

# New Jersey Future

## Rethinking Farmland Preservation in New Jersey

May 2001

### I. Introduction and Executive Summary

The purpose of this report is to summarize and synthesize the full scope of farmland preservation in New Jersey; to identify issues; to outline fresh approaches to this critical and timely resource conservation issue; and to pinpoint areas that deserve fuller inquiry and action.

Some 850,000 acres of farmland remain in New Jersey today – roughly half of the farmland we had as recently as 1950. New Jersey's long effort to stem this loss dates from *The Farmland Assessment Act of 1964* that grants preferential property tax assessments to farm properties. The Pinelands program, enacted in 1979, introduced regulatory restrictions for farmland and natural areas.

More recently, civic and governmental attention has focused on the state purchase of development rights (PDR) program administered by the State Agriculture Development Committee (SADC) since its inception in 1983. This program gained significantly increased funding with the creation, in 1999, of the Garden State Preservation Trust. Through this program, New Jersey has spent \$292 million in public funds to purchase development rights to 476 farm properties, preserving some 69,500 acres as of December 31, 2000.

These significant legislative milestones – tax policy, regulation, public acquisition – along with many others, are a rich and varied experience that New Jersey can examine, learn from and build on. The New Jersey farmland preservation experience is far more than a narrow focus on the PDR program suggests – and offers a broader base to build on.

#### Conclusions Summary:

- **High public expectations.** In their support for a million additional acres of open space within the next decade – of which 500,000 acres would be farmland – New Jerseyans asserted that preservation of farmland and the natural landscape are among their highest priorities. A New Jersey Future opinion survey affirms that, by overwhelming majorities, New Jerseyans want to preserve farmland and restrict growth.
- **Insufficient resources.** Considering financial resources, administrative constraints, and the availability of applications, New Jersey Future estimates that about 245,000 additional acres of farmland can be preserved through the SADC easement purchase programs in the coming decade, well short of the 500,000 acres goal (See Figure 14).
- **Farmland loss will continue.** Absent new, complementary initiatives, farmland loss will continue. Suburban-fringe communities, where sentiment for open-space conservation runs highest, will lose the most farmland. Even in the unlikely event that the 500,000-acre goal were achieved in a reasonable timeframe, we would have lost 350,000 acres, or 41 percent of today's farmland, mostly concentrated in these areas (See Figure 1).
- **A checkerboard preservation pattern.** Gross figures obscure wide variations in the geography of farmland preservation. Sixty percent of all preserved farmland is

concentrated in 18 of the 82 towns that have preserved farmland. Even in these “bellwether” towns, farm properties have been preserved in a checkerboard pattern that permits – and often encourages – intrusive residential subdivision (see Figure 13).

- **Land policies in conflict.** Outside the Pinelands, the fundamental elements of land use policy – sewerage, zoning, affordable (Mount Laurel II) housing requirements, tax policy – are at best disconnected from, and at worst directly in conflict with farmland preservation. While the narrow focus of farmland preservation policy in New Jersey has been on the purchase of development rights, other land policies fuel farmland loss.

### **Recommendations Summary:**

- **Learn from the “bellwether” towns.** Some towns – among them East Amwell, Washington, Plumsted, Chesterfield, and others – have skillfully combined land use regulations under the *Municipal Land Use Law* (MLUL) with local and state easement purchase funds, sound planning, political leadership and negotiating skills. Down zonings, combined with zoning flexibility, have slowed the pace of growth, allowing strategic application of easement purchase funds.
- **Implement growth management.** *Growth management* is a mutually complementary relationship among land planning, taxation, infrastructure, public spending and zoning. Absent any additional legislation, local and state government alike can do far more to coordinate the powers of government, toward more effective farmland preservation.
- **Limit urban infrastructure.** Amendments to the present New Jersey Department of Environmental Protection rules could proscribe extension of sewerage to farmland preservation areas, in accord with the recently adopted *State Development and Redevelopment Plan*.
- **Legislate new tools for municipalities and provide technical support.** Towns could save more farmland with enabling legislation for: transfer of development rights; clarification of cluster development provisions; mandatory master plan elements; and state-level legal support for down zonings and other local land-use restrictions.
- **Reform farmland tax policy.** We should limit preferential tax assessment to property owners who make a long-term commitment to agricultural use; and enact a greater tax penalty for conversion of farmland to development, with the proceeds dedicated to the state farmland preservation fund.
- **Review SADC Policies and Procedures.** We need (1) Stricter standards for identifying prime farmland areas and tracts, in conformity with the State Plan; (2) Priority for easement purchase funds to jurisdictions that have planned for and protected farmland through land-use regulations and infrastructure restrictions; (3) Streamlining current appraisal procedures; and (4) Easement provisions that provide for public access where it is warranted.

With the programs administered by the State Agriculture Development Committee, The Pinelands Commission, and other agencies, New Jersey has a wealth of positive experience on which to build. The sections that follow aim to summarize that experience and discuss these new directions in more detail.

## II. New Jersey's Changing Landscape

It will be useful to look at broad land-use trends and issues so as to gain a perspective on farmland preservation in New Jersey. New Jersey Future and other civic and governmental groups for the first time are assembling the data that allow us to examine past land-use trends and policies, to describe and analyze present land use on a statewide basis, and to envision the future use of land in our state.

New Jersey's approximately five million acres are used as follows: 1.417 million acres, or 28 percent, was urban or suburban as of 1995, the latest year for which data are available. About 969,800, or 19 percent, has been purchased or permanently restricted from future development as parkland, ecological reserves or farmland. This is a remarkable accomplishment, testimony to the consistent public support for "Green Acres" and farmland preservation funding. Since 1961, New Jerseyans have approved nine bond issues, totaling \$1.39 billion, for these purposes.

On the 1997 recommendation of the Governor's Council on New Jersey Outdoors, Governor Whitman initiated a program to acquire or restrict an additional one million acres of land within the next decade. If achieved, the total amount of preserved land in New Jersey would approach two million acres, or 40 percent of the state's land area, an astonishing amount for an eastern state. The agency to achieve this goal is the Garden State Preservation Trust, established by law in 1999.

Despite stepped up acquisition programs, agriculture-to-urban land conversion continues apace. Between 1986 and 1995 (figures are available for these years), developed land increased by 222,390 acres. This loss was at the expense of farmland, that decreased by 123,390 acres; forest land, by 44,620 acres; and freshwater wetlands, by 51,860 acres. John Hasse, of the Rutgers Center for Remote Sensing and Spatial Analysis (CRSSA), estimates that if sprawl continues at the present rate of about 22,000 acres a year, New Jersey will likely be the first state to run out of land sometime in the twenty-first century. Should the million-acre goal be achieved, virtually every undeveloped acre will have been developed or held for development, and every acre of open space to be preserved will have been intentionally preserved.

For lands we choose to develop, we are developing them less efficiently. Between 1986 and 1995, while population growth increased by 4.5 percent, developed land grew by 15 percent. New Jersey Future studies show that, in 1986, we used 0.16 of an acre per person on a statewide average. But, the 20 municipalities that developed the greatest number of raw land between 1986 and 1995 – which together accounted for more than 25 percent of all new acres developed in the state - developed at 0.36 acres per new person. New development in the suburban fringe has been more than twice as land-hungry as the statewide average in 1986, and far more so than in previous decades.

We are also developing land in a discontinuous, checkerboard pattern. Studies by CRSSA document the fragmentation of agricultural and woodland areas, with larger open spaces

increasingly broken into smaller ones. Suburban growth is leapfrogging into formerly unbroken agricultural expanses along the Delaware Bayshore in Cumberland and Salem counties; into the Farmbelt of Burlington, Mercer and Monmouth counties; and into the Piedmont of western Hunterdon, Sussex and Warren counties. The progressive fragmentation of open space undermines forest ecology, wildlife habitats, and the maintenance of biodiversity and endangered species, just as it undermines agriculture.

Many centuries of American history have distinguished the landscapes of cities, wilderness and the rural countryside. Only in the past half-century have we been willing to concede that an entirely new landscape type has crept over more than 80 percent of New Jersey, just as it has over metropolitan regions across the country. The suburbs and their adjunct – the “exurban” fringe – are a landscape new to cultural history and to public policy. The checkerboard pattern of exurban New Jersey mixes three distinct elements: suburban life, agriculture and natural ecosystems.

Real estate markets – abetted by the zoning policies of myriad local jurisdictions and facilitated by massive public investment in highways, sewers, and schools – have created the scattered landscape of suburban life, with its large residential lots, scattered employment centers, attenuated retail strips and dependency on highways for mobility.

Agriculture is the second element. In some areas, farming continues in the traditional “production” model: extensive uninterrupted blocks reasonably free of suburban growth. Elsewhere, smaller, scattered farms thrive on nearby suburban markets. These farms may produce vegetables or nursery stock, or have an amenity value, as for example the horse farms in Monmouth County.

Nature is exurbia’s third element. The outright loss of woodland, marsh, and grassland habitats is an obvious effect of suburbanization, but ecologists equally deplore the fragmentation of ecosystems, due to the isolation of forest fragments and the barriers presented by roads and buildings. Agricultural lands, say some scientists, can under the right circumstances build biodiversity. But badly managed farms can erode natural systems as readily as residential suburbs.

While the preservation of “open space” and more recently of extensive wildlife habitats has long been a public policy goal – as have been the preservation of farmland and the management of suburban land development – we are only beginning to understand and to plan for these three elements as part of a more complex, interactive whole. While in some ways synergistic, they are in other ways inimical. Just as we created public policies to manage cities, wilderness and rural areas, we are now struggling to create new public policies appropriate to our new suburban/exurban landscapes.

### III. Agriculture in Suburban New Jersey

Many New Jerseyans do not fully appreciate that the rural landscape is maintained in large part by business enterprises: farm businesses. Their failure as businesses would result in the disappearance of much of our open landscape – through conversion to suburban growth, or reversion to woodland.

“For agriculture to survive farmers must make money and farming must have an economic base. Otherwise, agriculture will always yield to alternative uses of the land.” So writes Dr. Adesoji Adelaja, Dean/Director of Research for the New Jersey Agricultural Experiment Station and a prolific author of the most insightful research on agriculture in New Jersey. This critical issue has come to be known as “agricultural viability.” According to Adelaja, “Viability may be defined as the ability of a farm to meet its financial obligations.”

In his classic work on the economic geography of the northeast, (*Megalopolis*, 1961) Jean Gottman stated: “The direct consumer’s market is the megalopolitan farmer’s particular advantage.” But the reality is somewhat more complicated. The locational advantages do include: access to nearby markets, low transportation costs, higher prices for fresh produce and the opportunity for direct marketing. Suburbanization often translates into a market for high value-added products: nursery stock, vegetables, fruits and exotic animals. It also offers access to off-farm jobs and opportunities for supplemental income from entertainment agriculture.

But there are negatives: high business costs from taxes, insurance, labor, utilities, and raw materials. The negatives also include escalating land values. These factors in combination have long been understood as the primary cause of an “impermanence syndrome” that shortens the planning horizon of farmers, and discourages investment in new machinery, technology and infrastructure. Disputes with suburban neighbors regarding farm nuisances aggravate the problem.

A 1993 survey of New Jersey farmers, conducted by Dr. Adelaja, is the source of much useful information about New Jersey agriculture. Some of the findings are alarming. For instance, only 49 percent of the respondent farmers said they generated sufficient income, including off-farm income, to cover all their business costs in 1993. As reported in the 1994 FARMS Commission report on the future of New Jersey agriculture, “... 27 percent of farmers between the ages of 25 and 39 – those who will see the state’s agriculture through the year 2020 – say that, because of the current business environment, they would sell all their land if offered a fair price and would move to another state to remain in agriculture.” Of all respondents, 35 percent would sell all their land today if offered a fair price, while an additional 8 percent would sell some portion.

To address the business aspect of farmland preservation, two prominent public policy measures have been adopted in New Jersey: “right to farm” measures at the state and local levels, and preferential assessment of farm property for local real estate property tax purposes.

## **Right to Farm**

The intermingling of farms and suburban growth often leads to conflicts between farmers and non-farm suburbanites. Such disputes may involve: trespass, vandalism, dust from crop cultivation, machinery noise, construction and operation of farm stands and stores, animal smells, application and disposal of manure, the impact of farm vehicles and pesticide applications. There are conflicts between farmers and suburbanites regarding the definition of a farm market.

The costs of these disputes are very real. The 1993 Rutgers survey found that 16 percent of farmers had experienced such conflicts in the previous five years. Such complaints had reduced farm viability by an average of \$25,000 annually per farm. Extrapolating this figure to the population of 8,400 farms yields an estimated 1,440 farms experiencing right-to-farm disputes, with an aggregate cost of \$33.6 million annually, or 12 percent of NJ's 1996 net farm income (Adelaja and Sullivan, 1998). As noted, these conflicts undermine the confidence of the farmers in their future.

New Jersey's *Right to Farm Act* was adopted in 1983 to address these issues of compatibility between suburbs and agriculture. In brief, the *Act* validates generally accepted agricultural practices by providing an irrefutable presumption they shall not constitute a public or private nuisance or otherwise be deemed to invade or interfere with the use or enjoyment of nearby land or property, unless there is a threat to public health or safety. The *Act* provides for dispute resolution procedures involving County Agriculture Development Boards (CADBs,) and appeals to the State Agriculture Development Committee (SADC). There are provisions for defining generally accepted agricultural management practices.

The *Act* provides farmers with relief from local ordinances that interfere with on-site production, processing, and packaging of agricultural products, a critically important consideration for those farmers attempting to "add value" to their homegrown goods by engaging in on-site processing or sales to the public. To benefit from the *Right to Farm Act*, a commercial farm must be operated in conformity with federal and state laws and best management practices, as recommended by the SADC. The farm must be located in a municipal zone where agriculture is deemed a permitted use. The 1983 *Act* was found wanting, especially after series of Superior Court decisions that undermined its provisions. After an extensive analysis by Cook College and the State Department of Agriculture, the *Act* was significantly strengthened. Amendments adopted in 1998 tightened the definition of a "commercial farm;" prescribed a more liberal definition for farm markets; and strengthened many other provisions of the statute.

New Jersey Municipalities have also adopted their own right-to-farm ordinances under the provisions of the General Municipal Law. As of 1996, there were 79 municipalities outside the Pinelands and 46 in the Pinelands with right-to-farm ordinances, out of 328 municipalities with farmland-assessed acreage. Of these, according to Rutgers analysts, only 47 municipalities have "the highest degree of protection."

#### IV. Tax Policy: Preferential Assessment for Farmland

The preferential, use-value assessment of farm property for real estate tax purposes is a second means of addressing farm profitability. By now, virtually all states have some sort of use-value assessment for land devoted to farm and/or forest use. In New Jersey, farmland use-value assessment began with the *Farmland Assessment Act of 1964* (PL 1964, Ch.48). In 1999 (the latest year for which data are available), there were about 1.16 million acres under farmland assessment in New Jersey, down from 1.27 million in 1983, the year when the greatest acreage was enrolled. (The following discussion draws heavily on *Gaining Ground; Preserving New Jersey Farmland Through Effective Tax Policy*, New Jersey Conservation Foundation, 1998).

To be eligible for farmland use assessment under current law, a tax lot must be at least five acres in size. It must be “actively devoted” to agriculture in the present and two preceding years; it must have produced \$500 per year in gross sales on the first five acres, and an additional \$5 per year on each additional acre. The farmland use value is computed on a statewide basis by the N.J. Division of Taxation, using a formula that combines a capitalization of net farm income per acre with an estimate of the natural productivity of the land.

When property is no longer farmed – usually because it is developed – a “rollback” tax is levied. The rollback is the difference between the farmland value and real estate market value for the current and previous two years. Despite New Jersey’s intent to base farmland taxes on agricultural use, the property tax burden on New Jersey farms remains among the highest in the nation, in part because farm buildings remain taxable at full value, though the land tax is reduced sharply.

Two distinct rationales underlie preferential property tax assessment for farmland and forestland. The first is based on tax equity. It is argued that, because farming and forestry are land-based businesses, real property taxes are more onerous than to other businesses that are not land-dependent. To treat agriculture and forestry fairly, the rationale runs, their property tax burden should be lightened relative to other businesses.

Another tax equity consideration is the relative fiscal costs and benefits of agricultural/forest land versus urban land. While some suburbanites have argued that a preferential tax for farms and forests shifts a tax burden to their suburban homes, a more widely accepted analysis affirms that the demands of suburban homeowners for municipal services are ordinarily many times more costly than the open land they replace. A widely cited study by the American Farmland Trust (1991) finds that, for each \$1 of tax revenue generated by agricultural and forest lands, \$0.30 was expended, while the ratio for the residential sector was \$1: \$1.14. Thus, farmland yields a tax surplus; suburban homes a deficit. Considered from a tax equity standpoint alone, the farmland use-value property tax is positive land policy.

The second rationale turns on farmland retention. Here, the conclusions are negative. The final report of the 1988 N.J. State and Local Expenditure and Revenue Policy (SLERP) Commission concludes: “The program has been an ineffective deterrent to the development of farmland because the penalty for development . . .diminishes relative to the tax subsidy received as the duration of the subsidy lengthens. The program thus subsidizes speculator and developer

‘land banking,’ the acquisition and holding of parcels of land for eventual development. The penalty bears no relation to the gain realized by developing the property.” After a review of an extensive literature on farmland assessment as well as experience in New Jersey, the NJCF concludes that the farmland assessment effectively provides an interest-free loan to landowners holding their property for future financial gain or actual development.

Most criticisms of farmland assessment respect the tax equity contribution to the viability of agricultural business, and to the quality of life in communities with farmland. At the same time, they focus on two reforms: First, they would increase the rollback, or penalty for conversion of land to other than farm use. At present, New Jersey’s “rollback” provisions are weak compared to others states in the northeast. The New Jersey Conservation Foundation recommends increasing the rollback to 10 years, and dedicating these funds to the state farmland preservation fund. The argument for an increase is based on the principle that the value of land is created by government policies and investments. So long as farmland is preserved, it yields a public benefit. But its conversion to suburban use results in a both a windfall profit for the property-owner and sharply rising costs to municipalities.

The second reform seeks closer links between preferential tax treatment; a longer-term preservation commitment by property owners; and the advancement of broader land policy goals. New Jersey’s preferential assessment could, for example, be limited to properties in agricultural districts, where property owners enter into a long-term agricultural commitment, and wherein other land policy measures (the absence of sewer extensions, for instance) apply. New York State has such a stipulation. Wisconsin grants greater property tax abatements in jurisdictions that have adopted stricter land-use restrictions, either through exclusive agricultural zoning or preservation agreements with individual landowners. The SLERP Commission recommended certain property tax benefits only to areas designated for environmental or rural conservation in the *State Development and Redevelopment Plan*.

## **V. New Jersey’s Purchase of Development Rights (PDR) Program**

The *New Jersey Agriculture Retention and Development Act* (Ch. 32, PL 1983) and *The Right to Farm Act* (Ch. 31, PL 1983) established a multi-faceted farmland preservation strategy. Its centerpiece is a state fund for the purchase of development rights on farmland, administered by the State Agriculture Development Committee (SADC), in but not of the Department of Agriculture.

Other features include (1) an incentive program for property owners to restrict their property for eight years in return for certain benefits; (2) the delineation by counties of Agricultural Development Areas (ADAs), a means of focusing preservation efforts and limiting governmental eminent domain proceedings for, say, roads, schools and sewers; and, (3) right to farm provisions, discussed earlier.

For its acquisition programs, the SADC offers a government cash payment in return for an agreement by the landowner to grant a restrictive easement that precludes development. The landowner retains full ownership to the fee title to his property, subject to terms contained in an

agricultural easement. The SADC offers landowners a financially competitive alternative to the sale of farm property at real estate market prices. The property is first appraised at its development potential, or what the property would be worth on the open real estate market (the “before” value); then the appraisal estimates the value of the property at its restricted farm use (the “after” value). The difference between the “before” and “after” is officially certified and subsequently approved for funding.

The public financial investment in the SADC programs is significant and increasing. Since 1985, the year the first easement was purchased, the program has secured 69,545 acres of farmland on 476 farm properties, and a total public cost of \$292 million, as of December 2000. (For program data, see Figures 5-11.) The average cost of preserving an acre of farmland has ranged from a low of \$1,713 in Cumberland County to a high of \$8,578 in Morris County (see Figure 5). Not surprisingly, the variation in program cost and yield carries significant fiscal and policy implications. Should limited public funds be expended in low-cost agricultural areas distant from urban centers, or should funds be distributed equally to counties and agricultural areas on the urban fringe? To date, the SADC has adopted a policy that gives every participating county something, though aggressive, well-staffed, and preservation-minded counties, like Burlington, receive far more.

The SADC’s philosophy rests on the word *voluntary*. Its programs depend on a flow of applications tendered by landowners. Nor may state, county or municipal governments apply on behalf of a landowner, nor may they permit the use of funds for eminent domain takings of farm interests. The SADC thrives on a combination of real estate market pricing and general goodwill in the farming community. SADC administrators have worked hard with county agricultural boards and municipal governments to affirm and reaffirm the voluntary nature their offerings.

There are, at present, four distinct programs administered by the SADC.

### **The “Traditional” Program**

The “traditional” program, legislated in 1982, relies heavily for project management on County Agriculture Development Boards (CADBs). This includes farmland preservation planning, marketing, landowner contact and support, scoring of applications and the monitoring of restricted property. Farmers have relied heavily on county-level contacts for interpretation of SADC regulations, program details and assistance through the labyrinth of dual approvals by the CADBs and the SADC. The SADC has funded an historical average of 67 percent of the cost of the easements, with the remainder coming from county and municipal funds and landowner bid-down discounts.

Despite its complex, obstacle-filled, two-year administrative process, the traditional program has been in operation long enough to be understood and accepted by many members of the agricultural community. The program has earned ample support among county and local officials – both elected and administrative – who have worked hard to launch the program and continue their work in shepherding local projects through the state pipeline. These government people generally hold that the traditional farmland program has been highly successful and should not be replaced or sufficiently modified by any “improved” program.

### **Direct State Acquisition**

This program authorizes the SADC to directly acquire either fee-simple title or farm easements. Applications and appraisals are processed by SADC staff with no CADB involvement. The SADC may acquire the full fee title to a given farm that is then made subject to a restrictive farmland easement and resold at public auction. In this fashion the SADC has been able to move quickly to save critical farms while recouping most of its investment. Or, it may acquire the easement in the first instance. The SADC pays the full cost of these acquisitions.

To date, this program has yielded only 25 of 438 completed projects. These 25 transactions have totaled approximately 4,700 acres of which nearly half was acquired within the last two to three years. Direct state acquisition started slowly, but we view the Direct State Acquisition Purchase Program as a fast, flexible and cost-effective element in the State's preservation toolbox, one whose use should grow markedly over the next decade.

### **Planning Incentive Grants (PIGs)**

This new program, legislated in 1998, is intended to attract municipalities to take a stronger role in farmland preservation. If they meet certain planning and other criteria, they may qualify for a block grant of up to \$1.5 million in acquisition dollars per year in state matching funds. Once approved as a group, single projects automatically qualify for matching funds, eliminating the need for the SADC to individually rank and approve applications as required by the traditional program. The PIG program requires municipalities to adopt a farmland preservation element of their municipal master plan, establish a local farmland preservation committee, enact a local open-space preservation tax and enact a right-to-farm ordinance. To date, approximately two dozen municipal PIG applications have been approved for funding by the SADC, although no farm easement projects have actually closed.

### **The Nonprofit Acquisition Program**

Newly established in 1999 pursuant to the *Garden State Preservation Trust Act*, this program allows the SADC to award 50-percent matching grants (up to \$500,000 per project) to nonprofit land conservancies active in farmland preservation. The balance of funds for the project must come from the nonprofit's local fundraising or through a discounted sale by the farmer-landowner. Owing to the program's relative youth, there are no project closings to date, however, partnerships are forming between local nonprofit conservancies and municipalities with both entities relying on the nonprofit acquisition and PIG programs to help with project cross-subsidies.

How will these four programs perform over the next decade, and how can they be expected to contribute to the Council on New Jersey Outdoors goal of preserving 500,000 acres of farmland in New Jersey? Will the SADC be able to achieve the goal? If so, during what period? And, if not, what additional and complementary means are necessary to meet the public expectations regarding farmland preservation? Figure 14 presents New Jersey Future's estimates for performance by program. An explanation follows.

There are three categories of constraints on program performance: (1) financial, (2) landowner participation, and (3) administrative. These are discussed in turn.

### **Financial Constraints**

How much funding is actually available to the SADC in a given year? The correct answer is between \$36 and \$80 million. Under the *Garden State Preservation Trust Act* three minimum funding classifications were established using a base distribution of \$98 million per year: For the preservation of historic structures there is \$6 million with the balance of \$92 million divided between Green Acres (60 percent, or \$55.2 million for recreational land) and the SADC (40 percent, or \$36.8 million for farmland). As noted, these distributions represent minimum annual allocations established under the *Act*.

As with many government programs, one must distinguish appropriations from obligations and expenditures. In the case of the *Garden State Preservation Trust Act* we must further separate the minimum funding guarantees from supplemental appropriations permitted by the *Act*. Practically speaking, the SADC can receive from the Legislature considerably more than \$36.8 million. In fact, appropriations to the SADC for fiscal year 2000 totaled \$80 million and a similar financial target is set for fiscal 2001. But based on its own data covering the calendar year 2000, the SADC expended only \$16.2 million on actual project closings, or just over 20 percent of its appropriation. In fairness to the SADC, however, we should note that the State's fiscal year precedes the calendar year by six months and deviations in data should be anticipated for this reason.

Our point is that in generating accurate estimates of program capacity one must look beyond appropriations figures to actual project closings under the SADC's project pipeline. While appropriations give us a good measure of the capital available for public land purchases, New Jersey Future believes that administrative capacity and the ready supply of qualified farm applications will be the best measure of program capacity. This is especially true for the SADC's near-term accomplishments, notably projects completed over the next five years.

For the 2000 fiscal year the legislative appropriation to the SADC substantially outstripped the program's cash expenditures for completed farmland projects, which totaled \$16.2 million (calendar year). Will the SADC be capable of doubling or quadrupling the volume of project closings within 1-3 years as required to meet the half-million acre goal as well as the high level of appropriations?

While financial capacity may appear unbounded given the overall funding enabled by the *Garden State Preservation Trust Act* and legislative appropriations thereto, a better estimate of SADC program capacity is built around: the total number of project closings processed annually by the SADC; the average cost of preserving an acre of farmland in New Jersey; and the average size (in acres) for a farmland preservation application. Few economies of scale are realized administratively if the average size of a project continues to diminish, for the same level of staff effort is required to process an farmland application covering 300 acres as is required for 30 acres. This loss of scale is likely to occur as the SADC turns its attention away from the traditional program and toward the PIG and nonprofit programs.

By way of background, the traditional farmland program has been the workhorse of the SADC's preservation effort. Historically, the average statewide-adjusted cost per acre of eased farmland is \$4,515, a figure derived from all easement projects closed and recorded between

1996 and July 2000. (Of course, the average per acre easement cost varies by region from a low of \$2,028 in the seven-county South Jersey area to a high of \$7,132 within the four-county Central Jersey region) This massive intervention in the land market comes at a time of strong demand for housing and related suburban uses, raising the important issue of its inflationary effect. As we have already explained, the SADC has historically supported approximately 67 percent of the purchase price of the easement with the remainder funded through county and municipal partners and landowner bid-downs. The SADC anticipates lowering its cost-share to the 60 percent level.

Unlike the traditional program, the PIG and nonprofit programs lack a track record of completed projects, thereby making difficult the job of projecting their likely programmatic impact. Judging from the number of applications tendered in recent months – combined with projected appropriations for fiscal year 2001 – it appears that both programs are off to a strong start. Each program has generated substantial interest among host municipalities in Central Jersey counties, including Hunterdon and Monmouth, and among several nonprofit organizations with experience in land preservation, such as the New Jersey Conservation Foundation and the Monmouth Conservation Foundation. In Figure 14, we have estimated that these two programs will collectively preserve 4,000 acres per year (2,800 under the PIG and 1,200 under the Nonprofit Program), although it may take one to three years to achieve these results.

### **Applicant Pool**

All SADC programs remain voluntary with applications tendered by the landowner. In addition, there are several distinct applicant pools, each seeking to qualify under one (or more) of four programs: traditional, direct, PIG and nonprofit. It is the belief of New Jersey Future that the highest rate of growth in applications should be expected under the new PIG program, which is embraced by progressive municipalities situated on the suburban-exurban fringe. These municipalities are taxing themselves for open space purposes and generally express clear objectives for preservation of small, expensive and lower-quality farm properties when measured against applications tendered under the traditional program. Growth within the applicant pool for the SADC's direct purchase program as well as the nonprofit program will be more modest, limited by the number of qualified projects as well as short-term administrative challenges.

The applicant pool for the traditional program may grow or it may shrink depending how one approaches the question. On one hand, the pool of applicants can grow substantially by virtue of the CADBs enhanced solicitation, scoring and pre-qualification of applications. Depending on available funding and the message from SADC administrators, CADB standards for qualifying easement applicants can be flexibly managed to "pass through" additional applicants. Under these conditions the applicant pool could suffer from reduced quality with a higher proportion of applications evidencing lower soil values, smaller average parcel sizes and higher relative "after" values arising from appraisals (this would be indicative of a shift toward "estate-type" farm applications). Of these, the two most telling indicators include soil quality and parcel size. On the other hand, the applicant pool might conceivably shrink in proportion to the number of willing easement sellers.

### **Administrative Capacity**

Given the enormous increase in funding the farmland program, the SADC was quick to

hire a number of capable CADB staffers, bringing them to Trenton to work in the central office. In the coming year the SADC intends to hire additional project management staff. This shift will improve the SADC's management of pending farmland applications but may deprive the CADBs of capable staff. The CADBs are burdened by entirely too much program work and are in need of additional staff. Municipalities, for their part, are generally inexperienced and likewise overloaded with their work under the PIG program.

The SADC's administrative capacity is not only constrained by staff. Consideration should be given to cumbersome procedures, beginning with the appraisal "client" and review function and continuing to applicant ranking and approval, management of the offer bid-down process, administration of metes-and-bounds survey standards, title exclusions and other legal conditions imposed at the closing stage. In the post-closing / easement monitoring phase, there are areas where the SADC must recognize the need for greater flexibility in working with the farmer-holder of the restricted fee.

### **Overall Program Summary**

Figure 2, "Farmland Preserved, 1982 – 2032, Projected" and Figure 14, "NJF's Estimate of SADC Program Capacity, Next 10 Years" summarize New Jersey Future's expectations regarding the SADC programs, and indicate that the half-million acre goal could be met in approximately the Year 2018.

If adequately funded and creatively administered by the SADC, the PIG and non-profit programs could lead to an array of creative and flexible farmland preservation projects, such as innovative zoning, incentive-based density and preservation regimes, as well as hybrid-type open space and farm preservation projects. From a geographical perspective, completed projects under the PIG and nonprofit program are likely to be located closer to existing population centers or in areas of nontraditional agriculture. In addition, the two programs will support projects that combine farm preservation with public trail corridors, greenway assemblages and preservation of sensitive habitat resources and acquisition of local-purpose lands, such as "farm parks."

Greater emphasis on direct state acquisition, plus the new PIG (municipally based) and non-profit programs, offer promising new pathways for the conservation of farmland, and a shift away from the "traditional" county-based model. More resources should be directed at the direct state acquisition programs (in fee and easement). This would eliminate the duplicative ranking and time-consuming interaction between the SADC and county boards. Finally, consideration should be given to replacing the appraisal process with a model based a point system, such as is used in Maryland, and likewise recently proposed by rule for acquisition within the Pinelands.

Measured in numbers of acres preserved, and despite our stepped-up efforts of recent years, New Jersey's farmland preservation program remains far behind those of Maryland, 185,872 acres; Pennsylvania, 186,321; and Vermont, 88,281 (all figures as of February, 2001, American Farmland Trust). While acres preserved by easement is hardly the only measure of program accomplishment, these figures suggest we might learn something about program administration from experience in these states.

## VI. The Geography of Farmland Preservation: Policy and Reality

### The SADC's Geographical Policies

An evolving complex of plans, policies and initiatives has, over the years, attempted to bring geographical coherence to farmland preservation. The concept of a “critical mass” was the original basis for establishing what, in SADC parlance, came to be the goal to “permanently preserve significant areas of reasonably contiguous farmland that will promote the long-term viability of agriculture as an industry.” An examination of program maps at a regional scale shows that this has been accomplished to a marked degree, though doubts remain when local patterns of suburbanization intermingled with agriculture are examined.

The SADC has adopted a succession of measures intended to bring about this geographic focus. The 1983 *Act* listed criteria for delineating *Agricultural Development Areas* (ADAs), “where agriculture shall be the preferred, but not necessarily the exclusive use of land in that area.” In practice, at the discretion of a county, ADAs may be “designated” in advance, or “voluntary,” on receipt of an application. Subsequent SADC policy called for the identification by counties of *Project Areas*, where priority is to be given to the purchase of development rights.

The SADC criteria used in ranking individual applications emphasize – for a specific property – the quality of soils, the number of tillable acres, and the presence of boundaries and buffers, including already preserved properties. Referred to collectively as “local commitment,” a far smaller number of points are granted for land-use measures intended to support agriculture; such as clustering, the absence of sewers and consistency with state, county and local plans.

Analysis conducted for this study indicates that, at the broadest, regional scale, agricultural land preservation under SADC programs has been concentrated in certain regions of the state. Certain counties have more aggressive programs than others (see Figures 4,6,7) but the regions where preservation is concentrated are larger than county-level figures indicate. These regions are characterized by good agricultural soils and relatively strong agricultural economies. At least until now, they have been beyond the urban fringe. There are two principal areas of concentration: Gloucester – Salem - Cumberland (The Delaware Bayshore), and Burlington – Monmouth – Ocean – Mercer (The Farmbelt). These two regions represent on the order of 39,000 acres, or 60 percent of the total farmland preserved under the SADC's funding program. Preserved farmland elsewhere in the state is far more scattered, for reasons of physiography, agricultural economics, or suburbanization.

Viewed at the town scale, SADC preserved lands are likewise concentrated in a few towns, not necessarily in the regions cited above (see Figure 12). Eighteen New Jersey towns (out of 82 with some preserved farmland) account for 60 percent of the preserved farmland (see Figure 3). Twenty-nine towns account for 75 percent. Upper Freehold Township in Monmouth County has 5,795 acres, or almost 9 percent of the state's preserved land. Chesterfield (Burlington County) and Upper Pittsgrove have almost 5 percent each. These local programs have been built on a combination of good agricultural conditions, only moderate development pressure and strong municipal leadership. Many of these towns have initiated land-use planning and regulatory measures to augment the farmland preservation program.

With encouragement and support from the SADC, many counties are now becoming more strategic in their farmland preservation programs. The new PIG (Planning Incentive Grant) program is specifically designed to encourage municipal planning for agriculture, and better ties between municipal land-use governance and agricultural retention. The SADC itself is becoming more proactive, expecting to identify in advance areas where public funds would best be directed. There is a progressive effort on the part of all levels to target acquisitions where they will be (a) most effective from an agricultural standpoint, and (b) where suburbanization will intrude least.

But as of now, these intentions fall short of what is required. When one looks in more detail at the townships themselves, even those with aggressive programs, it is evident that preserved farmland is checker-boarded with unrestricted properties – and that the unrestricted properties are under growing development pressure. The zoning in some of these towns may have slowed growth, yet it may not be a sufficient deterrent in the future. There is also evidence that preserved farmland actually attracts residential subdivisions of homeowners attracted to rural views. All these issues are clear in East Amwell (See Figure 13), where one of New Jersey's most aggressive farmland preservation programs may be undermined by intrusive land development.

The interweaving of preserved farmland with suburban development is cause for concern. As we have seen, nuisance (right-to-farm) issues loom high among the concerns of New Jersey farmers. On the other hand, a growing number of farms depend on the suburban appetite for fresh, nearby food. And, new developments are a sure market for nursery stock. To some degree, agriculture thrives on suburbanization. From New Jersey Future's perspective: more needs to be known about agricultural viability in exurban settings; what we do know has yet to be fully discussed in farmland policy circles; and further field research is required on this question.

### **The State Development and Redevelopment Plan**

The revised *State Development and Redevelopment Plan* represents, in conceptual terms, an overall model of growth management that accepts growth. But it recommends that growth be redirected to places that are well suited, and away from areas better suited for conservation, including farmland. The State Planning Commission recommends that this be accomplished by withholding infrastructure from conservation areas (including agricultural areas) and by encouraging municipalities to amend their local plans and regulations to accomplish this goal. If implemented, The *Plan* would do much to preserve farmland. But the Commission has very limited authority to make that happen.

The *State Planning Act* (P.L. 1985, c.398) directed that the *Plan* "... identify areas for growth, limited growth, agriculture, open space conservation and other appropriate designations..." And later, "Protect the natural resources and qualities of the State, including but not limited to agricultural development areas..." The new *Plan* (revised in March 2001), like its predecessor, establishes geographical boundaries and accompanying policy recommendations intended to delineate and protect open space. The Rural Planning Area (PA4) comprises 420,000 acres in agricultural production, two-thirds of the state's farmland, as well as forestland and small towns. The Environmentally Sensitive Planning Area comprises 726,813 acres of forest and

wetlands, as well as developed land in small towns. Both include extensive farmland and other open space already preserved, as well as developed land mostly in small towns.

There are four broad areas meeting PA 4 criteria: (1) a Delaware Bayshore region in northern Cumberland, Salem and southern Gloucester counties, (2) the “Farmbelt region,” predominately in Burlington, but with contiguous areas in Monmouth, Ocean, and Mercer counties, (3) a scattered, suburban fringe region in Hunterdon, Somerset, and northern Mercer counties, and (4) a rural belt in Warren and Sussex counties.

Were the overall land policy in the Plan implemented – shifting new growth toward areas already developed and/or served by urban infrastructure, and towards centers of varying scale – the *Plan’s* benefit to farmland preservation would be marked. The recently published impact statement documents this. (*The Costs and Benefits of Alternative Growth Patterns: The Impact Assessment of the New Jersey State Plan*, September 2000).

The Impact Assessment shows that, under TREND projections (were present land-use trends to continue), 125,000 acres of farmland would be lost to development over the 20-year horizon of the Plan. Eighty percent would be prime farmland. If the Plan were implemented, this loss would drop to 57,000 acres: “For every acre taken under TREND development, 0.35 acres of farmland are lost. Under PLAN development, this will be reduced to 0.16.” The savings would be most dramatic in the suburbanizing regions of the state. As the study emphasizes, “The state is getting to the point where much of the remaining unprotected developable land is farmland – thus, land losses to development are farmland losses.”

The map is accompanied (*Interim Plan*, pp. 170-177) by well-conceived but effectively precatory language guiding development into centers and specifying alternative means of rural planning and preservation. The State Planning Commission has proposed by rule an “endorsement process” for municipal plans and regulations that could serve as an effective incentive for local action toward farmland preservation goals. In an effort to give the Plan “teeth” in accord with the growth management model, the N.J. Department of Environmental Protection proposed (in the Year 2000) a new *Water Quality and Watershed Management* rule intended to make development of Planning Area 4 (also, PA3 and 5 more difficult) – except in centers, where new development is to be concentrated – by establishing more stringent criteria for approval of sewer extensions. Most unfortunately, this proposal’s fate is in question.

In short: policies designed to redirect growth and to “target” farmland preservation funds, most of which are simply planning policies, lacking real “teeth”; the paucity of funds relative to the amount of land that needs to be preserved to achieve public goals; the essentially voluntary nature of the state purchase of development rights program; the continued vagueness of geographical program criteria; and the disconnect between the state program and local zoning policy – all these add up to a scattered, checkerboard pattern of farmland preservation that, absent further measures, threaten the real goal: “to permanently preserve significant areas of reasonably contiguous farmland that will promote the long-term viability of agriculture as an industry.”

## **Regional Considerations**

New Jersey's farm regions vary widely with respect to soil type, climate, agricultural market and products, unit production costs, form of ownership as well as the investment interest and horizons of farm owner-operators. The attitudes of farmers – and the public-at-large – also differ. For example, a program suited for Cumberland and Salem counties – where agriculture remains strong and suburbia still at the horizon – may differ markedly from the Highlands, where agriculture is weak and suburbanization rampant.

The SADC has managed its program under a uniform statewide set of rules governing such items as the scoring and ranking of applications, procedures for appraising easements, handling of purchase offers, landowner negotiations and granting needed land-use relief to a farm encumbered by an easement. While uniformity in administration is a key to good governance and fairness, these rules may have prevented the SADC from taking advantage of some important opportunities.

For instance, one of the state's most productive agricultural regions is that in Cumberland and Salem counties. There are large blocks of contiguous farmland, the loss of farm acreage is statistically flat (for Salem farm acreage has actually increased), farmers are investing in their operations and the value of farm product per acre is on the rise. Owing to the region's geographic isolation, Cumberland-Salem's easement values are the lowest in the state; on a per-acre basis, an easement in Cumberland-Salem costs the SADC approximately 40 percent of the average cost statewide and is between five and eight times *below* the average cost of acquiring an easement in Morris and Somerset counties. For this and other reasons, differing packages of preservation incentives may be appropriate for differing region.

## **VII. Growth Management and Land-Use Regulation**

The dual concepts that (a) farmland preservation should be *voluntary* for the property-owner; and (b) that preservation measures should be fully *compensated* by government at fair market value have come to dominate discussions regarding farmland policy in New Jersey. No other category of New Jersey land is favored with this consideration; all other land is regulated involuntarily, and without consideration of compensation – unless all its value is removed. There are other tools for farmland preservation. With these, the New Jersey farmland preservation experience is much richer than a focus on purchase of development rights would suggest.

### **Municipal Land Use Regulation**

Throughout most of New Jersey, we have two distinct land-use regimes; the first based on land planning, infrastructure provision and regulation under the *Municipal Land Use Law* (MLUL) and related statutes; the second based on compensable acquisition of property by conservancies and public agencies. These two regimes must be merged.

With the exception of the handful of progressive, “bellwether,” towns referenced earlier in this report, New Jersey municipalities have not taken full advantage of the land use tools available to them. To preserve farmland, the more progressive towns may have lots of five, six, and occasionally 10 acres. Such lower base densities are typically accompanied by lot flexibility

provisions such as cluster development, lot averaging, or transfer of development credits. While greater average lot sizes may in some towns slow the rate of growth, they may in others simply accelerate the consumption of land.

With strong public support for farmland preservation, why do local governments not adopt more stringent regulations? Two reasons stand out. The first is an American sense of fairness. Local governments, with their voluntary boards of property-owning citizens, simply lack the political will to go beyond a certain threshold in depriving their neighbors of the value of their property. This applies particularly if their neighbors are farmers, who are perceived – incorrectly – as owning most farm property.

This attitude holds despite ample statutory authorization and judicial precedent to the contrary. The *New Jersey Municipal Land Use Law* (the statutory basis for municipal land-use regulation) clearly authorizes planning for and regulation to effect the preservation of farmland. The authority of government to regulate land for agricultural use was forcefully upheld against an owner of farm property in the New Jersey Supreme Court’s landmark property rights case, *Gardiner v. New Jersey Pinelands Commission* (125 N.J. 193, 1983). The court stated: “Diminution of land value itself does not constitute a taking.” And, “...there exists no constitutional right to the most profitable use of property.”

The second factor is the municipal fear of legal challenges to “downzonings.” East Amwell Township (Hunterdon County) has spent \$240,000 – 10 percent of its annual budget – in this fiscal year alone defending its progressive, well-conceived farmland preservation program against a suit by property owners joined by the New Jersey Farm Bureau. Hopewell Township, after a recent downzoning, was served by 20 property-owner lawsuits, mostly from non-farmer property owners. The Pinelands Commission was defended by the Office of the Attorney General against such property-rights challenges in the *Gardiner* case. But absent similar state-level support for progressive local government actions in the name of farmland preservation, local governments will continue to balk at progressive regulatory measures to preserve farmland.

On the other hand, land-use regulations are the legislative acts of local governments and may be amended by subsequent governing bodies; undermined by granting of variances; overturned by judicial interpretation. Regulatory measures are accurately characterized as impermanent. Nevertheless, they are important to the farmland preservation mix, for they dampen development pressure; in some cases, they provide directly for deed-restricted dedication as a condition of development approval; and they buy time so that acquisition programs can be phased to match landowner financial needs and available funding.

### **Transferable Development Rights (TDR)**

TDR is a land preservation tool based on the principle that the right to develop land can be severed (as in an easement) from ownership of the land itself, and transferred to another property. Using this tool, a jurisdiction could require, in its land-use regulations, that the owner of a property well situated for development acquires, as a condition of approval, the development rights from a property slated for conservation. TDR thus provides some compensation for owners of conservation property, and recaptures, for the public, some measure of the “unearned increment” that accrues to the owners of property well situated for development, usually because

of public investment in sewerage and transportation. TDR uses the real estate market to effect land preservation goals, at a far reduced public cost. (Note: TDR could also be implemented regionally, across jurisdictions, though this is more complex.)

TDR had its origins at Cook College in the early 1970s as a research project that culminated in a landmark report, “Transfer of Development Rights; a New Concept in Land Use Management.” An initial legislative proposal was introduced in 1975 and died, opposed by builders and farmers. In 1979, TDR was incorporated in the *Pinelands Protection Act*. New Jersey’s only successful TDR program has unfolded in the Pinelands (see below).

A 1984 Appellate Division decision struck down an East Windsor ordinance that provided for a complex, fully realized municipal TDR program, as not authorized under the *Municipal Land Use Law*. Subsequently, the State Agriculture Development Committee took the lead in writing a new TDR bill that, with many embellishments, was eventually adopted as the *Burlington County Transfer of Development Rights Demonstration Act*, effectively limiting TDR to that county. A 1993 statute (c339, PL 1993) established a TDR bank, capitalized at \$20 million – but its use, according to an Attorney General’s decision (October 21, 1997) has been limited to Burlington, the only county with municipalities expressly authorized to have TDR ordinances. A limited form of TDR – a provision for clustering on non-contiguous lots – was written into the Municipal Land Use Law in 1997.

Finally, in 1998, a bill was introduced by Assemblyman Richard H. Bagger and Senator Robert J. Martin that: (1) amends the *Municipal Land Use Act* to authorize municipalities throughout the state to implement TDR programs; (2) requires that TDR programs be consistent with the *State Development and Redevelopment Plan*; and (3) extends the use of the TDR bank to any municipality with a TDR program. A somewhat similar bill has been introduced by Assemblywoman Connie Myers. If enacted, such a bill would extend TDR as a tool for farmland preservation throughout New Jersey. While some regard TDR as a panacea for many of New Jersey’s land use challenges, the reality would be far different. TDR is difficult for municipalities to administer. And, there is generally hostility to the higher densities of growth zones. Yet TDR is an important element of the farmland preservation mix.

### **The Pinelands Protection Plan**

The Pinelands model should be studied closely for applicability to other parts of New Jersey, for here we can demonstrate that land regulation, land acquisition, and infrastructure investment all work together to serve a well-considered land use plan.

New Jersey’s Pinelands, comprising 1.1 million acres within the Pinelands National Reserve and approximately 927,000 acres within the jurisdiction of the state Pinelands Commission, illustrates a unique and highly effective system of resource management that has not been approached in any other area of the state. There is, in the Pinelands, a mixture of public and private ownership, with 400,000 acres under state ownership and 75,000 under federal, the remainder private. The *Pinelands Preservation Plan* effectively requires conformance of local land-use regulation to the Pinelands Plan.

Agricultural Protection Areas (66,000 acres), are one of seven land-use management categories. In this zone, the Comprehensive Management Plan limits homes to a density of one unit per 40 acres; but only on the condition that the homes are clustered on one-acre lots and the remaining 39 acres allocated to each residence are permanently dedicated to agricultural use by a recorded deed restriction. It was this restriction that was upheld by the New Jersey Supreme Court in the landmark 1991 “Gardiner” property rights case, cited above. Critical to the decision was the clear and well-documented statement of public purpose embodied in the Pinelands Preservation Plan. Note, however, that as with all regulatory measures, the farmland in this zone may not be permanently preserved.

The Pinelands Commission also administers a transfer-of-development-rights program that has permanently restricted 19,233 acres, more than 7,000 acres in Agricultural Production Areas. The Pinelands Development Credit Bank, an independent agency created by the Legislature in 1985, facilitates private market transactions in development rights. Acting through the *Pinelands Infrastructure Trust Bond Act of 1985*, \$30 million in grants and loans for infrastructure, mainly sewers, are available in regional growth areas; essential to facilitate development in well-suited locations on the edge of the Pinelands region. Through a recently adopted formula that in effect raises the price of farmland easements, farm property owners in the Pinelands may have a greater incentive to sell restricted easements.

The 1998 Rutgers study of farm viability, cited above, concludes that the Pinelands land use regime “appears to have had no adverse effects on farm viability.” Another study adds: “The finding that farmers who are located within the Pinelands have a longer planning horizon suggests that one of the goals of the Pinelands Comprehensive Management Plan (to protect agriculture located within the Pinelands) is being achieved. . . the land use zoning and Transfer of Development Rights (TDR) programs implemented by the Pinelands Commission not only preserve agriculture, but are effective in increasing farmers’ planning horizon.”

### **Growth Management: Merging Tax Policy, Regulation and Planning**

In contemplating the next steps in farmland preservation, it is helpful to consider the concept of “growth management.” Growth management is a mutually complementary relationship between planning, taxation, public spending and regulation.

In New Jersey, outside the Pinelands, the elements of growth management are at best disconnected from, and at worst directly in conflict with, farmland preservation: We sewer areas that are identified in state and local plans documents as farmland. We zone such areas for growth. We grant tax breaks to speculative owners of farm property. And then – through the state purchase of development rights program – we offer to purchase these properties at real estate market prices dictated by these public policies. While the focus of farmland preservation policy in New Jersey has been on the purchase of development rights, the other elements of growth management on balance tend to fuel farmland loss.

Two key determinants of land use in New Jersey are often disruptive factors in our farmland preservation efforts. Sewerage is the first. The N.J. Department of Environmental Protection, through its regulations governing sewer extensions, has the authority to limit such extensions into farmland areas. To date, it has declined to do so. Second, some municipalities, by

avoiding their obligation to provide their "fair share" of affordable housing, open themselves to builders' suits for housing developments in farmland regions.

The Pinelands land-use regime is the model for how the growth management concept can be realized. The Pinelands program, for instance, combines strict environmental regulation, targeted infrastructure, and land acquisition in a comprehensive *growth management model* that the rest of New Jersey could learn much from. Indeed, if acreage were the measure, the restricted (not necessarily permanently) 66,000 acres in areas designated "agricultural" in the Pinelands Plan and the 7,196 that are in fact permanently eased are an impressive farmland preservation accomplishment – and this was accomplished at very low public cost.

The SADC program represents almost 20 years of valuable experience in planning for, and implementing farmland preservation. It should now be complemented by stronger planning, tighter land use regulations, complementary public infrastructure practices, and tax policy reforms.

A paradigm for meeting this challenge has been proposed by Edward Thompson, Jr. of the American Farmland Trust (*William and Mary Environmental Law and Policy Review*, Vol. 23, No. 3, Fall, 1999). Thompson states that in an effective farmland preservation program that he terms "hybrid," "...regulations will be strong enough to hold the line against sprawl and, thus, buy time for incentives like easement purchases to provide more permanent protection of farmland and open space, while compensating landowners for lost equity." This accurately characterizes the Pinelands program, and it is also the model for the nation's other landmark farmland preservation programs.

A desirable policy would be to adopt state-level guidelines for "targeting" easement purchases to locations where: (1) state and regional plans show farmland preservation to be the highest public value, based on a combination of more strictly drawn Agricultural Development Areas (ADAs), local planning under the Planning Incentive Grant (PIG) planning, and the *State Development and Redevelopment Plan*, PA 4; (2) local government has adopted regulatory programs that sharply limit average residential densities; and (3) where state policies curtail extension of roads, sewers and other infrastructure. Funds for easement purchase, lower farm property taxes, and other farm operation inducements would be the "carrots" to ease any burden of the regulatory "sticks" in this growth management mix.

### **VIII. The Politics of Farmland Preservation**

New Jerseyans support farmland preservation. The June 2000 New Jersey Future opinion survey of 1,201 New Jerseyans on a broad array of "smart growth" issues revealed that 76 percent of respondents disagreed with the following statement: "We have plenty of farmland, so we can afford to lose some to housing developments." Fully 84 percent agree – 65 percent strongly agree – that: "We are fast running out of land in New Jersey, and it's time to save the land that's left for open space."

More detailed survey questions reveal that, by overwhelming majorities, New Jerseyans favor “limits” on the amount of farmland that should go to housing and commercial development. A question directed at means showed that 54 percent favor “restrictions” on open land, while 41 percent favor government purchase. This may at first seem inconsistent with the 2-to-1 margin by which voters, in 1998, approved a constitutional amendment providing a stable source of funding for open space acquisition. But 1998 voters may have understood that government purchase was the only game in town at that time; the choice of “limits” and “restrictions” was not then on the table.

Although agriculture is a conspicuous use of open land, most New Jerseyans do not know that farmers do not own most open land in New Jersey. Rather, speculators hold it; that is, owners who are more interested in capital gains than in agricultural use. Many of these are, of course, farmers. No current information exists on the ownership of farmland. But a 1979 Cook College survey is suggestive. This survey found that 56 percent of all undeveloped land was owned by non-resident (not residing in the municipality) individuals, groups or firms. Of farmland actively in use, non-residents owned 37 percent. Twenty years later, these percentages are surely far higher.

The value of land, in the philosophy of New Jersey Future, is created somewhat by the efforts of the landowner – but far more through the massive financial investments of government in roads, sewers, schools, parks, and other infrastructure, as well as through regulatory measures such as zoning, that have the ability to increase property values as well as diminish them.

It is fair, in our opinion, to recapture for the public the “unearned increment” or “windfall” in land value increases through tax policy, impact fees, transferable development rights, and similar measures that implement the public interest through land policy. Zoning is fair, though for different reasons; it can protect property values across the board for most property owners, and it can protect natural and cultural resources such as farmland.

Property rights advocates hold a sharply different view – and this includes most farmers. They believe that they are entitled to the gain in real property values that accrue from government policies and programs. Property rights advocates support measures that enhance the value of their property, and oppose measures that diminish it. This ideological difference makes productive discussions of farmland preservation policy very difficult.

Agricultural interests dominate farmland policy in New Jersey. The structure through which policy is transmitted is of interest. The State Board of Agriculture, a quasi-official body entirely made up of farmers, is “responsible for establishing policies within the framework of agricultural laws for the New Jersey Department of Agriculture.” The Board recommends a candidate for Secretary of Agriculture to the Governor. Farmers also dominate the State Agriculture Development Committee, chaired by the Secretary of Agriculture.

The independent New Jersey Farm Bureau is the political voice of the New Jersey agricultural community. The Farm Bureau holds a strong property rights ethic, stridently opposing land regulation, opposing any measure that would diminish the value of real property, and supporting measures that enhance it. John Rigolizzo, President of the New Jersey Farm

Bureau, has, for example, declared that agricultural zoning is illegal. Changes in land-use law, he asserts, can drive a farmer out of business. “There are a lot of well-meaning people out there who don’t have a clue what they are doing.”

The Farm Bureau opposed the proposed DEP rules limiting sewer extensions. This puts the Farm Bureau in the interesting position of supporting sewer extensions that sharply raise land values, while the value of property purchased under the PDR program will reflect that enhanced value. In testimony on the proposed water quality rules before the Assembly Regulatory Oversight Committee, Peter Furey, NJFB Executive Director, stated that the proposal, “Undercuts the principle established by the Garden State Preservation Trust and the Farmland Preservation Program... that landowners would be fairly compensated for the loss of their development rights. ...As drafted, the rules could drastically upset the basis for establishing fair market value appraisals and greatly reduce farm owner participation.”

At the instigation of farmers, the 1992 *State Development and Redevelopment Plan* included a policy statement entitled “Equity.” The plain intent of the text is to link “equity” with property rights: Where the plan “...affects the reasonable development expectations of property owners...agencies at all appropriate levels of government should employ programs, including for example compensation, that mitigate such impacts...” Equity statements, and their direct descendants, property value guarantees, have begun to creep into other programs; for instance in the Garden State Preservation Trust legislation, where land, for acquisition purposes, is granted a floor of 1998 values. Indeed, over the past decade, in a quiet and steady movement, the property rights ethic has been codified in important New Jersey property acquisition law and procedures, and has virtually come to dominate land-use policy at the state and local levels.

Farmers argue that maintaining “equity” is critical to farm viability. The collateral value of farmland, they assert, sustains borrowing needs. Further, attractive government offers for easements are necessary to attract farmers into the PDR program. On the other hand, the public does not know that most farmland is owned by speculators, not farmers; and that many farmers – not all, by any means – are more interested in enhancing their property values than they are in preserving their farms. While these arguments may make sound business sense for individual farmers in the short term, they are at odds with the long-term public interest in retaining New Jersey’s farmland base. To advance the long-term reforms and innovations essential to New Jersey’s long-term farmland preservation goals, a political strategy of sufficient strength to countermand the position of the property rights advocates will need to be devised and executed.

Through organizations such as the Farm Bureau, approximately 8,000 farmers often have a decisive voice in the fate of land policy in one-fifth or more of New Jersey. Why is this so? A 1999 Farm Bureau public opinion survey confirms that farmers have a very strong public image – as high, in fact as teachers and firefighters. According to this source, they contribute a great deal to society, are effective in conserving natural resources and are compensated poorly for supplying food. According to the poll, the environmental protection rating was higher for farmers than environmentalists or scientists. Though one may question this source, it suggests reasons for the stature of farmers in New Jersey land use debates. And, as noted above, there is a limit to what individual local board members will do.

## **IX. Conclusion**

For this project, New Jersey Future staff and our consultant, Strauss and Associates/Planners, interviewed professionals knowledgeable about farmland preservation in New Jersey and in other states, reviewed literature, compiled extensive program data, made field trips to four counties (Cumberland, Hunterdon, Monmouth and Middlesex), and created a data base on land use and natural resources in New Jersey.

We have learned that, with the programs administered by the State Agriculture Development Committee, The Pinelands Commission, many counties and municipalities, and non-profit land conservancies, New Jersey has a wealth of positive experience to build on. It is imperative that we build and sustain the coalition that will be necessary to advance any of the proposals in this report. Absent such an initiative, we can expect only limited gains toward the twin goals of farmland preservation and “smart growth.”