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Land Preservation in New York, New Jersey, and Pennsylvania: Strategy, Funding, and Cooperation are Key

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Abstract

Land use planning in America has traditionally meant "planning for development." Over the past 25 years, hundreds of communities and several states have recognized the need to preserve land for farming, forestry, watershed protection, wildlife habitat, recreation areas, or open space. A common problem is that public planners have not clearly delineated certain lands for preservation. Meanwhile, non-profit organizations have not fully perceived themselves as land use planning agencies (Wright and Czerniak 2000); and have often pursued a piecemeal and reactive preservation strategy in response to weak local zoning and the swift pace of development (McQueen and McMahon 2003). Thus, in most places in America, including New York, New Jersey, and Pennsylvania, privately owned open land seems to be at once for sale for development and available for preservation. The competition to preserve or develop land causes considerable friction between developers and land preservationists. Meanwhile, governments have a schizophrenic relationship to land: they want to see it developed so the tax base will increase and the economy will grow, yet they are also active in preserving land.

Comments

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**Land Preservation in New York, New Jersey, and Pennsylvania:
Strategy, Funding, and Cooperation are Key**

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Presented at the Conference on The Race for Space: The Politics
and Economics of State Open Space Programs, Princeton, New
Jersey, December 2, 2005

Introduction

Land use planning in America has traditionally meant “planning for development.” Over the past 25 years, hundreds of communities and several states have recognized the need to preserve land for farming, forestry, watershed protection, wildlife habitat, recreation areas, or open space. A common problem is that public planners have not clearly delineated certain lands for preservation. Meanwhile, non-profit organizations have not fully perceived themselves as land use planning agencies (Wright and Czerniak 2000); and have often pursued a piecemeal and reactive preservation strategy in response to weak local zoning and the swift pace of development (McQueen and McMahon 2003). Thus, in most places in America, including New York, New Jersey, and Pennsylvania, privately owned open land seems to be at once for sale for development and available for preservation. The competition to preserve or develop land causes considerable friction between developers and land preservationists. Meanwhile, governments have a schizophrenic relationship to land: they want to see it developed so the tax base will increase and the economy will grow, yet they are also active in preserving land.

There are two reasons for this contentious situation. On the one hand, most open land in these three states is zoned for one-, two-, or three-acre minimum lot sizes (and sometimes there is no zoning). The open land is in effect zoned for rural residential development. On the other hand, a landowner may at any time voluntarily sell or donate development rights (also known as a conservation easement)—subject to approval by the landowner’s mortgage holder. In short, land preservationists can’t be sure that land without a conservation easement will stay undeveloped; and developers can’t be sure that land with development potential won’t be preserved.

So what we are left with is a race between preservationists and developers to “stake their claims” to land. Sometimes the developers win, sometimes the preservationists win. There is an element of stealth involved as well. There is no central data base of preserved land in New York, New Jersey, or Pennsylvania. Land trusts closely guard this information. Similarly, open land held by developers for future development is often titled under creative names like Meadowlark Associates or Deerfield Partners, Inc.

For land preservation to be successful, preservationists must preserve large contiguous blocks of natural areas and working farm and forest lands. While some natural areas and recreation lands can prosper as stand alone preserved parcels, the creation of islands of preserved farm and forest lands does little to promote these industries other than to maintain some open space. Developers in turn may find such spotty preservation as simply obstructionist.

Land preservation is also likely to be successful if it is done in concert with the revitalization of cities and inner suburbs. Otherwise, residents will continue to seek homes in the outer suburbs. This creates a land use pattern that is wasteful of land, environmentally damaging, and social divisive. It is no surprise that these three states have some of the most segregated populations along income and racial lines.

This paper presents an overview of the land preservation strategies and funding programs of state and local governments and non-profit organizations in New York, New Jersey and Pennsylvania. The paper then discusses innovative planning programs and cooperative efforts that could help to resolve at least some of the competition over land resources.

New York

New York is the nation's third most populous state with 18.25 million inhabitants. It is a big state made up of several very different regions. Long Island and the Hudson Valley are under heavy development pressure, falling within commuting distance of the nation's largest city. Other areas, such as the "southern tier" of counties along the Pennsylvania border, western New York, and the Tug Hill region in the north, are under little development pressure. The Adirondacks, a rugged and sparsely settled region, has recently seen repeated struggles over development.

State Programs

The State of New York has three main land preservation programs: The Open Space Plan, the Farmland Preservation Program, and a grant program to land trusts.

Funding

The Environmental Protection Fund (EPF) was created by the State of New York in 1993 to use a portion of the state's annual real estate transfer tax revenues to pay for a variety of environmental projects, including: the acquisition of open space, natural areas, wildlife habitat, and development rights to farmland. The dedicated tax generates significant revenues each year (see Table 1). This funding stream should enable long range planning for land acquisition. Nonetheless, the legislature and the Governor decide how much of the tax revenues are allocated to land preservation programs each year. Preservationists are calling for the EPF to be funded at \$250 million or more each year, which would include increased funding for land preservation programs.

Table 1. EPF Funding in Fiscal Years 2002-3 to 2005-6, (in millions of dollars).

<u>Program</u>	<u>Fiscal Years</u>			
	2002-3	2003-4	2004-5	2005-6
Open Space Program	37.75	29.75	31.5	39.5
Farmland Preservation	8.0	12.0	12.6	16.0
Land Trust Grants	.25	.25	.5	.5
Total of 3 Programs	46.0	42.0	44.6	56.0
Overall EPF Funding	125.0	125.0	125.0	150.0

Source: Land Trust Alliance, Saratoga Springs, NY Office

The New York Open Space Plan

New York's 1993 Environmental Protection Fund legislation required the State to draft an *Open Space Plan*, identifying priority areas for State acquisition, such as natural areas, open spaces,

forests, shorelands, park and recreational areas, and historic resources. The program is administered jointly by the New York Department of Environmental Conservation (DEC) and the Office of Parks, Recreation, and Historic Preservation (OPRHP). State and county governments appoint nine regional advisory committees to provide input on the Plan.

Since 1995, three Plan Open Space Plans have guided the expenditure of more than \$375 million in state funds to protect almost 400,000 acres of land. The 2002 Open Space Plan focused on how the State, local governments, not-for-profits, and landowners can work together to protect open space resources. The Plan described several joint State and non-profit land preservation projects, and the Plan identifies priority projects by region.

The 2002 Plan urged local governments to develop local sources of open space preservation funding and to create Local Open Space Districts that offer reduced property taxation for owners of open space. The Plan recommended that the state provide local governments with more technical assistance in open space planning, and state matching grants programs for watershed planning, open space planning, farmland preservation planning, and land and conservation easement acquisition. The Plan concluded with a summary of funding needs and proposed sources, advocating the expenditure of \$113 million a year in State, federal, and local funds.

At the end of 2000, about 15 percent of New York was permanently protected, and the state ranked first in the nation in the percentage of land owned by the state (Trust for Public Land 2005). Most of the state-owned land is in the Adirondack Park and the Catskill Preserve.

Farmland Preservation Program

New York created a state-level farmland preservation program in 1996, the last state in the northeast to create such a program. New York has a \$3 billion a year agricultural industry, and, remarkably, one of the state's leading agricultural counties is Suffolk County on Long Island where farmers produce more than \$150 million a year in

farm products. Suffolk County created the nation's first purchase of development rights programs to preserve farmland back in the mid-1970s (Lyons 1989).

The New York farmland preservation program has been funded at an average of about \$10 million a year (see Table 1); 2005-6 funding is at a high of \$16 million. But the demand from farmers has far outstripped the available funding. Farmers have applied to sell more than \$70 million worth of development rights each year. The state will fund up to 75 percent of the value of a conservation easement. A local government or land trust can make up the other 25 percent, or the landowner can simply agree to donate the remaining 25 per cent of easement value.

To date, the state has spent most of its money in Suffolk County and the Upper Hudson Valley, but in Suffolk County, easement prices can easily exceed \$30,000 an acre. Statewide fewer than 25,000 acres have been preserved (see Table 2). The farmland preservation program has included \$2 million in grants to 48 counties to draft farmland preservation plans. But because planning and zoning are controlled at the town level, the farmland preservation plans have had little impact.

The New York farmland preservation program has a number of deficiencies. Funding has been woefully inadequate, enabling the preservation of only a few thousand acres a year. The state does not hold an interest in conservation easements it funds and there is no state oversight of easement monitoring; thus, there is no state-level accountability. Also, there is no requirement that preserved farms have a soil and water conservation plan, meaning that farm management may result in practices that harm the environment. Finally, each farm that is approved by the state must go through a review by the Governor's office—the only state that has such a requirement. This gives at least the appearance of political favoritism.

Grants to Land Trusts

In 2002, the State of New York began a grant program for private, non-profit land trusts. In 2005, the State of New York made \$500,000 in grants to 29 land trusts, which put up \$750,000 in

matching funds. This leveraging of private funds is key to expanding the public-private partnership approach to land preservation.

Strategy

Governor George Pataki set a goal to preserve one million acres of New York land during his administration. This goal will likely be met in 2006. While the preservation of one million acres is a commendable achievement, it is worth noting that most of this land is remotely located in the Adirondack Park. The park is a six-million acre region where about 45 percent of the land is state-owned and 55 percent is privately owned. Only 110,000 people live in the Park, which is larger in size than the State of Vermont with its 620,000 people. The 1970 Adirondack Park legislation gave control of most planning and zoning to the Adirondack Park Agency.

Much of the Adirondacks are mountainous and pockmarked with lakes and ponds. Timber companies own large tracts in the Adirondacks; but they have become interested in selling land and conservation easements to increase their returns. The State of New York has preserved several large tracts. For instance, in 1999, the State paid the Champion International Corporation \$24.9 million for conservation easements on 110,000 acres and the outright purchase of 29,000 acres in the northwestern Adirondacks (Daniels and Daniels 2003). The conservation easements allow timber harvesting as well as public access for recreation.

Local Government

Most county governments in New York have been reluctant to fund land preservation programs. One exception is Dutchess County in the mid-Hudson Valley which approved one million dollars to help match state farmland preservation funds. Another is Suffolk County where voters approved a two percent real estate transfer tax in 1998 dedicated to purchasing development rights to farmland. Suffolk County has more than 8,000 acres of preserved farmland out of about 35,000 acres still in farm use.

A few towns have created their own farmland preservation programs. The Town of Pittsford, a Rochester suburb, preserved

about 1,200 acres in the late 1990s, and in 2000, voters in the Town of Warwick, in Orange County, about 45 minutes from Manhattan, approved a \$9 million bond to preserve 3,000 acres of farmland. A number of towns in Suffolk County have farmland preservation programs as well, most notably the Town of Southold which boasts a thriving winery industry.

The Long Island Pine Barrens transfer of development rights program, created in the mid-1990s, has resulted in the preservation of more than 1,000 acres and has limited development in the core preservation area to protect the drinking water supply of much of eastern Long Island.

Non-Profits

New York has a few large land preservation organizations and nearly 100 land trusts in all. The leading land trusts include The Open Space Institute and Scenic Hudson in the Hudson Valley, the Peconic Land Trust on Long Island, and the New York Chapter of the Nature Conservancy. In 2005, The Conservancy completed a deal to preserve more than 100,000 acres in the Adirondacks and in 2002, The Conservancy preserved more than 44,000 acres in the Tug Hill region.

Summary

New York's state land preservation programs are shrouded in politics. Every approved project must first pass through the Governor's office. While the Open Space Plan and the local farmland preservation plans give a semblance of a strategy, the weakness of local land use planning and zoning throws the long term effectiveness of New York's land preservation efforts into question. The preservation of large tracts in the Adirondacks is commendable and very attractive in terms of low per acre cost. But the state of New York has not employed land preservation as a tool for growth management. Local government funding for land preservation has generally been lacking; part of the reason may be that New York has among the highest property taxes in the nation and the financing of a land preservation effort would likely come from raising property taxes.

New Jersey

New Jersey is well-known as the most urbanized state in the nation. New Jersey has 8.6 million residents and a population density of 1,134 people per square mile. Sandwiched between two large cities—New York and Philadelphia, much of New Jersey is suburban. Yet, there are plenty of natural gems. The New Jersey Highlands provides drinking water to more than two million consumers and the Jersey Shore is a popular recreation area. New Jersey is also known as The Garden State, and agriculture is still an \$800 million a year industry.

State Programs

New Jersey differs from New York and Pennsylvania not only in size but in development and conservation strategy. Whereas neither of New Jersey's neighbors has a state-level growth management strategy, New Jersey adopted a Development and Redevelopment Plan in 1992. Although critics note that the plan is short on implementation muscle, the plan calls for directing development into existing cities and suburbs and specific rural areas (Chambers 2005). The state plan identifies "tiers" of development based on available infrastructure with the aim of reducing sprawl and concentrating development. Of the remaining open space, New Jersey is attempting to preserve half of it, about a million acres (Hiss and Meier 2004).

In 1998, New Jersey voters created the Garden State Preservation Trust (GSPT) to fund land preservation efforts from the Green Acres program and the state farmland preservation program, as well for historic preservation (GSPT 2005). The Trust is funded at \$98 million a year from state sales tax revenues. New Jersey is using this stream of tax revenue to leverage \$1.2 billion in bond proceeds. The idea is to use the bond funds to preserve one million acres between 1999 and 2009, and pay off the bonds over a 30 year period, 1999-2029. Although there will actually be about \$2 billion available in the 1999-2009 period from all sources, New Jersey officials are recognizing that more money will be needed to reach the goal of preserving one million acres. Rising land costs are a major obstacle. For instance, in 1998 the Green Acres program paid an average of \$1,723 per acre, but an average of \$3,994 per acre in 2004 (NJ Future 2005).

Currently, only California has more money for land preservation. Finally, to aid in the land preservation effort, in 2004 the New Jersey legislature enacted a state-wide transfer of development rights program and the Highlands Water Protection and Planning Act.

Green Acres

New Jersey's Green Acres Program was created in 1961 to preserve recreational and conservation lands. From 1961 to 1995, New Jersey voters approved nine statewide ballot measures totaling \$1.4 billion for land acquisition and park development (www.state.nj.us/dep/greenacres, 2005).

From 1999 to 2004, the Green Acres program provided \$299 million to preserve 91,765 acres and made grants of \$291 million to local governments and non-profit organizations to help preserve another 41,295 acres. The Trust for Public Land has called the Green Acres program a model for other states. Even so, the Green Acres Program is not a comprehensive open space plan for the state. Although the Green Acres program uses a GIS-based system to rank project applications, like many state programs, the idea is to spread funding throughout the state.

Farmland Preservation

New Jersey has one of the leading farmland preservation programs in the nation, ranking third in acres preserved (139,000 acres) behind Pennsylvania and Maryland. New Jersey has preserved a larger percentage of its farmland than any other state; yet, between 1997 and 2002, New Jersey saw 51,000 acres of farmland converted to other uses (NJ Future 2005). The State Agricultural Development Committee (SADC) administers the state farmland preservation program and makes grants to counties, municipalities, and non-profits for the purchase of development rights to farmland.

Strategy

New Jersey, even more than New York or Pennsylvania, appears to be relying on land preservation as a substitute for strict

zoning in the countryside. Proponents of strict zoning, such as densities of one house per 20 or more acres, often face the following obstacle: there has already been a considerable amount of development in the New Jersey countryside, except in less suitable areas such as the Pinelands and Highlands. This rural residential sprawl has led to widespread expectations of what land would be worth for development. Landowners tend to call such expectations their “equity,” but this is a misnomer which landowners have successfully used to block most attempts at downzoning.

There are three main problems in relying on land preservation. First, the rising cost makes land preservation more expensive. Second, New Jersey does not have a clear preservation strategy. Although the state has drafted a Garden State Greenways Plan and a Farmland Strategic Targeting Plan, there may not be consistency between the state plans and local land preservation projects. In particular, a local project does not have to be listed on the state plans to qualify for state land preservation funding (NJ Future 2005).

Third, land preservation depends upon voluntary participation by landowners. By contrast, zoning’s police power of government is much less expensive; but zoning is temporary and can be changed, while land preservation is far more durable and to date, nationwide, only 12 conservation easements have been challenged in court and only two overturned (Anella and Wright (2004).

Pinelands Commission and TDR Program

The New Jersey Pinelands transfer of development rights program has been cited as one of the most effective TDR programs in the nation. To date, the program has preserved more than 20,000 acres. The program has complemented strict zoning of one house per 40 acres in the Pinelands preservation area. The aquifer beneath the Pinelands is the largest in the Northeast.

Local Government Programs

In 2005, all 21 counties and 210 municipalities had levied taxes for land preservation and recreation purposes. But local land use regulation is otherwise weak. Municipalities typically zone rural land

in two-acre or three-acre lots, which opens up large areas for rural residential sprawl that relies upon on-site septic systems and wells. Still, local governments can use a variety of tactics to delay development projects, especially through the subdivision and land development process.

Land Trusts

New Jersey has several land trusts, including the state-wide New Jersey Conservation Foundation. Since 1960, the Conservation Foundation has completed dozens of projects, protecting more than 100,000 acres, from the Highlands to the Pine Barrens to the Delaware Bayshore, from farms to forests to urban and suburban parks (njconservation.org, 2005).

Pennsylvania

A standard joke about Pennsylvania is that there is Pittsburgh in the West and Philadelphia in the East and between the two is Alabama. In reality, southeastern Pennsylvania has some of the nation's most fertile farmland. The Poconos in the northeastern region are a recreation and tourist area. Central Pennsylvania has the Appalachian Mountains and several large valleys and the northern tier has the famous Grand Canyon of Pennsylvania and hunting lands.

Land preservation efforts have long been focused on the southeast where Philadelphia is the fifth largest city in the United States. Philadelphia has been losing population since 1950 while its suburbs have mushroomed.

State Programs

Pennsylvania has two main state programs that preserve land. The Department of Conservation and Natural Resources preserves natural areas, open space, and parkland through fee simple purchase and conservation easements, as well as through grants to local governments and land trusts. Pennsylvania's farmland preservation program has preserved more land than any other state program in the nation. More than 300,000 acres and 2,650 farms have been

preserved at a cost of about \$500 million (PDA 2005). The farmland preservation program was jump started in 1987 when voters of the Commonwealth approved a \$100 million bond for the purchase of development rights to farmland. Since 1994, the program has been funded primarily through a two cent a pack tax on cigarettes. In 1998, the Legislature added another \$150 million for farmland preservation. And in May of 2005, Pennsylvania voters approved a ballot measure entitled "Growing Greener II" that authorized another \$80 million for the state farmland preservation program and \$217 million for DCNR to preserve natural areas and open space, and to create state and local parks (PPA 2005).

Strategy

Pennsylvania's grants for the acquisition of parks and natural areas are influenced by the state's Pennsylvania Natural Diversity Inventory data base. But the grant programs are very much reactionary as opposed to strategic. The farmland preservation program relies on local governments which create "agricultural security areas" (also known as voluntary agricultural districts) which contain farms that are eligible for the state preservation program. The security areas, however, need only be 250 acres in size and often do not contain large contiguous blocks of farmland. This "Swiss Cheese" effect means that in most localities farmland preservation is spotty. The state could simply require that all eligible farmland be zoned for agriculture; but so far only three counties (Berks, Lancaster, and York) have extensive areas zoned for agriculture. Preserving farmland in areas without agricultural zoning involves the risk that houses will be built on adjacent lands to take advantage of the "preserved views" and will lead to conflicts between farmers and non-farm neighbors.

A further shortcoming of the state farmland program is the formula the state uses to distribute farmland preservation funds to the counties. Half of the state funds are allocated based on the amount of matching money a county appropriates for farmland preservation relative to the other participating counties; this approach rewards effort, which tends to put more money into the wealthier counties, which are often suburban, have heavy development pressures, and high easement values. The other half of the state funds are portioned according to the amount of property tax revenues generated in a

county. Again, the suburban counties benefit because they have a higher turnover of real estate. In short, Pennsylvania's farmland funding formula could better target funding to those counties that have a significant agricultural industry that is worth protecting, rather than high-priced suburban areas where farmland preservation is mainly open space preservation.

Local Government Programs

More than 50 counties participate in the state farmland preservation program. But Pennsylvania agriculture is concentrated mainly in the southeast region. There, the four counties of Berks, Chester, Lancaster, and York have preserved more than 180,000 acres of farmland. Lancaster County, known as The Garden Spot (not to be confused with the Garden State), is the leading agricultural county in Pennsylvania and the entire Northeastern US with more than \$800 million in farm output. Although the county has 500,000 residents, the county is also a national leader in farmland preservation with more than 62,000 acres preserved. Like other counties in southeastern Pennsylvania, Lancaster County has gone to the bond market to raise funds for its farmland preservation program. The strategy has been to match state dollars as much as possible and to fund some separate county purchases of development rights.

Since 1990, the county and the Lancaster Farmland Trust have operated under a cooperative agreement, a public-private partnership for farmland preservation. Over the years, the two organizations have jointly funded half a dozen easements and on a few occasions the Trust has done advanced easement acquisitions for the county.

A few townships in Pennsylvania have raised funds for farmland preservation and a handful of townships are using the transfer of development rights. Only since 2000 has it been legal to transfer development rights across municipal boundaries, but few, if any townships have seen transfers across boundaries.

Land Trusts

Pennsylvania has some of the nation's leading land trusts. The Brandywine Conservancy, based in Chadd's Ford, has preserved

more than 30,000 acres of farmland, open space, and natural areas, mainly in Chester County. Other notable land trusts include: The Heritage Conservancy, The Wildlands Conservancy, and The Lancaster Farmland Trust.

In 2003, the Greenspace Alliance, a coalition of dozens of land conservation groups in Southeast Pennsylvania noted that more than \$400 million has been spent on land preservation in greater Philadelphia without much to show for it. It is difficult to create large contiguous blocks of preserved land where the land is zoned for two are lots and land prices are high.

Common Themes

New York, New Jersey, and Pennsylvania have all been successful in asking voters at both the state and local levels to support major funding for land preservation. New Jersey has raised the most money at the state level. New Jersey and Pennsylvania have been successful at the county level; and New Jersey most successful at the municipal level. But in all three states, the local town or township government controls planning and zoning, and zoning is generally weak. The zoning in most places is often based on prayer. Local officials pray that some landowners won't develop their land, and that others will to expand the tax base. But the bottom line is what you zone for is usually what you get.

Land preservation strategies in the three states have largely been piecemeal and poorly coordinated. New York's Open Space Plan may work fine within the Adirondack Park where private development is fairly tightly controlled; similarly, land preservation in the Pine Barrens is aided by strong land use restrictions. But other than these examples, land preservation is often resulting in a pattern of spots and dots—*islands of preservation*. And the risk is that these preserved properties may attract development next door.

Ironically, none of the three states is growing very fast. In the 1990s, Pennsylvania's population grew by an anemic 3.4 percent. Between 1982 and 1997, the state grew by just 2.5 percent while it's developed area jumped by 47 percent (The Brookings Institution

2003). In the 1990s New York grew by 5.5 percent and New Jersey by 8.9 percent, well below the national growth rate of 13.2 percent.

Between now and 2025, New York's population is projected to increase by 9 percent, New Jersey's by 10 percent, and Pennsylvania's by only 3.2 percent. Most of New York's growth is expected to happen in the greater New York City metropolitan area. New Jersey's population will increase mostly in the Philadelphia to New York corridor, and somewhat in the hinterlands. Pennsylvania's meager population growth will occur mainly in the outer suburbs of Pittsburgh and Philadelphia.

Most of the growth in the three states will probably occur on greenfield sites. Hence, the head to head competition between developers and land preservationists is likely to continue. Land trusts, local governments, and state governments will continue to pour money into land preservation. It is a fair question to ask how much preservation is enough? When will enough acres be preserved? On the other hand, it is fair to ask how much development is enough? When has a community reached build-out?

In comparing the land preservation progress among the three states, it is clear that Pennsylvania has done well with its farmland preservation program (see Table 2). By comparison, New York's farmland preservation effort, though somewhat younger, is weak for a state with a \$3 billion a year agricultural industry. New Jersey and Pennsylvania have solid funding programs for preserving farmland. New York's funding is an annual legislative struggle despite the dedicated funding for the Environmental Protection Fund.

In the preservation of forest land and open space, New York and New Jersey are well ahead of Pennsylvania at the state level. Both Pennsylvania and New York lag behind New Jersey in funding and acres preserved at the local level. New York has preserved more land than either Pennsylvania or New Jersey over the past 10 years. The advantage that New York has is the large private timber holdings in the Adirondacks, and the fact that the timber companies have been willing to sell easements on hundreds of thousands of acres.

Table 2. State Farmland Preservation Program Achievements in New York, New Jersey, and Pennsylvania, 2005.

State	Farms Preserved	Acres Preserved
New York	115	22,000
New Jersey	1,167	139,000
Pennsylvania	2,618	301,120

Sources: New York Dept. of Ag and Markets,
Farmland Preservation Report, October 2005.
 Pennsylvania Dept. of Agriculture

Land trusts have been successful in each of the three states. But neither Pennsylvania nor New York has a state-wide land trust, unlike New Jersey's Conservation Foundation. Regional and local land trusts are likely to play a secondary, yet important, role to supplement state land preservation programs.

Land Preservation Innovations

The land preservation package. Among the local governments in the three states, only Lancaster County, Pennsylvania is employing a coordinated package of land protection techniques: 1) urban and village growth boundaries; 2) strict agricultural zoning in the countryside; and 3) an aggressive purchase of development rights program (Daniels 2000a, 2000b). The growth boundaries set a limit to the extension of sewer and water lines. Yet, within the boundaries there is sufficient land to accommodate development needs over the next 20 years. The agricultural zoning generally allows the subdivision one house on a two-acre lot for each 25 acres owned. About 350,000 of the county's 600,000 acres are zoned for agriculture. The County Agricultural Preserve Board and

the Lancaster Farmland Trust have preserved more than 62,000 acres so far. Over 50,000 acres have been preserved by the County, which has spent about \$50 million of its own money along with state matching funds.

Lancaster County is the only jurisdiction in the nation that has expressly targeted the preservation of farmland along growth boundaries; such preservation makes parts of the growth boundaries permanent. The challenge is to make life within the boundaries attractive so people do not attempt to run out to the countryside.

Development Rights Payment in a Like-Kind Exchange.

Lancaster County pioneered the use of a development rights payment in a “like kind exchange” under Section 1031 of the Internal Revenue Code (Daniels and Bowers 1997). The county received two private letter rulings from the Internal Revenue Service; the first defining development rights as an interest in real estate and hence “real estate”; and the second ruling allowed the use of development rights payments in a 1031 exchange for any real estate involved in business, trade, or investment (IRS 1992). A landowner does not receive a check for the development rights. Instead, the check is written to the landowner’s intermediary, such as a bank or attorney. The landowner then instructs the intermediary to purchase additional real estate involved in business, trade, or investment. In the process, capital gains taxes that would have been due on the sale of the development rights are deferred. The real estate acquired may be additional farmland, apartments, or other investment real estate. The like-kind exchange has been used by more than 200 landowners in Pennsylvania as well as landowners in New York and New Jersey. One caveat is that from the date a landowner signs the deed of easement, the landowner has 45 days to identify the property to be acquired and 180 days to complete the transaction.

Installment Purchase Agreement. The Installment Purchase Agreement (IPA) is essentially a way to turn a development rights payment into a municipal bond. Like a municipal bond, the landowner receives a piece of paper in which the local government agrees to pay the landowner a certain fixed amount of tax-free interest over the life of the Agreement. At the end of the agreement, say 20 years, the landowner receives the principal payment for the development rights

and capital gains taxes are then due. Also, like a municipal bond, the landowner may sell the Agreement on the municipal bond market at any time before the end of the term of the Agreement, say in year 7. The advantage of an IPA to a local government is that the government can leverage funds and preserve more land sooner than under a traditional lump sum payment for development rights approach. The local government can sell deep discount zero coupon bonds to cover the future cost of paying the development rights principal. The local government then has to come up with the annual interest payments which are small compared to what the lump sum principal costs would be.

The IPA was first used in Howard County, Maryland, where it helped in preserving nearly 20,000 acres (Daniels and Bowers 1997). Harford County, Maryland uses IPA exclusively. IPA has been used in Mercer County, New Jersey and Lancaster County was the first to use it in Pennsylvania. IPA is not yet allowed in New York State.

Combining land preservation with affordable housing and a public-private partnership. One concern about land preservation is that it can limit the amount of developable property and hence push land and housing costs. In 1987, the State of Vermont created the Vermont Housing and Conservation Board (VHCB), with the dual responsibility of providing funds for low- and moderate-income housing projects and purchasing development rights to farmland (Libby and Bradley 2000). The VHCB receives an annual appropriation from the state legislature and works with the Vermont Land Trust to package farm and forest land preservation projects. Farmland easements in Vermont are often jointly held by the VHCB, the Vermont Department of Agriculture, and the Vermont Land Trust. Through an agreement with the VHCB, the Vermont Land Trust monitors the preserved farms. As of 2005, the VHCB has preserved more than 100,000 acres of land and created or protected more than 7,600 units of affordable housing (Everhart 2005).

Land preservation and multi-municipal plans. All three states have thus far rejected county-level planning and zoning. Yet, there are three examples of land preservation that may encourage a sub-county, multi-municipality type of planning. In 2000, Pennsylvania enacted a law that allows two or more municipalities to draft a “multi-

municipal plan.” The plan enables the municipalities to identify and zone for where development should go and where lands should be protected or minimally developed. The plan allows for a multi-municipal vote on developments of regional impact, such as a proposed Wal-Mart, revenue sharing across municipalities, and the transfer of development rights across municipal boundaries.

Similarly, in the Long Island Pine Barrens program, three townships have participated in the transfer of development rights away from the core water quality protection area. As noted, in 2004, New Jersey approved a statewide TDR program, in effect allowing for TDRs to be transferred across the state. This could encourage greater cooperation between municipalities.

A Note on Working Landscapes

A major factor in successful land preservation is whether there is a working landscape that can be preserved. It is no coincidence that Lancaster County, PA, Burlington County, NJ, and Suffolk County, NY are each state’s best example of county-level land preservation. These are also the leading agricultural counties in their respective states. Preserving land may make sense for aesthetic and ecological reasons, but someone still has to manage the property, and often still make a living. Conservation easements are attractive because private landowners are still responsible for managing the land, but they need an income to be able to stay on the preserved land.

Those counties and towns that have lost their farms and actively managed forests are at a disadvantage for several reasons. First, it is difficult if impossible to downzone land for “conservation” purposes. Pennsylvania courts have supported a 10-acre minimum lot size for a conservation zone.¹ In New York’s Adirondack Park, the rural use zone allows one house per 8.5 acres.² In the New Jersey Pine Barrens, the Forest zone, which comprises 87 percent of the Barrens, allows only one house per 28 acres.³ It is important to note that the Pine Barrens is a National Reserve. But outside of the Adirondack Park, there are only a few towns that have zoning requiring a density of less than one house per 3 acres. The same holds for New Jersey outside of the Pine Barrens. Very few townships

in Pennsylvania have adopted a one house per ten acres conservation zone.

Second, it is cheaper to purchase development rights from land with low-density conservation zoning, as opposed to rural residential zoning. Hence, the more rural residential zoning predominates, the more expensive it is to preserve land.

Third, the communities with more rural residential development are more likely to have a fragmented land base. Once the rural residential genie is released from the bottle, you can't put it back.

Conclusion

State and local governments, developers, landowners, and land trusts are facing the need to plan for both land preservation and land development. This will require a cooperative effort. The fragmented local governments in New York, New Jersey, and Pennsylvania are generally not up to the task. They are too small to hire a full-time professional planning staff, and they lack the financial muscle to preserve a significant amount of land. These local governments are a vestige of 17th century England, when transportation and communication occurred by horse and foot. The central purpose of many of these local governments is the hunt for expanding property tax revenues; a hunt that is often erroneously biased against land preservation. Land use decisions are based on property tax revenues, not ecological, aesthetic, or quality of life concerns. Yet, more than 80 studies by the American Farmland Trust have shown that residential development on average demands more in services than it generates in property tax revenues (Freedgood 2002).

County, local, and state level growth management strategies and funding are needed for successful land preservation. Where counties or local governments have been unwilling to fund land preservation programs, state funding has not been sufficient to do the job. Land trusts can help both with strategies and funding. Cooperation among state agencies, counties, towns and townships, landowners, land trusts, and the development community is essential. Preserving the right land and developing the right land with the right projects will continue to be a challenge as populations continue to

increase, yet spread out from the metropolitan areas in each of these three states.

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¹ *Reimer v. Bd. Of Supervisors of Upper Mt. Bethel Twp.* 150 Pa. Commw. 323, 615 A.2d 938 (Pa. Commw. 1992).

² www.apa.state.ny.us/Documents/Guidelines/CitizensGuide.pdf

³ www.state.nj.us/pinelands/landuse/areas