SUSTAINING AGRICULTURE:
A Handbook for Local Action

Supplement to the
Planning Manual for Vermont Municipalities

Vermont Department of Agriculture, Food and Markets
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SUSTAINING AGRICULTURE:
A Handbook for Local Action

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Preface

“'You know the state talks about open land. I don't think the people know what open land is,' reflected John Meyette whose family bought the Newbury farm in '45 and milked 18 head. ‘Open land is what farmers do.'”

This manual is designed to help townspeople sustain agriculture—and, as a result, open land. It is based on the premise that many different people, for many different reasons, will benefit from continued agriculture in Vermont. And, there are a variety of tools available to either help farming, to conserve open land, or to do both. To succeed, we will need to acknowledge the many different reasons, pull together the many different people, and apply as many tools as we can.

This manual was prepared as a companion to the Planning Manual for Vermont Municipalities, and it does not repeat the legal requirements and basic advice for preparing a town plan. Instead, this manual focuses on sustaining agriculture. It outlines some of the tools available, some good ideas from around the state, and how the town plan can be part of a strategy to sustain agriculture.

Although the survival of agriculture in Vermont is largely dependent on forces beyond the control of townspeople, perhaps the ideas suggested in the manual will help us lift a few straws off the camel's back.
Acknowledgments

Many people offered their ideas and experiences to share with others: Kate Willard, Dave Dolan, Jo-Anne Balentine, Penny Hoblin, Ethan Parke, Gerald Nicholson, Dick Hodge, Peter Condaxis, Tim Buskey, Bob Wagner, Wayne Patenaude, Enid Wonnacott, Tim Atwater, Edith Patenaude, Tom Daniels, Lee Light, Suzanne Long, Sherry Russell, Gil Livingston, Mike Audet, Michael Rushman, Fred Dunnington, Paul Gillies, Bill Rice, Tim Sanford, Harvey Smith, John Corcoran, David Miskell, Clark Hinsdale III, Eugenie Doyle, Sharon Murray, Dean Pierce, Herb Durfee, Bill Bartlett, Dennis Canavan, Lew Sorenson, Patty Spear, Kip Potter, Alan Curler, Alex Considine, Joss Besse, Dennis Borchardt, Lee Krohn, and others.

Amy Jestes Llewellyn is the perseverance behind this manual. Not only did she coordinate the preparation and review of this manual; as state agricultural planner, she has been working to strengthen and clarify the role of agriculture in Vermont for many years.
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1. Sustaining Agriculture

"I don't like to use the words 'protect' and 'preserve' but I'd like to keep farming in Vermont," said New Haven farmer Harvey Smith, reflecting some of the ambivalence many farmers have about being the direct object of land use planning. "Any long-term solution to the conservation of this land must address the needs of the rural economy and culture, and not just the land and resources alone."

In the past, some of the efforts at farmland preservation focused on the land alone—without an emphasis on supporting agriculture—and pitted farmland owners against planning commissions, and farmers against environmentalists. "They're saving the real estate, but missing the boat," said Harvey Smith.

An alternative view is that agriculture is an economic sector and should be valued as such. "Too many people see farming as a quaint way of life or as an adjunct to the tourist industry instead of as an irreplaceable resource that is essential to the production of food," wrote Steve Kerr in 1980 when he served as director of agricultural development for the Vermont Department of Agriculture. "As a result, we don't give agriculture the respect and protection it needs."

However, many people working daily in agriculture are pessimistic about the ability of farming in Vermont to compete and survive if given the invisible-hand treatment accorded a unit of economic production.

"If I look at agriculture in Vermont from a purely business perspective and assume it would have to survive on its own merits, I would say chances are that it won't make it," said Shoreham orchardist Sandy Witherell. "We need to take advantage of the interest of our non-agricultural neighbors."
He suggests a simple solution: working together. Vermonters interested in preserving farmland as scenery or because it is the essence of Vermont or because it helps the tourist industry would benefit from keeping agriculture economically feasible. It is certainly cheaper to have farmers making a living from managing the land than it is to buy all the farms and hire people to mow the fields. At the same time, those working the land would benefit from joining forces with non-agricultural interests to receive some support for sound regional agricultural policies and some compensation for the services farms provide in Vermont above and beyond putting food on the table.

The premise of this manual is that efforts should be directed at sustaining agriculture—not just at conserving farmland. This is not only because the best way to keep open land is to keep it farmed. It is also because agriculture is a critical industry in Vermont. Sustaining agriculture will require that those interested in farmland as scenery or as ruralness understand what is required to keep the scene.

The manual also assumes that the most effective local efforts will be those which unite the farmland preservation interests of both the agricultural and nonagricultural community members. To be successful, it is critical that farmers play a role in directing these efforts. As many farmers have noted with dismay, decisions about the future of agriculture are often made by people who don't farm, mainly because few farmers participate.

"I went to a hearing the other day (about Accepted Agricultural Practices) and I couldn't believe how many agency people there were relative to farmers. Now that scares me," said Harvey Smith.

"I'd like to encourage farmers to become members of the local planning commission," said Tim Buskey of Middlebury. "I don't think that as a group we pay much attention to what the planning commissions do. Farmers should walk in and ask to be appointed. Then, we're at least aware of what people are saying about agriculture and what they think they should do."

Working together to sustain agriculture has proven successful elsewhere. Wendell Berry wrote the following about Marin County, California, where an unusual coalition between ranchers and conservationists worked at the local level to protect farmland and sustain agriculture:
It became evident that to preserve the open space they needed the farmers. And it became equally evident to the farmers that, to survive, they needed the sympathy, support and help of the city people; they saw that, by themselves, they did not have the power to determine their own future...

In response to a variety of pressures, needs and desires, and in ways inescapably halting, the many heroes... have changed their standards. They have learned to act in the interest of the community and the land. They have begun the difficult, necessary recognition that these two interests are one.¹

Just as there are a variety of interests, there are a variety of tools that could be used to conserve farmland. Some are directed primarily at sustaining agriculture and others are directed primarily at conserving open land. Some are regulatory; some are compensatory; some are voluntary. No single tool can accomplish all that’s needed to keep farms in operation.

The first lesson from the Marin County study was this: “If you plan to preserve some agricultural land, hold nothing back. Use every tool, every idea that comes to mind.”²

This manual explains many of the possible tools available to Vermont towns. But tools need direction. The direction comes from the town plan—the vision of the townspeople and the commitment they are willing to make. And, as Dennis Borchardt told a group of Bennington citizens interested in tools they could apply to their task of agricultural conservation: “We’ve got to get more heart into planning. In the past, a lot of our planning efforts were done by our brains and we’ve kind of forgotten to use our hearts.”

In forging the vision and in compiling the tools which the town will use, it may be useful to consider some of the following principles of sustaining agriculture:

## Principles of Sustaining Agriculture

1. Farmers should receive a fair and real return for what they produce.
2. Farmers should receive a fair return for what they provide to the town, the region, and the state.
3. Farmers should be given an incentive and the freedom to care for the land.
4. The best way to sustain farmland is to sustain agriculture.
5. Whether big farms or small intensively managed farms will be most successful in the future in Vermont is unclear. Policies should be directed at preserving options rather than assuming only one type of agriculture will be viable.
6. Conserving agriculture in Vermont will take a coalition of interests. Farming as a business is important but will probably need to be strengthened by efforts of tourism, rural communities, conservation, historic preservation, recreation, etc.
7. Some policies and actions may be directed at preserving open land rather than preserving agriculture. These should not hinder agriculture.
It is probably most useful if the principles and the discussions in town result in a strategy for sustaining agriculture—not just a document labeled “plan.” The most successful strategy will use, in some way, as many tools as possible—some of which are outlined in this manual. Possible components of a strategy and the manual sections that are most directly related are listed below.

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2. Defining Agriculture

In East Montpelier, some of the same people who backed the proposal of Austin Cleaves to sell development rights on his farm were outraged when he proposed to build a 400-cow barn. For some, the original vision of the quiet, idyllic Vermont farm prospering into perpetuity was likely to be replaced by a nightmare of truck traffic and industry.

"I think people need to realize we cannot all be Billings," said Orwell farmer Mike Audet referring to the Woodstock farm museum which is now a National Park. "What you need in people places are the museum farms. You can not expect the people population to coexist with agribusiness. If this 400-cow barn was going to be built in an agricultural area, you would not hear a thing about it."

Taking a hard look at what agriculture is now and what it is likely to be in the future is a very important first step in planning. For agriculture to survive in the future, the owner must be allowed some flexibility to respond to future conditions. This may include activities and practices that are not yet common; it may involve consolidation; it may entail greenhouses, storage structures or new equipment; it may require specialization so that equipment travels over the roads from farm to farm.

As agriculture changes, so will its compatibility with other types of uses—particularly residential. Intermingling clusters of houses with farm fields may not be as much of a problem now as it could be in the future with more intensive types of agriculture. The classic example is when the peaceful farm with the rambling barn at the edge of the village is converted to a piggery.
The town plan and regulations should try to find the balance between encouraging all future agricultural uses and protecting the health, safety and welfare of all citizens.

In general, because sustaining agriculture is a public goal, defining agriculture is done to confer certain benefits or protections to the agricultural land use or activity. There are several definitions of farming and agriculture adopted at the state level for the purposes of benefiting or protecting it:

- Agricultural land is defined in 32 V.S.A. Chapter 124 to allow that land to receive preferential taxation.1

- “Farming” is defined in Act 250 to exempt construction for farming purposes (below the elevation of 2500 feet) from the definition of development subject to Act 250 review.2

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1 32 V.S.A. Section 3752 (1) “Agricultural land means any land, exclusive of any house site, in active use to grow hay or cultivated crops, pasture livestock or to cultivate tree bearing edible fruit or produce an annual maple product, and which is 25 acres or more in size except as provided below. There shall be a presumption that the land is used for agricultural purposes if:
   (A) it is owned by a farmer and is part of the overall farm unit; or
   (B) it is used by a farmer as part of his farming operation under written lease for at least three years; or
   (C) it has produced an annual gross income from the sale of farm crops in one of two, or three of the five, calendar years preceding of at least:
       (i) $2,000 for parcels of up to 25 acres; and
       (ii) $75 per acre for each acre over 25, with the total income required not to exceed $5,000;
   (iii) exceptions to these income requirements may be made in cases of orchard lands planted to fruit producing trees which are not yet of bearing age.”

2 10 V.S.A. Section 6001 (22) “Farming means:
   (A) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
   (B) the raising, feeding or management of livestock, poultry, equines, fish or bees; or
   (C) the operation of green houses; or
   (D) the production of maple syrup; or
   (E) the on-site storage, propagation and sale of agricultural products principally produced on the farm; or
   (F) the on-site production of fuel or power from agricultural products or wastes produced on the farm.”
• Farming activities are exempted from the state’s Wetland Rules, and the Water Resources Board adopted a definition of the protected activities.\textsuperscript{3}

All of these definitions, although different, are fairly general and would probably allow most types of agriculture envisioned in the future. For purposes of encouraging agriculture at the town level, similarly general definitions are probably the best because they will allow variations.

However, the general purpose of planning is not to sustain agriculture but to protect the health, safety and welfare of the citizens. To serve this purpose, there is reason to make the definition more inclusive or selective. For example, slaughterhouses, feed lots, and manure-to-energy plants, (colloquially known as “fart factories”), are not generally welcome near the village even in a town that wants to encourage innovative agriculture and secondary industry.

In spite of the bucolic image, it is important to recognize that agriculture is an industry and the agriculture of the future may be even more industrial. Agriculture is likely to bring large and noisy machines, chemical fertilizers and sprays, and large buildings. After careful consideration of the possible shapes of agriculture and secondary processes in the future, striking the balance between encouraging agriculture and protecting other residents may mean that different agricultural uses would be appropriate in different parts of town and that different definitions should be constructed.

Townspeople may feel that striking the balance may involve defining specific practices—the particular methods or procedures used to perform agricultural activities—that are acceptable or not acceptable in a certain area. Looking at the practices acknowledges that a certain agricultural activity could be performed in many ways—some good and some bad. The appropriateness of a practice depends on the setting in which it occurs, materials, amounts, timing and design. For example, spreading manure is an agricultural activity. However, spreading manure on frozen ground near surface waters is a practice that could reduce water quality.

\textsuperscript{3}10 V.S.A. Section 902(5) and 905(9). The regulations adopted by the Water Resources Board define farming activities as: “the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; and the growing of food and crops in connection with the raising, feeding, or management of livestock, poultry, equines, fish farms, or bees for profit.”
There is considerable debate over the extent to which Vermont municipalities can restrict agricultural practices. Please see Section 10 for more information on regulating agriculture.
3. Fee Simple Acquisition

Fee simple acquisition is the purchase of full title to land with all its rights; it is what we normally call buying the land. This tool is listed first in this manual only because it is the simplest to understand. In reality, its use is very limited.

From the town's point of view, the biggest advantage of acquiring fee simple ownership is that both the management and development of the land is permanently controlled. There are three major disadvantages: fee simple acquisition is considerably more expensive than other options; the town (or other public or quasi-public body) assumes responsibility for management; the land is generally removed from the tax rolls. (See Section 17, Farmland and Property Taxes.)

From the farmland owner's point of view, acquisition by a public agency or a land trust may meet two goals: getting a fair price for the farm, and keeping it from becoming a shopping center. In some cases, the farmland owner may continue to farm the land under a lease-back arrangement.
The Vermont statutes list the following possible ways for towns or state agencies to acquire land and all its rights:

- Fee simple;
- Fee simple subject to the right of the grantor to continue to use the land as a farm and residence;
- Fee simple with the resale of rights and interests, for example reselling the land subject to conservation easements;
- Fee simple and lease-back, where the land is purchased and leased to a farm operator.

The “Town Farm,” often known as the “Poor Farm,” was once common in Vermont. However, at the present time, fee simple acquisition of farmland is rare. Public funds are used more often to purchase conservation easements to stretch the money to protect more land, and so that public agencies do not assume the role of land manager.

There are a few situations where fee simple acquisition of farmland may arise. Sometimes landowners donate entire parcels of land to towns, public agencies, government or non-profit organizations. In other instances, government or private organizations purchase land outright but hold it only long enough to achieve other means of protection.

The concept of land banking, or purchasing land to later resell it subject to certain restrictions, is gaining some interest. The concept is similar to Vermont’s original land grant system; when towns were laid out, land was divided up and lots were conveyed for certain uses: a church lot, a school lot, a swamp lot for each family, tillable land for each family, etc.

For agricultural land protection, the modern version would require public purchase of property and resale to farmers subject to recorded deed restriction limiting the use of the land to agriculture.

\[^{10}\text{V.S.A. Section 6303}\]
On an individual parcel scale, this type of transaction is employed by non-profit conservation organizations that step in to buy a farm—particularly one in immediate danger of being sold for development—and later resell the land to farmers subject to conservation restrictions.

A town is also authorized to purchase an option to buy farmland or rights and interests in farmland². This does not entitle the town to any special price and it does not authorize eminent domain. It simply means that if and when the owner is ready to sell the farmland, the town will have an option to match the selling price.

The Vermont Housing and Conservation Board (VHCB) holds a right of first refusal on farms enrolled currently or within the last five years in the Working Farm Tax Abatement Program. If the landowner wants to "convert to non-farm use part or all of that property," the state has the right to purchase the land. The VHCB can exercise its right only by offering fair market value and only if and when the owner plans to convert the property. In making the decision of whether or not to purchase the property, the VHCB "may consider any duly adopted municipal or regional planning policy by which agricultural lands for preferred or protected status are identified."³

Even though it is unlikely that the VHCB would exercise its right of first refusal, recognition of the potential for the state to exercise its right of first refusal may be valuable to the town in two ways: if the land is important for preservation, local designation may add weight to the VHCB considerations; and the town may want to line up funding to contribute to the purchase of an important parcel.

²10 V.S.A. Section 6303 (a)(7).
³32 V.S.A. Section 3773.
Sustaining Agriculture:
A Handbook for Local Action
4. Purchase of Development Rights (PDR)

Purchasing agricultural land development rights ensures land will not be developed by paying the landowner for foregoing the right to develop. Generally, some combination of public and private non-profit entities—a town, a land trust, the Agriculture Department and/or the Housing and Conservation Board—purchase and hold the rights to develop the land.¹ At the time the development rights are purchased, a conservation easement that restricts the use of the property to farming and compatible activities is placed on the land. The farm owner continues to own and manage the land for agriculture.

There are three main reasons why it may be more advantageous to the town to purchase development rights on farmland rather than to purchase the land in fee simple: it keeps the farm operation and the land management in the hands of a farmer rather than in the hands of public officials; it costs less per acre than purchase of all rights; and it removes less value from the tax rolls.

To the farm owner, it is a way to sell the farm and keep it, too. Many farm owners have looked at the farm value as needed potential income and, until recently, the only way to tap that income was to sell all or part of the farm. Selling the development rights offers a way to cash in on some of that value while continuing to own and manage the farm.

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¹ 10 V.S.A. Chapter 155 contains Vermont's enabling legislation for purchases of development rights.
Selling Development rights is a particularly valuable option when farms are being passed down to the next generation: the parents can sell the farm in two pieces—the development rights to the public and the farm to the children or new farmers. This means the parents can get that retirement income without saddling their children or the new farmers with mortgage payments that make farming unprofitable. It is also helpful when farm owners would like to pay off their debt or buy new equipment. In addition, the families of farm owners may benefit from a reduction in inheritance taxes.

“The people who want to keep the land open can’t just take away the rights of farmers,” said a farmer of land in Charlotte for which the development rights have been sold. “This doesn’t take away property rights; it pays people a fair price, and it comes up with some innovative solutions to help farmers keep the land in farming.”

For future farm owners, it is a way to buy a farm for a more reasonable price. Theoretically at least, the sale price of a farm subject to a conservation easement should be the value of the farm for farming only. In reality, a buyer looking for a farm will still be competing with a buyer looking for an estate. However, at least the competition (and therefore higher price) posed by a buyer planning to make millions by building a model village would be removed.

However, many people are concerned that, if the economic situation does not improve for agriculture, removal of the development rights will leave the next generation of farmland owners without anything to sell off to remove operating debt or to pay bills.

“The purchase of development rights is a much touted strategy for maintaining open land and it has its merits,” said dairy farmer Harvey Smith. “However, as the strategy is being put into effect, it is becoming clear that there are drawbacks, too...If the underlying lack of economic viability of the farming unit or the land itself has not been addressed, then the sale of development rights has not accomplished a lasting purpose.”

As Smith knows, many farmers have been making ends meet by selling an occasional house lot, and this option would be precluded on most parcels from which the development rights have been removed. However, the practice of selling off lots to support farming is a surviv
technique that has no long-term future. If agriculture becomes more profitable soon, the PDR approach makes sense because it reduces the cost of transfer and preserves agricultural land until then. If agriculture in Vermont continues to be less and less profitable, then neither technique—neither selling off lots or nor PDRs—will keep farms in operation.

If agriculture is not economically viable in the future, the only people who will be able to afford the land stripped of its development rights will be people who do not need to make a living from farming it. But, at least the land will still be open.

In contrast to zoning or other regulatory techniques, a PDR program is generally well accepted by landowners. First, it is voluntary. Second, the landowner is compensated for lost value, avoiding the equity questions that plague zoning schemes. However, these two points which are advantages to the landowners have their downsides for the public: it means the method will only work to the extent that there is willing participation and adequate funding; and, because landowners are compensated for reductions in their property values, it tends to undermine the public acceptability of uncompensated restrictions imposed by zoning or other regulations.

In addition, the program is expensive. The value of the development rights is calculated as the difference between the fair market value of the farm without any restrictions and the fair market value of the farm with conservation restrictions, as determined by an appraiser. In areas where the market for new housing is strong, the value of the development right may be more than half of the total value. In areas where there is no demand for house lots, the development value and the farm value may be equal.

For example, on a farm in northern Vermont, the development rights were valued at about $600 per acre—about one half of the value of the land itself in 1992. On a parcel in southern Vermont, the development rights were valued at $1000 per acre—also about one half of the value of the land if unrestricted.

Some people feel that the public should not pay the full value of the development rights because at least some of the development value was created by the public itself through its investment in schools, roads,
water, and sewer. However, others argue that the public investment adds value to residences and other property as well, and owners of those properties are allowed to profit fully from it.

If a landowner agrees to give up development rights for less than the appraised value, there may be tax benefits:

1. A donation of part or all of the value of the development rights may be considered a charitable donation for income tax purposes.

2. The reduced value of land also reduces the value of the property for the estate tax which would normally be due upon death of the landowner. There have been instances where the beneficiaries of an unrestricted farm have been forced to sell portions of the farm in order to pay the estate tax.

3. The appraised value of the property and therefore the property tax bill may be reduced by the transaction. However, the appraised value is rarely as low as the use value and therefore most landowners will want to continue in Vermont’s Use Value Appraisal program. (See Section 17 on Farmland and Property Taxes.)

4.2.
Program Provisions

Conservation easements in Vermont commonly have the following provisions:

1. The conservation easement is perpetual. Amendments may only be made in the following cases:
   a. a clerical error;
   b. the proposed amendment will either have a neutral or enhancing effect on the conservation values; or
   c. threat of condemnation proceedings.

2. No effort is made to define or regulate agricultural practices.

3. Those activities that interfere with agriculture are restricted.

4. The entity that holds the development rights retains the right of first refusal on the land should the owner want to sell.
5. Subdivision is not permitted without permission of the holder of the conservation easement.

Many farm owners approach the decision to sell development rights with seasoned skepticism of government programs. First, there is the concern about perpetuity, which is generally a requirement. If farming is no longer economically viable, is the farm owner left with anything but a liability to pay taxes? While the future is unknown, experience in other New England states indicates that restricted properties will sell as estates even when farming is not a viable option.

The most common fear is that farm operations will be delayed because of government involvement. As one landowner put it, “I can’t sit around and wait until Big Brother decides whether or not I can start my tractor on Mondays.”

To avoid this, as mentioned in provision 2 above, most conservation easements state, “the owner maintains the right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures in accordance with generally accepted agricultural practices² and sound husbandry principles.” This wording not only protects the landowner, it also protects the town or land trust holding the rights. Because accepted agricultural practices are extremely varied now and will certainly evolve over time, this general wording saves the headaches of creating an exhaustive list of detailed specific practices that would need to be updated constantly and possibly cause confusion, uncertainty, delays and controversy.

Most conservation easements also specify an area, known as the Farmstead Complex, where the owner is allowed to renovate or enlarge existing buildings and construct new barns, buildings and improvements normally associated with farming (and consistent with zoning) without getting approval from the town or land trust, even though constructing buildings is generally prohibited elsewhere on the property.

² No attempt is made to link the conservation restriction to the Accepted Agricultural Practices which the Commissioner of Agriculture, Food and Markets has established. The generally accepted agricultural practices referred to in the conservation easement are not defined.
Farm owners often worry about selling the land in the future. While the land generally cannot be subdivided, the landowner is free to sell the land as one unit, subject to the conservation easement. Generally, there is a right of first refusal provision in the contract which works like this: if the owner receives a legitimate offer for the restricted property, the holders of the development rights should be notified and they would have 90 days to decide whether they would buy the property at the price offered. If they do not respond within 90 days, the owner is free to accept the original offer. The right of first refusal does not generally apply to gifts or sales to family members.

From the public’s point of view, the purpose behind reserving this right is to keep the land in farming. It probably would only be exercised if the farm owner received an irresistible offer from someone looking for a retirement estate that would not be farmed. The land trust or town might exercise the option to purchase the farm and resell it to someone interested in farming.

Another common concern of farm owners is the ability to reserve lots for their children, for employees, or for a future project they have in mind. These arrangements should definitely be worked out in advance, and the extent to which they will be allowed is up to the town and other entities that will hold the development rights. In working out a solution to this question, the following considerations should be kept in mind:

1. The remaining farm should be a viable farm unit.

2. The lots should be designed to minimize their possible future interference with the operation of the farm and to be compatible with the town plan and zoning.

3. If, for zoning or subdivision purposes, the lots must be larger than two acres, perhaps some of the land could be subject to a conservation easement.

4. Employee housing may be critical to a farming operation. However, if employee housing is constructed on the farm, the farm may become too expensive to sell as one unit in the future. If, on the other hand, the housing is allowed to be sold separately, it is likely to lose its value as employee housing if the farm.
Although a purely local effort to purchase and hold development rights is possible, most towns have found it preferable to coordinate with a land trust or the Department of Agriculture. There are several reasons to consider coordination:

The town may not want to invest in the training and education necessary to negotiate and consummate a few purchases.

The town may not be willing or able to provide the perpetual responsibility for monitoring and enforcing compliance.

Working with another entity may help the town fit into a regional or statewide strategy for preserving blocks of farmland.

There are several possible sources of funding for the purchase of development rights, and most projects involve a combination of:

1. Donations by townspeople and businesses

2. Bargain sale by the landowner, where the landowner accepts less than the full fair market value of the development rights. There may be tax benefits for the landowner on the “donation” of some of the value.

3. An appropriation from the town, either to a special fund for farmland preservation or for a specific parcel.

4. Funds available through the Vermont Housing and Conservation Board.

5. Funding from other organizations, especially for projects with special attributes such as a recreation trail or a natural area.

Because the biggest limitation to a PDR program is funding, it will be important to set up priorities and a system for choosing the most important farmland to participate. It is extremely difficult to find the right balance between giving highest priority to the farms that have the greatest potential for being successful or giving highest priority to the farms that are most likely to be developed. Most committees grappling with the ranking system agree they do not want to spend all their money buying development rights on land which would never be developed.
anyway, nor do they want to buy rights to farmland just because it would probably be developed if it is too small, too dry, or too rocky or otherwise only minimally suitable for commercial agriculture.

Although threat of development certainly adds urgency to the situation, it is probably a better investment to target farms that have the best agricultural potential and moderate development pressure. The agricultural benefits will be the greater, and the price is likely to be lower.

The I.R.S. (Internal Revenue Service), when determining whether or not an easement donation should qualify as a charitable conservation donation, looks for some development pressure (without which there would be little if any value to the development right) but it also requires that the preservation of the parcel be “pursuant to a clearly delineated Federal, state, or local governmental policy that is intended to protect the types of property identified by representatives of the general public as worthy of preservation or conservation.” (Internal Revenue Code Section 1.170A-14(d)(4)(iii)). For I.R.S. purposes, then, priority would be given to property with some development potential but which is located within an agricultural zone designated in the town plan and zoning regulations.

The Vermont Housing and Conservation Board also looks to see that the farm land conservation project would be consistent with the town plan and zoning.\(^3\) In addition, the Board has grappled with the balance between buying farms for farming’s sake and buying farms to save them from development. Because the Board’s policy on the issue may be of use to towns devising a local version of a priority system, and because a majority of the projects apply for some funds from the VHCB, it may be helpful to request a copy of their latest criteria and priorities for funding conservation of agricultural land.\(^4\)

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\(^3\) Consistency with a town plan is generally considered in ranking farm parcels for acquisition with VHCB funds. However, once a municipal plan is “approved,” 6 V.S.A. Section 32 directs VHCB to limit acquisition to those parcels designated by both the municipal and regional plans. See Sections 18 to 20 for more information.

\(^4\) Vermont Housing and Conservation Board, 136 1/2 Main Street, Montpelier, Vermont 05602 (802) 828-3250.
5. Transfer of Development Rights (TDR)

A Transfer of Development Rights (TDR) program is similar to a Purchase of Development Rights (PDR—see Section 4) program except that the development rights sold by the farmland owner are transferred to another area and used to develop another parcel.

In theory, at least, a Transfer of Development Rights (TDR) program avoids some of the major problems with agricultural zoning (section 7) and with Purchase of Development Rights. Many zoning schemes, such as 10-acre zoning, do not really conserve large pieces of land for agriculture. On the other hand, an exclusive agricultural zoning scheme that totally limits the development on land through regulation conserves the land but provides neither development options nor compensation for the landowner.

A TDR program can be designed to permanently conserve large pieces of agricultural land while providing some compensation for the development rights removed from agricultural land. Unlike a PDR program which relies on public funds and charitable donations, the TDR compensation comes from developers who purchase the development rights from farmland and use them to develop land in a designated area.

In spite of the appealing theory, there are no successful operating TDR programs in Vermont at this time.
In a TDR program, two types of districts are designated: the Sending Area comprising the agricultural land that the town would like to protect; and the Receiving Area comprising the land in which increased development is appropriate. The land in the Receiving Area can be developed to a greater density if development rights (TDRs), purchased and removed from land in the Sending Area, are transferred to the Receiving Area. Once the development rights have been removed from land in the Sending Area, a conservation easement is recorded and the land is treated as it would be in a PDR program (see Section A for information on Purchase of Development Rights).

Transfer of Development Rights:
Illustration of Sending and Receiving Areas

- Farm Land
- Village
- Forest
The main advantage to the farmland owner is compensation for the loss of the right to develop the property. Unlike a PDR program, the amount of this compensation depends on the extent to which the development value of land in the Receiving Area is increased by the TDR. The compensation, therefore, does not directly relate to the value lost by the farmland owner.

The advantage to the town is that private rather than public funds are used to secure the conservation easements on farmland. The town avoids some of the equity problems associated with agricultural zoning, yet it can, potentially, protect more land than would be possible to protect through public purchase.

The use of private funds and market forces could be an advantage for both the town and the landowner. Assuming there is development pressure in the Receiving Area, there will be demand for the TDRs and more parcels can receive funding for their development rights than would be possible under a PDR program relying on public funds. This means that more farmers can participate and more land would be protected.

In Vermont, many of the towns considering TDR programs would like them to be voluntary. That is, a farmland owner would have the choice of subdividing/developing the property or selling the TDRs or neither. However, Dennis Canavan, director of the Montgomery County, Maryland program which is the most successful TDR program in the country, advises against purely voluntary programs. He feels that farmland owners need a push, such as strict agricultural zoning that allows very little development, in order for the program to work.

The question Montgomery County put to farmland owners was this: "Would you like your land downzoned, or would you like it downzoned with TDRs?" Canavan reports that it was a "tough pill to swallow" when the program was being proposed, but now the farmers and the Farm Bureau are in favor of the TDR program.
Several planners with TDR experience caution that a rural Vermont town may not be the right unit for a TDR program. For the program to work, there must be sufficient growth and development pressure to provide an incentive for developers. While the system might work better at a regional scale to target growth to a regional growth center, Vermont’s statutes and tax structure would make the regional approach difficult.

Vermont farm owners are quick to foresee the problems with a mandatory program in a rural area where there may not be demand for the TDRs. They fear that they will lose their development potential and be compensated with TDRs that have no value. "It's like having 1,000 pairs of socks," commented a farmer in Essex.

While people designing a TDR program generally focus on ways to protect the farmland in the Sending Area, the Receiving Area is critically important to the success of the program. Although the program could potentially make the land in the Receiving Area more valuable because it could be developed to a higher density, many homeowners worry that the development allowed by the TDR program would urbanize and degrade their village neighborhood.

There are also property tax complications with a TDR program. These are discussed in Section 10, Farmland and Property Taxes.

Finally, several areas have found that, in the initial stages of a TDR program at least, there is no private demand for the rights, yet there are owners of important agricultural land who need to sell. In those cases, the government has set up a TDR bank authorized to buy TDRs and to resell them. This serves three purposes: the landowner can sell rights when he or she needs to at a reasonable price; the town can protect valuable agricultural land even if the private market is not expanding; and the bank can set prices for the rights so that they do not lose value.
5.3.1 Elements of an Effective TDR Program

Drawing on the experiences in Montgomery County and other attempts to set up TDR programs, Dennis Canavan lists the following elements of an effective TDR program:

1. **Simplicity**
   The TDR system must be simple to administer and understand. A frequent criticism of TDR programs is their complicated nature.

2. **Growth Management**
   Strong planning and zoning practices using an adopted master plan followed by implementing regulations.

3. **Growth Pressure**
   Sufficient prospects of long term growth pressure must be assured to warrant confidence that all TDRs will be absorbed into growth areas. TDR programs are not effective in entirely rural areas.

4. **Adequate Incentives**
   The farmland owner must have an incentive to sell TDRs; farmland to be protected must be downzoned at the time of TDR program initiation. The developer must have an incentive to purchase TDRs rather than build under existing zoning regulations. The TDR density options must provide adequate incentive to trigger the transactions.

5. **Receiving Area Strategy**
   A planning strategy must be developed that provides assurance to communities surrounding TDR growth area that a public facility overload will not result from the use of the TDR density option. Also, housing type and community capability issues must be addressed.

6. **Political Leadership**
   Courage and commitment, by at least some political leaders, must be demonstrated. They must recognize the problems and be willing to risk a new approach.

7. **Support Constituencies**
   Enough missionary work among the affected constituencies is necessary to generate widespread public understanding before the final public hearings are held. Public outreach.
References

Enabling legislation: 24 V.S.A. Section 4407 (TDR Statute)
10 V.S.A. Chapter 155 (Acquisition of Interests in Land by Public Agencies)


6. Payment for Public Benefits

In most towns, citizens recognize the public benefits provided by farmland owners: preserving a rural landscape; keeping land open; providing certain types of habitat; allowing people to hike in the woods, ski over the hayfield, or ice-skate on the pond, etc.

There is no reason that the town or some other sort of public or private organization cannot enter into a contract with the land owner to pay for some of those public benefits provided. The town could, for example, lease the development rights of a parcel for a certain number of years. Or, the town could pay the owner to allow public access to the pond in the winter. Or, a conservation organization could pay the owner for protecting certain habitat.

Local committees often attempt to compensate landowners for providing these public benefits by reducing the property tax bill. At the present time, there are no provisions in Vermont statutes to provide tax stabilization for purposes other than agriculture. In other states, however, taxes may be reduced based on a "public benefit rating scheme." The greater the public benefit provided by the land, the greater the reduction in the tax bill.

However, there is no reason why the same concept cannot be applied independently of the tax structure. Instead of offering a tax reduction, a town can offer a direct payment for certain public benefits. The amount of the payment could be determined by a public benefit rating system. It is also possible that the payment from the town to the owner would

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1 Several counties in Washington use a public benefit rating system, according to the provisions of Revised Code of Washington 84.34.010. See, for example, the Thurston County Open Space Tax Program and Thurston County Ordinance 8075 as amended.
exceed the tax payment from the owner to the town. The value of the public benefits provided by the farmland owner could certainly exceed the annual property tax bill.

Many citizens have not supported annual payments because "you don't have anything in the end." If that is an objection, perhaps a lease agreement may be structured to give the town an option to purchase the land at the end of the contract period.
7. Agricultural Zoning

Perhaps the best thing that zoning can do is separate conflicting uses. And, for farm operations, that can be important.

"The thing that farmers hate the most, except maybe government, is a non-farming neighbor," said Tom Daniels, native Vermonter and Director of the Lancaster County (PA) Agricultural Preserve Board.

Many Vermont farmers have heard complaints from non-farm neighbors about the smell of manure spreading, the mud on the road, the milk trucks that run over petunias in the planting in the intersection, the tractors that slow traffic, the glare of the sunlight off large expanses of metal barn roof, or the farm tenant housing that devalues the neighborhood. Zoning can reduce complaints by establishing agricultural zones in which farming is permitted while non-farming uses can be restricted.

Many towns in Vermont have "large-lot" agricultural zones in which residential development is permitted with a minimum lot size of 5 to 25 acres. This has not been effective in either separating residential development from farmland or sustaining agriculture; in fact, it means that houses will be spread about the farm zone and, when a farm owner needs to sell a lot, the farm will lose more acreage than is actually needed by a homeowner.

"If you think five-acre zoning would protect farmland, I suggest you do a build-out analysis and look at what the land would look like after all those lots were created," said Lee Krohn, Manchester Town Planner. "I would suggest that the area won't look anything like what you want it to be."
But large-lot zoning is not the only type of zoning that towns can use. A zoning scheme that does a better job of protecting large blocks of farmland without depriving the landowner of the right to develop a portion of the land specifies an allowable density—one dwelling per 25 acres, for example—but also specifies that the house lots cannot exceed two acres. These types of schemes are generally known as Area-Based Allocations. Other zoning may specify that the lots be clustered in one area so that the remaining farmland is in one large piece.

A few general requirements and concepts apply to all types of zoning. The zoning regulations must be directed at achieving the purposes set out in Title 24\(^1\) and at implementing the goals of the town plan.\(^2\) If zoning is to be one of the tools used to sustain agriculture, the goals and policies in the town plan (Section 18) should give clear direction.

Zoning regulations may regulate: the use of land; the location, size, construction and use of buildings and structures; lot sizes; land to be left unoccupied by uses and structures; density; and intensity of use. In general, zones are delineated in which certain uses (e.g. agricultural uses) are permitted, where certain uses are conditional and allowed only if they meet specified conditions, and where other uses are prohibited. This section first examines possible approaches to determining density and lot size (7.2) and then possible special provisions that might be applied to focus or refine any approach (7.3).

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To be successful, an agricultural zoning program should achieve the following:

- conflicts between farm and non-farm uses are minimized;
- farmland is not divided into parcels too small to be farmed economically;
- the largest possible blocks of contiguous farmland are maintained; and
- the most productive soils are conserved for agriculture.

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\(^1\) V.S.A. Sections 4402 and 4302.
\(^2\) V.S.A. Section 4401 (a).
7.2.1. Exclusive Agricultural Zoning

Exclusive Agricultural Zoning\(^3\) prohibits all new non-farm uses or structures in an Agricultural Zone. While this effectively separates agriculture from the spread of conflicting uses within the boundaries, it eliminates the ability of the farmland owner to sell or develop any land for other uses. This is generally unacceptable to farmers who, although they would like to continue farming, see their ability to profit from some development as retirement income, a rainy day fund, a means to support the farm, and/or a right.

If exclusive agricultural zoning is used, towns must guard against “taking without just compensation.” Technically, compensation is required when the landowner is denied all economic use of the property. Exclusion of residential development would not require compensation as long as farming or other permitted uses remain economically viable in the zone. However, some small, developable parcels may be inappropriate and uneconomical for farming. If prohibiting development on these parcels denies owners all economical use of their land, the regulation could be considered a “taking” and financial compensation by the town could be required.

Even in situations where the law does not require financial compensation for reducing the potential to develop farmland, a community’s sense of fairness may compel it to offer some compensation. The community could take one or more of the following actions to offer compensation to owners of land in an Exclusive Agriculture Zone: 1) purchase development rights (Section 4); 2) set up a transfer of development rights program (Section 5); and, 3) provide special tax breaks, grants, loans or other financial benefits to ensure the economic viability of farming (Sections 6, and 15-17).

Variations of exclusive agricultural zoning have been implemented in Hawaii, Oregon and California. It has been noted that, because landowners have no options for limited development, the zoning has resulted in a significant number of re-zoning requests and subsequent conversion of farmland.

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\(^3\)Statutory authority for exclusive agricultural zoning in Vermont is implied. Exclusive forest and recreational zones are described in 10 V.S.A. Section 4407 (f). Exclusive agricultural zones would be similar in both purpose and restrictions.
7.2.2. Large-Lot Zoning

Requiring a large lot for a residence has been the traditional method of agricultural zoning. Large-lot zoning is familiar, easy to understand and administer, and ensures that the area will not be developed as densely as the village is. But, large-lot zoning has serious drawbacks. It tends to spread out housing rather than concentrating it; it can increase conflicts between farm and non-farm land uses; and it can waste farmland by chopping it into lots that are too big for the average homeowner’s needs and too small to be farmed efficiently.

Across the nation, minimum lot sizes for agricultural zones are usually about 40 acres and range between 5 and 320 acres. It is generally recommended that the minimum size of a lot should be enough to support an economically viable farm operation over the long term. While specialty crops, such as strawberries, can be profitable on smaller parcels, most crop farming requires parcels of 40 or more acres, and dairy farms require much larger areas.

“We chose 25 acre minimum lot size,” said Dennis Canavan, Montgomery County, Maryland, “because 25 acres of farmland could sustain a family where we are.”

Montgomery County is just outside the market area of Washington, D.C., and so vegetable farming might be profitable. In Vermont, 40 to 50 acres may be more appropriate for a minimum lot size in a large-lot zoning scheme. Presently, however, many Vermont towns require only 5 to 10 acres for a lot. This lot is too small for the average farming operation and too big for the needs of most families.

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510 V.S.A. Section 4407 (1)(A) describes an agricultural zoning district with a 25-acre minimum lot size as an example. This example of non-exclusive, large-lot zoning is not limiting in any way. Non-farm development could be excluded, minimum lot sizes could be larger or smaller, and the desired overall density in the zoning district could be achieved independent of lot size.
7.2.3. Area-Based Allocations: Fixed Scale and Sliding Scale

There are two zoning schemes, Fixed Scale and Sliding Scale, that attempt to authorize a certain number of lots which could be sold while specifying that the building lots must be as small as possible—thereby minimizing the amount of land removed from agriculture.

Both schemes recognize that development density need not be uniform throughout the agricultural zoning district. Ideally, development should be focused on the portions of the district least suited for agriculture and best suited for development, and the remaining lands should be dedicated to farming.

Unlike traditional large-lot zoning, Area-Based Allocations calculate the number of house lots allowed and the lot size separately. Even though the number of lots created per parcel may be the same under both zoning schemes, more open land is protected under Area-Based Allocations because the lots created are much smaller.

For example, under a large-lot zoning scheme with 25-acre lots, a 400-acre parcel could be divided into 16 25-acre lots that would occupy all of the parcel. In contrast, under an area-based scheme, the owner might be allowed to sell the same number of lots, but the town could specify that they be 2-acre lots. As a result, only 22 acres would be broken off from the farm and the remaining 368 could continue in agriculture.
Under **Fixed Scale** area-based allocations, the number of house lots allowed per unit area is fixed for the entire zone. For example, if the town allowed one lot for every 25 acres in the parcel, then the total number of house lots allowed per parcel would be determined by dividing the number of suitable acres in the parcel by 25. However, unlike traditional 25-acre large-lot zoning, the lots under fixed-scale zoning might be smaller than 25 acres. Fixed Scale area-based allocations work best in zones where existing parcels are uniformly large.

Under **Sliding Scale** area-based allocations, the smaller the parcel, the more house lots allowed per unit area. For example, the scale might allow one house lot for every 25 acres for the first 100 acres in any parcel. For larger parcels, four houses would be allowed for the first 100 acres (density of one per 25 acres), but an additional 50 acres would be needed for each additional house. The result is that smaller parcels, often less useful to agriculture and purchased with the expectation of future development, are allowed to develop at a higher overall density than larger parcels (Table 7.1). In areas with a wide range of parcel sizes, allowing higher density on smaller parcels usually makes the sliding scale method more acceptable than the large-lot or fixed-scale approaches.

### Table 7.1 Example of Large-Lot, Fixed Scale, and Sliding Scale Zoning

<table>
<thead>
<tr>
<th>Acres in Parcel</th>
<th>Number of 25-acre Lots Allowed Under Large-Lot Zoning</th>
<th>Number or 2-acre Lots Allowed Under Fixed-Scale Zoning</th>
<th>Number of 2-acre Lots Allowed Under Sliding-Scale Zoning</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-49</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
</tr>
<tr>
<td>50-74</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
</tr>
<tr>
<td>75-99</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
</tr>
<tr>
<td>100-124</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
</tr>
<tr>
<td>125-149</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 50 for Acres &gt;100</td>
</tr>
<tr>
<td>150-174</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 50 for Acres &gt;100</td>
</tr>
<tr>
<td>175-199</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 50 for Acres &gt;100</td>
</tr>
<tr>
<td>200-224</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 50 for Acres &gt;100</td>
</tr>
<tr>
<td>225-249</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 50 for Acres &gt;100</td>
</tr>
<tr>
<td>&gt;250</td>
<td>1 / 25 A.</td>
<td>1 / 25 A.</td>
<td>1 / 75 for Acres &gt;250</td>
</tr>
</tbody>
</table>
In either scheme, usually both the minimum and maximum lot size are specified. Minimum lot size is usually specified in terms of the area of land needed to site adequate septic and water systems; it often depends on soil and site conditions. Maximum lot size usually ranges between one and two acres. Its purpose is to ensure that development will take only a small percentage of property. People who want to control more than the maximum lot size may purchase multiple building lots or buy limited rights to use, but not develop, adjoining land.

In some cases, a maximum lot size is not set. The town may either allow development to occur on both large and small lots, or set performance standards (discussed later in this section) for determining the lot sizes and locations based on considerations such as soil characteristics, road access, and minimizing the interference with agriculture. This approach would allow for a variation or combination of lot sizes; a 25-acre lot used to grow vegetables intensively might meet the performance standards while a 25-acre house lot might not.

In creating the “scale” that will dictate the number of lots to be allowed on parcels, calculating two benchmarks may be useful: 1) the number of lots allowed under current zoning regulations; and 2) the number of lots that would be allowed if 25- or 50-acre large minimum-lot zoning were implemented.

It is also recommended that the number of lots assigned to any parcel be determined by looking at the total number of developable acres (after subtracting unsuitable land such as flood plain) rather than the total number of acres. At first glance, it would seem that this is unfairly reducing the number of lots which the landowner could create. However, it is important to realize that even under current zoning, many areas would be undevelopable and therefore the theoretical number of potential lots would not be achievable. Subtracting unsuitable land before calculating the number of lots to be allowed is essentially reflecting the current realities of development. However, the town may want to allow a greater number of lots, assigned by using the total parcel acreage, as an incentive.

The area-based allocation methods require record-keeping. Once a lot has been developed or subdivided, the town must record a conservation easement on some of the residual acres. For example, if the town allows one lot per 50 acres and the lot created was 2 acres, a conservation
easement must be recorded on 48 acres that cannot be developed or subdivided.

It is important to note that area-based allocation alone will not necessarily accomplish clustering. Although it may enable clustering, it may also enable developing the parcel such that there are lots scattered throughout. If clustering is desired, the area-based allocation should be coupled with special provisions such as PRDs, PUDs, conditional use standards, performance standards, subdivision regulations, or some of the techniques mentioned in the Rural Cluster/Agricultural Zoning discussion which follows.

Presently, no Vermont towns are using area-based allocations, but several are considering it.  

7.2.4. Rural Cluster/Agricultural Zoning

Although there are several variations on clustering, Randall Arendt, one of clustering’s foremost proponents, suggests establishing a zone in which a certain overall density is fixed, but in which all new construction is required to be located on smaller lots on only a portion—perhaps one third—of the parcel. Essentially, each parcel would be treated as if it were divided into two zones: a portion would be treated as if it were in a residential zone; the remainder would be treated as if it were in an exclusive agricultural zone.

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6 Because the statute uses the large-lot approach as an example of how to achieve a low overall density in an agricultural zoning district, there is some concern that it is the only approach that may be used. It is our opinion that the legislature listed lot size and density separately as aspects of development that could be controlled using zoning regulations. (24 V.S.A. Section 4401(b)(1)). Because they are listed separately, they may be regulated separately. Use of different terms in the same statute must be given effect. In construing a statute, a court will not assume that the legislature “used unnecessary language.” (Connor v. Federal Deposit Insurance Corporation, 113 Vt. 379, 382 (1943)). “In construing a statute, every part of the statute must be considered, and every word, clause, and sentence must be given effect if possible.” (State v. Stevens, 137 Vt. 473, 481 (1979)).
He cites the following benefits for the approach: “It is easy to administer, does not penalize the rural landowner, does not take development potential away from the developer, and is extremely effective in permanently protecting a substantial proportion of every development tract. It does not require large public expenditures (to purchase development rights), and allows farmers and others to extract their rightful equity without seeing their entire land holding bulldozed for complete coverage by house-lots.”

But not everyone agrees that clustered residential development in agricultural areas will help sustain agriculture. It still represents more residences and potential problems in an agricultural zone; the residences, although clustered, are still separated from the village and may be more expensive to serve than a village extension.

“I think we have to ask, ‘do we want to promote farming, or do we want a semi-rural area?’” said Tom Daniels, Director of Lancaster County (PA) Agricultural Preserve Board. “Lancaster killed rural cluster agricultural zoning because we don’t want non-farm people out there. What you get is effectively low density rural sprawl.”

Daniels also pointed out that, in many cases, the remaining farmland is no longer owned by the original farmer and operated as a farm. The scheme may be more successful in protecting rural character than farms.

In Vermont, probably the easiest way to accomplish this type of clustering is to use an area-based allocation system to determine the overall density to be allowed and then use special provisions such as PRDs, PUDs, conditional use criteria, or subdivision regulations to locate the lots.

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Michael Rushman of Upcountry Planning and Development in Cabot, Vermont, proposes the following voluntary clustering scheme:

1. A town would create two new master plan and zoning district classifications—agricultural and forest preservation (AFP) and clustered rural residential (CRR).

2. An owner of land meeting certain criteria (e.g., minimum parcel size of 50 acres, in a certain district, with productive soils) could apply to have the parcel split into the two zones (AFP and CRR). In order to be included, a landowner would have to designate not less than 2/3 of the property for the AFP zone and the remaining area could be set aside for potential residential development in the CRR zone.

3. The AFP zone would be an exclusive agricultural zone. No unrelated development would be permitted. In addition, a conservation easement given to the town or to a third party, such as a land trust, would be recorded in the deed records.

4. In the CRR zone, only clustered residential development would be permitted at a density that allowed one building site for each 15 acres in the landowner’s original parcel (the CRR plus the AFP components).

5. The town would enter into a contractual agreement (technically known as a put agreement) with the farm owner so that, in the event of any future change in zoning, the landowner would have the right to “put” the land in the CRR zone to the town at a price that reflected its value as zoned for the originally approved cluster, and the town would be obligated to purchase the land at that price.

There are two significant differences between this proposal and Randall Arendt’s clustering approach. First, the program would be voluntary on the part of owners of qualified land. Second, the landowner would be assured that future zoning changes would not reduce the development value of the land designated for development. In addition, the formality of the recorded conservation easement and the put agreement would be useful. Once a conservation easement is deeded to the town, the owner can only be taxed for the remaining rights on the protected land. With
the put agreement on the cluster area, the landowner should find it easier to borrow from a bank using the development value of the land as security.

To avoid the problem of rural sprawl, Rushman recommends an approach taken by Loudon County, Virginia, to encourage the clusters on adjoining farms to be grouped to create hamlets. He suggests this approach may create new centers that mirror the kind of traditional crossroads communities found in rural parts of Vermont. This approach may not be practical in many parts of Vermont, mainly because of sewage disposal.

7.3.1. Conditional Uses

Once the zoning regulations are adopted, applications for any of the uses that are permitted in a zone do not require the approval of a town board (except for the very limited review for site plans or design). For this reason, careful thought must be given to defining the uses that are agricultural and/or compatible with agriculture if they are to be listed as permitted uses. Applications for conditional uses, on the other hand, must be reviewed by the town zoning board of adjustment and approved only if they meet specified criteria.

Many towns have been extremely frustrated by their limited power to exercise judgment in permitting or influencing various types of development proposed for their town. Often, the frustration is due to the fact that the zoning regulations specified broad categories of permitted uses. As a result, the zoning administrator issues permits for any use fitting that category. If the town had listed these categories as conditional uses, the town may attach reasonable conditions to the permits of these uses to ensure that the standards are met or deny the permit if the standards cannot be met.⁸

⁸ 24 V.S.A. Section 4407 (2) provides that:
"In any district, certain uses may be permitted only by approval of the board of adjustment, if general and specific standards to which each permitted use must conform are prescribed in the zoning regulations and if the board of adjustment after public notice and public hearing determines that the proposed use will conform to such standards."
Regardless of the approach to allocating lots, conditional use provisions open the door for a great variety of non-farm uses in the agricultural zone while allowing the town to have some control by specifying the standards that must be met to ensure that the uses will be compatible with agriculture.

The zoning regulations should prescribe general and specific standards that a conditional use must conform to. When a conditional use is proposed, the Zoning Board of Adjustment must measure the proposal against the standards. The Board should only grant a permit if the proposed use meets the standards, and it may impose conditions on the permit to ensure that the standards are met.

There is room to be creative in designing standards for conditional uses. The statute includes certain requirements for general standards.\(^9\) In addition, the statute provides a list of possible specific standards but the list is not limiting.\(^10\)

Basically, the standards can be specific and fixed, such as specifying that structures be a certain distance from the boundary of farmland, or they can be performance standards (Section 7.3.2), directed at the impact, such as specifying that the use must be consistent with the agricultural use of the zone. It will be up to the Zoning Board of Adjustment to interpret and apply the standards. More general standards allow more flexibility in dealing with the problems, yet more specific standards are easier to apply. “We were very specific,” commented one town official, “because we don’t trust ourselves.”

\(^9\) 24 V.S.A. Section 4407 (2). “Such general standards shall require that the proposed conditional use shall not adversely affect:

- A. The capacity of existing or planned community facilities;
- B. The character of the area affected;
- C. Traffic on roads and highways in the vicinity;
- D. Bylaws then in effect; or
- E. Utilization of renewable energy resources.”

\(^10\) 24 V.S.A. Section 4407 (2). “Such specific standards may include requirements with respect to:

- A. Minimum lot size;
- B. Distance from adjacent or nearby uses;
- C. Performance standards, as under subdivision (7) of this section;
- D. Minimum off-street parking and loading facilities;
- E. Landscaping and fencing;
- F. Design and location of structures and service areas;
- G. Size, location, and design of signs;
- H. Such other factors as the zoning regulations may include.”
Although there is a great deal of latitude in what is required by the standards, neither the standards nor their application can be arbitrary. The requirements must "substantially advance" the government's goals and interests in the area, and there must be a "rational nexus" between the standards and the government's goals for the area. A community's agricultural goals for the town or agricultural zoning district must be clearly stated if conditional use standards are to be relied on.

According to "A Board of Adjustment Handbook for Local Officials," prepared by the Agency of Development and Community Affairs, the Board may only impose those conditions necessary to accomplish the reasonable implementation of those standards and their legitimate objectives. Since conditional uses are actually a special category of permitted uses, the Board may not deny a permit unless the standards cannot be met.

Although the standards will generally be applied to non-agricultural uses, it is important to note the debate over whether or not towns can apply standards which might apply to agricultural uses. Please see Section 10 for a discussion of accepted agricultural practices and the town's jurisdiction.

7.3.2. Performance Standards

Performance standards are criteria used to control and minimize the troublesome effects of proposed land uses by specifying desired outcomes rather than specifying methods to achieve the outcomes. They can be applied to both conditional uses and permitted uses (uses permitted by right).\textsuperscript{11}

\textsuperscript{11} 24 V.S.A. Section 4407 (7). "As an alternative or supplement to the listing of specific uses permitted in districts, zoning regulations may specify acceptable standards or levels of performance which will be required in connection with any use."

24 V.S.A. Section 4407 (2) allows specific standards for conditional uses to be in the form of performance standards.
When applied to uses permitted by right, the Zoning Board Administrator determines whether or not the proposed use would satisfy the performance standards. In this case, the standards should be as specific as possible. When applied to conditional uses, the Zoning Board must make that determination as part of the discretionary review process described in the previous section.

According to Vermont’s Supreme Court, a zoning permit may be denied if the proposed use cannot meet the performance standards.12

The scope of possible performance standards may be broad as long as the standards substantially advance the town’s goals for the agricultural district. However, as mentioned in the discussion of conditional use standards, whether or not towns can apply standards which may restrict agricultural practices may be limited. Please see Section 10 for a discussion of accepted agricultural practices and the town’s jurisdiction.

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**Table 7.2. Examples of Performance Standards that Conditional Uses Could Be Required to Meet in Agricultural Zoning Districts.**

<table>
<thead>
<tr>
<th>To be approved, the Conditional Use must:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• be consistent with the rural character of the zone;</td>
</tr>
<tr>
<td>• be compatible with agriculture over the long term;</td>
</tr>
<tr>
<td>• minimize disruptions to farming;</td>
</tr>
<tr>
<td>• maintain a buffer strip between agriculture and other uses;</td>
</tr>
<tr>
<td>• minimize loss of primary agricultural soils;</td>
</tr>
<tr>
<td>• maintain large blocks of contiguous open land;</td>
</tr>
<tr>
<td>• ensure open land will remain available for farming; and</td>
</tr>
<tr>
<td>• acknowledge the right-to-farm within the zone.</td>
</tr>
</tbody>
</table>

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12 (Terino v. Town of Hartford Zoning Board, 148 Vt. 610, 613 (1987)). “We find the plain meaning of (24 V.S.A. Section 4407(7)) authorizes municipalities to make performance standards indispensable conditions which must be met prior to issuance of a permit. Where an otherwise permitted use fails to meet the performance standards, a reviewing tribunal may properly rescind the permit.”
7.3.3. Planned Residential Developments/Planned Unit Developments

No matter how well thought-out the zoning bylaw is, there may be situations where a clustered development plan could improve on the layout which would otherwise be prescribed by the bylaw. The town may make provisions for Planned Residential Developments (PRDs) that reward creative designs that promote farming and other community goals with approval of up to 25 percent more dwelling units than would be permitted on the parcel under the standard zoning regulations.\(^{13}\)

A proposal for a PRD would go before the planning commission rather than immediately to the Zoning Administrator. The Planning Commission would be able to approve modifying the zoning regulations, including authorizing a density increase, if certain conditions were met. Siting developments on nonprimary agricultural soils, clustering buildings on small lots, and establishing buffer strips between the residences and farmland are examples of actions that could justify granting density bonuses under the PRD scheme.

Planned Unit Developments (PUDs) are similar in concept and application to PRDs. The main difference is that PRDs are limited to residential development while PUDs may include a mixture of houses, stores, industries and other nonresidential development.\(^{14}\)

In Vermont, the non-farm use most commonly allowed in agricultural zones is residential. However, industrial enterprises and agriculture are probably more compatible. For this reason, PUDs that allow clustered industrial development of portions of the agricultural parcel may be appropriate.

Wayne Patenaude’s farm has residences on one side and industry on the other. Although he is extremely careful to keep good relations with all his neighbors, he rarely needs to apologize to the factory.

\(^{13}\) 24 V.S.A. Section 4407 (3) (b).
\(^{14}\) 24 V.S.A. Section 4407 (12).
"There are probably a lot more things that farmers do that would bother a residential development than would bother a factory," commented Tim Buskey.

7.3.4. Overlay Zones

Overlay zones are used to protect special areas in the community by imposing additional regulations on the underlying zones wherever the special areas occur. Overlay zones are usually used to protect environmentally sensitive areas such as wetlands, shorelines, wildlife habitats and historic buildings. They may also be used for protection of existing agricultural areas.\(^\text{15}\)

In essence, the requirements of an overlay zone are superimposed upon an underlying base zoning district. Regulations for overlay districts usually state that the requirements of the overlay zone apply concurrently with the requirements of the underlying districts, and, where conflicts exist between their requirements, the more restrictive requirement shall apply.

Agricultural buffer zones are a type of overlay zone created "for the purpose of making transitional provisions at or near the boundaries"\(^\text{16}\) of an agricultural zoning district. They are used to reduce land use conflicts at the interface between agricultural zoning districts and residential, commercial or industrial zoning districts.

\(^{15}\) 24 V.S.A. Section 4405(a) states, in part:
"All provisions shall be uniform for each class of uses or structures within each district, except that additional classifications may be made within any district:
(1) For the purpose of making transitional provisions at and near the boundaries of districts;
(2) For the purpose of regulating, reducing and eliminating certain nonconforming uses or structures;
(3) For the regulation, restriction or prohibition of uses of structures at or near:
...places having a special character or use affecting and affected by their surroundings.

\(^{16}\) 24 V.S.A. Section 4405(a)(1).
For example, towns could prohibit certain types of non-farm development within 500 feet of an agricultural zoning district or they could make non-farm development a conditional use subject to special performance standards and discretionary review by the Zoning Board of Adjustment. The purpose of the standards and review would be to minimize conflicts with agriculture in the adjacent agricultural zoning district.

Towns may wish to set up another type of agricultural overlay zone to protect individual farms regardless of the zone in which they are found. Typically, the farms and possibly adjacent lands that could affect the farm operations are delineated as the overlay district. Non-farm development is usually made a conditional use within the overlay district and performance standards are prescribed for such development.

In establishing this type of overlay district, it is important to describe what makes these farms special and how those special qualities could be affected by different land uses. The regulations and standards which apply to the overlay zone must have the purpose of protecting those identified qualities.

The Town of Stowe drafted regulations for agricultural overlay districts, but has not adopted them.
References


8. Agricultural Districts

In 1972, New York became one of the first states to implement a program of agricultural districts.\(^1\) Since then several other states have passed laws enabling the creation of agricultural districts; Vermont is not one of them. Agricultural districting programs offer a variety of incentives to farmers in exchange for their agreement not to develop.

By 1978, almost one half of New York State's farmland was enrolled in agricultural districts.\(^2\) The reliance on incentives, voluntary enrollment and local control made agricultural districts popular among the state's farmers. Others, however, see voluntary enrollment as a potential weakness. They point out that farmers are sometimes reluctant to join an agricultural district in rapidly developing areas where the value of farmland for development is substantially higher than the value for farming. In such areas agricultural districts may have to be coupled with other tools in order to successfully sustain farming and farmland.\(^3\)

The voluntary, incentive-based approach of agricultural districts should not be confused with the mandatory land use controls of agricultural zoning districts (Section 7). They are very different tools that can be used separately or together.

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\(^1\) N.Y. AGRIC. & MKTS. LAW Sections 300-309.
\(^2\) Jurgensmeyer, 1982.
\(^3\) Nelson 1992; Duncan, 1984.
8.2 General Provisions of Agricultural Districts

The exact provisions of an agricultural districting program vary from place to place. Generally, they are similar to the following:

1. Eligible landowners must apply for the creation of an agricultural district. A committee consisting of active farmers, agribusiness people and legislators review the application and make a recommendation to the legislative body which must decide.

2. Upon acceptance of the application, owners agree to restrict the land to agricultural use for a specified period of time. Generally, landowners are allowed to terminate agreements at any time as long as they pay a roll-back penalty on taxes saved and wait until the agreement expires prior to developing. In Minnesota, agreements do not expire until eight years—the term of the agreement—after the notice of intent to terminate is filed.

3. Decisions to accept the application are based on criteria such as: size of district, viability of active farming in the proposed district and adjacent areas, presence of viable farmland, nature and extent of nonfarm uses, and the region's development patterns and needs.

4. If the application is approved, land in the agricultural district is eligible for several benefits. Examples of these benefits are listed in Table 8.1.
Table 8.1 Examples of Benefits Provided by Agricultural Districts

Benefits may include:

- improved eligibility for governmental grants and loans;
- use value property tax assessment, subject to a roll-back penalty if converted to non-farm uses;
- agreement not to impose certain types of property taxes on farmland; \(^4\)
- an annual payment for public benefits provided, such as scenery or habitat protection;
- a guaranteed right-to-farm with the acknowledgment that farming will take precedence over the concerns of nonfarm residents;
- exemption from local regulations that would unreasonably restrict farm structures or farming practices unless such restrictions bear a direct relationship to public health or safety; \(^5\)
- requirement that governmental agencies develop policies to encourage farming and change policies and regulations favoring non-farm development;
- requirement that alternatives be evaluated prior to making any public investment in non-farm development; and
- restrictions on the use of eminent domain powers.

\(^4\) For example, the state of Washington exempts agricultural land from municipal property taxes that are levied to pay for sewer and water systems, roads, and other special improvements intended to serve development, but not farming (RCW 84.34.360 to .380). In Vermont, there is no provision for municipalities to offer this type of treatment to farm land directly. However, it may be possible to set up special assessments for future public improvements in town and exempt agricultural districts if they are not served by the improvement. (32 V.S.A. Chapter 87).

\(^5\) The extent to which Vermont statutes already exempt agriculture from local regulation is unclear. Section 10 summarizes the current debate.
8.3 Do Agricultural Districts Work?

Agricultural districts have proven to be very effective in providing incentives to encourage continued farming. However, incentives alone cannot protect farming and farmlands in areas under high development pressure. The most successful agricultural districting programs are well integrated with comprehensive planning and land use control programs. ⁶

In addition to providing direct benefits to farmers, agricultural districts boost the spirits of farmers by communicating that farmers and farming come first. Over 35 percent of New York farmers responding to a survey indicated the “atmosphere of confidence” created by the agricultural district helped them decide to stay in farming. ⁷

Agricultural districts also work to head off land use conflicts and unreasonable burdens on farmers by requiring state and local governments to consider the effects of their regulations and actions on agriculture.

⁷ Duncan, 1984.
Minnesota has an agricultural districting program that is integrated with a comprehensive land use planning program. In combination, these programs encourage the continuation of farming and guide development away from agricultural areas. Minnesota does this by limiting agricultural districts in a seven-county region surrounding Minneapolis-St. Paul to areas which have been 1) designated for agriculture by a local or regional plan and 2) zoned accordingly. With a few minor exceptions, zoning in Minnesota's agricultural districts limits development to no more than one residential unit per 40 acres.

In Minnesota's case, legislation creating agricultural districts spurred local and regional agricultural planning and the adoption of agricultural zoning. Apparently, farmers were willing to accept reduced control over their lands in return for the financial, regulatory and other benefits of agricultural districts. Some farmers asked local officials to adopt agricultural zoning in order for their lands to be eligible for the benefits of agricultural districting.

Minnesota's agricultural zoning requirement reduces the development potential of farmland and increases the likelihood that farmers in rapidly developing areas will enroll in agricultural districts. The result is twofold: development is directed away from farmland and continued farming is encouraged.

Of course, if development is directed away from farmland, it ends up being shifted to other areas of the town or region. Logical growth centers and rural residential areas need to be identified to accommodate growth. Plans, policies, incentives and other tools used to direct growth to these areas are as important to sustaining agriculture as the tools used to direct growth away from farmland.

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* MINN. STAT. ANN. Section 473 H.01-.17.
Vermont has not created a statewide program of agricultural districts. However, towns can certainly apply the concept by developing a package of benefits that a participating landowner could receive. These might include providing: local tax stabilization, local right-to-farm protection, arrangements for estate planning, eligibility for local grants or low-interest loans, exemption from certain local regulations, and other benefits.

To be most effective, the voluntary program should be open only to land in areas zoned for agriculture. Like Minnesota's program, a local effort that ties the voluntary program to planning and zoning would bring several tools together to support continued farming and would direct development away from farmland and toward logical growth centers.

References


MINN. STAT. ANN. Section 473 H.01-.17


N.Y. AGRIC. & MKTS. LAW Sections 300-309

REV. CODE OF WASH. 84.34.300 to .380
9. Right-to-Farm

Sale of farmland for residential development not only decreases the amount of land available for agricultural production, it also can make farming of the remaining area more difficult, or even impossible. While new residents are attracted to the pastoral landscape created by farming, some find the noise, odors, dust, chemicals, smoke, hours of operation and other real-life aspects of farming to be a nuisance. Some newcomers complain to farmers and public officials or file lawsuits to eliminate the offensive farming activities.

Complaints and lawsuits can lead to lost time, increased costs, additional restrictions on farming activities, and even bankruptcy. Eventually, some farmers will give up and sell more farmland for development, exacerbating the difficulties for the farmers that remain.

Vermont passed a right-to-farm statute to give farmers some protection against lawsuits claiming farming activities are a nuisance. This section describes the legal basis for nuisance suits, the strengths and limitations of Vermont’s right-to-farm statute and the local actions that could be taken to supplement the statute’s protection of farmers while providing fair treatment of non-farmers and increased benefits to the public.
9.2 Pigs and Parlors

An ancient legal principle—sic utere tuo ut alienum non laedus—holds that property owners should use their property so as not to injure that of others. Someone who substantially and unreasonably interferes with the use and enjoyment of private property or with a public right common to all is said to cause a "nuisance." Nuisances can arise from negligence, intentionally harmful acts and acts that carry inherent risks to society at all times, under any circumstances ("nuisance per se").

In determining if an alleged nuisance unreasonably interferes with other land uses, the courts consider the particular circumstances of each case. In a landmark decision, the U.S. Supreme Court pointed out that certain land uses may be reasonable in one context, yet unreasonable in another. "A nuisance may merely be the right thing in the wrong place, like a pig in the parlor instead of the barnyard." ¹

At one time, a farmer could defend against a nuisance suit by claiming that the farm was there first and the new residential development had "come to the nuisance." But, times have changed and today's courts typically reject this defense for fear of stifling progress and orderly development.² Well-designed state local right-to-farm laws and policies can help protect farmers from nuisance suits and help ensure that pigs and cows are not displaced by Yorkies and Corgies.

9.3 Vermont's "Right-to-Farm" Law

In 1981, Vermont's legislature passed a "right-to farm" statute (12 V.S.A. Sections 5751-5753) protecting agricultural operations from nuisance suits under certain circumstances. In effect, it restores the defense of coming to the nuisance as long as the farm follows "good agricultural practices."

¹ 272 U.S. 366, 388 (1926).
² Thompson, 1982.
Vermont’s Right-to-Farm Law

12 V.S.A. Section 5721
The legislature finds that agricultural production is a major contributor to the state's economy; agricultural lands constitute unique and irreplaceable resources of statewide importance; that the continuation of agricultural activities preserves the landscape and environmental resources of the state, contributes to the increase of tourism, and furthers the economic self-sufficiency of the people of the state; and that the encouragement, development, improvement, and preservation of agriculture will result in a general benefit to the health and welfare of the people of the state.

12 V.S.A. Section 5752
(a) “Agricultural activity” includes, but is not limited to, the growing, raising and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay and dairy products.
(b) “Farmland” means land devoted primarily to commercial agricultural activities.

12 V.S.A. Section 5753
(a) Agricultural activities conducted on farmland, if consistent with good agricultural practices and established prior to surrounding non-agricultural activities, shall be entitled to a rebuttable presumption that the activity is reasonable and does not constitute a nuisance. If an agricultural activity is conducted in conformity with federal, state, and local laws and regulation, it is presumed to be good agricultural practice not adversely affecting public health and safety. The presumption may be rebutted by a showing that the activity has a substantial adverse effect on the public.

b) Nothing in this section shall be construed to limit the authority of state or local boards of health to abate nuisances affecting the public health, as provided in 18 V.S.A. Chapter 11.
Vermont's current right-to-farm statute could be improved to benefit both farmers and non-farmers. In addition, local plans, ordinances and actions could be used to strengthen the statute and guarantee a right-to-farm that is firm and fair.

From the farmer's perspective, there are four major shortcomings of the present statute:

Vermont's right-to-farm statute deters the filing of nuisance suits by restoring the defense of "coming to the nuisance" and by establishing a legal presumption that good agricultural practices are not nuisances. It does not, however, protect farmers from being taken to court. Both the time and money involved in a legal defense can be expensive. The Texas right-to-farm statute addresses this problem by holding people bringing frivolous nuisance suits against agricultural operations liable for all the farmer's "...costs and expenses, including but not limited to attorney's fees."

Second, Vermont's right-to-farm statute offers farmers protection only from nuisance suits; they are not protected from claims of trespass or other causes of action. Laws involving trespass are similar to those concerning nuisance with one major difference: trespass requires a physical invasion of the injured property. It is possible that farmers could be held liable for dust, odors, manure and pesticides that trespass onto adjacent properties.

Third, Vermont's statute protects individual, pre-established agricultural activities; it does not protect the farming operation as a whole. Newly adopted agricultural activities and major technological changes in agricultural practices are not protected from nuisance suits brought by people residing in the area at the time activities or practices change, even if the conditions in the area are unaffected by the change.

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Fourth, unlike the laws of some states, Vermont's right-to-farm statute does not protect farmers from unreasonable interference by local regulations. Instead, agricultural practices must conform to local regulations in order to receive protections under Vermont's right-to-farm law. However, the extent to which local regulations apply to agricultural practices is brought into question by another statute, 24 V.S.A. Section 4495. For more information, turn to Section 10, Regulating Agriculture.

Since right-to-farm laws attempt to protect agriculture at the expense of non-farmers, government must be sure it is fair to non-farmers and does not violate their rights. There is a need for balance and common sense. Vermont's statute respects the rights of non-farmers by enabling them to rebut the legal presumption it creates in favor of farmers. It protects only those nuisances that result from "good agricultural practices" and do not have a "substantial adverse effect on the public."

Non-farmers might find it helpful if the state compiled and certified a list of good agricultural practices (the list of "accepted agricultural practices" discussed in Section 10 relates only to water quality) and established standards for determining substantial adverse effect. Prior to certification, the public could be given an opportunity to review and comment on the state's list of good agricultural practices and their environmental effects. The list could be reviewed, updated and recertified from time to time.

Some non-farmers believe it would be less confusing and fairer to them if protection under Vermont's right-to-farm statute were limited to designated agricultural areas. They believe the statute should not offer protection to the right thing in the wrong place. Even "good agricultural practices" in densely settled areas could have substantial adverse effects on the public.

Under Vermont's current statute, farmers may sell lots and build houses on their land in ways that create avoidable conflicts with new residents and then may rely on the statute to protect them and other farmers from the nuisance suits that arise. One expert likens this to closing the barn door after the cows have escaped. He believes farmers must be willing to relinquish some of their rights not to farm (i.e. develop) in return for receiving the right to farm.4

4Thompson, 1982.
9.4 Local Actions

Farmers may not be protected by Vermont’s Right-to-Farm law for activities that do not conform with local zoning regulations. Towns may want to review their regulations with this in mind and revise any with which common agricultural practices would not conform. This could be done by exempting certain agricultural practices from particular provisions of local zoning or subdivision regulations.

Towns may also wish to adopt a local ordinance that offers additional right-to-farm protection. The local ordinance could incorporate any or all of the following provisions:

- It could protect the farmer against any action “alleging that an agricultural operation has interfered with private property or personal well-being, whether as a nuisance or on other grounds.”

- It could cover agricultural operations as a whole rather than individual activities and practices. It could include a general description of the agricultural operations expected in an agricultural zoning district, the kinds of agricultural activities associated with those operations, and the conditions expected to be created by the practice of those activities. These descriptions could vary among agricultural zoning districts or portions of districts. Changes in agricultural activities or practices would be protected as long as they were consistent with the town’s description and did not substantially change the conditions expected in the area.

- Official procedures could be established to attach a notice to all real estate sales, rental contracts, and building permits in designated agricultural areas. Notices could state that the property is located in an area that the community wishes to remain agricultural and that anyone locating in the area must be willing to tolerate the sights, sounds, odors, and other by-products that are reasonable to expect from typical agricultural operations.

- The local right-to-farm ordinance could be one of the benefits associated with an agricultural district (Section 8), and therefore would only apply to certain areas of town.

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5 This assumes that some agricultural activities may be regulated by municipalities. See section 10 for a discussion of this issue.

6 Thompson, 1982.
The town can certainly attempt to minimize disputes in other ways, such as zoning and provisions for agricultural buffers. In addition, in order to give farmers and non-farmers an opportunity to settle their disputes out of court, a local committee could be established to hear both sides, weigh the information against pre-established criteria and recommend a fair, workable solution. The proceedings could be designed to be informal, not require much time and not require representation by attorneys.

References

12 V.S.A. Sections 5751-5753.


10. Regulating Agriculture

There is a great deal of confusion and controversy over the extent to which a town plan or ordinance can regulate agriculture or agricultural practices. Within Vermont's Planning and Development law is the following statement:

“No plan or bylaw adopted under this chapter shall restrict accepted agricultural or silvicultural practices as defined by the commissioner of agriculture or the commissioner of forests, parks and recreation, respectively, under 10 V.S.A. Sections 1021(f) and 1259(f).”

Although there are essentially no records documenting the legislature's intent, a common belief is that 24 V.S.A. Section 4495 was adopted to protect farmers from unreasonable local regulations that threaten the viability of agriculture. In recent years farmers have complained about municipal regulations that zone out agriculture, prohibit roadside stands or signs for roadside stands, impose unduly restrictive regulations to protect scenic views or historic districts, or restrict agriculture in other ways that threaten its economic viability. And, even though some of the

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1 24 V.S.A. Section 4495.

Currently, the official definition of Accepted Agricultural Practices (AAPs) is found in the Vermont Department of Agriculture's 1987 publication entitled, “Defining Accepted Agricultural Practices in Vermont.” The publication provides a list of agricultural activities similar to that found in Act 250. If the practices used to conduct those agricultural activities satisfy some broad criteria and are not included in the publication's list of “unaccepted” practices, then they are presumed to be “accepted.”

The current definition of AAPs may change as part of a proposed memorandum of understanding between the Agency of Natural Resources and the Department of Agriculture, Food and Markets. The new definition will be developed through an administrative rule-making process and will be subject to public hearings and legislative review. Until this process is complete, the 1987 definition will apply.
local regulations were not intended to restrict agriculture, they have
done so because agriculture was not explicitly exempted.

In theory, 24 V.S.A. Section 4495 was intended to remedy this problem
by providing in all towns at least some degree of exemption from
regulation. How much of an exemption was intended is hotly debated.
Did the legislature intend for all agricultural activities following
Accepted Agricultural Practices to be exempt from all restrictions
imposed by local plans, zoning regulations and subdivision regulations?

In May of 1992, the Lamoille Superior Court concluded the answer was
yes. The Court's decision stated "Section 4495 pre-empts any municipal
zoning regulation which confines or keeps within limits, accepted
agricultural practices." The decision was not appealed to Vermont's
Supreme Court.

The Montana Supreme Court, facing a similar question in 1963,
concluded that exemption of agricultural practices from "any regulation"
would prevent orderly development and defeat the purpose of the state's
planning and development act. Some Vermont legal experts believe the
same conclusion should have been—and ultimately will be—reached in
Vermont's courts.

The Vermont Secretary of State's Office issued an opinion in 1992 which said, in part: "Section 4495 isn't unreasonable, if it's read to promote agriculture while finding some balance between this fragile industry and the needs of a community, but a pure exemption for all agricultural uses is going too far. Won't this signal the end of zoning, if everybody but the farmer is bound to follow the by-laws?"

If one takes the exemption to its extreme, then municipalities may not:
prohibit manure pits in residential neighborhoods, control the keeping
of livestock in villages, require adequate setbacks of farm buildings from
roadways, or in any way regulate accepted agricultural practices
regardless of the severity of their impacts on public health, safety or
welfare.

2 Bothfield and Seidel v. Hyde Park Board of Adjustment, Docket Nos. S0314-91
LaCa and S0315-91 LaCa.
4 Opinion Number 3321.
People close to local planning, tend to agree with the Secretary of State's opinion that exempting all accepted agricultural practices—including construction of new farm buildings—from all zoning regulations is going too far. Some say that, because the definition of accepted agricultural practices was written to exempt these practices from legislation relating to water quality, the town is only pre-empted by Section 4495 from applying more stringent standards to farmers to protect water quality. They believe Section 4495 does not limit the ability of municipalities to impose reasonable restrictions on agricultural practices for other purposes, such as protecting the public.

Until the debate is settled by the legislature or the courts, farmers are advised not to push the legal limits of 24 V.S.A. Section 4495 and municipalities are advised to revise their existing regulations so that the viability of agriculture is promoted, rather than obstructed. There is much to be gained by trying to find common ground on this potentially divisive issue.
Vermont's Act 250 provides a review of certain major development projects against 10 criteria—some of which are related to agriculture. Although it is a valuable process for local officials to understand, it is important to note that Act 250 can supplement but not replace local efforts to save farmland. Generally, only commercial, industrial, or multiple-unit residential developments are subject to Act 250 review; however much of the development of agricultural land is "nickel and dime stuff" that does not come under Act 250.1 And, even when projects do go through the process, they often result in the development of farmland.

Recognizing the limitations, local officials and citizens interested in sustaining agriculture can use Vermont's Act 250 in three ways:

1. Proposals reviewed under Act 250 should conform with the town plan. Strong agricultural planning can influence the decision and affect the conditions imposed on developments that go through the process.

2. Local officials and town plans may provide information about the relationship between the proposed project and agricultural soils so that the decision results in the minimum loss of primary agricultural soils.

3. The Act 250 criteria, with a long history of how they have and have not been effective, can be used as models for local review criteria.

1 10 V.S.A. Section 6001 (3) and 6081.

Typical proposals that would require Act 250 approval and could affect farmland include:
- the construction of improvements for commercial or industrial purposes on a tract or tracts of more than ten acres or on a tract of more than one acre within a municipality that has not adopted permanent zoning and subdivision regulations;
- housing projects with ten or more units; and
- subdivisions of ten or more lots within a radius of five miles of any point on any lot, created within any continuous period of ten years.
11.2. Conformance with the Town Plan

Projects coming under Act 250 review must satisfy each of the statute’s 10 criteria. Criterion 10 requires proposed projects to be “in conformance with any duly adopted local or regional plan or capital program.” This means projects going through Act 250 will be expected to satisfy the municipal plan’s goals and policies for sustaining farming and farmland.

If the agricultural policies in the municipal plan (Section 18) are strong and clear they can be much more effective. Unfortunately, this is not usually the case. Stephanie Kaplan, a former Executive Director of Act 250’s Environmental Board, says that, “even in those towns that do have plans, they are often too general or vague to be considered.”

Specific goals and policies should be stated for each section of town that is designated to remain predominantly agricultural. When writing the goals and policies, consider including statements about the importance of maintaining consolidated blocks of farmland and minimizing disruptions to farming and loss of primary agricultural soils. Note the types of developments that are least compatible with farming.

Goals and policies directed at sustaining agriculture are critical to include in the plan, even if the plan does not designate specific areas for agriculture.

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2 10 V.S.A. Section 6086.
Projects must also meet the requirements of Criterion 9(B), and its four subcriteria, which examine the loss of primary agricultural soils. Some applicants have been denied Act 250 permits for failure to meet one or more of the four subcriteria of 9(B) and some have had strict conditions imposed on their developments to ensure compliance.

The town plan and local information can influence the decision of the Commission in reviewing proposals under Criterion 9(B) in two ways:

- The plan may identify the circumstances that would “significantly reduce the agricultural potential of primary agricultural soils.” These circumstances may be different for primary agricultural soils in different parts of town.

- The plan may identify areas on which the agriculture and forestry are important, and the types of activities on adjoining land that would jeopardize the continuation of agriculture or forestry on this land. (Subcriterion iv).

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3 Act 250 defines primary agricultural soils as:
soils which have a potential for growing food and forage crops, are sufficiently well drained to allow sowing and harvesting with mechanized equipment, are well supplied with plant nutrients or highly responsive to the use of fertilizer, and have few limitations for cultivation or limitations which may be easily overcome. In order to qualify as primary agricultural soils, the average slope of the land containing such soils does not exceed 15 percent, and such land is of a size capable of supporting or contributing to an economic agricultural operation.

4 Kaplan, 1982.
### Table 11.1 Act 250’s Criterion 9(B)

A permit shall be granted for the development or subdivision of primary agricultural soils only when it is demonstrated by the applicant that, in addition to all other applicable criteria, either, the subdivision or development will not significantly reduce the agricultural potential of the primary agricultural soils; or.

i) the applicant can realize a reasonable return on the fair market value of his land only by devoting the primary agricultural soils to uses which will significantly reduce their agricultural potential; and

(ii) there are no nonagricultural or secondary agricultural soils owned or controlled by the applicant which are reasonably suited to the purpose; and

(iii) the subdivision or development has been planned to minimize the reduction of agricultural potential by providing for reasonable population densities, reasonable rates of growth, and the use of cluster planning and new community planning designed to economize on the cost of roads, utilities and land usage; and

(iv) the development or subdivision will not significantly interfere with or jeopardize the continuation of agriculture or forestry on adjoining lands or reduce their agricultural or forestry potential.
The first step in the review process under Criterion 9B is to determine whether or not primary agricultural soils are involved. Several sources of information are relied on.

The Act 250 Commissions and Environmental Board initially look to the U.S. Soil Conservation Service soil maps (Section 19). On-site investigations are usually made to see if the soil maps accurately portray the site and to gather information not included on the maps. Occasionally the maps do not accurately reflect the amount of drainage needed, the presence of stones or rock outcrops, and other factors such as mature forest that would preclude cultivation.

If a portion of a site meets the soils part of the definition, then the slope, size, shape and location of the portion containing those soils are analyzed. Considerable judgement is required when balancing these characteristics. Good soils may not meet this part of the definition if they occur in small, isolated pockets; long, narrow slivers; predominantly developed areas; or other contexts that would make agricultural operations on those soils uneconomical.

Amy Jestes Llewellyn, the State Agricultural Land Use Planner, offers a simple rule-of-thumb: if the area to be affected has a history of cultivation and can support two decent cuttings of grass-hay every year, or can support more intensive cropping, then it could contribute to an economic agricultural operation.

Once it is determined that the project would affect primary agricultural soils, then the four subcriteria must be met if the project is to be approved.
Subcriterion (i) was intended to allow landowners to sell or develop small parcels of land containing primary agricultural soils without having to go through Act 250 and to ensure that denial of permits would not result in unconstitutional takings of property without just compensation. But, it has become a loophole used by purchasers of prime farmland for development purposes.  

Subcriterion (i) requires applicants to prove that a reasonable return on the fair market value of their land is impossible unless the primary agricultural soils are developed as proposed. The Environmental Board has determined that reasonable return does not mean the highest profit possible. In one case in which the profit that could be made from developing the land was greater than the profit to be made from agriculture, the Board dismissed the notion that development was necessary to realize a reasonable return. In another case, the Board asked developers to consider more costly alternative designs that yielded reasonable returns but that reduced the impacts on agricultural potential of the land.

Subcriterion (ii) requires applicants to prove that they do not own nonagricultural or secondary agricultural lands that would be reasonably suited to the project. A permit will not be issued if they do.

Developers with large land holdings may attempt to circumvent this subcriterion by conveying title to the project site to a holding company and removing their names as owners of record. The applicant in Act 250 would be the holding company and the other land holdings of the original owners would not be subject to review under this subcriterion.

Subcriterion (iii) may provide Act 250’s most effective means of protecting farmland. It requires applicants to prove that the development has been planned to minimize the reduction of the agricultural potential of the soils and consume the minimum amount of primary agricultural land.

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5 Kaplan, 1981.
6 In re La Brecque, No. 660217-EB (Vt. Environmental Board Nov 17, 1980). The Board held that the "subcriterion is satisfied only when the applicant is unable to realize a reasonable return on fair market value of his land in agricultural use."
7 In Re Davison, No. 5L0444-EB (Vt. Environmental Board July 21, 1978).
Compliance with this subcriterion requires applicants to consider alternative locations and designs and, if reasonable, choose the one that minimizes the loss of agricultural soils. In one case a developer was denied a permit for subdivision into two-acre lots because it did not "reflect cluster planning or any reasonable effort to prevent the significant interference with or jeopardy to the use of the primary agricultural soils." After redesigning the subdivision to minimize disruptions to agriculture, the permit was approved.

In another case, a District Commission convinced an applicant to redesign a project so that the most intrusive and permanent structures were clustered on the least productive agricultural soils, and the less intrusive, temporary structures were sited on the more productive agricultural soils. Most of the primary agricultural land was left undeveloped.

Often conditions are imposed to guarantee that the undeveloped farmland will remain available for agricultural production. In some cases where no guarantees were made, the Board retained jurisdiction over any future development on the entire parcel—even development that would not by itself require an Act 250 permit.

Subcriterion (iv) requires the applicant to prove that the development will not significantly threaten the continuation of agriculture on, or reduce the agricultural potential of, adjoining lands. Impacts of proposed developments on adjoining farmland can sometimes be reduced by establishing buffer strips, constructing fences, rerouting traffic, and officially notifying future residents of the development that farming will be going on next door.

Unfortunately, the statute does not define the meaning of "adjoining lands." Some believe the term should be interpreted to include farmlands that do not physically touch the project site, but would be affected by the loss of the farmland at the site. This is because many Vermont farmers own or rent noncontiguous parcels of farmland and loss of those parcels could hurt the viability of their farm operations. A broad interpretation—looking at the economic rather than the physical interconnections of farmlands—would enable the Board to examine the impacts of a project on the viability of farming over a large area.

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8 In Re Peck, No. 1R0383 (Dist. Envl. Comm’n No. 1, July 31, 1980).
One applicant argued that this subcriterion should be limited to lands “touching and abutting the subject property,” but the District Commission rejected this argument citing many of the reasons outlined above. The Superior Court overruled the commission on this point, yet considered the effects of the project on a dairy farm over three miles away and required covenants prohibiting the extension of water and sewer lines off the site.

11.4. Using the Criteria in the Local Review Process

Towns might consider adopting some of the subcriteria from Act 250’s criterion 9(B) in their local review process for conditional uses (see Section 7 on Zoning). This would ensure a similar review for developments on agricultural land that are not required to go through Act 250. It would also enable the town to take advantage of some of the experience gained through Act 250 implementation.

Towns should consider dropping the first subcriterion from their regulations because of the difficulties of applying it. The second subcriterion’s loophole regarding ownership of the land should be plugged. Evaluation of alternatives to minimize disruptions to agriculture under the third subcriterion should be strengthened so that it becomes the heart of the local review. The fourth subcriterion should be clarified so that impacts on affected farmlands in the surrounding region are considered. Special consideration shall be given to areas designated for agriculture in the municipal plan.

References

Act 250—10 V.S.A. Chapter 151.


USDA Soil Conservation Service and Vermont Department of Agriculture. 1983. Primary Agricultural Soils and Vermont Agriculture. Montpelier, VT.


12. Off-Site Mitigation

The situation may arise when important farmland will be developed. In some instances, the development proposal is approved with a requirement for off-site mitigation, or the permanent protection of farmland in another area.

In general, the developer does not choose the farmland to be protected, but rather contributes a certain amount to a fund to be used to purchase land or development rights, according to certain provisions regarding the length of time the money will stay in the fund and the specific uses to which it can be put. The provision is generally designed so that the amount of land protected is equal to or greater than the amount of land developed.

Several proposals that have been reviewed under Act 250 have paid money to be used for off-site mitigation. At this point there is no rule directing the process or the amount of the contribution. In some cases, the developer has paid an amount equal to twice the average per acre value of farmland for each acre developed; in other cases, the amount has been based on the average value of the development rights—not the fee-simple value of land. In some cases, the Act 250 District Commission has directed that the agricultural land be purchased in a certain town or in the area directly affected by the proposed development; in other cases, the District Commission has allowed the fund to be used for land anywhere in the district. In most cases, if the money has not been spent in two years, it will go the Vermont Housing and Conservation Board to be applied to priority farm projects anywhere in the state.
Off-site mitigation is defined as “permanent protection of land not necessarily adjacent to the development site and which compensates for the impact of the development.”

Towns are also authorized to accept off-site mitigation. Chapter 131 of Title 24, the chapter on impact fees, states: “A municipality may accept off-site mitigation in lieu of an impact fee or as compensation for damage to important land such as prime agricultural land or important wildlife habitat.” Off-site mitigation is defined as “permanent protection of land not necessarily adjacent to the development site and which compensates for the impact of the development.” While the legislation is fairly specific about calculating an impact fee, it does not offer much direction for calculating the amount or value of off-site mitigation which “compensates for the impact of development.”

While off-site mitigation is probably not a significant factor in implementation of a strategy for sustaining agriculture, it may be worthwhile for the plan to recognize the possibility that funds will be available and to prioritize projects to take advantage of the opportunity. The plan could include a policy that would prompt off-site mitigation should certain land be developed. The plan could also prioritize land for purchase should off-site mitigation funds be available in the area.

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1 24 V.S.A. Section 5202 (b).
13. Building the Coalition

While most people interviewed said there were too many useless committees in this world, they also felt that having an active local committee that comprises real farmers and their non-farming neighbors is crucial to building a coalition that will devise, support, and implement reasonable and enlightened proposals. In some communities, the planning commission or conservation commission serves this function; in other communities, those commissions are regarded with a certain amount of suspicion by farmers and a separate committee may help communication.

"I'm tired of this divisiveness," said John Corcoran who works with Earth's Best in Middlebury. "It's time to start working together and recognize that we all have a stake in making this work. Let's get around the table to move ourselves forward instead of fighting each other. We need to arrive at a new consensus, and to me, it's very possible."

"Educating the non-farm people about farming as a business should be at the top of the list," suggested Penny Hoblin of Newbury. Similarly, having non-farmers explain what is most important to them about farmland may indicate to everyone which tools would be appropriate and which would not.

The role of the committee would be to figure out what townspeople—both farmers and non-farmers—would like, where there are conflicts, where there is common ground. Then the committee could proceed to take positions on issues—local, regional and national—which affect agriculture, and to recommend or carry out actions, including any of those listed in this manual.
13.2. Participation on Planning Commissions and Conservation Commissions

Many people said that the regulatory tools failed farmers because farmers did not participate in the process and make their needs known. If there is no agricultural committee attempting to balance the needs of farm and non-farm townspeople, a superhuman effort should be made to have farm representation on these commissions so farmers are planning rather than simply planned for.

13.3. Forums to Build Consensus

In Addison County, an annual Saturday-long Conservation Congress is directed at bringing together different people who have different perspectives about conservation in the county. Organizer David Brynn pointed out that farmers have other opportunities to talk among themselves about issues such as sustainable agriculture and taxation of agricultural land, and Audubon members have meetings about the same issues, but without the Conservation Congress, the members of the two groups rarely come together.

Sandwiched between opening and closing sessions that all participants attend are opportunities to choose two out of eight workshops. Each workshop—focused on hot topics such as wetland regulations and farming, taxation, the regional plan—presents different points of view and allows ample time for neighbors to talk with each other about how the issue affects them.

The 1991 Congress was considered to be a huge success because it was an opportunity to hear both sides, to work toward an understanding if not a consensus, and to deal with issues at the local level. It was a time to participate and learn from neighbors rather than a conference for listening to experts from afar.

13.4. Forums on Non-local Policies with Local Consequences

Other communities have suggested forums on issues that originate outside of town but which may significantly change the future of agriculture locally. Suggested topics include dairy pricing systems, GATT and its impact on Vermont agriculture, or the Northeast Interstate Dairy Compact. These are topics vitally important to all Vermonters interested in the future of agriculture; however, their local significance is rarely covered in newspapers and is not well understood.
Often, the local farmers and non-farmers can reach agreement on a position, and the united front may be persuasive. For example, a coalition of non-farmers and farmers lobbying for higher milk prices has been both unusual and influential in other states. Perhaps representatives from a town coalition in Vermont speaking with their colleagues in Connecticut could advance the progress of the Northeast Interstate Dairy Compact.

Although this work on the “big issues” is extremely important, it works best when coupled with—rather than instead of—efforts on local agricultural issues.

The town of Calais decided to help owners of large tracts of land weigh their options for the future of their land. First they held a meeting where various experts presented information on topics of interest such as: what a land trust can do; why estate planning is important; how to manage and market timber; ways to sell lots without selling the farm; wetland and wildlife management.

After a general meeting, landowners specified topics they would like to follow up on. The town held additional workshops as requested, referred some landowners to representatives of government or private organizations. When necessary, private consultants were hired to help landowners with some questions.

According to Jo-Anne Balentine who directed the program, the landowners showed a sincere desire to preserve family land and a strong sense of stewardship. The program built on this and helped the landowners identify options for their land while clearly seeing the bottom line: financial profitability.

One of the topics that sparked a great deal of interest in Calais was estate planning. Without estate planning, the inheritance tax due on land may necessitate selling a large portion of the land—something that most landowners as well as the town would like to avoid. A recent survey of Vermont farmers conducted by the Vermont Department of Agriculture, Food and Markets determined that only 23 percent of the farmers responding had an estate plan and that 62 percent felt that estate planning would be beneficial to them. Estate planning has
benefits for the town interested in preserving farmland as well as for the landowner interested in keeping the land in the family.

Another topic that may be important in the town is creative development or conversion planning. The premise is that many farms will be subdivided eventually, and there are ways to subdivide that are better than others. With planning, the owner may be able to site the future development in such a way that the interference with agriculture is minimized. The farmland owners would benefit from being able to continue farming after selling some lots, and, in many cases, the value of the carefully sited lots may be greater than that of the traditional ten-acre lots lined up along the highway. (see Section 11 on Zoning for more information on the pros and cons of creative development schemes and the zoning regulations that would allow for it.)

13.6. Mediation Committee

The premise of this manual is that the town will pull together some sort of committee comprising farmers and non-farmers who begin to understand each other, work with each other, and trust each other. One of the functions of this committee could be to anticipate problems between agricultural and non-agricultural practices and to mediate disputes.

“Some of us have thought there might be a permanent body in town to keep the town abreast of the agricultural needs and the concerns of non-farmers, to articulate concerns, and to act as a forum for the gripes of people adjacent to farms,” said Shoreham orchardist Sandy Witherell. “There are problems which arise because of not understanding the needs of agriculture, and farmers don’t always give adequate consideration to the needs of their neighbors. It makes my heart ache to see local complaints go to the Vermont Pesticide Council. A body within the locality might help.”
14. Respect for Agriculture

“There are a lot of people who think food comes from the supermarket,” said St. Johnsbury farmer Wayne Patenaude. “They get annoyed when we start up our tractors early on Sunday morning, but they expect to go to the supermarket a few hours later and find fresh food.”

To many people, reestablishing the link between food and agriculture is essential if land is to be treated as more than a view. One reason the link has been broken is our system of food distribution. At one time, most of the food eaten by Vermonters came from their neighborhood. Today it comes from all over the globe. The Vermont Department of Agriculture, Food and Markets estimates that Vermont currently imports about 85 percent of its food.

Another reason the link between agriculture and food has been broken is Vermont’s specialization in dairy. Reestablishing the link could be aided by diversification—producing other food besides milk. However, this is easier to say than do.

“Diversification was a fine idea, but it has its limits in terms of human energy,” said Eugenie Doyle of the Last Resort Farm in Monkton. “It’s like telling Ben and Jerry’s that they should also make shoes.”

14.1. Agriculture as Food

“There are a lot of people who think food comes from the supermarket.”
Community gardens, farmer's markets, community foodbanks, and "farm to family" programs where low-income families are allowed to purchase locally grown produce all reinforce the idea that food comes from the land. The programs have many other advantages: the food is fresher than the supermarket variety; there is less packaging; the community is strengthened; there is a direct connection between growers and eaters; nutritious food is provided to the hungry; and there is a market for locally grown produce.

The Working Land Fund suggests the following actions individuals may take to increase awareness of local agriculture, to keep the land working, and to open up markets for locally grown food:

- Buy food raised as close to home as you can get it.
- Buy directly from farmers.
- Buy "organic." One way local and small-scale farmers currently can compete with agribusiness is by growing vegetables certified organic.
- Ask your produce manager where your food comes from and if more can be procured locally.
- Ask the manager of your grocery store if it could feature at least one locally raised organic product weekly in store coupons.
- Invest in your beliefs at the store: regard any additional cost of purchasing organic food as an investment in the kind of landscape, environment and food supply you want.
- Talk to schools, hospitals, and other institutions in your community about buying local and organic.
- Buy locally raised and produced wool products.
In addition, it is important to remember that the success of agriculture depends on the continuation of the agricultural infrastructure: feed and seed stores, food processors, farm machinery dealerships, etc. Purchases at agricultural stores rather than at general merchandise discount stores will help ensure their survival.

Several towns have tried to bring agriculture—both culture and science—into the schools. Some have suggested hosting agriculture awareness weeks where students combine field trips to local farms with classroom studies of all aspects of agriculture. Many schools grow some of their food.

One organizer offered this advice: don’t just focus on “the cow eats the grass and makes milk”; make sure that agriculture as a business is discussed as well. Another suggested tracing food from farms (in California) through processing plants, warehouses, supermarkets and station wagons until it finally reaches the table. This exercise might be combined with growing the same food in the school yard and comparing the energy savings as well as the taste.

The Newbury Community Arts Project resulted in an oral history of the town, a photo essay which has been displayed in the Governor’s office, and, more importantly, an awareness of the culture of agriculture. As the town’s history came alive, so did the importance of farming to the community. In the words of Mac (Margaret) Peabody:

*Growing up on a farm—there’s absolutely nothing like it. It’s just the greatest life there is. We just made our own fun. We’d have skating parties down on the meadow and we’d have a big bonfire. I remember corn husking, and kitchen junkets. Know what they are? There’s singing, square dancing, lots of food...fiddle player, guitar, piano player and everyone sings the old songs. There’s nothing that can quite take its place.*

According to organizer Penny Hoblin, the project created a stronger sense of community and, in the process, some of the rural traditions—including the kitchen junkets and dooryard square dances—were rediscovered and resumed.
14.5. Agriculture Appreciation

Newbury’s Conservation Commission hosted an appreciation dinner for the town’s farmers. They rented a hall and put on a feast to honor the people in their town who were so vital yet so rarely recognized for their achievement in making Newbury the community that it is. Over fifty people attended, including one couple who said it was the first night they had been out together in ten years.

Other towns have shown their appreciation in other ways including annual report dedications and awards.

New Haven farmer Harvey Smith pointed out that most towns tend to be quick to recognize resources on private land that provide a public benefit, and then regulate them, turning the public benefit into a private liability. Instead of regulating and penalizing, it would be nice to occasionally reward the private owner who is providing the public benefit. “Any town can set up a program to recognize the landowner for exemplary performance,” he said.

14.6. Farm Tours

Brattleboro’s farms hold open houses so that non-farm residents can tour the farms. The events are well publicized and extremely popular family affairs. In the process, local residents understand slightly more about farming and feel some connection with their local farms.

14.7. Roads

“But don’t run over your favorite farmer,” said Marshfield dairy farmer Lee Light. “It’s a tremendous problem—people zooming by a farm.”

There are two ways to deal with this problem. First, towns can set lower speed limits through farm districts. Lee Light suggests 30 to 35 miles per hour. Second, they can plan carefully so that now lightly travelled dirt roads serving farm districts do not end up serving as thoroughfares.
15. Strengthening the Economics of Agriculture

To a large extent, the economic viability of agriculture in Vermont is governed by economic and political decisions made outside of the town boundaries. However, townspeople can certainly try to understand and influence state and national policies and decisions. A coalition of farmers and non-farmers could present an unusual united front on important issues such as: dairy pricing, regional agricultural policy, interstate compacts, wetlands, property taxation, Vermont Housing and Conservation Trust Fund, capital gains taxation, research and development on sustainable agriculture, marketing of Vermont agricultural products, the role of the extension service, debt-for-equity swaps on farms financed through FmHA, regional control of USDA funds, and GATT, to name a few.

Research and education on the local implications of the policies can be difficult; building a coalition on the issue will take time; and, finally, the decision will not be made locally. However, the position the group comes to will certainly be more influential than the single-interest demands usually heard by legislative bodies. The coalition's work in bringing consensus from different groups is what the legislatures must try to do.

15.1. Lobbying for State and National Policies
15.2. Reestablishing the Link Between the Consumer and the Farmer

“There clearly needs to be a dialogue between consumers and farmers, but the dialogue typically is controlled by the middle and the issue has been focused on cheap food,” said John Corcoran of Monkton.

Yet cheap food may not be what consumers really want. In Massachusetts, when the vendor’s fee threatened to raise the price of milk to consumers in order to pay farmers more, there was no consumer revolt. Perhaps this was because consumers were promised that the fee would go directly to farmers rather than to the middlemen and that the fee was crucial to the survival and stability of agriculture in the state.

“I think consumers and farmers need to start talking about what we will need to pay you to grow what we want, to farm sustainably, so you get a living wage,” John Corcoran concludes. While this may be difficult for people in Cleveland or New York City to do, it is still possible in Vermont.

One method is Community Supported Agriculture or Subscription Farming. Although there are variations, the basic concept is that non-farmers either buy shares in a farm, or pay a subscription rate to order produce for their household throughout the year. Usually each household is regularly supplied with bags of local, fresh produce. To the grower, the subscription system offers stability; it helps in planning; it reduces waste; it is protection from the unpredictability of supply and demand; and it shares the risk of weather between the producer and the consumer. For the consumer, it is an organized way to get fresh local produce for the family each week and to support local agriculture.

But the process is more than just producer and consumer. “You’re involving a community,” said Tim Sanford who, with his family, supply 90 households with produce.
There was a time in which most Vermont towns had a town farm; now there are many “Town Farm Roads,” but no town farms. However, a variation on the town farm is still worth considering. Several people suggested that town farm land could be made available to townspeople for community garden plots and that larger tracts could be leased, under a long-term lease, to be used for Community Supported Agriculture.

Tim Sanford and Suzanne Long have had difficulty finding a secure site for their community-supported agriculture project. “A lot of people don’t want to think beyond five years,” said Tim Sanford. “When you start talking about a 25 year lease, it goes right over their heads.” A fairly small town site could be used for these purposes.
15.4. Processing, Marketing and Adding Value

The same people who buy premium ice cream and fine wines buy no-name milk. At the present time there is no market for premium milk. Some of the reason for this may be that people do not think they can taste the difference between different milks; some of the reason is that we have invested in a processing and distribution system which pools milk; and some of the reason is that we simply have not tried to segregate milk and establish a premium market. In only a few areas in Vermont do farmers segregate milk and market it under a separate label which would guarantee certain qualities that might include: locally produced, organic, somatic cell count, Jersey, etc. People go out of their way to buy 100% recycled paper even though it is more expensive and jams in the copy machine; wouldn't they pay a premium for high-quality Vermont milk?

Some people have suggested that the key to improving the economics of agriculture in Vermont is by adding value to the agricultural products through processing. In some cases, this may involve storage and packaging facilities, such as those provided by the Shoreham Co-op for apples. In other cases, the value-added processing may be more substantial, such as making ice cream or cheese. While citizen members of a town committee probably will not undertake these types of ventures, they can help brainstorm, conduct some feasibility studies, and solicit interest. In addition, a town may offer to reduce the property taxes of a new agricultural processing plant that it feels would benefit the town.¹

¹ 24 V.S.A. Section 2741.
16. Paying for Farmland

Basically, the only way a town can raise money is through the property tax. Because, for many voters, this tax is already too high, any suggestions for increasing the tax for conservation, or for any other purposes, are likely to be met with a great deal of resistance.

Farmland preservation programs—whether they involve acquisition, tax stabilization, or various incentives to landowners—cost money. These may raise the property taxes of other taxpayers in town in two ways. Some preservation options, such as purchasing development rights or purchasing land in fee simple, require a direct up-front payment from the town. This payment can be raised through the property tax, by a bond paid off through the property tax, from a fund which accumulates impact fees or other fees, and/or from grants or donations. Other options, including tax stabilization programs or leasing development rights, require only an ongoing tax shift from the farm property to the non-farm property. Most options have both an initial and an ongoing tax consequence.
It is important for taxpayers to have a realistic picture of the extent of this tax shift—including the offset provided by the state aid to education formula. However, it is also important to realize that, in the long run, conservation may be cheaper than growth. Towns raise taxes to pay for the costs imposed by people not for the costs imposed by land. Several studies have shown that land brings in more in property taxes than it costs the town in services.¹ Residences and their occupants, on the other hand, cost more to service than they pay in taxes. Land subsidizes residences. (For more information on the relationship between taxes and growth, and on the state aid to education formula, see Section 17, Farmland and Property Taxes.)

A direct general fund appropriation is the most common way for towns to raise money for purchases of land or rights. The appropriation is part of the town budget, debated at town meeting, and approved as an increase to the property tax rate.

A town may bond for farmland purchases, just as it bonds for buildings and fire trucks. This means the money will be available up front, to be paid off over time. The bond payments are raised through the annual property tax.

Setting up a town fund for conservation or farmland may be worth much more than the dollars the taxpayers put into it. It can be used to stimulate donations, and it can also be used to leverage funds from other organizations. The Vermont Housing and Conservation Board, for example, looks for local contributions in prioritizing its grants. The town of Calais, recognizing that the fund should not only be used for purchasing land or rights, has begun work on drafting criteria for using the money. Possibilities include: assisting farmland owners with conversion plans; conducting inventories and assessments; hiring consultants to give technical advice to landowners on topics such as estate planning, marketing and forest management.

¹See, for example, studies on the cost of community services by the Northeastern Office of the American Farmland Trust, Herrick Mill, One Short Street, Northampton MA 01060 (413-586-9330).
Although this has rarely if ever been done in Vermont, towns may lease development rights, with or without an option to purchase, or make direct payments to the landowner for public benefits provided by the land. In general, these payments would come from the property tax. This option is similar to a local tax stabilization program in that the town would make annual payments and the long-term ownership would remain with the farmland owner. There are a few differences. During the lease period, the town could have more control over development. The payments could truly reflect the value of those rights as opposed to tax stabilization payments that reflect the value of taxes. However, for towns that receive state aid to education through the Foundation Formula, there would be an increase in state aid when the tax base shrinks due to a tax stabilization contract while there would not be if the town undertook a lease arrangement. (See Section 17 for more on the Foundation Formula and tax stabilization. See Section 6 for more on the payment for public benefits.)

An option to purchase land or rights would also generally be paid for through the property tax. The cost would be, in general, the cost of money. For example, suppose the town were to secure an option to purchase the development rights of a farm for $100,000. The annual cost of that option would be calculated by multiplying the selling price ($100,000) by the annual interest rate (say 6%), or $6,000 per year in this case.

An option which is possible but rarely used in Vermont is the impact fee. Towns may levy impact fees on new development such that the beneficiaries of new development will pay their proportionate share of the cost of municipal services that benefit them. If the town were to establish a program of farmland acquisition, impact fees could be set up so that beneficiaries of new development would also contribute their proportionate share to the effort. This does not mean the town can expect newcomers to pay the total cost of land preservation efforts: the impact fee can only cover the portion of costs of a capital project that will benefit or is attributable to the development. In addition, there are several technical requirements which may make this approach difficult.

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2 10 V.S.A. Section 6303.
3 10 V.S.A. Section 6303.
4 24 V.S.A. Chapter 131.
in rural towns: the town must have a capital improvements program; a careful accounting of the costs is required; and the fee must be spent within six years on a project specified. Vermont’s impact fee legislation also authorizes towns to require off-site mitigation, or the payments to be used to purchase land, when land is developed. However, the mechanisms for determining the payments are not well defined.

Finally, the town can look for non-tax sources of funding. In Vermont, the most commonly used fund is the Vermont Housing and Conservation Board\(^5\) (VHCB) which was established by the Vermont legislature in 1987 and assigned the dual goals of:

- creating affordable housing for Vermonters, and,
- conserving and protecting Vermont’s agricultural land, historical properties, important natural areas and recreational lands.

In the first five years of existence, the VHCB has contributed to the purchase of conservation easements on more than 50 farms. In each case, the board became a partner with a town, a land trust or the Vermont Department of Agriculture, Food and Markets rather than undertaking a project on its own. For the reasons discussed in Section 4 about the Purchase of Development Rights, the town may wish to work through a state or regional land trust or the Vermont Department of Agriculture, Food and Markets rather than approach the VHCB directly.

Working with a regional land trust may have funding advantages, as the trusts are likely to be fairly well established and aware of all possible grants and funding sources.

Landowners may be willing to make a partial donation of the value of their rights by selling the rights to the town for an amount which is less than the appraised value of the rights. This may have federal tax benefits for the landowner (by qualifying as a charitable donation and lowering the income tax). It may also count as leverage and give the project a higher priority in the eyes of other funding sources.

Finally, local fund-raising is important. Besides raising money, it raises awareness of the effort and community spirit.

\(^5\) Vermont Housing and Conservation Board, 136 1/2 Main Street, Montpelier, VT 05602 (802-828-3250). VHCB Policy on Funding in Appendix.
17. Farmland and Property Taxes

To both the farmland owner and the town, the property tax is extremely important in determining financial solvency. The farmland owner can be faced with a tax bill on land that exceeds the economic value of cultivating the land. Unless this bill is reduced, no rational person would continue farming. The town, on the other hand, is totally dependent on property taxes. Any reduction in the amount of taxes received from farmland must be made up by other taxpayers—many of whom are also feeling they can not afford to pay any more.

For a farmland conservation program to be successful, the property tax problem must be solved for both the farmland owner and the town. The landowner's taxes must be reasonable, and the town must be able to afford any tax shift that might occur.

The purpose of this section is to explain how farmland is taxed currently, and what would happen in both the short term and the long term if some of the protection tools were utilized. We note at the outset that some of this information is contrary to public perception.

17.1. Introduction
17.2. Fair Market Value Taxation

In Vermont, all real property is taxed at its fair market value. In most cases, the fair market value exceeds the value of the land for farming, and in some areas the resulting property tax is higher than the amount that could be gained from cultivating the land.

Noel Perrin, part-time Vermont farmer and author, wrote a story to jolt people into understanding what the property tax does to farmers. He wrote of a social worker making $18,000 per year who received an annual income tax bill from the IRS for $50,000. She immediately called the Feds to point out that no one making $18,000 per year could possibly pay an annual tax of $50,000. The bureaucrat responded that the bill was correct; they had determined the woman could make $100,000 per year as a prostitute and they had calculated her tax bill accordingly.

His point was this: just as we don't want our income tax to drive this woman into prostitution by basing her tax on that endeavor, we don't want our property tax to drive our farmland into development by basing its tax on development potential.

17.3. Current Use

To avoid the situation illustrated by Perrin, Vermont has a Current Use Program which allows agricultural land to be taxed based on its potential for agriculture rather than its potential for development. So that the towns do not lose the money they need to function, the state reimburses each town for the taxes lost due to the Current Use Program. Because land from which the development rights have been sold is still often appraised at a value that exceeds the use value, these parcels will probably still find the Current Use programs to be beneficial.

At the present time, there are three possible Current Use Programs available to farmland owners: the Agricultural Program, the Farmland Program, and the Working Farm Tax Abatement Program (WFTAP). Each has slightly different provisions and slightly different penalties associated with land conversion. To those participating, the tax relief has been fairly significant. However, in FY92, FY93 and FY94, the state funding was inadequate and the landowners have been asked to pay more. In addition, the programs have been closed at least for the time being so that no new parcels may be enrolled.

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1 32 V.S.A. Sections 3431 and 3481.
2 32 V.S.A. Chapter 124.
It is important that the legislature sought to target WFTAP funds to the most important agricultural land by restricting future enrollment in WFTAP to lands designated through a local application of guidelines developed by the state. (See Section 20, Rating Agricultural Lands, for more on the link between WFTAP and rating systems.)

Towns may set up their own tax stabilization contracts for farmland, forest, or for agricultural business enterprises. Although the purpose of the local tax stabilization program is probably the same as that of the state's Current Use Program in which the tax on farmland is designed to reflect the land’s productive capacity, the taxes in a local program need not match farm income.

There are four possible ways the town may stabilize taxes:

1. set and maintain the listed value of the property (E.g., the listed value will be set and maintained at $10,000);

2. set and maintain the tax rate to be applied (E.g., the tax rate will be set at $0.75);

3. set and maintain the actual amount of tax due (E.g., the tax bill will be set at $1,000); and

4. set the amount of the tax at a certain percentage of the tax that would otherwise be due (E.g., the tax due would be 50% of the fair market value tax normally due).

If land subject to a stabilization contract is converted to another use, the owner must pay back to the town an amount equal to the savings in the past three years.

3 24 V.S.A. Section 2741 and 32 V.S.A. Section 3846
In the 1970s, more than 30 towns offered their own local tax stabilization programs. However, after the state got into the business through its Current Use Program, many towns dropped their local programs. Now that the state’s program looks vulnerable, several towns have looked into reinstating a local program which supplements rather than replaces the state’s efforts. For example, towns have considered programs that stabilize the farmland owner’s property tax bill at its 1990 level. If, after the state has calculated its share, the owner’s bill exceeds its 1990 level, the town will be responsible for the difference.

Unfortunately, for the average taxpayer, the property tax bill has been rising faster than income and there is considerably less ability for non-farmers to absorb additional taxes in the 1990s than there was in the 1970s when tax stabilization programs were fairly common. Middlebury, for example, which abandoned its stabilization program after the Current Use Program began, asked the voters to approve a local “piggyback” stabilization program to help offset the cuts in the state program. Even though the former program cost $90,000 per year and was fairly enthusiastically supported, the 1991 request for a much smaller program was turned down.

For a tax stabilization program to be successful, a full accounting of the probable cost shift is advisable. This generally begins with interviewing farm landowners when the program is being set up to see which type of stabilization method is preferable and how many people would participate. The next step is to estimate the annual savings to the landowner. In towns that do not receive state aid to education through the foundation formula, the cost to the town is the sum of the savings to all participating landowners. This is the amount that would be shifted to all taxpayers in town.

In towns which do receive state aid to education through the foundation formula, some of the cost is shifted to the state. As a rule-of-thumb, in formula towns, about 90 percent of the loss in school taxes would be offset by state aid to education. Because school taxes generally make up about 66 percent of the total tax bill, in formula towns more than half of the cost of a stabilization program would be offset by the state (90 percent of 66 percent), while less than half of the cost would be shifted to all property taxpayers in town.
If farmland is purchased by the town, it is not taxable. This only makes sense, because the town would not send itself a tax bill. The entire amount of the taxes normally paid on the parcel would be spread among all taxpayers.

Farmland that is purchased by a state agency should be taxed as other state land. There was once a statute, now repealed, which specified that farmland acquired by the state would be set perpetually in the Grand List at its value determined during the appraisal preceding the acquisition. Because the repealed statute is referred to by another existing statute, it is generally believed that the provisions of the repealed statute are still in effect. In theory, this would mean that the town would not need to make up any taxes on land acquired by the state, at least in the short term. However, over time, the listed value will not increase with inflation and therefore the share of taxes paid by the property would decrease. In addition, it is important to note two things: the state purchases very little farmland in fee simple; and the tax compensation is to be paid out of the state’s contingent fund—a fund which rarely has any money.

If farmland is purchased by a qualified conservation organization, the land should be “assessed on the basis of its actual use.” Although it is not quite clear what this means, it has been suggested that the land should be assessed as if it could not be developed. In general, the assessed value would be lower than the fair market value of the property if it could be developed. This would mean that a portion of the taxes normally due on the property would be paid by the non-profit organization and a portion would be shifted to other taxpayers. The appraisal and tax consequences would be similar to those on a parcel subject to a conservation easement.

In all cases, it is again important to recognize that any diminution in the Grand List in a town which receives state aid to education on the foundation formula will result in an increase in state aid. As a rule-of-thumb, the increase in state aid will amount to more than one half of the taxes lost on the protected property.

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4 32 V.S.A. Section 3833.
5 To be qualified, the organization should be certified by the Division of Property Valuation and Review. 10 V.S.A. Section 6306.
17.6. Conservation Easements (PDR and TDR)

In most cases, when land is subject to a conservation easement as a result of the Purchase of Development Rights (Section 4) or the Transfer of Development Rights (Section 5), there is a reduction in taxable value.

The farmland owner should be taxed only on the value of the remaining rights if the conservation easement is held by any of the following:

- state agencies including the Agency of Natural Resources; the Agency of Transportation; the Department of Agriculture, Food and Markets; the Vermont Housing and Conservation Board;
- the federal government;
- the town; or
- a qualifying non-profit conservation organization when the transfer has been certified.

There is no rule-of-thumb to estimate how much the value of the parcel will drop once the development rights have been removed. In some cases, according to appraisers, there is no diminution in value: either the highest and best use remains the same, or any decrease in the value of the protected land is offset by an increase in the value of the adjacent land. On the other hand, many people believe there is some value to keeping options open. As one lister put it: "I can't believe that, confronted by two farms which are identical except for the right to develop, a buyer would pay the same amount for both."

From the farmland owner's point of view, the listed value (and therefore the tax bill) of the farmland without development rights is not likely to be as low as it is in the Current Use Program. Participation in the Current Use Program or some other tax stabilization program will still be important to achieve a tax level commensurate with income from the land. Although there has been talk about not allowing land subject to a conservation easement to participate in the Current Use Program, at this time conservation easements do not affect eligibility.

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6 10 V.S.A. Section 6303 (c).
7 For interests held by a non-profit organization to be tax exempt, the organization and transfer must be certified by the Division of Property Valuation and Review according to the provisions of 10 V.S.A. Chapter 155.
From the town's point of view, there is likely to be some loss in tax revenues due to the reduced taxable value. Full accounting is advisable. The reduction in tax revenue is calculated as the reduction in taxable value of the restricted parcel multiplied by the tax rate. For towns receiving state aid to education through the foundation formula, at least half of this amount will be offset by an increase in state aid.

A recent study conducted by the Vermont Housing and Conservation Board examined the tax implications of the acquisition of development rights on a hypothetical 185-acre farm which would have resulted in removing $148,000 from the tax rolls in each Vermont town in 1990. This would have resulted in an average tax increase of $1.43 per year on an $80,000 house in towns on the foundation formula and an average increase of $2.04 per year on an $80,000 house in towns that are not on the foundation formula.

From a tax point of view, a Transfer of Development Rights program differs from a Purchase of Development Rights program mainly in the ownership and use of the development right. In a TDR transaction, the development rights are removed from a parcel in an area chosen for conservation (sending area) and purchased, generally by a private person, to be used to develop another parcel in an area chosen for development (receiving area).

As a part of a TDR transaction, a conservation easement is created and granted to the town under 10 V.S.A. Chapter 155 limiting the land uses on the parcel in the sending area. At this point, the land in the sending area from which the development rights have been removed should be assessed and taxed in exactly the same way as a parcel from which the town has purchased the development rights: the farmland owner should be taxed only for the remaining rights and there is no tax on the conservation easement itself as it is owned by the town.\(^8\)

\(^8\)24 V.S.A. Section 4407.
To the farmland owner, land subject to a conservation easement—whether created through a PDR program or a TDR program—would be assessed and taxed in the same way. Because the taxes are likely to be higher than they would be in the Current Use Program, the owner would probably continue in that program.

To the town, there is a tax difference between a TDR and a PDR program: in a TDR program, when the rights are transferred to a parcel in the receiving area, that parcel should show an increased value.

It is important to note, in designing a TDR program, that there may be a limbo period in which the value of the development rights is lost for tax purposes. Development rights themselves, separate from a parcel, are not taxable in Vermont. If the development rights are purchased and held for speculation and a conservation easement is created, the sending parcel should be taxed based on only the remaining rights, and the TDR itself is not taxable (until it is attached to a parcel in the receiving area). To avoid a temporary loss in taxes, the town may want to set up the program so that the conservation easement is not actually created and recorded until the TDR is attached to another parcel.

A TDR program has the general effect of downzoning one area and upzoning another. In general, the tax loss created by limiting the potential density in the sending area can be at least partially offset by the tax gain created by increasing the potential density in the receiving area.

17.8. The Long-Term Tax Implications of Farmland Protection

In general, any immediate tax shift created by taking farmland or development rights off the tax rolls is fairly easily calculated and fairly minimal. Taxpayers, however, are often still reluctant to accept a farmland protection program because of the long-term tax implications. Any program that permanently restricts the development potential of the land precludes the possibility of building something really lucrative—something that brings in substantial property tax revenue.

While every town is different, it may be helpful to approach this concern by looking at what has actually happened in Vermont as towns have converted farm and forest land to uses that contribute more in property taxes. In general, as towns become more developed, the tax bills go up—not down.
On average, the tax bill on the house of average value increases as population in the town increases (Figure 17.1). It is fairly easy to calculate that, on average, a child costs $5,000 per year to educate and a house contributes about $1,000 in school property taxes per year. The gap is made up by other taxpayers—property taxpayers in town pay higher property taxes and state taxpayers contribute through state aid to education. The American Farmland Trust has approached the problem by looking at the difference between the taxes for different types of land uses and the costs of servicing those land uses. Although the ratios vary from community to community, the general conclusion is that farmland pays more than it costs while residences cost more than they pay.

**Figure 17.1**

![Population and Residential Tax Bills*](Vermont, 1989)

<table>
<thead>
<tr>
<th>Tax Bill*</th>
<th>Under 600</th>
<th>600-900</th>
<th>1,000-1,599</th>
<th>2,000-2,999</th>
<th>Over 3,000</th>
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</thead>
<tbody>
<tr>
<td>Population</td>
<td></td>
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* Tax Bill on House of Average Value
Source: Vermont Division of Property Valuation and Review

...the general conclusion is that farmland pays more than it costs while residences cost more than they pay.

Commercial or industrial development, on the other hand, is looked at as a net fiscal gain because it pays the school property tax without putting children in school—at least directly. However, the Vermont towns with the most taxable commercial and industrial property—the towns often considered the winners in the quest for tax base—have, on average, higher taxes. (Figure 17.2).
Figure 17.2.

<table>
<thead>
<tr>
<th>TAX BILL</th>
<th>MILLION $ OF COMMERCIAL/INDUSTRIAL PROPERTY</th>
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<tr>
<td>Under 1</td>
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<tr>
<td>1-5</td>
<td></td>
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<td>5-7</td>
<td></td>
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<tr>
<td>Over 17</td>
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</table>

Residential Tax Bills* & the Value of Commercial/Industrial Property
Vermont, 1989

* Bill on average-value house with less than 6 acres
Source: Vermont Division of Property Valuation and Review

Farmland conservation may be a very smart move for the long-term fiscal health of the community.

There are several explanations, but the main reason that taxes are highest in towns with the most commercial property is that there are significant costs to serving commercial property and the residential growth that follows the commercial/industrial growth. Although the tax base swells with growth, the budget tends to swell more.

The conclusion to be drawn from this is not that growth is bad, but that we should not be looking at growth to lower tax bills. Similarly, we should not be looking at farmland conservation programs as precluding more lucrative options any more than we should be looking at it as preventing more expensive options. In fact, farmland conservation may be a very smart move for the long-term fiscal health of the community.

References

For information on cost of government studies contact: American Farmland Trust, Northeastern Office, Herrick Mill, One Short Street, Northampton, MA 01060, (413) 586-9330.

The Tax Base and The Tax Bill: Tax Implications of Development. 1990. Vermont League of Cities and Towns, 12 1/2 Main Street, Montpelier, VT 05602, (802) 229-9111; or Vermont Natural Resources Council, 7 Bailey Avenue, Montpelier, VT 05602, (802) 223-2328.

18. Fitting Agriculture into the Town Plan

"The municipal plan is both a thorough research document of the community's present condition and a guide for accomplishing community aspirations and intentions through public investments, land use regulations, and other implementation programs." The plan is an official statement of a community's goals and the strategy adopted to attain those goals. Information on past trends, current conditions and future projections provides the context for setting goals, policies, objectives and actions.

Towns are not required to adopt plans. However, if the town would like to adopt zoning regulations or impact fees, or if citizens would like to be able to use their town's goals as a basis for supporting or challenging future proposals going through the Act 250 process, the plan should be adopted according to the requirements of 24 V.S.A. Chapter 117. The Planning Manual for Vermont Municipalities (Planning Manual) includes useful information on the procedures for plan adoption, the required elements of a plan, and the roles of the select board and the planning commission—the two bodies officially responsible for creating and adopting the plan. Please refer to the Planning Manual for important advice on meeting the requirements; that information is not repeated here.

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2 According to 24 V.S.A. Section 4401 (a), any municipality that has adopted a plan under the chapter may adopt bylaws to implement the plan. According to 24 V.S.A. Section 4404a (a), a capital budget and program may be adopted if a facilities and services plan—a required element of a plan—has been adopted according to the chapter. According to 24 V.S.A. Section 5203 (a), a municipality may levy an impact fee provided it has adopted a capital budget and program pursuant to chapter 117.
There is no prescribed format for the organization of a plan. Chapter 117 prescribes ten required “elements” of a municipal plan. Agriculture is not one of the ten required elements; it is an integral part of several of the other required elements. The planning commission may decide to devote a separate section of its plan to agriculture, or it may not. Even if there is a separate agriculture chapter, the role of agriculture should not be limited to that chapter; the desire to sustain agriculture should affect the delineation of zones, the transportation plan, where residential development should take place, and policies for wildlife, etc. Integrating agriculture into each section of the plan is crucial.

While the planning commission is officially responsible for drawing up the plan, many towns have found it helpful to have a subcommittee, the conservation commission, or a newly-created agriculture committee do some of the initial work: talking with citizens, organizing the data collection, devising strategies, coordinating with other committees, and drafting the agricultural sections of the plan.

The basic components of any municipal plan—and of the agricultural part of the plan—are listed in Table 18.1. Theoretically, the planning process follows the order listed in the table, beginning with the collection of background information and culminating with the implementation plan. However, it is often difficult and inefficient to collect information without a clear purpose in mind. For agriculture planning, it may be more effective to start by discussing preliminary goals and possible implementation strategies with as many citizens as possible so that the committee can make a list of the information which should be collected to understand whether or not the proposed goals or actions are appropriate. For that reason, this manual will explain goals, objectives and policies before explaining inventory and rating schemes.

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1 See Planning Manual for Vermont Municipalities, pages 138-141 for suggestions on organizing a municipal plan.

Ten elements required by 24 V.S.A. section 4382(a) are: 1) objectives, policies and programs; 2) land use plan and map showing existing and prospective land uses including areas proposed for agriculture; 3) transportation plan; 4) utility and facility plan; 5) policies on preservation of rare features and resources; 6) educational facilities plan; 7) implementation program; 8) compatibility with plans for other parts of the region; 9) energy plan; 10) housing element.
Table 18.1. Basic Plan Components

<table>
<thead>
<tr>
<th>Inventory and Background Information</th>
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<tbody>
<tr>
<td>Goals</td>
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<td>Objectives</td>
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<tr>
<td>Policies</td>
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<td>Implementation Strategy - Actions</td>
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</table>

To provide some structure and consistency to the planning process, the terms “goals, objectives and policies” are seen as forming a sort of hierarchy from the broader goals to the more specific objectives and policies. Table 18.2 gives general definitions, and the Planning Manual includes more information. However, even after agreement on the definitions, there is often disagreement at meetings about whether a particular statement is a goal or an objective, and the definitions blur.

The purpose of this section is not to force a town into a particular definition, but to give examples and suggestions of how the terms might be applied to town planning for agriculture.

18.2. Goals, Objectives, Policies and Actions
<table>
<thead>
<tr>
<th>Table 18.2. Goals, Objectives, Policies and Actions</th>
</tr>
</thead>
</table>
| **Goals**                        | • Statements of end results or conditions desired by the town.  
|                                  | • Expressions of the town's values.  |
| **Objectives**                   | • Something tangible or measurable to strive for in the near-term to achieve broader and/or long-term goals.  
|                                  | • Objectives reflect the priority or timeline for achieving the goals.  |
| **Policies**                     | • Principles, rules or standards used to guide decision-makers in achieving goals and objectives.  |
| **Actions**                      | • Steps, mentioned in the implementation section of the plan, which will actually get the job done.  |
Examples of a general goal to sustain agriculture and the supporting objectives, policies, and actions may help illustrate their differences.

<table>
<thead>
<tr>
<th>Goal</th>
<th>Policies</th>
</tr>
</thead>
</table>
| * Protect and encourage the maintenance of agricultural lands for the production of food and other agricultural products.* | * Ensure all regulations do not unnecessarily interfere with the viability of agriculture.*  
  * Ensure that new developments are located and designed to conserve the agricultural potential of important land.*  
  * Plan public investments to sustain farming, to direct development away from agricultural land, and to minimize development pressure on agricultural and forest land.* |

<table>
<thead>
<tr>
<th>Objective</th>
<th>Actions</th>
</tr>
</thead>
</table>
| * Develop a program to ensure that agriculture remains a dominant, viable land use.* | * Establish a task force of farmers and citizens to discuss existing barriers to farming, recommend local strategies to remove those barriers, and propose other ways to keep agriculture viable in town.*  
  * Enact a right-to-farm ordinance making it clear that good agricultural practices, including those that generate odors and noise, are appropriate and necessary to the continuance of the town’s agricultural economy.*  
  * Adopt agricultural zoning regulations specifying performance standards to minimize disruptions to agriculture.*  
  * Stabilize property taxes for farmers enrolled in the Vermont Use Value Program by agreeing to pay the difference in years when the state does not fully fund the program.* |
18.2.1. Goals

Goals are the basic building blocks of the plan. They express the values and wishes of the community, and the plan's policies, objectives and actions must clearly follow from them.

Goal statements that are too broad run the risk of being too vague to be useful; goal statements that are too specific run the risk of being too narrow to enable the town to deal with slight variations of the anticipated situation. It may be appropriate to describe the goals broadly for maximum applicability while including prominent examples to focus attention without limiting the scope. Chapter 117 of Title 24 lists the following state agricultural goal which is fairly general: "to encourage and strengthen agricultural and forest industries." In general, town plans will contain more specific goals. Table 18.4 gives examples of a town's goals that are consistent with the state goal, but more specific.

18.2.2. Objectives

An objective is really a secondary goal, and there is often a great deal of confusion over what is a goal and what is an objective. The general rule is that an objective is the first step in grounding goals to reality. It is more specific and obtainable than the goal it fits under.

In most towns, the process of talking about the town's future results in lots of flip chart lists of statements which may be goals, objectives, policies, or actions. After settling on goals, it may be helpful to go back through the flip chart lists to see which of the remaining statements fit neatly under each goal. If it is a description of a measurable point along the way toward achieving a goal, it may be an objective.

For example, a goal may be to ensure that every farmer who would like to sell development rights on land identified as important has an opportunity to do so. An objective may be to have agreements in place on a few of the top-priority farms within the next ten years.

Some town plans do not list objectives. They group related goals and move on to the policies and implementation actions.

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124 V.S.A. Section 4302 (c) (9).
Table 18.4. Examples of Town Goals to Sustain Agriculture

- Sustain agriculture in sections of town where it is the predominant land use and where soils and other conditions enable it to remain economically viable. These areas include, but are not limited to the Lemon Fair Valley, Gooseneck Bend, and the Sheep Farm sections.

- Create and maintain an environment—physical, social and regulatory—that encourages entrepreneurship in agricultural activities, including those which add value to other local agricultural products.

- Create and maintain agriculture that is environmentally sustainable and that makes an important contribution to the state and local economy and to the rural character of this community.

- Enable and assist farming and farm-related enterprises in town to be vital and aggressive competitors in the marketplaces.
18.2.3. Policies

Policies are used to guide the local select board and other officials, to ensure that the goals of the plan are interpreted correctly, fairly, and consistently.

While it is impossible to create a set of policies that will cover all contingencies, spelling out certain key policies during the planning process may avoid some immediate problems and help local officials understand the plan. Brainstorming a list of the types of decisions town officials are likely to be faced with in the future is a good place to start. For example, a town might want promote its goals for agriculture by setting policies for dealing with any of the following situations:

Table 18.5. Examples of Situations for Which Policies Might be Developed

| Proposed sales or donations of development rights of agricultural land. |
| Complaints from non-farm neighbors about farm operations. |
| Cuts in the state's use value assessment programs. |
| Proposals to site a manure pit next to the village. |
| Proposals to spread sludge on farm fields. |
There are also fairly general state policies related to agriculture. In general, town policies can be consistent with the state policies, while being more specific.

<table>
<thead>
<tr>
<th>Chapter 117 (24 V.S.A. Section 4302 (c) (9))</th>
<th>Strategies to protect long-term viability of agricultural and forest lands should be encouraged and should include maintaining low overall density.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The manufacture and marketing of value-added agricultural and forest products should be encouraged.</td>
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<td></td>
<td>The use of locally grown food products should be encouraged.</td>
</tr>
<tr>
<td></td>
<td>Public investment should be planned to minimize development.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Act 250 (10 V.S.A. Section 6042)</th>
<th>Preservation of the agricultural and forest productivity of the land, and the economic viability of agricultural units,...are matters of the public good. Uses which threaten or significantly inhibit those resources should be permitted only when the public interest is clearly benefited thereby.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The construction, expansion, or provision of public facilities and services should not significantly reduce the resource value of adjoining agricultural or forestry lands unless there is no feasible and prudent alternative, and the facility or service has been planned to minimize its effects on adjoining lands, pressure on agricultural and forest land.</td>
</tr>
</tbody>
</table>

| Executive Order 52 | Assure that land acquisition, direct state development projects, state-assisted public and private development, and development requiring state permits will not eliminate or significantly interfere with or jeopardize the continuation of agriculture on productive agricultural lands or reduce the agricultural potential on primary agricultural soils, unless there is no feasible and prudent alternative and the facility or service has been planned to minimize its effects on such lands. |
18.2.4. Implementation Strategy—Actions

The final list of actions and implementation tools is often most exciting to citizens because it is most real. To be most effective in leading to action, the implementation strategy should include: 6

A description of the action to be taken;
A time line;
A list of responsible parties;
A cost estimate; and
A recommendation for funding.

It may be useful for the implementation strategy to include actions to be taken by non-municipal entities, even though the plan may only “encourage” the action.

The plan’s implementation program may suggest that certain provisions be added to the zoning regulations or that the town bond to purchase development rights on farmland, but these actions will be approved and implemented separately.

18.3 Public Involvement

Involving the public is essential. For agriculture, it is extremely valuable to enlist the expertise of the farming as well as non-farming citizens in mapping existing land, creating a vision of the future, establishing a rating system for the most important agricultural land, defining community goals, objectives and policies, brainstorming possible actions, choosing the most important actions, and setting priorities.

Official public hearings are not the most effective way of tapping the energy of the public in the process. Communities have found it more helpful to hold forums and workshops, perhaps with a speaker or leader who would encourage participation. Many towns have used surveys to solicit opinions as well as to stimulate thought and discussion. In most Vermont towns, a committee can call all farm landowners individually to ask their opinions and to invite them to participate.

6 Implementation strategies may be effectively summarized in a table with a row for each action and a column for each of the categories listed. As an example, see the Vermont Forest Plan, Vermont Department of Forests, Parks, and Recreation.
The more public the planning process, the more publicity. We often think of publicity as something the advertising agencies do: a catchy campaign with a big thermometer to encourage people to contribute to purchasing a farm field, for example. However Webster's Dictionary defines publicity as, "the state of being public, openly known, or open to the knowledge of a community." Early, ongoing, and meaningful participation has several results: it is its own publicity, it helps with the acceptability of the plan, and it makes subsequent action more likely.

People who may not be interested in planning may be more comfortable dealing with specific points that have closer links to their own lives. Someone who feels constrained by the discussions of whether a statement is a goal or an objective can nevertheless offer valuable suggestions about specific farms or problems. Farmers may know of ways to reduce the impacts of residential development and traffic on their operations; the conservation committee may see a way to help farmers stabilize stream banks and protect wetlands; a local accountant may offer to help farmers reduce debt and estate taxes through the sale or donation of development rights. People should be allowed, and encouraged, to participate in the way that suits them.

As the discussion becomes more specific, people seem to be better able to focus on the task. This can be very inspiring, but it can also provoke controversy. Much of the controversy encountered at this stage in planning comes from a fear of some of the implementation tools—most notably zoning—which may restrict a landowner's rights to develop property. Some neighbors may object to agricultural operations near their property. Some taxpayers may be concerned about higher tax bills caused by taking farmland (or partial interests in land) off the tax rolls and by bonding to purchase development rights on agricultural lands.

Some people have found that it is effective to allow time at a meeting for bringing up suggestions—without criticism. The suggestions are all listed and citizens may ask for an explanation, but no debate on the merits of a suggestion is allowed at the time. This provides an opportunity to get all the ideas "on the table" without allowing a few vocal and antagonistic people to dominate and intimidate the participants. A separate time may be scheduled for discussing the pros and cons of each suggestion. Even at the beginning of the planning process, when the committee may be trying to talk about goals, people will want to talk about specific actions; encouraging them to do so may
clear the air, get other people thinking, and generate a long list of ideas
to be allocated a proper spot later on.

18.4. Regional Coordination

Municipal plans, regional plans, and state agency plans should all be
compatible. A municipality is directed to prepare a statement indicating
how the municipal plan relates to plans for adjacent municipalities and
the region. However, it may be even more important for the town to
review the plans of other towns, state agencies, and the region to be sure
they are compatible with the goals for sustaining agriculture in the
town.

For the municipal plan to be effective in designating land eligible for
purchase of development rights using the Vermont Housing and
Conservation Trust Fund and for any future programs tied to the
regional plan designations, a town should make sure that the regional
plan identifies all the locally identified important agricultural land.
Regional plans are likely to take a broad-brush approach to delineating
agricultural areas. Therefore, they should include provisions to
automatically add land designated for agriculture in an approved
municipal plan to the agricultural areas identified in the regional plan.
(See Section 19 for more information).

References:

In.

Vermont Municipalities.

Susskind, Lawrence and Jeffrey Cruikshank. 1987. Breaking the Impasse: Consensual
Approaches to Resolving Public Disputes.

7 24 V.S.A. Section 4382 (a) (8).
19. Inventorying Agriculture

Pulling together a solid base of information is key to the success of any strategy to sustain agriculture. Creating an accurate picture of farming today can help the town establish goals, objectives and policies, and take actions that will help to sustain farming tomorrow. The picture could contain information such as: who the farmers are; where the farms are located; where the best agricultural soils are located; what is being produced on the farms; what opportunities exist to strengthen agriculture; what is hindering farmers from taking advantage of those opportunities; and what threatens the continuance of farming in town.

Because time and budget will undoubtedly be limited, planning commissions should focus information collection on the most important agricultural topics. Before jotting down any names or numbers or coloring a single map, communities should think about why each piece of information is needed and how it will be used.

*The Planning Manual for Vermont Municipalities* should be consulted for a description of the basic process of collecting and analyzing information. The following sections describe a few common reasons for collecting information about agriculture and give some examples of questions that may be useful to answer.
19.2. Identify Farmland Owners and Operators

The only way to create a complete and accurate picture of agriculture in town is to involve the town's farmers. Planners may know how to plan, but only farmers know how to farm. They know what helps and what hurts farming. Their knowledge and insights can focus the process of collecting information and can help interpret the information once collected.

- Who are the full-time and part-time farmers living in town?
- Who are the farmers from neighboring towns that rent or own farmland?
- Who owns farmland in town, but is not a farmer?

19.3. List Opportunities and Threats to Agriculture

Identifying opportunities and threats to agriculture can help focus and prioritize the information collection process and the writing of the plan. A primary purpose of planning should be to capitalize on untapped opportunities, remove impediments to agriculture, surmount existing problems and avoid future problems. The committee may wish to ask farmers:

- What opportunities exist to strengthen or diversify agriculture?
- What is causing problems to existing agricultural operations?
- What barriers stand in the way of taking advantage of those opportunities or resolving existing problems?
- What information is needed to better understand those opportunities and problems?
Non-farmers sometimes need to be reminded of the critical role that agriculture plays in the local and regional economy, environment and quality of life. Pulling such information together can help gain their support for public policies, investments and other actions that will be needed to sustain agriculture.

It is also useful for the town plan, the regional plan, and the plans of other towns in the region, to acknowledge the importance of making provisions for equipment dealers, repair facilities, suppliers of feed and materials, food processing plants, roadside farm stands, and other businesses needed to sustain the farm economy.

- Where do farmers get their equipment, supplies and services?
- Are there a significant number of existing businesses that serve agriculture in or close to your community?
- How much do farmers spend each year on the above? How much on wages?
- What percentage of the town’s total Grand List value is classified as “farm”?

The type and scale of agricultural operations can be very diverse and may become more diverse with time. Strategies to sustain large-scale dairying operations may not work for orchards, small-scale vegetable gardens and or growers of specialty crops like berries. Taking stock of the similarities and differences in the town’s agricultural operations may enable the town to track trends and to create a strategy that helps rather than hinders the evolution of agriculture.

- What parcels make up the farm units of each farm owner or operator?
- What agricultural products are grown or raised on each farm unit?
- How might the type and scale of farm operations change over time?
- What roads are traveled by farm vehicles? Are there problems?
- What land uses are compatible/incompatible with each type of operation?
- What farms or portions of farms are on the market?
- What farms or portions of farms have donated or sold their development rights?
- What farms are enrolled in Current Use taxation programs?
19.6.
Characterize Existing Land Uses in Different Sections of Town

Some towns have found it useful to identify and characterize distinct sections of town. The sections are generally bounded by roads, streams, town lines, and other easily identifiable landmarks. Knowing which sections of town are predominantly agricultural and which sections are predominantly residential, commercial or industrial can help the town identify and sustain the land uses that are desired in each section.

For each section of town it may be useful to know:

- What percentage of the land area is actively managed for agriculture?
- What percentage of the land area is inactive farmland that could be put back into production?
- What existing nonagricultural land uses are causing problems for existing farm operations? When were they created? Where are they located? How could the problems have been avoided? How could future problems be avoided?

19.7.
Characterize the Soils in Different Sections of Town

Knowing where the best agricultural soils are located can help towns decide where to target their efforts to sustain agriculture. In most cases, existing farms and the most productive soils will coincide. If farming is to remain economically viable towns will want to direct incompatible development away from farming operations and away from the best soils.

In 1985, the Soil Conservation Service (SCS) rated soils throughout Vermont and classified their agricultural values into several groups. The statewide ratings have been refined to reflect local conditions in some counties. The SCS recommends use of the county ratings for local and regional planning.

The relative values of the soils decrease from Group 1 to Group 8. The first five soil groups have the physical characteristics needed to meet the Act 250 definition of primary agricultural soils—Groups 1-2 meet the national definition of “prime” farmland and Groups 3-5 are of “statewide” importance. According to the SCS:

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Prime farmland soils have the soil quality, growing season and moisture supply needed to economically produce high yields of crops when treated and managed according to acceptable farming methods.

Soils denoted as statewide have good potential for growing crops, but have one or more limitations which restrict choice of crops. They require more intensive management than prime soils.

Groups 6-7 have severe limitations on agricultural production and Group 8 soils are considered to have no potential. Highly developed (so-called "urban") lands of greater than 40 acres and water are excluded from the SCS classifications.

For each section of town it may be useful to know:

- Where are the primary agricultural soils located?
- What percentage is primary agricultural soil?
- Do the existing farms take advantage of most or all of the primary agricultural soils?
- What types of nonfarm developments are located on primary agricultural soils? When were they created? Could they have been located elsewhere? What could be done to direct non-farm developments away from primary agricultural soils in the future?
19.8. Describe Agriculture and the Pattern of Development

Hopefully, a key outcome of the planning process will be to ensure that the town's plan and regulations promote rather than undermine agriculture. Looking at how the type and pattern of past development have affected agriculture can point out the strengths and weaknesses of the current plan and regulations. It can help you revise those regulations and use other tools to properly guide future development.

A Geographic Information System (GIS) can be extremely helpful in this process. It can be used to "subtract" a land use map from one decade from a current land use map, and to tally the characteristics of the land which has changed from agricultural to residential or commercial. It can, for example, list how many developed acres are primary agricultural soils vs. how many acres are on less valuable soil. It can also print a map of the newly developed acres to help citizens look at the spatial trends.

- How many new lots have been created over the past five to ten years?
- What percentage of those lots occurred in predominantly agricultural sections of town?
- What percentage of those lots occurred on agricultural land?
- What percentage of those lots occurred on primary agricultural soils?
- How big were the lots created in the agricultural and non-agricultural areas of town?
- Were the lots clustered or scattered?
- Are the areas that are predominantly agricultural zoned to sustain agriculture?
- Do the town's zoning regulations allow a variety of non-farm land uses in agricultural zones? Could these uses interfere with agriculture?
- Could changes be made to the town's plan or regulations that would reduce future loss of agricultural land to development?
- Could changes be made to the town's plan or regulations that would remove barriers to farming and make it more profitable?
Agricultural land is rated—rather than merely identified—because it is assumed that some land is better suited for certain purposes than others, and the town would like to concentrate on the most suitable land.

For example, many town planning commissions begin with the assumption that not all agricultural land can remain as farmland. A committee forms to develop a rating system to determine the “best” agricultural land in town so that conservation efforts can be focused on that land. Committee members begin to brainstorm what makes the “best” agricultural land and find they have a list that includes soil drainage and vistas; cation exchange capacity and wildlife habitat; size of barns and proximity to the village. There does not seem to be a way to add these very different types of characteristics together to come up with something meaningful.

Pawlet farmer John Malcolm had this to say about the agricultural land assessment process in his town: “Most of the farmers were in favor of it in the beginning. But then they added the scenic qualities and views. That was too Dorsey—too effete. It made some of the poor farms come out best.”

Committee members quickly realize that land which is best for dairy farming may not be best for market gardens or that the farm that has the best soils many not have the best views. No single rating system can be used to select the agricultural land that is “best” for all purposes. Presumably, if you were selecting members of a choir, you would assess musical ability rather than shoe size but if you were looking for Cinderella, shoe size would be important. Similarly, if you are looking for the most economically viable agricultural land, you might look carefully at the dirt but if you were looking for land which is most important to the town’s rural scenery, you might look at the hills.
Confusion over the purpose of a rating system can cause other problems as well. In many towns, the lack of clarity over purpose comes across as lack of honesty and farmers become very suspicious. In some towns, landowners worried that they would be ineligible for government programs if their land did not have a high score. In other towns, landowners feared the system would lead to an agricultural zone in which they would lose property rights and they fought the system.

Before any rating system is designed, the purpose and use should be clear. If the purpose is to protect and promote agricultural viability, scenic quality should not be part of the ranking. On the other hand, if the purpose is to protect scenery or contribute to the rural character of the area, soil nutrient level and drainage should not be part of the ranking.

The following are several possible purposes to a rating system. While there may be some overlap in the rating systems used to determine the best land for each purpose, in general it is important to recognize that different purposes call for different criteria.

<table>
<thead>
<tr>
<th>Table 20.1 Possible Purposes of Land Evaluation Systems:</th>
</tr>
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<tbody>
<tr>
<td>• Determine agricultural zones</td>
</tr>
<tr>
<td>• Prioritize land for Purchase of Development Rights</td>
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<tr>
<td>• Determine land eligible for Transfer of Development Rights</td>
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<tr>
<td>• Determine land eligible for local tax stabilization</td>
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<tr>
<td>• Determine land to be protected by a local right-to-farm policy</td>
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<tr>
<td>• Determine land to be zoned for a clustered development and agriculture</td>
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<tr>
<td>• Determine land eligible to receive technical assistance from the town such as estate planning, conversion planning, etc.</td>
</tr>
<tr>
<td>• Prioritize land to be purchased or leased for public recreation</td>
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<tr>
<td>• Prioritize land on which to purchase a scenic easement</td>
</tr>
<tr>
<td>• Determine the land within an agricultural parcel which can be developed with the least disturbance to continued agricultural use of the rest of the parcel.</td>
</tr>
</tbody>
</table>
The state, as well, may want to target certain state agricultural funds and programs to land which is most appropriate rather than allowing the programs to apply to all agricultural land. Statutory provisions limit the benefits of two state programs to agricultural land which has been locally identified as important: the Working Farm Tax Abatement Program (WFTAP)\(^1\) and the acquisition of development rights by the Housing and Conservation Board.\(^2\) Although, at the current time neither provision is implemented, it is important to realize that the intent of the legislature was to limit the expenditure of state funds to those lands identified as important.

\(\text{\footnotesize \(^1\) The Commissioner of Agriculture is directed to establish "guidelines" to assist municipal and regional planning commissions in identifying agricultural land (6 V.S.A. Section 8 \(a\)), municipal and regional planning commissions are directed to develop criteria based on these guidelines (24 V.S.A. Section 4382 \((a)\)), and the WFTAP legislation states that "no property shall be eligible property ...unless it is in conformity with such criteria." (32 V.S.A. Section 3767). Land currently enrolled could continue in WFTAP as long as it continues to be eligible and is held by the same family which owned it only July 1, 1989. However, because the Commissioner has not established these guidelines, (at least as of December 1992), no parcels have been removed from WFTAP due to the application of the assessment criteria.}

\(\text{\footnotesize \(^2\) 6 V.S.A. Section 32. In towns with approved municipal plans, the legislature restricts acquisition of agricultural development rights by the Vermont Housing and Conservation Board to areas that are identified in the assessment conducted in the regional plan as viable and designated for agricultural use in the municipal plan. (The statutes direct both the regional assessment and the municipal designation to be based on the Commissioner's guidelines.) In towns without approved municipal plans, these restrictions do not apply.}

This restriction raises an important question: should towns seek approval of their plans, realizing that they may be limiting the ability of some land to sell development rights? Assuming a town is being "approved" by the regional planning commission, the only advantage to having the plan "approved" before January 1, 1996 would be to require state agency plans to be compatible with it. After January 1, 1996, there are four benefits to having an "approved plan": 1) eligibility for state planning funds; 2) ability to levy impact fees; 3) plan exempted from review by commissioner of housing and community affairs; 4) state agency plans must be compatible.
20.2. Suggestions for Agricultural Land Rating Systems

Clearly state the purpose(s) of the agricultural land rating system being developed. Divergent purposes are likely to require different criteria as well as different weighting schemes.

Only include criteria that help achieve the stated purpose(s) of the rating system. For example, an assessment of economically viable agricultural land probably should include criteria on size, infrastructure, and soil capability but it probably should not include criteria on wildlife habitat, recreation, scenic beauty or other factors that do not affect viability of the land for agriculture.

Similarly, the level of detail should be designed to collect only the information necessary to achieve the purpose. Committees often overwhelm themselves by trying to collect too much data. In some cases, evaluation systems can build on each other; a fairly general system can be used to identify land appropriate for an agricultural zone and a more detailed system can be used to identify the most viable farms within that zone. An even more detailed system can be used to evaluate the most viable fields within farms, or the land in a farm most appropriate for development if a limited development scheme were proposed.

Not all of the factors need to be treated equally. Threshold factors may determine minimum eligibility criteria for a parcel to be evaluated. For example, a town may decide that land must be at least 10 acres and in active agricultural use before it is even considered. Tie-breakers may be used to differentiate between two otherwise equally important parcels. For example, if an evaluation system were set up to determine the parcels which were most economically viable for agriculture in order to assign priority for the purchase of development rights, scenery might be considered a tie-breaker but should not be part of the ranking for determining viability.

Rating systems can branch. For example, assume a town were evaluating parcels in terms of economic viability. Soil capability and drainage would be important to all parcels. However, proximity to the center of town might be an asset for a market garden and a liability for a dairy farm. A rating system could be set up to branch at a certain point, assigning positive points to a market garden for close proximity to the village and positive points to a dairy farm for being away from the village.
Most towns will want to do broad-brush ratings of large areas of town to determine the best locations for agricultural zoning districts. Highly detailed field-by-field ratings will only rarely be needed. Consider putting a rating system in place to ensure consistency of results, but actually doing a detailed rating only on a case-by-case basis as the need arises. For example, determining the portions of a farm where development is most compatible could be done through a detailed, highly site-specific rating of all the lands within a particular farm. This may be appropriate for farms which would like to take advantage of a clustering/agricultural zoning option. There may be little reason to rate all the fields in town using the same level of detail.

The rating systems and ratings should be revisited occasionally because the importance of some of the factors will change over time.
<table>
<thead>
<tr>
<th>Purpose</th>
<th>Level of Analysis</th>
<th>Factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delineating Ag Zones</td>
<td>Area</td>
<td>• Percentage of land in agriculture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Availability of agricultural services</td>
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<td></td>
<td></td>
<td>• Availability of labor</td>
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<td></td>
<td></td>
<td>• Relationship to residential areas</td>
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<tr>
<td></td>
<td></td>
<td>• Percent of soil of statewide significance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Public investment in sustaining agriculture</td>
</tr>
<tr>
<td>Priority for Purchase of Development Rights: the most viable farm units</td>
<td>Farm</td>
<td>• Threshold factor: within agricultural zone</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Total acres in unit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Acres of soils of statewide significance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Balance between land and structures</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Potential for diversification</td>
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<tr>
<td></td>
<td></td>
<td>• Importance to continuation of ag in area</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Investment in agriculture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Tie-breaker: threat of conversion to non-farm use</td>
</tr>
<tr>
<td>Location of possible sites for clustered development (in exchange for</td>
<td>Field</td>
<td>• Threshold factor: within agricultural zone</td>
</tr>
<tr>
<td>conservation restrictions on agricultural land)</td>
<td></td>
<td>• Soil capability for development</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Viability of remaining farm unit</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Access to development site</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Proximity of development site to farm operations</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Buffer strips</td>
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</tbody>
</table>
Over a decade ago, SCS designed a Land Evaluation and Site Assessment system (LESA) so federal agencies could evaluate the "agricultural economic viability" of their land and put plans and policies in place to protect the nation's most viable and important farmlands. State and local governments were quick to pick up the federal LESA model and adapt it to their situations and needs.

The LESA model is based on a maximum score of 300 points: a maximum of 100 points for land evaluation and a maximum of 200 points for site assessment.

The Land Evaluation component is straightforward. Soil survey maps of the area being evaluated are matched up with the agricultural values assigned by the SCS to the soils. The SCS has rated agricultural values for soils on a statewide basis and has refined that rating for several counties. When doing a regional or local LESA they suggest using the county values if they are available. Statewide values should be used when comparing lands across county lines. Contact the SCS for a copy of Agricultural Value Groups for Vermont Soils or to find out if a special report has been prepared for a particular county.

The additional 200 points in the Site Assessment component can be tailored to meet the community's needs. Generally, a committee selects the factors to be used and assigns a maximum number of points to each one reflecting the relative importance of each factor.

The practical problems with local LESA systems are similar to the problems with any other rating system. First, if the purpose is not clear, the results will not be helpful. Remember, the purpose of the SCS LESA system is to evaluate agricultural economic viability. Because of this, the first 100 points are directed at the economic viability of agricultural land. Site assessment factors related to distance from farm supply stores would fit in well to an evaluation of economic viability; site assessment factors related to scenery would not. Second, partly because the purpose is not clear, the level of detail required to fill in the evaluation often makes the process too time consuming and the results less clear.
Sharon Murray, director of the Franklin-Grand Isle Regional Planning Commission, points out that "LESAs can be a useful tool, but they're an awful lot of work—too much for many local boards—and often with little real application." She believes many towns have made the Site Assessment component of their LESAs more detailed than is necessary for land use planning. By removing superfluous factors from the Site Assessment and properly targeting the unit of land to be analyzed, towns will get the most out of their work. They can always go back and do more detailed assessments later, if needed.

The National Agricultural Land Evaluation and Site Assessment Handbook, available from the SCS, explains how to develop and apply the LESA model. A statewide Farm LESA designed to rate the economic viability of whole farms was prepared as a model for regional and local planners. It is available from the Vermont Agriculture Department. Contact your regional planning commission for examples of LESA systems developed in your region.
21. Sources of Assistance

The Planning Manual for Vermont Municipalities contains an exhaustive list of agencies and organizations that can provide information or assistance to citizens. Individuals and groups who have a special interest in sustaining agriculture and may be able to provide assistance are listed below.

Vermont Department of Agriculture
State Agricultural Land Use Planner
116 State Street
Montpelier, VT 05602
(802-828-2500)

Soil Conservation Service
69 Union Street
Winooski, VT 05404
(802-951-6795)

George D. Aiken Resource Conservation and Development Area
P.O. Box 411
Randolph, VT 05060
(802-728-9526)

Northern Vermont Resource Conservation and Development Area
RR 4 Box 2293
Berlin, VT 05602
(802-828-4595)
Vermont Housing and Conservation Board
136 1/2 Main Street
Montpelier, VT 05602
(802-828-3250)

American Farmland Trust Northeastern Office
One Short Street
Northampton, MA 01060
(413-586-9330)

Vermont Land Trust
8 Bailey Avenue
Montpelier, VT 05620
(802-223-5234)
(800-639-1709)

Vermont Farm Bureau
58 East State Street
Montpelier, VT 05602
(802-223-3636)

Rural Vermont
15 Barre Street
Montpelier, VT 05602
(802-223-7222)
22. Useful Sources of Information


22.1 General


22.5 Zoning and Subdivision Regulations


10 V.S.A. Section 1410 (d) (Supp. 1990).
10 V.S.A. Section 6301 (Acquisition of Interests in Land by Public Agencies)
12 V.S.A. Section 5751 (Right-to-Farm Act)
24 V.S.A. Section 6001 (Act 250)
24 V.S.A. Section 4301 (Planning and Zoning)
32 V.S.A. Section 3751 (Use Value Appraisal)

Executive Order 52, 3 V.S.A. Appendix XII (1981)

Joint Resolution 43 of 1982. Journal of the House, Page 91, for Thursday, January 28, 1982. (Supports the activities of private land trusts in agricultural land protection.) Describes Vermont agriculture as "the major contributor to the economy of this State and the region, both directly and through its advantages to tourism and other industry."


