLUM. J. OF ENV'T L. 189

New Jersey's state level program for the purchase of easements for the preservation of agricultural land was a pilot program restricted to a single county demonstration area. The program proved too costly, however, and was opposed by farm owners. Legislation will be introduced in New Jersey to provide for a study of ways to preserve agricultural land in that state.¹⁰³

New York's agricultural districts law is the oldest and best known example of the use of agricultural districts to preserve farmland.¹⁰⁴ It is a voluntary program, requiring at least five hundred acres in each preservation district.¹⁰⁵ Certain benefits accrue to farm owners whose land is included in a district.¹⁰⁶ Districts are reviewed every eight years and may be terminated if agriculture is no longer practical or if the location is inconsistent with state plans and objectives. The New York agricultural district program has been popular, and many state programs for agricultural preservation have adopted elements of the New York program.

Other states have utilized agricultural zoning to preserve farmland.¹⁰⁷ In the West, state land-use planning has been relied

(1978). Suffolk County has purchased development rights on 15,000 acres of agricultural land. The goal is to preserve 55,000 acres. The sale of an easement reduces the value of land from sixty percent to eighty percent and stabilizes land values in the easement area. The program enjoys great popularity. Conversation with Diane Anderson, Administrative Aide, Suffolk County, New York (January 8, 1979).

103. N. J. STAT. ANN. § 4: 1B-1 (West Supp. 1978). The New Jersey program involved a two-year pilot program in one county to purchase easements on 41,000 acres of farmland. Five million dollars had been appropriated. Easements on 18,000 acres were offered for purchase and five thousand acres were actually appraised. After appraisals, the program met opposition from farm owners who feared that those appraisals would cause an increase in property taxes. Also, the program was opposed because it was too costly. It was estimated recently that it would cost eight billion dollars to preserve one million acres of New Jersey farmland. As a result, no easements were purchased. New Jersey is now exploring alternate programs to preserve its farmland. Conversation with New Jersey Department of Agriculture official (January 9, 1979).

104. N.Y. AGRIC. & MKTS. LAW § 300 (Consol. Supp. 1978).

105. *Id.* at § 303.

106. *Id.* Farm owners who are included in a district are exempt from special assessments for sewer, water, and electricity, and local governments are restricted in the exercise of eminent domain authority. Inclusion in a district also qualifies farmers for farmland assessment. In Maryland, however, it is not necessary to be included in a preservation district to qualify for farmland assessment.

107. Concern over the preservation of agricultural land appears to be an international phenomenon. French law authorizes the creation of districts and the utilization of the right of preemption to preserve agricultural land. Under this program, local governments designate areas for preemption except farmland that is in a development district or that is part of an adopted urban plan. If a farm owner wishes to sell his farmland, the government must be given the first right of refusal prior to sale indicating the sale price, the conditions of any sale, and the buyer. Any sale without such notice is void. The government then has a right to preempt and buy the property superior to the right of any other person. The seller may, however, withdraw his property from sale if he wishes. This program has

upon generally to control urban development, and exclusive agricultural zoning has been adopted to preserve agricultural land.¹⁰⁸ For example, Oregon has exclusive agricultural zones as part of a comprehensive state land-use plan, restricting urban growth.¹⁰⁹ Under the Oregon statute, the State Department of Land Conservation and Development is responsible for establishing statewide planning goals consistent with local plans.¹¹⁰ Proper planning and coordination of those plans between state and local government through zoning are some of the ways that Oregon is attempting to preserve agricultural land.

VII. CONCLUSION

The public is growing increasingly aware that agricultural land is a valuable natural resource deserving protection. Although a number of states have adopted various measures to preserve agricultural land, there seems to be no agreement as to any one "best" method.

Maryland's farmland preservation program is so new that its future effectiveness cannot be predicted. The program offers a challenge to local governments to plan more effectively and to reach sound land-use decisions that will both accommodate and direct growth, while providing for the preservation of agricultural land. Farm owners also face new challenges, largely because counties adjoining Maryland's urban areas have adopted restrictive zoning in order to control costly development and to preserve agricultural land by limiting its development potential. Farm owners faced with this threat may be more inclined to participate in voluntary agricultural preservation programs by requesting the inclusion of their land in preservation districts, or by selling an easement to the state or local government for compensation.

The purchase of development right easements from farm owners to restrict the use of their land will be costly. Although the Maryland state program is politically acceptable to farm owners and local governments, it is unclear whether there will be sufficient public commitment to provide the necessary funding mechanism for the purchase of development right easements.

been successful in preserving agricultural land and has assisted those who wish to continue farming. R. COUGHLIN & D. BERRY, *SAVING THE GARDEN*, *supra* note 88, at 172-81. See also Aberdeen, Hogg & Associates, Ltd., *Metropolitan Farming Study* 1-10, 94-95 (1977) (survey of efforts to preserve agricultural land in Melbourne, Australia and a discussion of preservation in England and Scandinavia).

108. OR. REV. STAT. §215.243 (1977). In an agricultural district, single family residences are permitted as long as they do not interfere with commercial agricultural farms.

109. *Id.* & § 197.230(b)(K). Statewide planning goals set standards for agricultural preservation.

110. *Id.* § 197.030.