Smart Conservation:
The "Green" Side of Smart Growth

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New Jersey Future is the state's oldest and largest
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I. Introduction and Summary

For an urban state, New Jersey ranks as a national leader in land conservation. We rank first in percentage of the farmland base preserved and fourth in absolute numbers of acres. Since 1961, New Jersey voters have approved ten successive bond proposals to fund the "Green Acres" open space program, a remarkable showing of public support. We have nationally-acclaimed growth management programs, such as that for The Pinelands; and strong regulatory programs, for example for freshwater wetlands.

In round numbers, one-third of our state's 4.7 million acres is developed. A fifth is publicly owned or deed-restricted parkland or farmland. Backed by a new, dedicated source of funds administered by a new agency, the Garden State Preservation Trust (GSPT), an additional 20 percent of the state has been targeted for purchase in fee or by easement, a "Million Acre Conservation Goal."

Yet suburban tract housing, office parks, and commercial strips spread further into the open countryside every day. Suburban sprawl threatens water supplies, fragments woodlands and wildlife habitats, and "checker boards" farming areas. Some analysts have estimated "build out" of New Jersey's remaining buildable land in 30-50 years. And, as cities, older suburbs, and some small towns have deteriorated, so have their parks.

With the "Million Acre Goal," state, county, and local governments - and independent land conservancies - are spending unprecedented sums for open space. Government and conservancy buyers see themselves as in a race with developers for critical sites. This means sharply rising land prices.

Public and private dollars – for purchase of land or development restrictions on land – are an indispensable foundation for New Jersey's conservation achievements and expectations. But experience has made it clear that ***when it comes to resource conservation, farmland and parks – we can't buy our way out of sprawl.***

A tension between two sharply different land use regimes frustrates land conservation in New Jersey. On the one hand, we have the acquisition programs, dedicated to purchasing open space at real estate market values based on comparable sales. Countering this, we have the intractable complex of municipal zoning, sewerage, road building, and development approvals, as practiced by New Jersey's 566 municipalities - all serving to drive up land values and in other ways obstruct conservation goals.

How can our citizens get more for the dollars that are dedicated by state and local government to preserving open lands and creating better park systems? Are there opportunities for greater efficiencies and effectiveness in the state's land conservation programs?

Smart Growth is well known as the broad effort to direct development to older areas and new centers in good locations, while conserving the open countryside. *Smart Conservation* is the

"green" side of smart growth. Its substantive goal is an interconnected, regional web of open and healthy recreational areas, ecosystems, wildlife habitats, water supplies and agriculture.

As government policy, Smart Conservation integrates tools often used to counter purposes today: land-use planning, regulation, spending on open space and infrastructure like roads and sewers, and tax policy. Smart Conservation also creates mutually supportive linkages between the actions of state and local government. In New Jersey (outside the 927,000 acres of the Pinelands that is governed under a special statute) the elements of Smart Conservation are at best disconnected from, and at worst directly in conflict with, natural resource and farmland preservation.

New Jersey Future has reviewed our state's land conservation programs. We have researched alternative models from other jurisdictions. Our research findings are summarized on page 4. Our leading policy recommendation - which are particular to New Jersey but hopefully offer direction for other jurisdictions - are summarized below and presented in detail beginning on page 52.

A. Summary of Policy Recommendations

(1) Intergovernmental conflicts can be minimized by integrating statewide land conservation plans with each other, with the functional plans of other agencies, and with the *State Development and Redevelopment Plan (State Plan)*.

Integrated, comprehensive planning can identify conflicts in governmental programs and resolve them. For instance: requirements for affordable housing should not conflict with resource conservation; sewerage should not be extended into areas slated for resource conservation.

A state-level land conservation plan should be adopted by rule for greater stature, and delivered to municipal government in a user-friendly format.

(2) Conservation planning should be *a required element* of municipal master plans.

Too often, local governments aim to block development rather than to gain broader resource conservation goals. Mandatory advance planning can minimize this practice.

Conservation and farmland preservation elements in municipal master plans should be consistent with statewide plans for open space. Green Acres and farmland funding – for both state and local acquisitions – should be targeted to priority areas that are consistent with state plans for open space.

(3) More land can be protected if state and local land conservation programs complement acquisition with zoning and infrastructure policies that limit growth in conservation areas.

Green Acres and farmland programs should grant a higher priority or higher funding levels to local jurisdictions that have adopted such measures.

Farmland and natural resource conservation lands should be restricted to low average densities; at least one unit per twenty acres. Purchase funds for easements or in-fee acquisitions, plus transfer of development rights, can provide compensation for property-owners wishing to sell.

(4) Additional Smart Conservation tools should be legislated to assist local government.

Municipalities would be more effective in achieving conservation goals if they were empowered to adopt transfer of development rights (TDR); if "Green" enhancements to the *Municipal Land Use Law* were in place; and if legal defense for appropriate conservation zoning were available from the state.

(5) The Smart Conservation agenda should be piloted by linking it to $75 million in land acquisition funds committed by the Governor to the Highlands region.

The Highlands region comprises 640,000 acres, 13% of New Jersey's land area. The Highlands Coalition of environmental groups has prioritized about half of this area for protection. But available funds will purchase only a small fraction of these sensitive lands, suggesting a need and an opportunity to apply broader Smart Conservation measures.

(6) New Jersey's use-value assessment of farmland fuels sprawl by providing tax relief to speculative landholders. This program should be reconfigured so as to reduce this effect.

A land-conversion tax would recapture taxes forgone during the period of use-value assessment, creating a dedicated revenue stream to augment farmland preservation funds. Use-value assessment should be limited to areas designated for resource conservation by state plans for open space, and/or to areas that have adopted restrictive zoning.

New Jersey Future's Smart Conservation project goal is to support the land acquisition programs of both government and independent conservancies in New Jersey by proposing and building support for Smart Conservation measures that would more fully protect ecosystems, watersheds, farmlands and urban recreational systems – on an integrated, regional basis.

With more than 40 years of experience with our "Green Acres" program, almost 20 years in farmland preservation, the nationally respected Pinelands preservation model, the *State Development and Redevelopment Plan*, and numerous other progressive public policy programs dedicated to land conservation, New Jersey has an impressive record and a lot of experience to build on. There simply isn't enough money to buy land sufficient to fulfill the public's expectations. We need Smart Conservation.

B. Research Findings

- **Funding for open space purchases under the Garden State Preservation Trust (GSPT) will be insufficient** to meet the needs and expectations of New Jerseyans for water supply, biodiversity, recreational open space, or sustainable communities. The magnitude of the gap is unclear, and will change in light of the current Administration's program shifts.

- NJF case studies illustrate some of the **significant conflicts among governmental units that frustrate resource conservation and raise its costs substantially**. These conflicts may be found at the state level, notably between land conservation and affordable housing mandates. They are also found in conflicts between state and local goals and actions.

- **Tax policy drives land development in natural and farmland areas.** New Jersey's reliance on the property tax is inordinate. Use-value taxation for farm and woodland (available to any property owner with five acres under production regardless of location) likewise subsidizes land banking by speculators and developers – and helps fuel sprawl.

- New Jersey must protect its $1.3 billion-plus investment in open lands. **Regulatory and statutory reforms are needed to support land acquisition with consistent planning and better regulations.** Other states and jurisdictions provide models for such linkage. Other states provide models for linking use-value property tax assessment to land planning and regulation.

- **New Jersey's land acquisition programs increasingly encourage and in some instances require strategic planning, and even linkages to the municipal planning process. But there are no links to land-use regulations such as zoning**. The best example of a planning linkage is the farmland program's Planning Incentive Grant (PIG) program.

- **An NJF review of a sample of Green Acres and farmland acquisitions shows that a large share (14-30 percent) of acquired land is zoned aggressively for growth** (i.e. non-residential or residential zoning up to 1.9 acre lots.) Well more than half of the sample was zoned for lots of five acres or less. No examples of zoning with lot sizes greater than 10 acres were found outside the Pinelands.

- **Municipalities vary markedly in their commitment to resource conservation – and their ability to achieve this goal.** Some municipalities have planned well for open space conservation, enacted restrictive zoning, and targeted land purchases to implement their plan. The limited examples of real success depend on aggressive, persistent leadership, often from one individual. But municipal land conservation is all too often opportunistic, guided by such objectives as blocking development and limiting taxes

II. Perspectives on Land Use in New Jersey

A. New Jersey's Land Acquisition Programs

In proportion to its size, New Jersey boasts one of the nation's most aggressive and sustained state-level public land acquisition initiatives. As of 2002, 1.1 million acres, or one-fifth of the state, were owned outright by government, or by easement restricted from development [1]. A recent survey of state-level open space programs by the Brookings Institution[2] includes New Jersey among the seven leading states. A study by the Environmental Law Institute[3] includes New Jersey as one of five "Smart Links" states that encourage local governments to use open space funding to strengthen their control of land development.

New Jersey's publicly owned natural and recreational areas have generally been secured by purchase. Property-owners have been "compensated" with public funds at or near prevailing market values. In the case of farmland, development restrictions are purchased while the land remains in private ownership. The purchase of open space is regarded as "permanent," in the sense that strong administrative and legal safeguards make reversion to private ownership difficult. A bedrock principle of New Jersey's land acquisition programs is that they have been "voluntary," depending on willing sellers; condemnation has rarely been employed.

The first Green Acres bond proposal to purchase natural areas and recreational lands was approved by the voters in 1961. In 1981, the voters approved the first bond proposal for acquiring development rights on farmland. Between 1961 and 1997, the New Jersey voters approved 10 bond proposals for open space, farmland and historic preservation totaling $1.3 billion.

In 1997, with about 886,000 acres preserved, the Governor's Council on New Jersey Outdoors proposed acquisition of an additional 1 million acres of open space, and a long-sought "stable source" of funding to accomplish this. The result was a constitutional amendment to dedicate $98 million annually for 10 years to open space, farmland and historic preservation. The *Garden State Preservation Trust (GSPT) Act* (Ch.152, P.L 1999) that established this initiative anticipated that up to $1 billion in bond proceeds would be supported from this source.

At all levels of government and through private philanthropy, New Jerseyans have embraced open space and farmland preservation, dedicating impressive sums to these purposes. Fully 187 municipalities and 20 counties have adopted dedicated open space taxes. The proceeds yielded $168 million in 2002 alone. Non-governmental land conservancies have grown rapidly in number, raised substantial sums from private sources, and have proven increasingly adept at complex transactions that merge funds from multiple private and public sources.

New Jersey's farmland preservation program, legislated in 1983, relies principally on the purchase of development rights (PDR). Some 130,000 acres are either preserved or under contract (March 2003 data). The rate of acquisition has accelerated since the enactment of the GSPT in 1999. The program

[1] American Farmland Trust, 2002.
[2] Hollis, Linda and William Fulton, 2002. *Open Space Protection: Conservation Meets Growth Management*. The Brookings Institute
[3] McElfish, James M. Jr. and Ryan Hamilton, 2002. *Smart Links: Turning Conservation Dollars into Smart Growth Opportunities.* Environmental Law Institute.

is slowed by the insertion of county-level agencies in the acquisition process, and has not kept pace with similar programs in other states. Concerned about limited funding (in proportion to its applications) and widespread "checker-boarding" in the geography of its acquisitions, the farmland preservation program has become less opportunistic, and more strategic in where to direct its scarce program funds.

B. Land-Use Governance in New Jersey

Of New Jersey's 4.7 million acres, well more than 1.5 million meet the standard for "urbanized" land.[4] Our population and economy are growing. We are already the nation's most suburban state. Growth is spreading ever more widely; the rate of land development, on a per-capita basis, is more than three times that of two decades ago. Estimates project that "build out" of land available for development will occur between 34 to 50 years from today. Such estimates, from several sources and under varying assumptions, are admittedly speculative. Yet they focus the public consciousness on the diminishing land development choices that remain to us in New Jersey.[5]

Demographic and economic forces generate outward growth. But its pace and pattern are shaped by government. The following are some of the leading governmental causes of exurban sprawl:

- Fragmentation of New Jersey into 566 small jurisdictions and numerous special-purpose agencies, that often compete for "ratables";
- Inordinate and inequitable dependence on the property tax;
- Deference to property owners among public officials, at every level of government;
- "Down-zoning" of rural land to densities that perpetuate sprawl but do not protect resources; and
- Conflicts among governmental policies and programs, especially when it comes to resource conservation.

Under the constitution, the state is empowered to regulate the use of land.[6] But the *Municipal Land Use Law (MLUL)*[7] delegates the lion's share of this authority to the municipal level of government, primarily through the instrument of zoning. Zoning is in effect, New Jersey's leading statement of public policy regarding land use. And, if one takes each of New Jersey's 566 zoning ordinances at face value, they assume – and even direct – that virtually all privately owned land will be "built out."

Beginning in the 1960s, with the force of the civil rights and environmental movements, many states enacted laws to protect environmental resources or to advance social goals and values such as better transportation, fair housing and education. Between 1970 and 1990, New Jersey was at the vanguard of this transformation.[8] The New Jersey Supreme Court complemented legislative initiatives with leading

[4] The figures are based on 1995 data (the latest available) and projections prepared by the New Jersey Office of Smart Growth which estimate annual urbanization of 18,000 acres per year.
[5] For an excellent summary of these estimates, and many other aspects of sprawl and land use in New Jersey, see John Hasse, "Geospatial Indices of Urban Sprawl in New Jersey." Doctoral Dissertation, Rutgers University, May 2002. http://users.rowan.edu/~hasse/dissertation/ "Build out" estimates on pp. 59-63.
[6] "… the State controls the use of land, all of the land." *So. Burlington Cty N.A.A.C.P v. Mount Laurel Twp,* 92 N.J. 158 (1983)
[7] L.1975,c.291
[8] Some legislative milestones suggestive of the scope this movement in New Jersey are: coastal wetlands (1970), public transportation (NJ TRANSIT, 1979), Pinelands protection (1979), water quality management (1981), farmland preservation (1983), fair housing (1985), and statewide planning (1985).

decisions in fair housing, regional planning and education finance. These legislative and judicial initiatives were necessary because "home rule" had simply failed to respond effectively to many of the critical needs and aspirations of New Jerseyans: environmental conservation, transportation mobility, fair housing, social equity, and economic prosperity. Today, with municipal land-use tools dating from another era now overlaid by regional and statewide statutes, land-use governance in New Jersey is perceived by independent observers as gridlocked, serving neither the interests of municipalities, developers or environmentalists - and certainly not the public-at-large.

In 1985, New Jersey initiated a statewide planning process, culminating with the adoption of the *State Development and Redevelopment Plan* (*State Plan)* in 1992, which was subsequently revised in 2001. The SDRP, a well-documented guide for growth in a suburban state in the 21st century, has begun to advance center-based development and better intergovernmental coordination. Yet under present statutes, the plan remains essentially "advisory," and is only just beginning to affect municipal and state land-use policies or practices.

As towns at the outermost fringe of suburban growth come under increasing development pressure, many - not all - have resolved that they do not wish to experience the suburban sprawl that has overwhelmed their inward counterparts on the radius of suburban expansion. Their reaction has been to reduce population potential (the "buildout" of their towns) by "downzoning" undeveloped land, typically to average residential densities of three to ten acres.

Such downzoning may well mitigate the impact of population and economic growth on school costs, traffic, and public services. However, the interests of land conservation may not always be served. In many exurban land markets, the mid-range of densities simply leads to the development of larger residential lots, fragmenting farmland and natural areas, and consuming land at a faster pace.

The striking exception to this capsule critique of land-use governance in New Jersey is the area under the jurisdiction of the Pinelands Commission: 927,000 acres or 20 percent of the state. Here, 56 municipalities in seven counties conform their land-use decisions to a *Comprehensive Management Plan* directed toward preservation of the Pinelands ecosystem. The Pinelands Commission administers a program of growth management that has become a national model, with many lessons yet to be learned elsewhere in New Jersey.

C. Political Attitudes Toward Land Use

While the public's expectations regarding preservation of farmlands and natural areas continue to rise, revisions to land conservation policies must address powerful political realities. With respect to Smart Conservation, several viewpoints are worth noting. The land conservancy movement and some arms of government – often viewing themselves in a tense, time-restricted "race" with the development industry for valuable tracts – are devoted to compensatory measures for land acquisition; unfettered and sometimes regardless of price. Frustrated by bureaucratic processes that are challenge enough, they may oppose measures that increase regulatory hurdles.

"Home rule" is another strong voice. Some state and local lawmakers will oppose any reduction in municipal discretion – in open space acquisition, or any other matter. Fearing the loss of "ratables," some municipalities – especially rural towns – oppose land conservation outright.

Municipal land-use attitudes also embrace a strong property-rights bias. The New Jersey Supreme Court has upheld the Pinelands Commission's exceptionally restrictive farmland provisions[9] writing bluntly that, "… there exists no constitutional right to the most profitable use of property." The "Gardiner" case is regarded as one of the nation's strongest state-level "takings" cases that uphold government's authority to restrict land use in the public interest. Despite this rock-solid legal doctrine, municipalities throughout New Jersey (except in the Pinelands) characteristically refrain from exercising their full authority to regulate land in the public interest – especially where it entails resource conservation.

Recent, important municipal wins on the "takings" front have helped. For example a 2001 Executive Order directs the State Attorney General to assist municipalities in defending land-use changes that are in accord with the *State Plan*.[10] But absent stronger public understanding of and support for growth-management measures, towns will be reluctant to exercise their authority as fully as is required to protect the natural environment and preserve agricultural land.

The property rights movement is itself alive and well in New Jersey. The *State Plan* includes a statement aimed at preserving the "equity" of property-owners. At the behest of farm property owners, the Garden State Preservation Trust (GSPT) Act voids, for valuation purposes, the effect of both down-zonings and restrictions in sewerage availability after its date of enactment. Recent legislation[11] that prioritizes critical water resource areas for acquisition may undercut government's ability to regulate such areas. Depending as much as we do on compensible programs for resource conservation, we risk undermining the potential of growth management measures and thus becoming the unwitting accomplice of the property rights movement.

The planning community (including New Jersey Future) is often at odds with the property rights viewpoint. The value of land, in New Jersey Future's view, is created in part by the efforts of the landowner, but far more by the massive financial investment of government in infrastructure such as roads, sewers, schools and parks. It is also maintained through regulatory measures such as zoning that have the ability to increase property values – as well as diminish them. Planning interests strongly support regulatory means of managing growth.

D. Land Use and Natural Systems

The ecological paradigm has become the basis for how progressive planners and public policy leaders think about and plan for resource preservation, human settlements, and the relationships between them. Two essential features of this paradigm are that (a) no single factor – water resources, urbanization, housing policy, to pick a few at random – can be successfully understood or managed in isolation from the others; and that (b) all function at a regional scale.

Nearly half a century ago, Ian McHarg began his heroic crusade to establish natural science as the indispensable basis for land policy. He showed planners that nature is composed of interacting,

[9] The applicable restrictions, from the *Pinelands Comprehensive Management Plan*, for Agricultural Production Areas are (1) homes may be constructed at a density of one unit per 40 acres, (2) residences must be clustered on one-acre lots, and (3) the remaining 39 acres allocated to each residence to be permanently restricted to agricultural use. Gardiner v. New Jersey Pinelands Commission, 125 N.J. 193 (1991). The decision is a roadmap for any government that wishes to establish a legally defensible relationship between planning and regulation.

[10] Executive Order No 4 (January, 2002) directs the State Attorney General to "…defend and/or intervene on behalf of municipalities, counties, or regional planning entities that have adopted plans that have been endorsed by the State Planning Commission or that are consistent with major smart growth objectives." (Paragraph 7)

[11] The "Smith bill," P.L., Ch.76, P.L. 2002.

interdependent biophysical systems, and that these represent the *values* that should form the basis of land policy. He referred to these natural values as *intrinsic*, opposing them to the economic values that typically drive land use in America.

Landscape ecology, as described by Richard T.T. Forman, who built on McHarg's work, seeks an understanding of land on regional scale, in the context of "a new form of linkage between ecology and culture, land and people, nature and humans." An influential report by The Conservation Fund coined the phrase "Green Infrastructure" to characterize a new attitude that "looks at conservation values and actions in concert with land development and built infrastructure planning." The New Jersey Conservation Foundation's Garden State Greenways plan well follows the ecological and "Green Infrastructure" paradigms.

New Jersey can boast two comprehensive land use plans built on the paradigms of landscape ecology. The *Pinelands Comprehensive Management Plan* is grounded in the preservation of the natural ecosystems, accommodating human settlement compatible with the plan. The *State Development and Redevelopment Plan*, likewise grounded in the intrinsic value of natural resources and ecological systems, balances conservation and development in a way that accommodates population growth and development in "centers." Centers vary in scale from cities, to regional centers, to villages and even hamlets.

Despite these progressive plans, planning and management of natural resources remains fragmented and implementation far from fully effective. For example, even so vital a resource as water has yet to be institutionalized in New Jersey so as to protect the natural hydrologic system. Science has revealed to us the interdependencies among ground and surface water, wetlands, stream corridors, and urban land uses. Economics shows us that headwaters conservation can yield large savings in downstream public works facilities such as reservoirs and treatment facilities. Yet we have a long way to go before we manage the water cycle with these considerations in mind.

E. New Jersey's Natural Resource Conservation Goals

New Jersey's natural resource conservation goals, which may be found in numerous statutes, regulations, and agency practices - have yet to be compiled systematically. A surrogate for the purposes of this discussion may be found in the *State Development and Redevelopment Plan*, adopted March 1, 2001. The Plan divides the state into seven Planning Areas (see Figure 1, page 11). It provides, for each planning area, a general description of current conditions, delineation criteria, a statement of intent, and state policy objectives.[12]

Two Planning Areas are of special interest for this report. The *Rural Planning Area* (PA 4), the Plan states, comprises much of the "countryside" of New Jersey, where large, contiguous expanses of farmland or woodland surround regional or local centers.[13] The area measures 634,250 acres, or 13 percent of the state.[14] Goals for PA 4 include: maintaining the environs of centers as large contiguous

[12] The Planning Area descriptions summarized here are on pp. 186-229 of the *State Development and Redevelopment Plan*, www.nj.gov/dca/osg/docs/stateplan030101.pdf. The *State Plan* also includes general statewide goals, strategies and policies regarding resource conservation and related issues. Critical Environmental Sites (see Footnote 16, page 12) are described on pp.224-227.

[13] The *State Plan* also distinguishes PA 4B, the Rural/Environmentally Sensitive Planning Area, where the provisions for PA 5 apply. No distinction is necessary here.

[14] "Delineation criteria are: (1) population density < 1,000 people/sq.mi.; (2) areas > one sq.mi.; (3) land currently in agricultural or natural resource production, or having strong potential, based essentially on soil quality; (4) wooded tracts and vacant lands; and (5) outside centers predominantly served by rural two-lane roads and on-site water and sewer.

areas of farmland and other open lands; accommodating growth in centers and revitalizing them if necessary; promoting a viable agricultural industry; protecting the character of stable communities; and limiting public utilities to centers.

The *Environmentally Sensitive Planning Area*, PA 5, comprises large contiguous land areas with valuable ecosystems, geological features and wildlife habitats. PA 5 comprises 833,282 acres, or 17 percent of the state.[15] The environmental and economic integrity of the state, the Plan declares, rests in the protection of these irreplaceable resources. As with the *Rural Planning Area*, PA 4, the intent of this area is to avoid the fragmentation of landscapes and the degradation of surface and groundwater. New development should be guided into centers, public utilities proscribed except for centers.

From a technical standpoint, the delineation of these areas could be greatly improved with updated information.[16] And, the *State Plan*'s Policy Map is the political product of the cross-acceptance process with local government, which may have compromised the delineation of all Planning Areas, including PAs 4 and 5.

Proactive plans for farmland acquisition have moved slowly since the origins of the farmland program, as county-level boards dominated by property owners have declined to delineate areas, fearing perhaps that they would become the basis for a regulatory agenda. But facing scarce funding, the State Agriculture Development Committee staff is now nearing completion of a strategic plan and targeting project that will to identify farmland preservation priorities in advance.

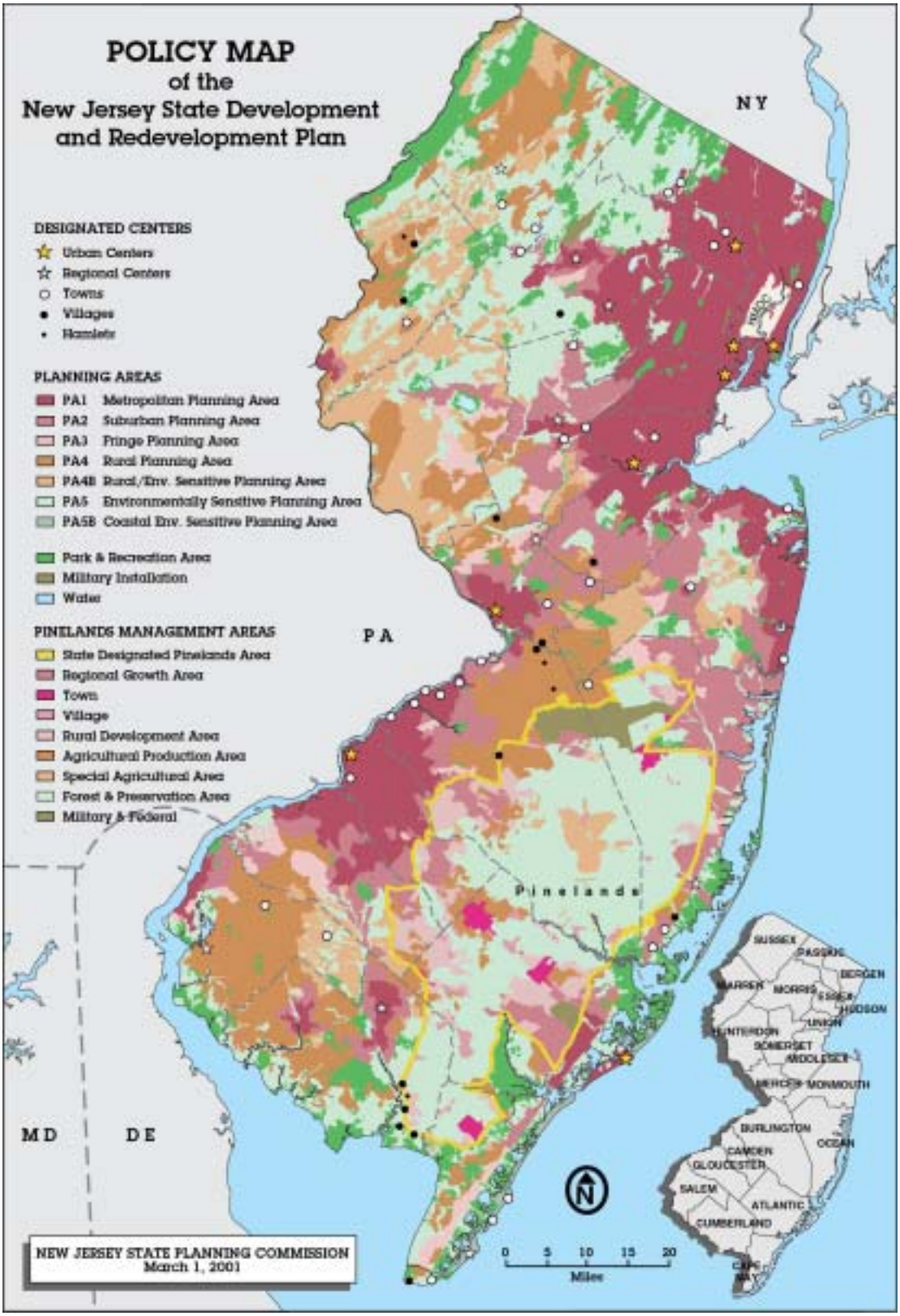
Scarce funding - in relation to rising demand and rising land prices - has also forced more proactive, planning-minded thinking at the Green Acres program. To date, Green Acres has never published an official state open space plan, though program administrators have had a strong sense of where the priorities should be. But with new legislation,[17] and a growing sense that scarce funds should be targeted to maximum advantage, it is expected that Green Acres will soon have the planning information base from which to make the hard choices regarding its projects.

[15] Delineation criteria are: (1) population density < 1,000 people/sq.mi.; (2) areas > one sq.mi; (3)trout production and other waters regarded as non-degradable; (4) watersheds of existing and planned potable water supply sources; (5) prime aquifer recharge areas for potable water supplies; (6) habitats of endangered species; (7) coastal wetlands; and (7) contiguous freshwater wetlands systems.

[16] The delineation of Rural Planning Areas, for instance, does not necessarily comport with the delineation of the Agricultural Development Areas (ADAs) required under the farmland statutes. Indeed, either ADAs have not been delineated at all, or have been delineated imperfectly, in many counties. With regard to the Environmental Planning Areas, better information is now available, including maps from the Landscape Project, that provide a far better basis for mapping and prioritizing the geography of New Jersey's biodiversity. It is also important to note that the *State Plan* addresses the identification of resources of less than one square mile – for example, stream corridors – in Planning Areas 1-3, through a policy regarding Critical Environmental Sites.

[17] Recent legislation, cited above, requires the Green Acres program to adopt within one year (by August, 2003) an "Open Space Master Plan." Except for language directing that lands bearing on the protection of water resources be prioritized, few particulars regarding the content of the plan are provided, though there is a stipulation that it be prepared "in consultation with the Office of State Planning." And save for the prioritization of lands essential for waters resource protection, few particulars are provided regarding how the plan would be employed.

Figure 1. Policy Map of the State Development and Redevelopment Plan



III. New Jersey's Land Conservation Programs: Summary and Evaluation

Three statewide efforts account for most of New Jersey's land conservation: (1) the Green Acres program, begun in 1961, managed by the State Department of Environmental Protection (DEP); (2) The Farmland Preservation Program, managed by the State Agriculture Development Committee, in the State Department of Agriculture; and (3) work of numerous independent (non-governmental) land conservancies throughout New Jersey.

New Jerseyans reaffirmed their long-standing support for land conservation in November 1998 when they approved, by a two-to-one margin, a constitutionally dedicated ten-year fund to support preservation of one million additional acres of open space. The Governor's Council on New Jersey Outdoors had recommended the "million-acre" goal in its preliminary report in May 1997 when it called for preserving:

- 500,000 acres of farmland
- 100,000 acres of water resource lands
- 200,000 acres for greenways linkages
- 200,000 acres of recreational open space.

The goal is ambitious, reflecting 21 percent of the state's land area. It would more than double the amount of land preserved at that time, which totaled 19 percent of New Jersey's total land area.

The G*arden State Preservation Trust Act* (Chapter 152, P.L. 1999) is the legislation that implements the public referendum cited above. This statute provides the state's first stable source of funding for land preservation, and creates the **Garden State Preservation Trust (GSPT)** to manage it. The *Act* established a trust fund that receives $98 million annually for 10 years to fund open space programs directly and/or service up to $1 billion in revenue bonds.[18] The statute sets maximum annual spending limits of new funds, disbursed as follows:

- $120 million for Green Acres projects,
- $80 million for SADC Farmland Preservation projects, and
- $6 million for historic preservation.

Other funds not subject to the cap include some $20 to $25 million in recycled loan funds[19] (approved by earlier bond issues) as well as federal funds. The *Act* also directed the Trust to oversee the state's progress towards the million-acre goal.

This report focuses on the two state programs that account for most of New Jersey's land acquisition: (1) the Green Acres program, and (2) the SADC Farmland Preservation program. Both agencies acquire land (or development easements) directly. They also disburse grant funds to local governments and private conservancies. Additional land conservation occurs without state funding, including independent acquisitions by federal and local governments and conservancies, development

[18] In addition $98 million is provided annually from FY 2010 through FY 2029 to be used exclusively for debt service payments. The FY 2003 budget diverted $7.4 million in GSPT funds to pay the administrative costs of Green Acres, SADC, Historic Trust and GSPT programs. This diversion is expected to be repeated.

[19] Approximately $20 million in Green Acres loan repayments from the open space program were diverted for use in the 2003 budget.

rights purchased through the Pinelands PDC program, private donations and donations made through state regulatory programs.

A. The Green Acres Program

The Green Acres program was created in 1961 to preserve open space for recreation and environmental protection. It is managed in The New Jersey Department of Environmental Protection (NJDEP). By statute, half of all Green Acres expenditures fund local projects[20] where individual communities or nonprofit organizations make acquisition decisions. With funding decisions driven by localities (and state control limited to a list of basic program requirements[21]), the program has always enjoyed strong grass-roots support.

Statewide demand for local open space preservation funds is tremendous. According to Green Acres staff, in FY 2001, requests totaled $300 million, compared to appropriations of $48 million. Green Acres addresses this disparity by weeding out the weakest applications[22] and then applying funding caps (as required by regulations) to spread funds as widely as possible among remaining applicants.

The traditional **"Standard Acquisition" Program** offers counties and municipalities a grant of up to 25 percent and a low-interest loan for some or all of the balance, depending on the availability of funds. All applications are ranked based on a list of criteria. According to program staff, applications that are complete and address recreational and/or natural resource goals are funded – subject to a project cap. Funding caps are determined annually, based on availability of funds. In 2001, the cap was $500,000 (25 percent grant, 50 percent loan.) In recent years, emphasis has been shifted to a Planning Incentive Acquisition Program (see below). Applications to the Standard Program have dwindled significantly.

Through its most generous program for local governments, the **Planning Incentive Acquisition Program (PI)**, Green Acres encourages municipalities and counties to plan strategically for open space preservation. A flexible, streamlined application process, matching grants of 50 percent, and higher project caps are made to localities with an approved Open Space and Recreation Plan (OSRP) and a dedicated local funding mechanism. Note that local OSRP plans are distinct from municipal master plans under the *Municipal Land Use Law*, and there is no requirement that they be consistent.

The PI program has become quite popular with local governments since its enactment in 1996; presently 15 counties and 94 municipalities participate and this number is expected to grow. In response to increased applications, funding caps for municipal projects dropped from $750,000 in 2001 to $400,000 in April 2002; county caps were cut in half from $1.5 million to $750,000. To complete expensive acquisitions, local governments may use Green Acres funds obtained over a period of years,

[20] The GSPT Act apportions annual Green Acres funding between three project areas as follows:

- 50 percent for state (or "direct") projects, with 20 percent of that designated for "urban" counties.
- 40 percent for local acquisition and development projects; and
- 10 percent for nonprofit acquisition.

[21] Eligible acquisition projects include natural areas, historic sites, conservation areas, water bodies and recreation areas. Former landfill sites, for example, are not permitted acquisitions. Public access is always required. In addition, local governments are required to certify to a Recreation and Open Space Inventory by which the local government agrees to permanently hold, for recreation and conservation purposes, all other lands so held at the time of receipt of a Green Acres loan or grant.

[22] "Weak" applications include those that are incomplete, address recreational needs inadequately, or fail to demonstrate any natural resource or recreational value.

obtain funding through local bonding, partner with nonprofit groups and/or borrow funds from the New Jersey Environmental Infrastructure Trust (NJ EIT[23]).

In place since 1989, the **Nonprofit Acquisition & Development Program** offers 50 percent matching funds for qualifying nonprofit organizations to acquire and develop land for recreation and conservation funds. Due to the competition for acquisition funds, development projects are typically limited to urban aid municipalities. Applications for projects not included in an approved Open Space and Recreation Plan are ranked. As with the local programs, the keen competition for funds has led to funding caps of $500,000 for local/regional grants and $1.4 million for larger regional/statewide projects, although exceptions are made for projects of special concern and extraordinary resource value.

Through the half of its budget reserved for **direct "state" acquisitions**, the Green Acres program serves as the "real estate agent" for the DEP. Land is acquired for state parks, forests, watershed protection, natural areas and wildlife management areas. Such lands are transferred to the DEP Divisions of Parks and Forestry and Fish and Wildlife and the New Jersey Natural Lands Trust, or to local governments or nonprofit organizations.

During the Whitman administration, program goals emphasized achievement of the million-acre goal identified in the GSPT Act through acquisition of a "system of interconnected open spaces." Governor James McGreevey's administration, in office since 2001, plans to shift program emphasis to urban and suburban parks, to protecting water resources and to buying ecologically significant lands under imminent threat of development. In September 2002, the GSPT adopted this policy. The Trust advocated tripling dollars for local recreational development. It also recommended directing the portion of state funding dedicated to "densely populated counties" to the *State Plan's* "Planning Area 1 and planning areas immediately adjacent thereto," and raising the match in local grants to urban areas from 50 percent to 75 percent. In Spring 2003, legislation was proposed that would essentially shift funds from farmland preservation to park development and redevelopment, and move a greater share of Green Acres funds to the local programs.

B. The Farmland Preservation 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 (PDR) 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) strictures on the use of condemnation within certain areas; and (3) right-to-farm provisions.

There are, at present, four primary PDR programs administered by the SADC. The "traditional" program, legislated in 1982, relies heavily for project management on **County Agriculture Development Boards (CADBs**). Their responsibilities include farmland preservation planning, marketing, landowner contact and support, scoring of applications and the monitoring of restricted property. Farmers have depended 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.

[23] The NJ EIT works in partnership with the NJ Department of Environmental Protection to make reduced rate loans to local governments for gray and green infrastructure projects to improve water quality.

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 enjoys support among county and local officials – both elected and administrative – who worked hard over many years to establish the program. Participation in this program has been stable, but may decline as localities become more involved in the PIG program, described below.

The **Direct State Acquisition** program authorizes the SADC to directly acquire either fee-simple title or farm easements. SADC staff process applications and appraisals 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 a public auction. Or it may acquire the easement in the first instance. The SADC negotiates a purchase price directly with the landowner, subject to an appraisal process. Typically, direct acquisitions take 9 months to complete once negotiations are finalized. The SADC then pays the full cost of these acquisitions. Relatively fast and flexible, the Direct State Acquisition Purchase Program handles a growing share of projects. In 2002, these programs accounted for 30 percent of all acres preserved.

The new **Planning Incentive Grant (PIG)** program, launched in 1998, is intended to support municipalities and counties seeking to preserve contiguous blocks of farmland. If local governments 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. Significantly, 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. By March 2003, eleven farms had been purchased, with some 58 more "in the pipeline" with approved SADC funding, and PIG applications were active in 41 municipalities in eight counties.

Newly established in 1999 pursuant to the *Garden State Preservation Trust Act***, the Nonprofit Acquisition 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. To date, six farms have been preserved under the program, with another eight pending.

C. Land Acquisition by Independent Conservancies

Independent (non-governmental) land conservancies make a critical contribution to land preservation, attracting resources from individual donors, foundations, and national sources. By acting quickly and assuming a neutral role in heated negotiations between local governments and landowners, they play a critical role in large, complex transactions. And, their technical expertise in resource conservation helps guide state and local acquisitions.

Because many private conservancies receive funding from the Green Acres and Farmland Preservation program, it is difficult to separate their contribution to the acreage totals shown here. However, a census of land conservation conducted by the national Land Trust Alliance[24] found that by the

[24] www.lta.org/aboutlt/census.shtml.

end of 2000, 29 local, regional or statewide land trusts[25] had protected 138,249 acres in New Jersey. Of these, the work of three statewide land trusts merits listing individually.

Statewide Land Trusts	Acres Preserved in NJ, Spring 02*
New Jersey Conservation Foundation	More than 100,000 acres
The Nature Conservancy/NJ Chapter	47,663 acres
Trust for Public Land/NJ Chapter	17,000 acres

** Figures include partnerships with other organizations, including Green Acres.*

Each conservancy operates under a different set of goals. The **New Jersey Conservation Foundation (NJCF)** has a broad mission, "to preserve New Jersey's land and natural resources for the benefit of all." Acquisitions occur in several geographic focus areas, including the Highlands Ridge and Valley areas, the Western Piedmont, urban communities, the Pine Barrens and the Delaware Bay, as well as smaller project areas. NJCF works in partnership with local governments and conservancies and its projects are influenced by requests for assistance.

The **Nature Conservancy/New Jersey Chapter (TNC)** focuses on preserving critical habitat for globally rare species. Acquisitions are based on a detailed scientific analysis of species needs and site-specific protection strategies. As such, TNC's project areas are in the state's most rural regions. Last spring, TNC announced a campaign to save the state's "Last Great Places," an initiative to secure $60 million to protect disappearing natural lands in the Skylands, Pine Barrens and Delaware Bay Shore.

The **Trust for Public Land/New Jersey Chapter (TPL)** bases its acquisition strategy on "conserving land for people," focusing on projects that address both urban recreational and environmental objectives. TPL/NJ's biggest project areas include the Newark Playground Program, the Barnegat Bay Initiative, the "River to Bay" Greenway (linking the Delaware River to the Barnegat Bay), and work in the Highlands region. In addition TPL assists communities on compelling conservation projects around the state.

D. Other Land Conservation Activity

Land conservation activities that occur independent of the GSPT or other state funding are estimated to preserve an average of at least 13,500 acres per year, roughly one-fifth of all preservation. (Data sources vary in reliability and detail.) They are listed below:

- Independent local government acquisitions. In 2002, local governments raised $168 million in dedicated open space tax revenues. Although most of these revenues are used as matching funds for state grants and loans, a Green Acres survey in 2000 found that localities had preserved 19,046 acres with their own funds since May 1997.

[25] The Land Trust Alliance census figures include work by the New Jersey Conservation Foundation, and the Nature Conservancy/NJ Chapter, but not the Trust for Public Land/NJ Chapter.

- Exactions by municipalities during development review. Land acquired or otherwise set aside by municipal planning boards as they approve applications for cluster or planned development. Though significant, this amount is unknown.

- The sale of "Pinelands Development Credits". PDC sales preserved a total of 36,750 acres, including 20,962 acres from January 1998 through November 2002. This program allows property owners in the Pinelands to sell development rights on the private market.

- Private Donations. Private donations (of land or development rights) to the state totaled 7,685 acres between May 1997 and June 2002.

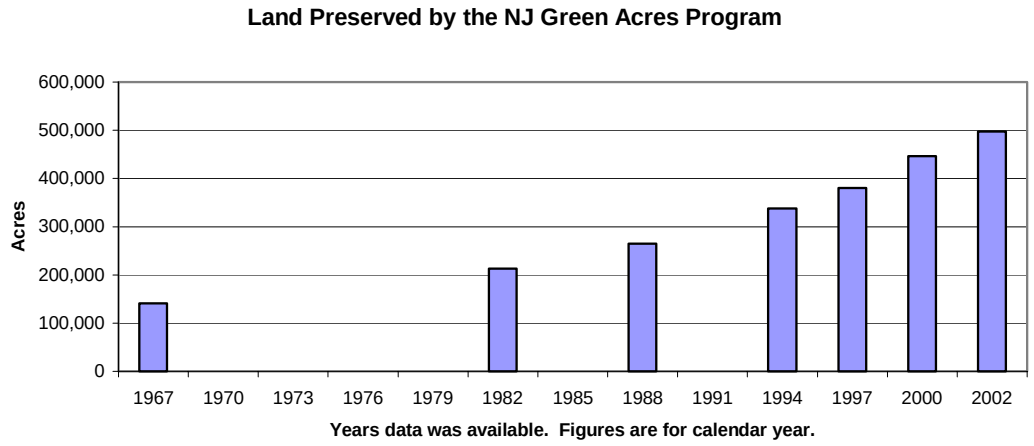
- Federal purchases. The federal government purchases land independently in New Jersey, primarily through the U.S. Fish and Wildlife Service (FWS). The FWS owns some 69,800 acres in New Jersey, and acquired 6,560 acres between May 1997 and June 2002.

- Land dedicated through state regulatory programs. Between May 1997 and mid-2002, 14,586 acres were preserved through negotiations involving state regulations. This figure includes 10,000 acres set aside as a result of mitigation involving a PSE&G plant; other dedications of this scale are not anticipated.

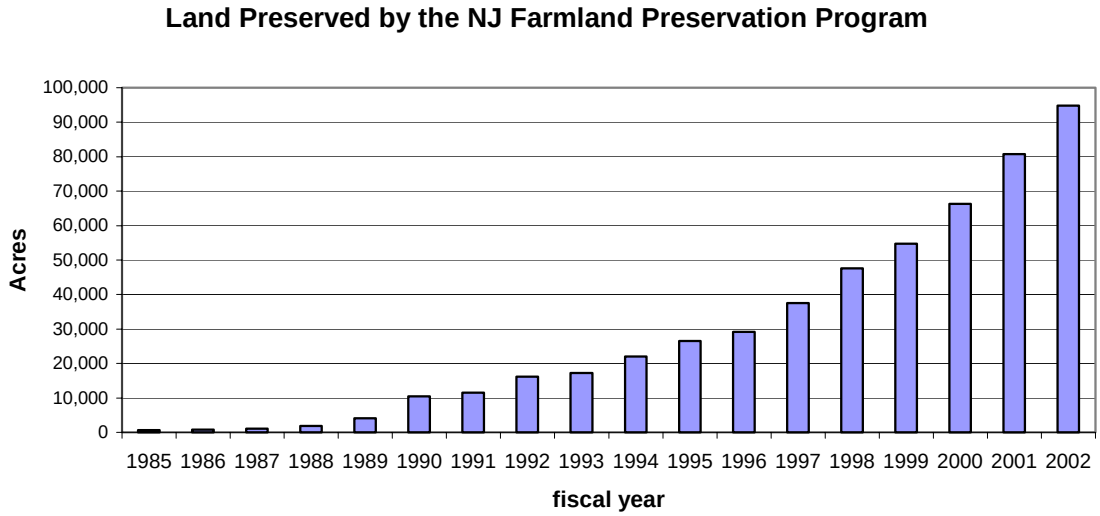
- Independent acquisitions by private conservancies. A Green Acres survey in 2000 found that nonprofit organizations preserved 1,167 acres since May 1997 without state funds.

E. Accomplishments of the Green Acres and Farmland Preservation Programs

By March 2003, the Green Acres program had preserved 514,000 acres – or 11 percent of the state's land area. The graph below shows progress over time for selected years.

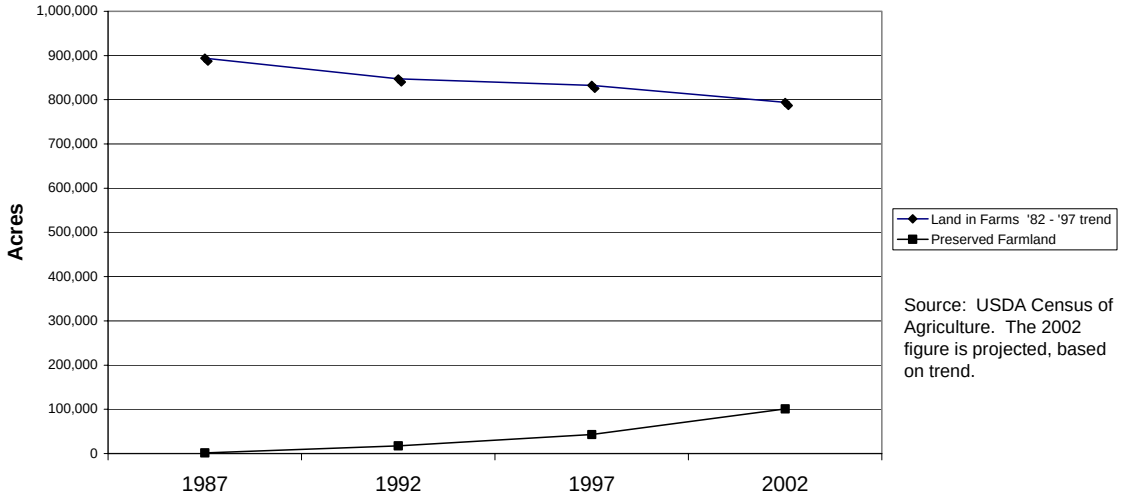


During its 18 years in existence, the SADC Farmland Preservation Program has preserved almost 104,000 acres or 2 percent of the state's land area. Note the increasing *rate* of preservation.



How does this amount of preserved farmland relate to the amount of land in farms? In 2002, an estimated 794,000 acres, or 16 percent of the state's land area, was in farmland. Of the farmland base, the state farmland program had preserved 13 percent. The chart below compares the amount of land in farming to the state's preservation accomplishments.

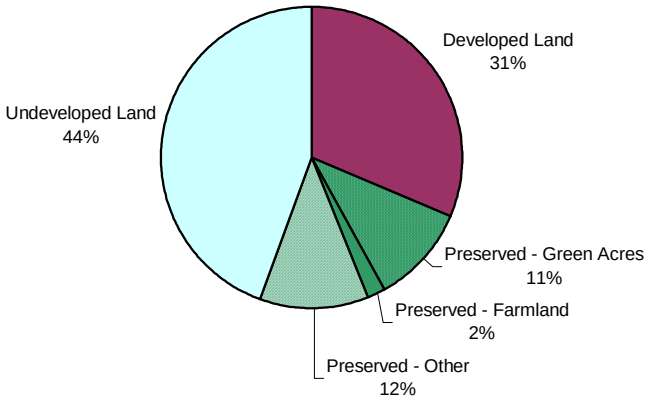
Land in Farms and Preserved Farmland in New Jersey



Source: USDA Census of Agriculture. The 2002 figure is projected, based on trend.

Taken together, by 2002, the state's two public conservation programs had preserved 13 percent of the state's land area. Others, mainly the federal government, had preserved an additional, estimated 11 percent.[26]

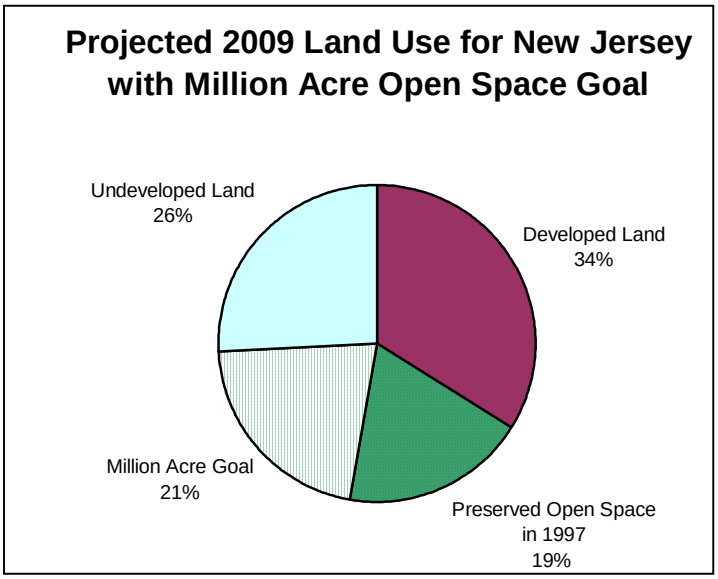
Estimated 2002 Land Use for New Jersey



[26] Note: this chart is based on 1995 land cover data, the latest available. The amount of developed land in 2002 was estimated, based on assumptions from the New Jersey Office of Smart Growth that 18,000 acres will be urbanized per year. The "Preserved – Other" figure is estimated based on past trends.

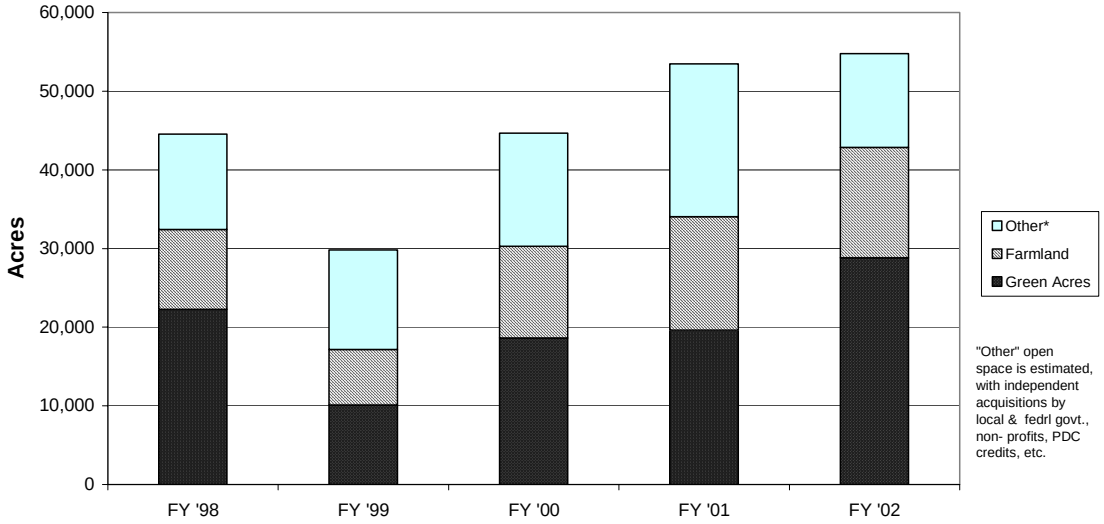
F. Progress Toward the Million-Acre Goal

The "Million Acre Goal" may be regarded as a reasonable approximation of both the amount of land that should for scientific reasons be preserved in order to protect New Jersey's water resources, natural areas, and farmland – and of the public's expectations regarding land conservation. The chart below projects land use data to 2009, the year when the million-acre goal is to be reached (see Footnote 26, previous page).



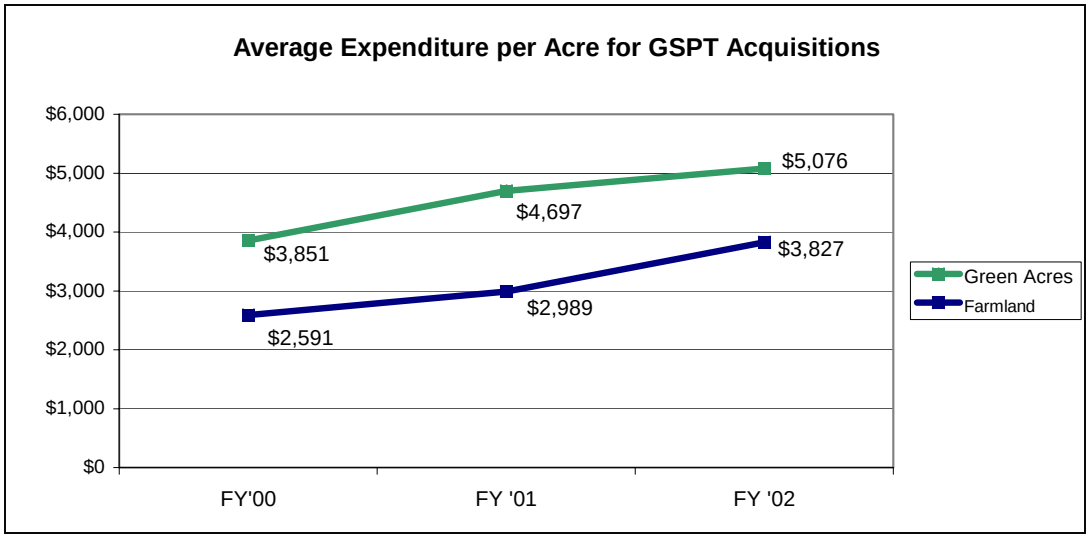
Funding from the GSPT and other sources has led to increased progress towards the million-acre goal. The chart below shows annual land preservation in New Jersey by all sources: the Green Acres and Farmland Preservation programs and independent efforts. While increased funding has raised preservation levels to more than 50,000 acres per year, the rate of increase cannot continue indefinitely, as explained below.

Annual Open Space Preserved in New Jersey



The Green Acres and Farmland Preservation programs face several constraints to increasing preservation levels, most notably financial and administrative limitations. The **financial limitations** are mainly established in the GSPT funding levels mentioned earlier. Other funding sources – recycled loan funds, federal funds and unexpended appropriations from previous years – are expected to remain constant.

Given fixed funding levels, land costs become an important component of program capacity. The chart below shows a rising trend in average acreage costs for Green Acres and Farmland Preservation Program acquisitions.[27]



Both the Green Acres and Farmland Preservation programs have struggled to increase their expenditures to match larger appropriations received since FY2000. During fiscal year 2002, the Green Acres program came close to catching up,[28] which means that the steady increase in preservation levels achieved in the last few years should level off. Farmland Preservation expenditures, though, had reached only 58 percent of appropriations. **Administrative constraints** are responsible for much of this shortfall. Many of the programs, but especially the largest "traditional" program, have been plagued by cumbersome procedures, often resulting in a process taking two to three years after funds are appropriated. (In March 2003, there were 370 farms with 29,000 acres approved for funding, but not yet closed.) With rising appropriations and long lead times, a delay in expenditures is inevitable. In addition, staffing levels have often been limited, most recently by a state hiring freeze in the fall of 2002. Finally, reductions in average farm size mean more work to preserve the same number of acres.[29]

Projections of future land acquisitions are broken down by program on page 22. They are based on funding allocations in place in March 2003. (Legislative proposals to reallocate funding could significantly reduce land acquisition levels.) A detailed description can be found in Appendix B, page 58.

Farmland projections are based on a new acreage goal of 20,000 acres per year adopted by the Department of Agriculture for the farmland program. This goal assumes that administrative constraints

[27] Average acreage costs for Green Acres PI acquisitions reflect only the state's share of the cost. For direct acquisitions, the figures reflect only the portion of the project funded by Green Acres if other funding partners were involved.
[28] For FY 2002, estimated expenditures equaled $157 million, almost equal to GSPT appropriations of $163 million.
[29] The average size of a farm preserved in 2002 was 84 acres, down from 155 acres in 1993.

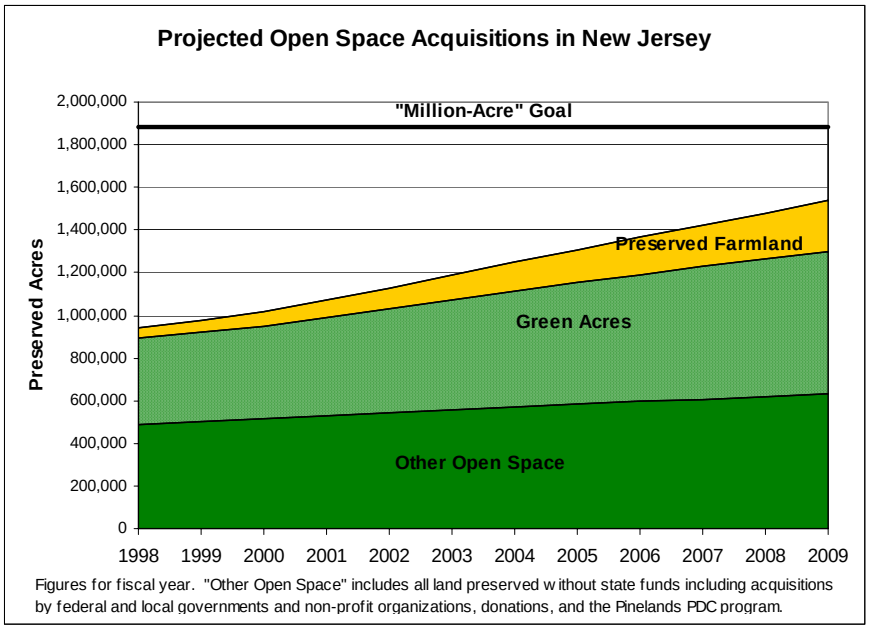
will limit the program to 250 closings per year. At an average farm size of 80 acres, 20,000 acres could be preserved. Note that this projection represents a 43 percent increase above the 2002 fiscal year level of 14,023 acres.

Green Acres acquisitions can be roughly estimated based on three simple assumptions: 1) funding levels and policies in place in March 2003 will remain constant through 2009; 2) average acreage costs will rise based on trends from the last 3 – 5 years, and 3) all appropriated but unexpended funds will be spent on land priced at the average acreage cost in FY2002.

Annual Green Acres funding for acquisitions can be estimated to total $136 million ($120 million per year from the GSPT Act plus revolving loan funds of $22 million from previous bond issues less the $10 million dedicated to recreational development, plus $4 million in federal LWCF funds.) The average per-acre expenditure for Green Acres projects in FY 2002 equaled $5,076 [30] and is estimated to rise to $7,833 in 2009, based on recent trends. We estimate another 42,636 acres could be acquired using previously appropriated (but unexpended) funds.[31] The result is annual acquisition levels of 23,000 – 30,000 acres per year for Green Acres.

Other independent open space acquisitions[32] are projected to continue at past levels. (A lack of data in this category precludes a more sophisticated projection.) Projections are shown on the chart below for the lifetime of GSPT funding.

Conclusion: At the end of the period, the state remains 350,000 acres shy of the million-acre goal, as illustrated in the chart below. Note: if Green Acres shifts funding to park development and acquisitions in urban and suburban areas, actual acquisition levels will be much lower.



[30] Note that Green Acres contributes only part of the cost of acquisitions under its local and nonprofit programs, but in this analysis receives credit for all of the acres preserved.
[31] The Green Acres program has an estimated $256 million of unexpended funds from prior fiscal years earmarked for acquisition.
[32] This category included acquisitions by private conservancies and federal and local governments without state funds, land preserved with Pinelands Development Credits, private donations, and dedications made through regulatory programs.

G. The Geography of Acquired Land

Our increased understanding of and appreciation for natural systems and the importance of "green infrastructure" has focused attention on the need to protect larger, more integrated project areas – our life-sustaining ecosystems, watersheds, recreational networks and farmland regions. This section examines the strategies (or lack thereof) behind land conservation decisions at both the state and local levels in an effort to understand the contribution they make to various environmental, agricultural and recreational goals.

The Green Acres Program's geographic strategies are focused on the half of its budget it has the most control over: direct acquisitions. Unlike its counterparts in Maryland, Delaware and Florida,[33] Green Acres lacks an official statewide open space plan to guide and evaluate its acquisitions, though progress is now being made in this direction. But for now, potential acquisitions are not ranked, and the program does not use a formal, prioritized list of sites to acquire.[34] For any potential acquisition, basic requirements must be met, including an agency to own and manage the property, a willing seller, and an agreed upon price. Then a variety of factors are used to evaluate projects: proximity to preserved land, maps identifying critical plant and animal habitat, water resource-related information, and so on. Potential acquisitions are categorized into regional project areas.

The lack of clearly defined priorities and the difficulty of obtaining data on the program's accomplishments discourage systematic performance assessment. The GSPT has been frustrated in repeated attempts to monitor the program's progress in protecting water supply areas and wildlife habitat. By Fall 2002, DEP had not presented Green Acres with a consolidated map of water protection priorities. Nor could Green Acres overlay its maps of preserved open space with existing maps of critical habitat. Program staff is working on resolving these technical issues.

The issue of priorities raises a fundamental question: should Green Acres be the driving force behind the state's open space acquisition policy, or simply the real estate arm of a larger department that is prioritizing competing conservation goals from its divisions? In the face of a prolonged drought, the state legislature amended the GSPT Act last spring to begin to address this issue.

The legislation commonly referred to as the "Smith Bill" (Ch. 76, P.L. 2002) establishes water resources and flood-prone areas as high priorities for the Green Acres program. It requires the DEP to adopt an open space master plan that indicates where open space investments are most likely to occur, specifically identifying the "land where protection is needed to assure adequate quality and quantity of drinking water supplies in times of drought." Further, the Department is required to adopt guidelines for the evaluation and priority ranking process of land acquisitions that give "three times the weight to acquisitions of land that would protect water resources, and two times the weight to acquisitions of lands that would protect flood-prone areas." The impact of the new ranking system will depend on regulations now being developed.

The Garden State Greenways, a map-based, statewide vision for greenways and open space, should be an important input for a statewide open space master plan. A project of the New Jersey

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[33] Smart Links: Turning Conservation Dollars into Smart Growth Opportunities, Environmental Law Institute, 2002.

[34] In the past, landowners have initiated most acquisitions. In turn, a third party may have prompted them: local governments, DEP divisions or nonprofit land conservancies. Staff increasingly markets the program by contacting landowners of attractive properties via mail or through local representatives at nonprofit organizations or state parks. Large, complex acquisitions may involve not only all levels of government, but also funds from different Green Acres programs. To become more proactive in identifying properties for acquisition, the Green Acres program reorganized its staff by region in 2000.

Conservation Foundation and the Green Acres program, it is based on a comprehensive GIS database of natural features and existing preserved open spaces. It has been supplemented with many of the state's regional, county and municipal preservation plans, and influenced by a serious of visioning workshops in 2000 and 2001 seeking feedback from the conservation community.

With respect to the geography of farmland preservation, an evolving assemblage of plans, policies and initiatives has, over the years, attempted to bring geographical coherence. 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 opposing tension faced by the SADC is to "reach every corner of the state" and spread public funds geographically. The latest SADC Annual Report highlighted the purchase of Sun Valley Farm, the program's first acquisition in Bergen County. The average cost of preserving an acre of farmland varies tremendously throughout the state. 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. Figure 2 on page 26 shows the location of SADC acquisitions statewide.

Because, until recently, counties have cultivated property-owners and ranked most applications, the SADC has sought to bring a geographical focus to these efforts though the following:

- The statutory requirement that counties delineate *Agricultural Development Areas* (ADAs), although conformity varies from the extreme of effective non-compliance to some carefully prepared plans.
- The Planning Incentive Grant (PIG) program, designed to encourage better planning for agriculture through adoption of a farmland preservation element as part of the municipal master plan or county strategic plan.
- A call for counties to develop comprehensive farmland preservation plans, launched in 1999, and a subsequent effort in mid-2000 calling for county level "strategic farmland preservation targeting." This effort, combined with the PIG program requirements, has been partially successful.

The SADC's latest effort to base acquisitions on a strategic process is part of a larger Economic Development Plan for the Department of Agriculture. The SADC component, the *Strategic Targeting Project* has a local and state focus aimed at securing the agricultural land base. Counties will be provided with a series of maps and statistics to enable them to update their ADAs and identify *Easement Target Areas. T*he SADC has just released a preliminary proposed *Strategic Targeting Map* (see Figure 3, page 27) that identifies preservation priorities. The SADC is gathering county feedback now and will present the map for public comment in May 2003. Proposals to link the both the ranking system and PIG applications to the map are being considered.

Analysis conducted by New Jersey Future[35] indicates that, at the broadest regional scale, agricultural land preservation has been concentrated in certain regions of the state. The two principal areas of concentration: Gloucester – Salem – Cumberland (The Delaware Bayshore), and Burlington – Monmouth – Ocean – Mercer (the Farmbelt) represent about 60 percent of the total farmland preserved with SADC funds.

[35] New Jersey Future Special Report, *Rethinking Farmland Preservation in New Jersey* 2001. www.njfuture.org/HTMLSrc/farmland_intro.html 2001

Viewed at the town scale, preserved farmland is concentrated in a few towns, not necessarily in the regions cited above. Some 60 percent of all preserved farmland is concentrated in 18 of the 82 towns that have preserved farmland. These local programs have been built on a combination of good agricultural conditions, moderate development pressure and strong municipal leadership. Yet even in these "bellwether" towns, farm properties have been preserved in a checkerboard pattern that permits – and often encourages – encroaching residential subdivision. This issue is clear in East Amwell, where one of New Jersey's most aggressive farmland preservation programs may be undermined by intrusive land development (see Figure 4, page 28).

Figure 2. State Farmland Preservation Program Acquisition Activity

Figure 3. Draft Map of Farmland Preservation Priorities, February 2003

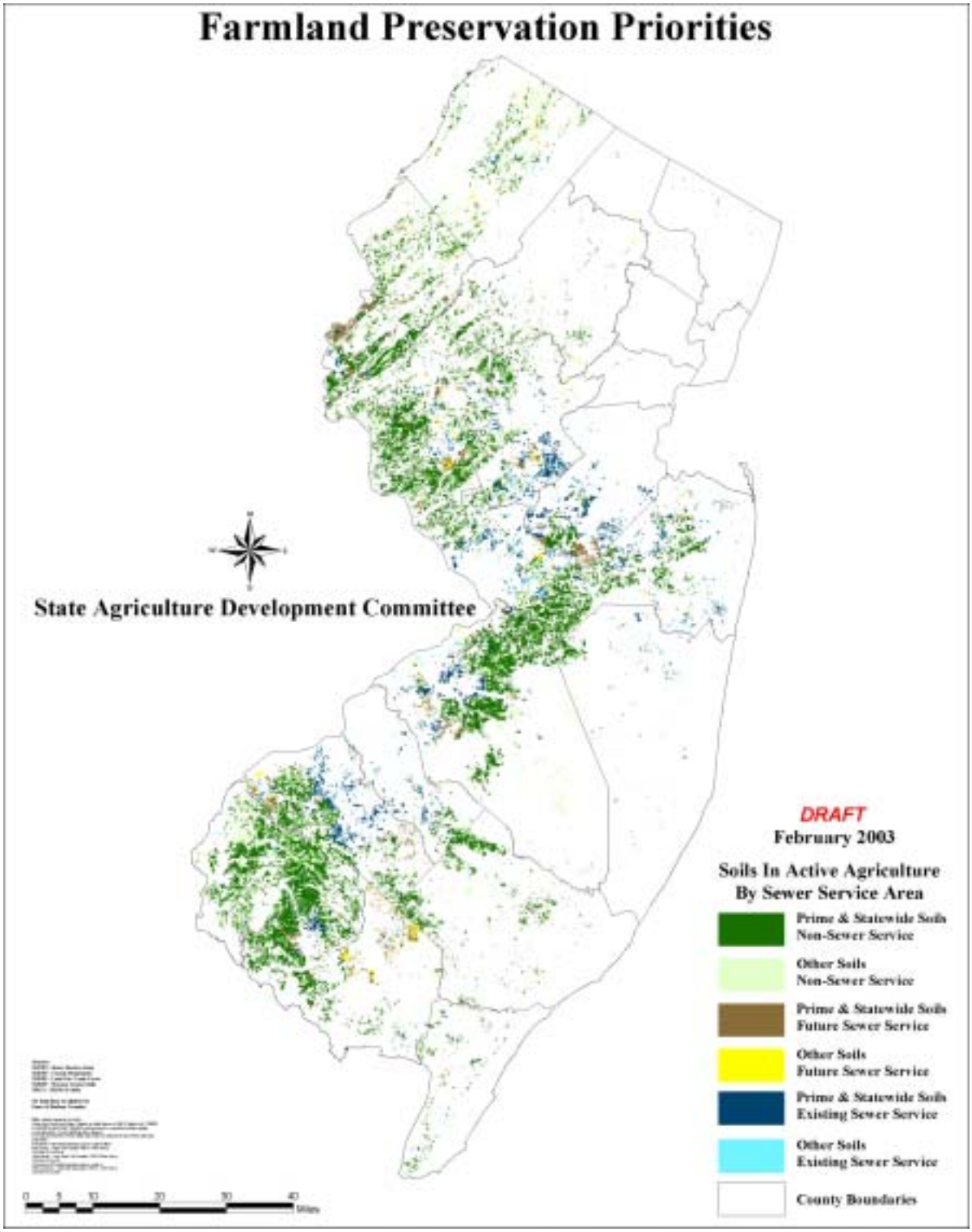
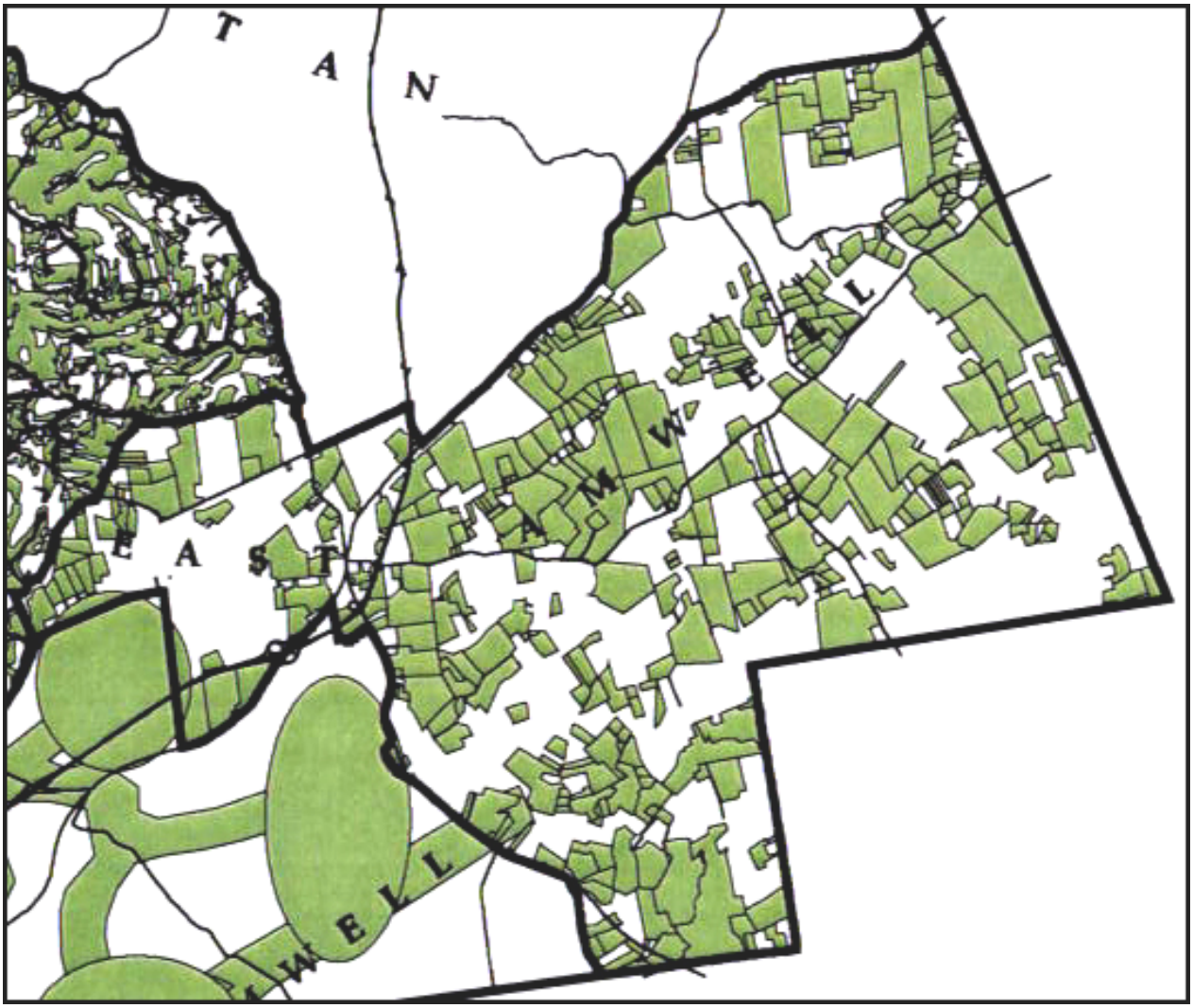


Figure 4. East Amwell Township, Areas of Municipal Preservation Interest



Prepared by: Hunterdon County Planning Department

IV. New Jersey Future's Research on Land Conservation: Problems and Opportunities

A. Land Conservation Performance and Practice at the Local Level

New Jersey Future published an analysis of **municipal performance** with regard to environmental resource protection in New Jersey towns in June 2001.[36] In New Jersey, 566 municipal governments exercise virtually all authority over land use; counties play a very limited role. A sample of 44 towns was surveyed. Within them lie some of the state's most valued and sensitive natural resources and landscapes. After identifying the critical natural resources of regional importance from various state, county and local sources, municipal master plans and land-use ordinances were reviewed. The finished survey compares local efforts with regional resource values. Some leading conclusions follow:

- Municipal land use regulations and practices are, for the most part, sharply at odds with regional environmental conservation imperatives – and even with local conservation goals expressed in master plans.
- Outside of the Pinelands, virtually all private land in New Jersey is zoned for development, often at densities that do not reflect the carrying capacity of the land.
- There is a sharply drawn "checkerboard" of commitment to environmental conservation. Activist towns border uncommitted towns.
- Municipal conservation policy typically lacks a natural systems approach; ecosystems, biodiversity and watersheds protection are usually not important factors.

New Jersey's *Municipal Land Use Law* (N.J.S.A. 40:55D-1 et.seq.), or MLUL, spells out the rules under which municipalities may plan for and regulate the use of land. Both the "purposes" of the MLUL, the provisions for master plans, and the authorizations for zoning and related land development ordinances provide an adequate basis for resource protection. In addition, there are important provisions for capital facilities planning and programming.

Importantly, the power to zone carries with it the authority to require open space "set-asides" as conditions of approval of development applications – at no public cost. This is typically the product of cluster development, planned development, or transfer of development credits from non-contiguous parcels. Significant amounts of open space have been acquired or protected throughout New Jersey by this method. Records, however, are spotty, and it is impossible to estimate amounts. (See also the case studies beginning on page 35.) Provisions in the MLUL regarding the ability of municipalities to mandate cluster and planned development are not as clear as they should be. Amendments to clarify these provisions are necessary.

Although most municipal master plans have general statements in support of resource protection – some with very detailed maps – these documents are seldom fully implemented in the form of regulation. For example, among the environmental goals to be found in Andover Township's (Sussex County) Master Plan are "to identify and protect environmentally sensitive areas" and "to require larger lot sizes on environmentally sensitive properties." A look at current land-use regulations in this resource-rich town revealed one-acre minimum lot sizes throughout with no special environmental ordinances in

[36] New Jersey Future Special Report, *Assessment of Municipal Resource Performance in Resource Conservation,* June, 2001. www.njfuture.org/HTMLSrc/rc_intro.html

place (i.e. aquifer, stream corridors, or steep slope protections) – efforts insufficient if the town is to achieve the aforementioned goals.

Our survey shows that – outside the Pinelands – virtually no town had a base zoning even close to the low densities essential in protecting environmental values; say an average of 1 unit per 20 acres. Some towns have "down-zoned" to the 3-5 acre range and a handful to as much as 10 acres, with various clustering provisions, a change that, by itself, will only accelerate the consumption of rural land. But most exurban zoning remains in the 1-3 acre range. Furthermore, the stated policy of all these municipalities – as implied by their land use regulations – is full "build-out," typically at market densities.

In addition to the zoning provisions, many towns have development regulations intended to protect one or more of the following: steep slopes, aquifers, floodplains, freshwater wetlands, stream corridors, woodlands, and right to farm. But these vary dramatically in their intended strength, some with a "presumption against," but many more with a "presumption for" development. Habitat conservation, endangered species, and biodiversity are mentioned in only in a handful of towns. Finally, the checkerboard of commitment to environmental conservation suggests that one town's initiatives may be undermined swiftly by development approvals or other conservation lapses by its neighbors.

To learn more about the issues municipalities face in preserving natural resources, as well as to gain insight about acquisition and regulatory strategies, NJF conducted **three case studies of local land conservation** during the summer of 2002. Each of the towns had significant quantities of prime agricultural soil and are identified on county or state levels as preservation priorities. They are: Allamuchy Township, Warren County; Plainsboro Township, Middlesex County; and Woolwich Township, Gloucester County. While no statewide conclusions can be drawn, a few characteristics of successful municipalities emerge:

- Local leadership to create a vision and sell it to the public;
- Public participation in planning issues;
- Cooperation and negotiation with other levels of government and developers; and
- Adoption of supporting regulations.

While state programs provide important resources for municipal growth management tools, *local* factors – strong leadership, supportive residents, and resourceful officials – are critical ingredients for municipalities seeking to protect environmental resources.

In the summer of 2002, NJF surveyed **county-level land conservation** efforts in all 21 counties, to learn about county conservation goals and plans as well as the interconnections with municipal efforts. Interviews were conducted with representatives from planning offices and related land-management departments. Current master plans, open space plans, and farmland preservation plans were examined when available, as were other county documents and information. The study's conclusions provide a snapshot of the county perspective:

- Land preservation is overly opportunistic, reacting to development pressure;
- Fewer than half of New Jersey's counties advise regulatory measures along with land acquisition to assist natural resource preservation;
- The role of counties in land preservation varies from proactive to uninvolved;
- Communication between state-county-municipal decision makers is often inadequate;
- Conservation plans throughout the state are being evaluated.

B. Links between Land Acquisition Programs and Local Plans and Regulations

Local government power over land conservation in New Jersey covers both planning and regulatory authority, as well as spending on land acquisition. Localities have decision-making discretion regarding the use of significantly more land acquisition funds than state-level staff. In 2001, municipalities and counties had access to $242 million from: local open space tax revenues ($134 million), Green Acres appropriations ($79 million) and farmland program appropriations ($29 million). Even considering that a portion of the Green Acres appropriations are for *loans* to local governments, this sum far exceeds the amount available to direct state-acquisition programs at Green Acres and the farmland program, which equaled $112 million.

Two state programs have been crafted to influence local land conservation: Both the Green Acres "Planning Incentive" (PI) Acquisition Program and the Farmland "Planning Incentive Grant" (PIG) Program demonstrate an ability to "incentivize" the adoption of growth management tools by local government. Though not identical, both programs require:

- A dedicated local-funding mechanism, typically a surcharge on the property tax;
- Adoption of either an Open Space and Recreation Plan or farmland preservation master plan element.

Incentives include a streamlined application process, which provides much-desired flexibility to the local government, along with quicker results. The Farmland PIG program offers matching grants directly to municipalities for the first time, while Green Acres PI program offers higher matching grants (50 percent) than previously available.

The response has grown significantly: by November 2002, 187 municipalities and 20 counties had adopted open space funding mechanisms. The chart below shows property tax revenues for the past three years.

Local Open Space Revenues from the Property Tax

Calendar Year	County	Municipal	Total
2000	$82 million	$28 million	$110 million
2001	$95 million	$40 million	$135 million
2002	$118 million	$49 million	$168 million

Figure 5 on page 32 shows the location of participating municipalities in green. Overlaid in red are all the municipalities that participate in either the PIG or PI programs. The map provides a good barometer of public support for open space preservation.

Unfortunately, the impact of the programs on local plans and regulations is mixed. According to Green Acres staff, the municipal open space plans vary widely in quality – and few take a regional view.[37] Figure 6 on page 33, for example, shows a compilation of all of the municipal open space plans in Hunterdon County. Municipal level planning – when aggregated at the county level – appears haphazard

[37] Green Acres staff reviews them for completeness, but not qualitatively. The most common type of five-year action plan involves a long "wish list" of properties that might be preserved. The properties identified in the five-year action plans are currently being mapped as a GIS layer to help Green Acres staff check whether proposed acquisitions are part of a municipal OSRP. Once an OSRP is adopted, local governments can acquire sites identified in the plan without having to file separate applications. The process is very flexible, and a locality can preserve a property not identified in the plan simply by notifying Green Acres that they are amending the OSRP.

Figure 5. Municipal Participation in Open Space Preservation Programs

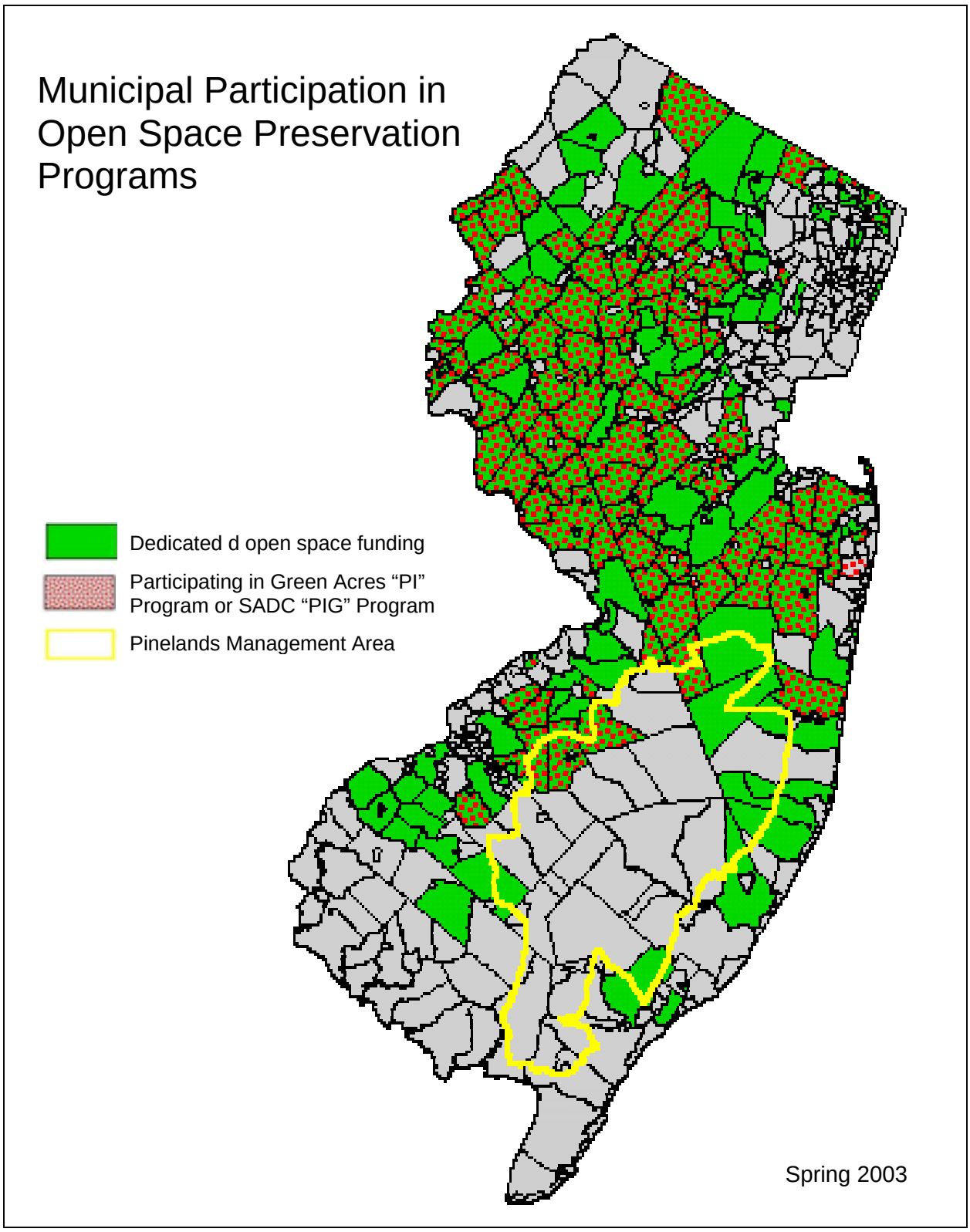
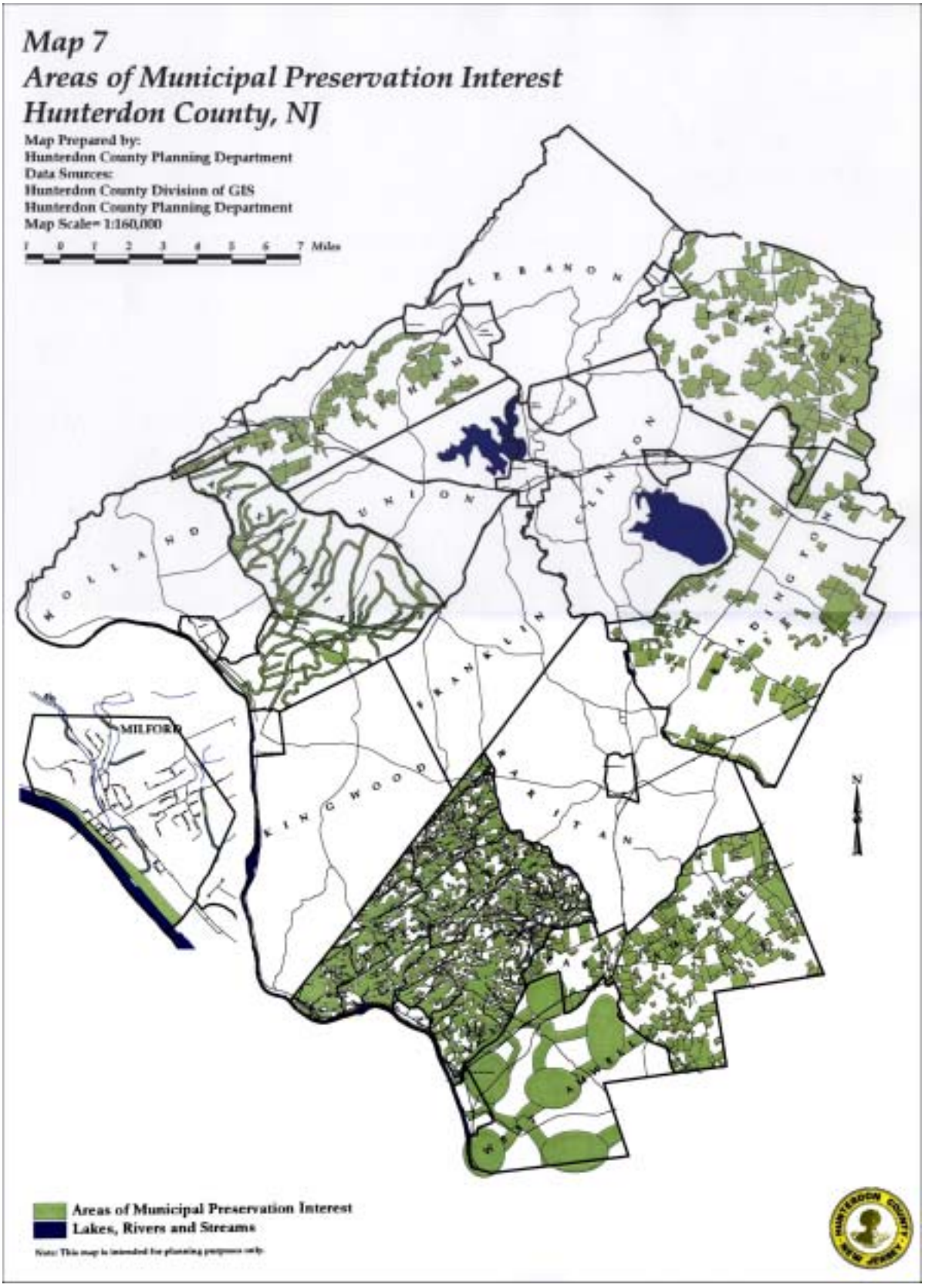


Figure 6. Areas of Municipal Preservation Interest in Hunterdon County



and inconsistent. Anecdotal evidence from the PIG program suggests better results, with that program's emphasis on preserving "reasonably contiguous blocks of farmland" encouraging municipalities to plan and regulate strategically. And, PIG requires that a farmland preservation element be adopted in the municipal master plan, offering an opportunity for better ties to municipal land-use governance. **Though they may affect local planning, neither the PI or PIG programs require any changes to municipal land-use regulations such as changes in zoning or other resource protection ordinances.**

A comparison of the state's[38] average cost per acre for acquisitions under the different programs reveals dramatic variations, as shown on the table below. The high cost of local Green Acres acquisitions (under the PI and to a lesser extent, the standard program) probably reflects the land's location in outer-ring suburbs where development pressure is most intense. Conversely, nonprofit and state acquisitions take place in more remote parts of the state.

Average Acreage Costs, by Program

	GA - Local	GA - Nonprofit	GA - State	Farmland
Fiscal Year 2002	$9,460	$3,342	$3,898	$3,827

To learn about the underlying regulations and public investments for conservation lands, New Jersey Future compiled data on hundreds of recent acquisitions by the Green Acres and Farmland Preservation program. Both programs rely on appraisals to help determine land value. Appraisals include an analysis of the land's development potential, describing allowed use and densities, clustering provisions and the availability of public sewers. Any development activity (e.g. development approvals) is usually described as well. The following sample of state acquisitions was studied:

- 143 Farmland Preservation acquisitions with closings in 2001, covering 11,973 acres;
- 112 Green Acres Direct State acquisitions with closings in 2001, covering 11,851 acres; and
- 128 Planning Incentive acquisitions in Hunterdon and Monmouth Counties[39] from 1999 – 2001, covering 5,683 acres.

The research findings (shown on the chart on page 35) found that most of the land acquired with state funds is zoned for growth. This demonstrates a costly contradiction in public policy: one arm of government zoning land for growth, and another spending public funds to purchase it. When developed, such densities lead to a wasteful consumption of land.

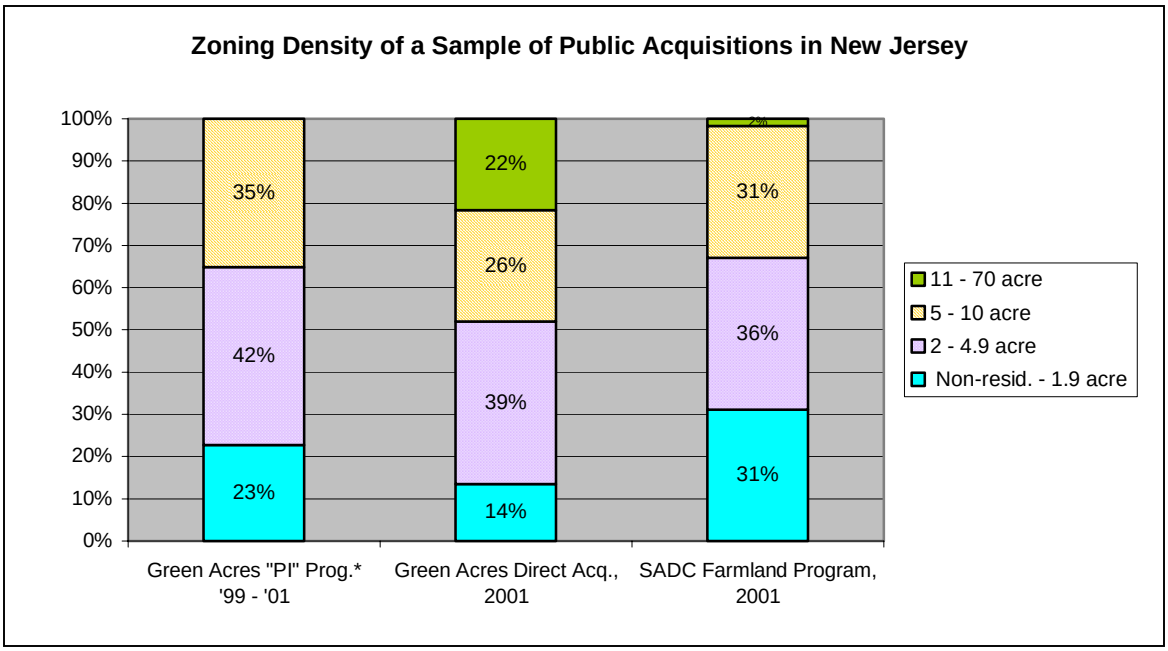
- All of the programs acquired a large share (14 percent -31 percent) of land zoned aggressively for growth, either designated for non-residential uses or residential with minimum lot sizes less than 1.9 acres.

- For the Farmland and Green Acres PI program, more than two-thirds of the land acquired was zoned for development at marketable densities, with minimum lot sizes less than 4.9 acres.

[38] The state pays 100 percent of direct acquisitions, but provides only up to a 50 percent match for local acquisitions, except in urban areas, where a 75 percent match is available. These figures show only the state share of the cost.
[39] Due to the complicated manner of record keeping it was only feasible to study a sample of PI acquisitions. Hunterdon and Monmouth were chosen because they had a mix of suburban and rural landscapes.

- Less than one-third of the farmland was zoned for lot sizes large enough to qualify for farmland assessment. (At least six acres are needed: a minimum of five acres devoted to productive agricultural use and one acre for a house & related structures.)

- Only the Direct State program – with limited local involvement – preserved any land with minimum lot sizes greater than 10 acres. All of these properties were located in the New Jersey Pinelands, which is subject to regional land-use control.



For most of the land acquired by Green Acres and SADC, sewers were not available, as shown on the chart below. According to this sample, public land acquisitions are seldom made on land with sewers.

	Total Acreage	Percent with Sewers
Farmland Preservation Program	14,950	2.4%
Green Acres: Planning Incentive	5,082	6.7%
Green Acres: State Acquisitions	14,005	1.6%

C. Case Studies of Conservancy Land Conservation Projects

Two case studies presented by Peter Szabo in his (draft) "Mid-Term Assessment of the Doris Duke Charitable Foundation Land Conservation Initiative" capture well the conflicts between state agency programs (e.g. between fair housing and environmental conservation), the inconsistencies in and among local government policies, and the conflicts between government and conservancy work.[40]

[40] Peter S. Szabo, "Doris Duke Charitable Foundation Land Conservation Initiative, Mid-Term Assessment; Draft" May 14, 2002. NJF augmented Szabo's work, quoted extensively here. The conclusions are those of NJF, with research on applicable land-use regulations. Some of the information presented here requires field verification.

Case Study: Muckshaw Ponds Preserve - The Nature Conservancy

The Muckshaw Ponds Preserve is a major Nature Conservancy holding in Fredon and Andover Townships, Sussex County (see Figure 7, page 37). It adjoins the Town of Newton, a growing exurban center in the ecologically distinct and sensitive Ridge and Valley province of Northwestern New Jersey. The Preserve and its environs, according to the Nature Conservancy, provide critical habitat for numerous globally rare plant species and natural communities. The Preserve, surrounding lands, and extensive areas to the south and east are ranked by the DEP for their ecological value as "Heritage Priority Areas" and are delineated on the *State Plan* map as PA 5, Environmentally Sensitive Planning Area.

Two high-density housing developments totaling 420 units were proposed in the Town of Fredon, upstream and in close proximity to the Muckshaw Ponds Preserve. Local leaders are reported to have feared that development of this magnitude would not only put at risk the area's ecological significance, but would accelerate a change in its rural quality of life, stress the local services (especially schools), and increase taxes.

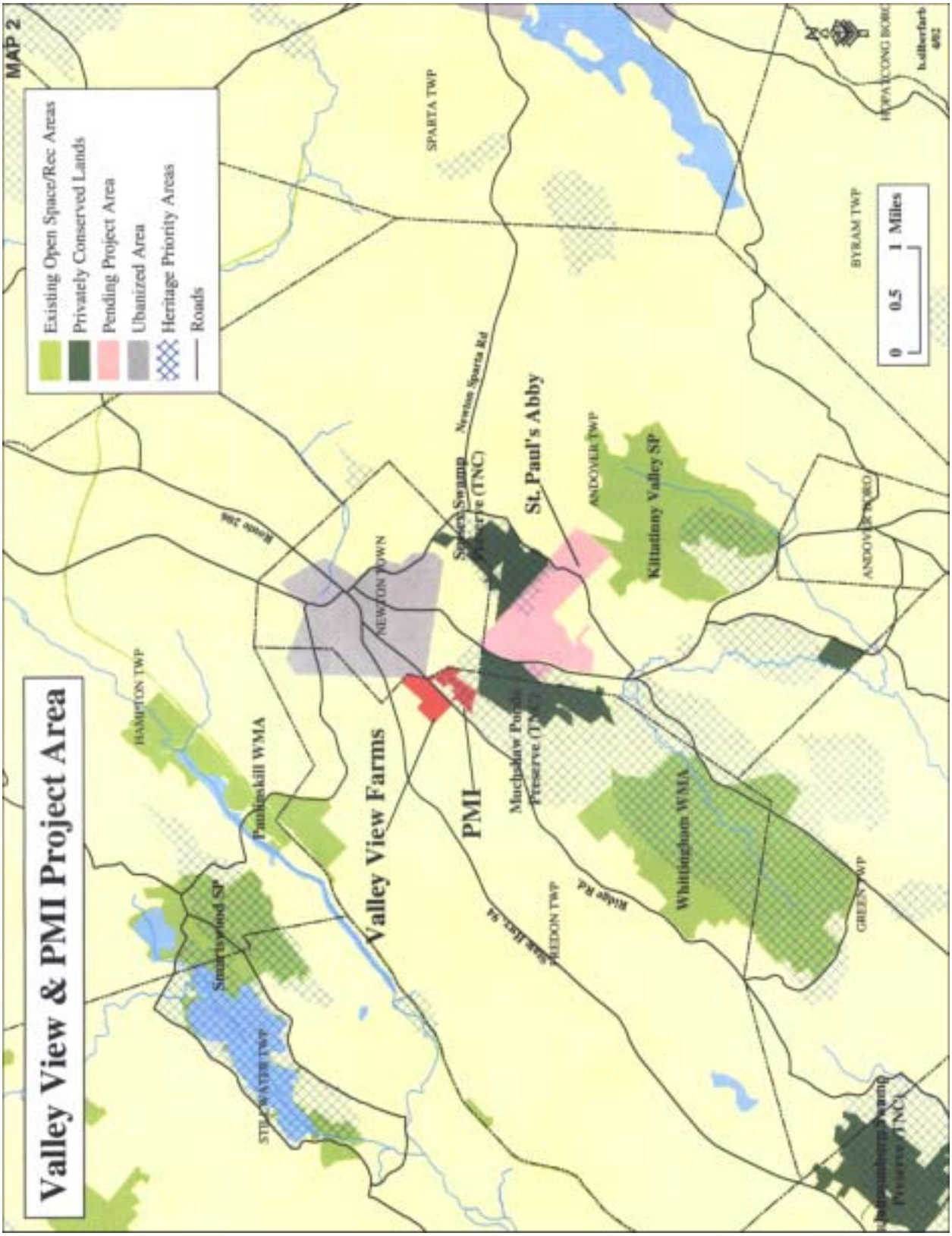
The 135-acre "PMI" tract, from Nature Conservancy reports, consists of wooded uplands, limestone ridges, and agricultural fields, serving as a major groundwater source for the nearby Muckshaw Ponds. While the tract is located in an "AR-6 Agricultural-Residential Zone," Planned Recreational/ Residential Development" is permitted as a conditional use anywhere in the zone on tracts of 30 acres or more. Previous owners of PMI had applied to the Township for approval to construct 183 patio homes and 18 single-family residences and a wastewater treatment facility. The development plan apparently conformed to the requirements of the conditional use and would also have served Fredon's Mount Laurel housing requirements. The Nature Conservancy acquired the property in June 2001 for about $11,000/acre.

Nearby Valley View Farms is a 198-acre property with similar characteristics. The zoning here is "PD Planned Development," providing for a mix of attached- and detached-housing types and, significantly, providing an opportunity for the town to meet its "Mount Laurel" affordable housing obligation. Indeed, the preamble to the zone description states: "The purpose of the PD district is to encourage the development of certain large vacant tracts …" for various reasons, including the realistic opportunity for affordable housing. TNC purchased the property in October, 2000, for approximately $14,000/acre.

These two projects "permanently" secured significant and sensitive natural areas valued by science and so designated in regional planning policy. They add substantially to a greenbelt of rural land around the growing center of Newton. Because it was the first non-profit application to the state farmland preservation program, Valley View Farms established an important precedent.

Yet these acquisitions perfectly illustrate the inconsistencies in public policy – affordable housing vs. environmental conservation – that frustrate land conservation efforts in New Jersey. Further, data and regional plans from State sources are inadequately represented in local land-use regulations.

Figure 7. Valley View and PMI Project Areas



Did the acquisitions curb sprawl? And, will future developments in the vicinity pose an equal threat? Is there money to buy them all? Local regulations offer little encouragement. At five acres, zoning in the surrounding portions of Fredon Township remains liberal, unlikely to protect ecological values, the agricultural economy, or the rural character. The "floating" planned residential zone remains in effect. Zoning in adjoining Andover Township, with minimum lot sizes predominantly in the 2-3 acre range, is more permissive still.

Case Study: The Krischer Tract - Trust for Public Land

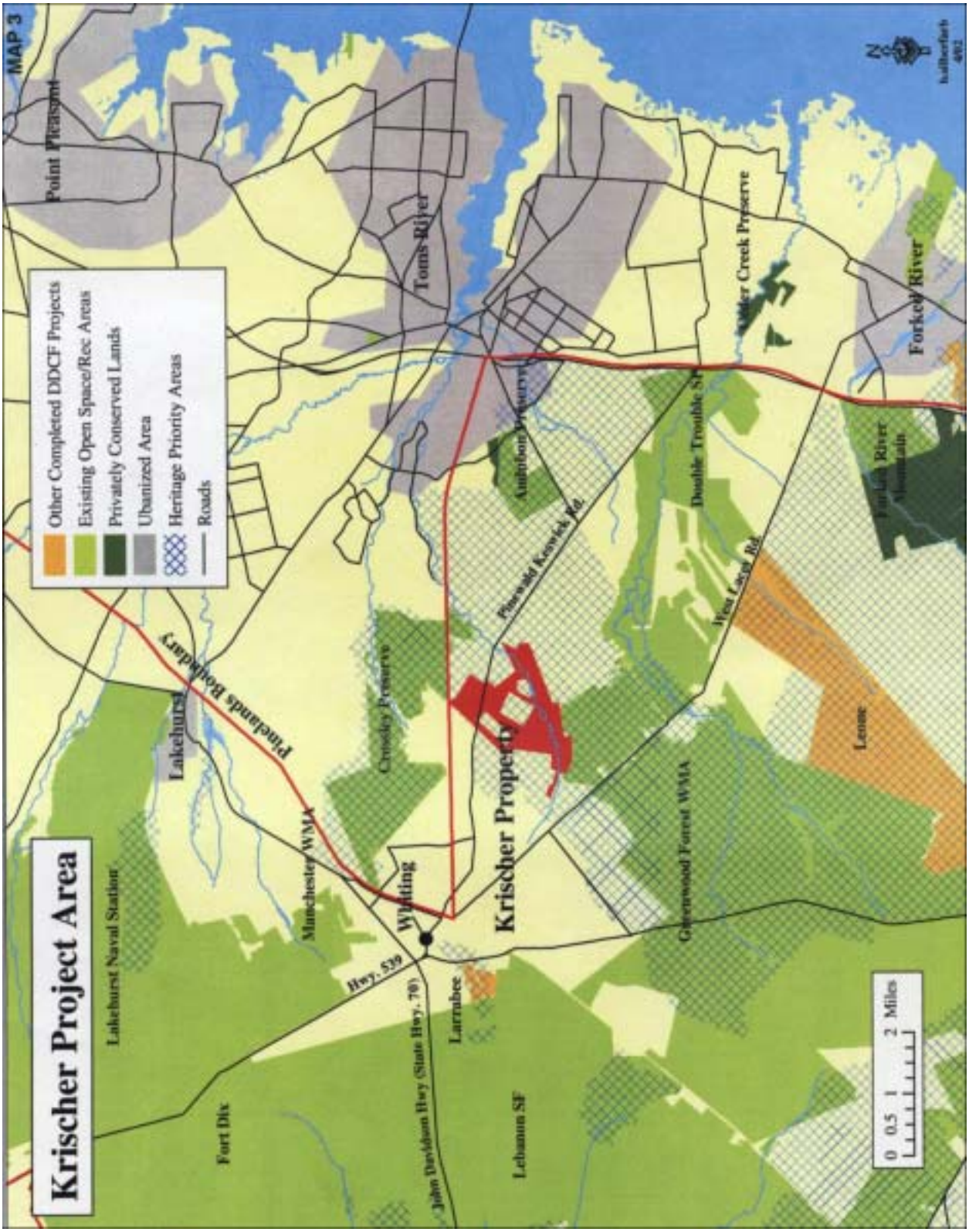
The Krischer property, 1,063 acres, is in Berkeley Township, Ocean County, at the northeastern edge of the New Jersey Pinelands (see Figure 8, page 39). It contains white cedar and sedge swamps and important bird breeding areas in the headwaters of the Toms River. There is development pressure from the burgeoning town of Toms River, a major Jersey Shore hub to the east, and the in the vicinity of Whiting, fast becoming a frontier of retirement communities. The Krischer property lies within the jurisdiction of the Pinelands Commission and is designated by the *Comprehensive Management Plan* as a Forest Management Area. Residential units in this zone are restricted to one unit to 15.8 acres, and strict environmental performance requirements apply for any construction.

The Krischer owners had challenged the Forest Management Area designation, claiming that the character of their property was better defined by the retirement and resort communities on three sides than by the Forest designation. The Pinelands Commission wished to defend the scientific planning standards by which they had delineated this area and others throughout the Pinelands region. TPL, recognizing the ecological value of the property and, with the Commission, wishing to settle a potentially disastrous lawsuit, purchased the property in December 2001 for $1.5 million or $1,411/acre. Another important secondary effect: the town of Berkeley completed the process of bringing its comprehensive plan and zoning into conformance with the Pinelands *Comprehensive Management Plan*, after 20 years, one of the last Pinelands towns to do so.

The Pinelands Area was delineated by state legislation in 1979, and the Pinelands Management Areas were designated by the Pinelands Commission in 1981. While one might dispute these designations – and many certainly have – they carry with them the well-established authority of government to draw boundaries and enforce within them regulations that may differ by area. To designate an area of forest between growing population centers is entirely appropriate. The Pinelands Area delineation (a legislative act) and the Forest designation (an administrative act) may, to be sure, be changed. The Krischer property is now afforded permanent protection. But the restrictive provisions of the Pinelands Commission surely had several critical effects:

- A low per acre cost of $1,411/acre, based on restrictive zoning provisions
- Leverage in the settlement of in important lawsuit
- A level of predictability – to most property-owners (though perhaps not Krischer) – as to what they can do with their property
- A high, albeit not certain, level of protection for property surrounding the Krischer tract.

Figure 8. Krischer Project Area



D. Property Taxes and Open Space Preservation

New Jersey has an inordinately high reliance on the property tax. This policy distorts municipal land-use decisions, fostering exclusionary motives in some towns that are grappling with rapid growth. These municipalities may actively pursue large lot zoning and land conservation as a way to minimize the number of school children. The tax system builds hostility to land preservation in other less developed towns that may oppose land conservation based on a desire to protect their future tax base.

Payments in Lieu of Taxes

To reduce the financial burden of preservation, an In-Lieu-of-Tax Payment Program was created in 1970, and expanded by the *Garden State Preservation Trust Act*. The program makes annual payments to municipalities to mitigate the loss of tax revenues from land held by the state of New Jersey or by nonprofit organizations. The legislation includes a 13-year declining percentage schedule and thereafter includes a $2-, $5-, $10- or $20-per-acre payment, depending on the acreage of land in the municipality owned in fee simple for recreational and conservation purposes by the state or qualified nonprofit organizations. In 2002, a total of $7.2 million was sent to 235 municipalities. Payments are made from the general fund, not GSPT funds.

The Farmland Assessment Program

Use-value assessment for farmland was authorized by the *Farmland Assessment Act of 1964* (PL 1964, Ch. 48) and is provided for by a constitutional amendment[41]. In 2002 there were 1.16 million acres (23 percent of the state's land area) under farmland assessment in New Jersey, down from 1.27 million in 1983, the year when the greatest acreage was enrolled.

The minimal requirements for farmland-use assessment eligibility are that a tax lot must be at least five acres in size and "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. With these minor constraints, eligibility is virtually ubiquitous in New Jersey, and enrollment is estimated at or near 100 percent. (In 1997, the USDA Census listed 832,600 acres in farming, while more than 1.1 million acres were farmland assessed.) Savings are substantial: a 1999 study of farmland assessment[42] estimated that under farmland assessment, tax payments averaged 30 percent of what they otherwise would be, and anecdotal evidence suggests even greater savings. Nevertheless, the property tax burden on New Jersey's farms remains among the highest in the nation, in part because farmhouses and related structures remain taxable at full value.

When a 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. New Jersey's "rollback" provisions are weak compared to others states in the northeast.

There are sound tax equity arguments for farmland assessment. But policy studies are at best mixed about its impact on land use, specifically on farmland retention and biodiversity. Most criticisms of farmland assessment focus on three reforms:

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[41] This discussion draws in part from Alison E. Mitchell, *Gaining Ground; Preserving New Jersey Farmland Through Effective Tax Policy*, New Jersey Conservation Foundation, 1998.

[42] Adesoji O. Adelaja. *Farmland Assessment in New Jersey: Effects of Revisions in Eligibility Requirements on Land Use, Open Space and Municipal Finance.* Cook College, Rutgers University. 1999, pp. VII-12.

1. Increasing the penalty for conversion of land to non-farm use.
2. Linking the benefits of preferential tax assessment to property owners' commitment to preservation and broader land-use policies, and
3. Broadening the scope of the program to adopt biodiversity as a permitted goal.

Recent studies have examined the impact of the rollback tax on farmland retention in New Jersey. Some have concluded that lengthening the rollback period will deter land conversion. But in 1998, after a review of an extensive literature on farmland assessment as well as experience in New Jersey, the New Jersey Conservation Foundation concluded that the size of the rollback tax "has proved insignificant in deterring sales of agricultural land for non-farm uses." Further, NJCF stated that farmland assessment encourages speculation by reducing land-holding costs and effectively provides an interest-free loan to landowners holding their property for future financial gain or actual development.

The final report of the 1988 N.J. State and Local Expenditure and Revenue Policy (SLERP) Commission concluded: "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."

More recently, a 1999 study commissioned by the NJ Department of Agriculture[43] studied the impact of an increased rollback tax and clarified its impacts:

- Long-term farmers would not be affected, nor would those selling their development rights for farmland preservation. Farmers and speculators planning to sell land would be affected.
- Land prices in a soft land market (where the buyer sets the price) would probably fall to reflect the conversion penalty, while, "In a competitive land market where the market is strong (e.g., where conversion is actively taking place and the land owner/farmer is not a price taker), the burden is mostly on the developer or speculator (higher development cost)."[44]
- Short-term speculators would have no incentive to participate in farmland assessment.
- Rollback tax revenues would increase.

Not all of these points were incorporated into the study's economic model, and its assumptions are subject to debate[45]. The study found that an increase in the rollback tax would induce many landowners to sell their land, because the tax would reduce their gain from selling and thus their incentive to hold the land. The study found that if the rollback period were increased to 10 years, 100,700 acres (just fewer than 10 percent of enrolled acres) would eventually[46] be divested, increasing rollback proceeds from $10 million to $156.6 million. While the magnitude of the effect claimed by the study is probably overstated, a higher rollback tax is likely to reduce land values in soft markets, and may induce some landowners to sell. It seems unlikely to affect landowners' decisions in active markets. The impact of deterring short-term speculation on conversion is not considered.

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[43] Ibid.
[44] Ibid., p. II-7.
[45] The study relies on a simple model that considers the effect of property taxes (and other variables) on farmland acreage. Not surprisingly, higher property taxes are found to reduce the amount of agricultural land. The model does not represent the effect of the one-time tax at the point of sale. Nor is the size of the rollback tax related to the gains made from selling. Thus, while the author argues persuasively that many farmers hold land primarily for the capital gains they will one day receive upon selling land, the effect of an increased rollback tax on this decision is not clear.
[46] No definition of "eventually" is provided, except for "in the long run."

To discourage conversion, the New Jersey Conservation Foundation recommends increasing the rollback to 10 years and dedicating these funds to the state farmland preservation fund. To avoid the need for a constitutional convention required to alter the rollback tax provisions, "conversion taxes" have been considered. In 1989, Senator Ogden proposed a conversion tax at the suggestion of the Department of Agriculture. This proposal deserves reconsideration.

The second reform seeks closer links between the following: 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.

Agricultural districting programs in other states provide clear linkages between land-use planning, regulation and preferential assessment policies.[47] California's Williamson Land Conservation Act, dating from 1965, allows landowners to petition cities and counties for the creation of agricultural preserves, typically 100 acres but smaller under certain conditions. District proposals are submitted to the city or county planning department. Creation of a district is conditioned on a finding that the preserve is consistent with the general plan. On establishment of a district, landowners may enter into a 10-year contract to have their property valued at its agricultural use. Should the contract be cancelled before expiration, the owner pays the deferred back taxes as well as a 12.5 percent cancellation fee. California law includes restrictions on the subdivision of district lands.

New York State's statute likewise permits the creation, at the request of property-owners, of districts carrying eligibility for farmland use taxation. The county legislative body may establish the district, after public hearing and a positive recommendation from both the county planning board and a farmland protection board. Minnesota's Metropolitan Agricultural Preserves Act applies only to the seven county Twin Cities region. Under this statute, land ceases to be eligible for an agricultural preserve – and preferential tax treatment – when the comprehensive plan and zoning for an area are no longer locally designated for agricultural use, as evidenced by a maximum residential density permitting more than one unit per 40 acres. 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.

All of these statutory models in varying ways meet the definition of "growth management" in that they provide consistency among land planning, regulation and fiscal policy. In New Jersey, there are no such ties. Use-value assessment for farmland is available anywhere, as long as the applicant's property is five acres or more. New Jersey's SLERP Commission recommended a *planning* link, granting certain property tax benefits only to areas designated for environmental or rural conservation in the *State Plan*, specifically Planning Areas 4 and 5. Eliminating preferential assessment in the state's designated growth areas would encourage development there by raising the cost of holding land. Preferential assessment could also be used as a "carrot" to encourage supportive *regulations*, if offered only to municipalities with protective zoning and infrastructure limits.

The farmland assessment program mandates harvesting on the large "nonappurtenant" tracts of forestland to meet income requirements. This practice undermines the protection of wildlife habitat and biodiversity, especially considering the threat posed by an overpopulation of the deer herd on forest regeneration. The New Jersey Conservation Foundation recommends amending program requirements to grant current-use tax assessment for woodland that is managed for habitat and biodiversity.

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[47] Information on agricultural districts is drawn from American Planning Association, *Growing Smart Legislative Guidebook*, pp. 14-75 et. seq. Statutory references are included, as well as a model agricultural districts law.

V. Smart Conservation in Action: New Jersey and Other States

A. Case Studies from New Jersey Municipalities

Some of New Jersey's local governments are implementing the principles of Smart Conservation. Three stand out as leaders: Chesterfield, Plainsboro and East Amwell. Each of these municipalities has taken charge of its future by adopting components of Smart Conservation. Each of these towns:

- Plans strategically to protect green infrastructure,
- Targets land acquisitions to priority areas,
- Coordinates planning, zoning, spending,
- Complements affordable housing plans,
- Creates a nexus between state and local actions, and
- Balances the public interest with that of property owners.

The Township of Chesterfield (Burlington County) is poised to become the state's first municipality outside of the Pinelands to add significantly to its already impressive farmland preserve, at little public cost, using a TDR program.

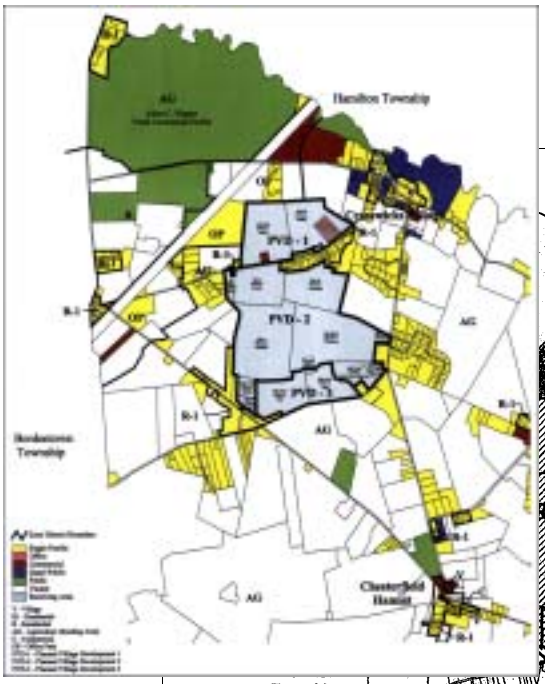
A sparsely developed agricultural community in Burlington County, Chesterfield has 5,955 residents in its 21.61 square miles. The entire township is designated in the *State Plan* as Planning Area 4 – Rural. Fully 73 percent of the town's land area is enrolled in the farmland assessment program. To date, 4,264 acres (31 percent of the land area) of farmland has been permanently preserved. The township has spent more than 10 years planning a TDR program to direct all of the township's future growth to a designated "receiving area" while limiting development elsewhere. The 1997 Master Plan envisioned a neo-traditional town center in the receiving area with a variety of housing types (including affordable housing), neighborhood shops and services, a school and other civic uses and recreational open space. Preserved farmland would surround the "planned village" and Chesterfield's three historic hamlets (see Figure 9, page 44).

Chesterfield's well-defined vision has allowed it make regulatory changes, garner state grants, make strategic infrastructure investments, and attract private participation. In 1998, the Township adopted a new Land Development Ordinance enabling TDR and changing the underlying zoning in the agricultural districts from 3.3-acre lots to 10-acre lots. A clustering option was added, giving a density bonus in exchange for preserving 50 percent of the property as open space. The planned village is unique in New Jersey in that it *requires* TDR credits transferred from the surrounding farmland, and is sized (at 1,300 dwelling units) and zoned to accommodate all of the Township's remaining development capacity. The State Planning Commission awarded "Center Designation" to Chesterfield's planned village, and the Township received a Smart Growth Planning Grant with which it commissioned the village's conceptual design and architectural design standards. Sewer capacity was secured from a nearby facility, and a force main and pump station were built with township funds.

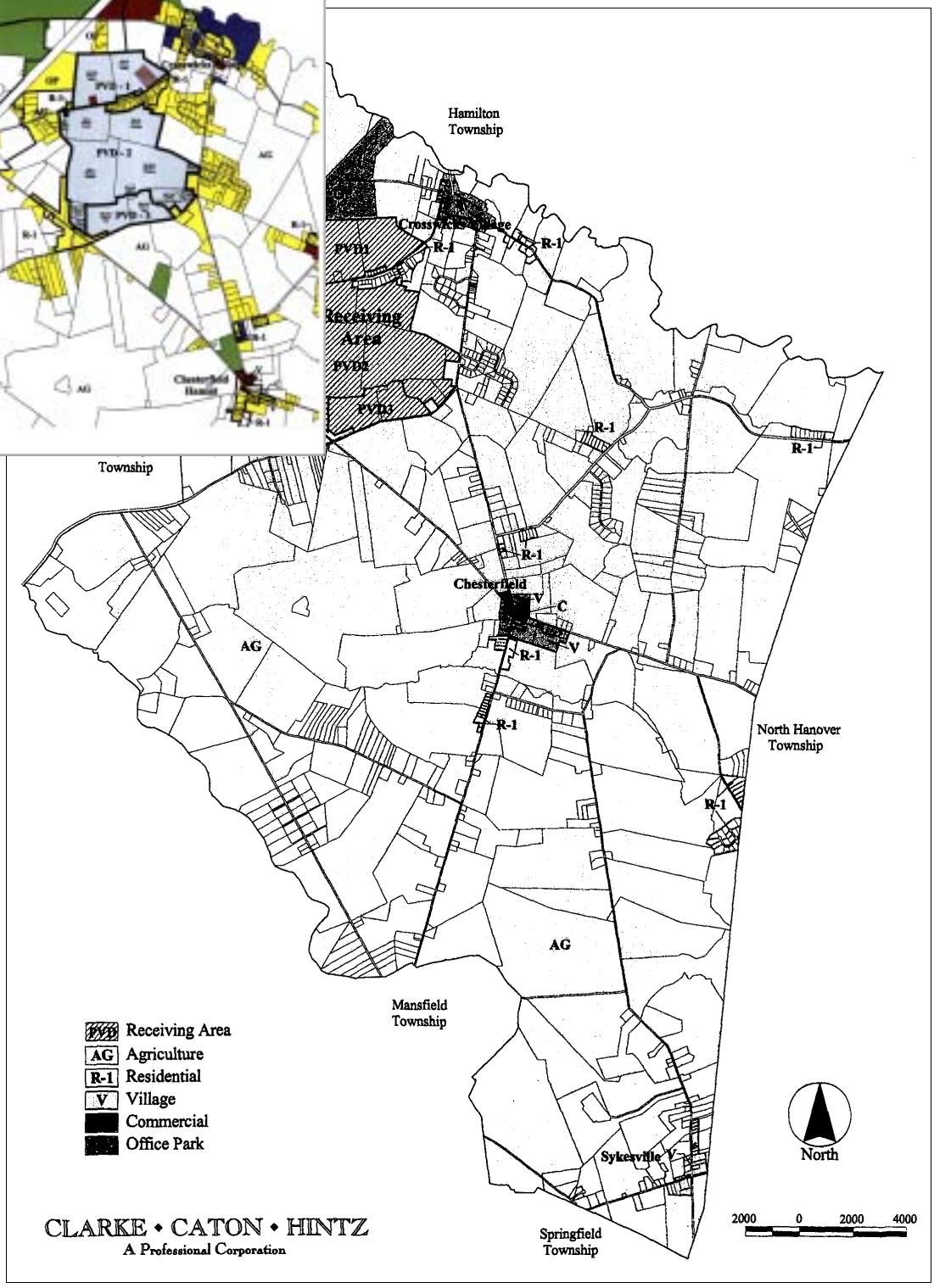
Chesterfield's vision will soon become reality. Fully 85 percent of the land in the Receiving Area is either controlled by major residential developers or in active contract negotiations. And, developers have already purchased development credits that will preserve 243 acres. Developers are to provide affordable housing through a mandatory set-aside, and contribute to the new road system and recreational facilities through cost-sharing programs.

Figure 9. Chesterfield Township Transfer of Development Rights Program

Receiving Area Existing Land Use & Zoning



Chesterfield Township Existing Zoning



During a 30-year period of rapid growth that transformed it from a small farming community, **Plainsboro Township** (Middlesex County) preserved 45 percent of its land through creative regulations, negotiations and acquisition. Now home to some 20,215 residents on 12 square miles, Plainsboro had no long-range plans for its future until the early 1970s, when more than 7,000 housing units were approved in a few years' time. In 1977, Peter Cantu became mayor and helped focus the direction of the township, and in 1979, the first master plan with land preservation goals was adopted. Since then, the Township has pursued a variety of means to concentrate development while preserving the surrounding land to "manage growth and provide passive recreational opportunities." By 2000, 45 percent of the township's land area had been preserved, including 540 acres of contiguous farmland and an 850-acre natural area encompassing the Plainsboro Preserve (see Figure 10, page 46).

Plainsboro's master plan conforms to the *State Plan*, which specifies a rural planning area in the south, suburban planning area in the mid-section, and environmentally sensitive land to the north. The township's open space plan targets specific parcels for acquisition, and sewer service has deliberately been kept out of preservation areas.

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Plainsboro employs innovative acquisition and regulatory strategies to redirect growth and reduce the cost of land conservation. On 19 percent of the town's land, farmland zoning limited development to 6-acre lots with a clustering provision that grants higher densities in exchange for preservation of 75 percent of the tract. A more recent "Internal Zone Clustering Ordinance" permits density transfer between non-contiguous properties if 75 percent of the area is dedicated as open space. To date, more than 500 acres of open space have been acquired via these provisions, at no cost to taxpayers. Plainsboro has also benefited from a zoning ordinance with defined open space requirements and successful negotiations with developers, which have led to the preservation of 442 acres of privately held land at a large office park, as well as other significant open space set-asides.

Plainsboro's residential development is concentrated in a mix of large multi-family and single-family residential developments. The Township has been certified by the Council on Affordable Housing as in compliance with state affordable housing requirements and maintains extra credits, while pursuing additional affordable housing opportunities. Although the compact nature of its residential developments complements land conservation, these lack the walkable, mixed-use character promoted in the *State Plan*. In 1999, the township adopted a Village Area Master Plan to create a pedestrian-oriented focal point for the community that would include a "downtown" type of area and two residential areas.

East Amwell Township (Hunterdon County) has translated a long-held commitment to agriculture into a multi-pronged strategy to preserve its farming region from suburban sprawl. East Amwell is home to some 4,455 residents on 28-square-miles in rural Hunterdon County. The southern part of the township covers part of the Sourland Mountains, a rocky, wooded area, while the small village of Ringoes sits along the northern border, bisecting the fertile Amwell Valley, an agricultural area designated in the *State Plan* as a Rural Planning Area. Dominated by productive agricultural soils, the Amwell Valley District experienced an increase in the value of farm products from $2.7 million in 1989 to $4.1 million in 1995, despite modest declines in total cropland harvested.

East Amwell's master plans have long valued farmland and agriculture. The Township began acquiring land through the Farmland Preservation program in 1989, and by 1997, nearly 1,500 acres had been preserved. In 1997, the Planning Board recognized that its three-acre zoning would not protect farmland, and chose to develop a "diversified agricultural retention strategy," rather than allow suburban sprawl to dominate its landscape.

Figure 10. Plainsboro Township Open Space Plan

East Amwell's three-pronged approach included:

- Planning and zoning
- Stepped up acquisition through the farmland preservation program, and
- Pro-farming regulations.

An Agricultural Base Study was conducted in 1997, followed by a land-use plan amendment in 1998 and a new zoning ordinance in 1999. The ordinance reduced by two-thirds the amount of development allowed on some 11,000 acres of open space, or about 60 percent of the town's land. Three options for development are now allowed there: 1) conventional development on 10-acre lots; 2) lot averaging, which permits lots as small as 1.5 acres, provided average densities do not exceed one unit per 10 acres; and 3) "open lands" subdivision, which provides developers with a 50 percent density bonus if they cluster the development and preserve 75 percent of the land in farmland.

East Amwell created an "equity protection program" to buy development rights at prices based on the 3-acre zoning in effect under the prior ordinance. As of January 2003, 3,334 acres of farmland had been preserved. To support agricultural viability, the township adopted pro-farming regulations including a right-to-farm ordinance, permitting the establishment of farm markets, permitting farm-based businesses and other uses such as golf courses and cellular towers, and creating a family-farm subdivision option.

East Amwell's zoning ordinance was challenged by a number of plaintiffs including landowners and the NJ Farm Bureau, but was upheld in Superior Court in August 2002 as consistent with local, county and state planning goals. It is under appeal.

East Amwell is also working to protect the environmentally sensitive Sourland Mountains and Stony Brook areas, with a proposed zoning ordinance requiring 15-acre minimum lot sizes, a forest protection ordinance, and limits on road improvements.

Because most of the Township's soils suffer from severe or moderate-to-severe septic limitations and there is no public water or sewer, East Amwell has not planned for significant residential development. The Township claims to be the state's first to be certified by the state Council on Affordable Housing as meeting state affordable housing obligations, and retains extra credits. Its affordable housing plan includes alternatives to new construction, such as subsidized accessory apartments and a program that provides down-payment assistance to qualifying families.

What can be learned from these towns that provide some "benchmarks" for what can be done to protect natural areas and agricultural lands in New Jersey outside the Pinelands? First, all these towns stress advance planning, to identify resources to be protected and to specify means of achieving their preservation goals. Second, by easing building pressure, down-zoning played a critical role in each town's success. But it should be emphasized that down-zoning alone would not have accomplished the towns' preservation goals. Third, in Plainsboro and Chesterfield, land conservation was complemented with compact development in other parts of the town, providing a variety of housing choices. In support, sewerage was restricted in natural and agricultural areas and directed toward growth areas.

Fourth, creative, flexible zoning provisions – clustering, transfer of development credits (TDC) and transfer of development rights (TDR) were combined with incentives such as density bonuses, to promote compact development located away from farmland and from environmentally sensitive areas. Fifth, state and local acquisition funds were employed to buy extensive tracts from property-owners who wished to sell. And sixth, each of these towns had certification from the Council on Affordable Housing that its "Mount Laurel" obligations had been met.

B. Smart Conservation: Examples from Other States

New Jersey Future has conducted a preliminary national survey of selected land conservation programs that exemplify Smart Conservation qualities. The results are summarized below, and are described in greater detail in Appendix A, pages 55-57. Note also that the state programs linking use-value assessment for farmland (see pages 40-42) also provide instructive examples. Our review shows models that range from conservation planning alone, to models of acquisition embedded in regional growth management systems. In New Jersey, the Green Acres program, where some acquisitions now require conservation planning, is at one end of the scale. The Pinelands land-use regime, where land acquisition is embedded in a comprehensive growth management program, is at the other.

Selected Smart Conservation Programs

Acquisition programs requiring dedicated local funds and supportive planning:

- Massachusetts: Community Preservation Act
- New Jersey: Green Acres Planning Incentive Acquisition (PI) Program
- New Jersey: State Agriculture Development Committee Planning Incentive Grant (PIG) Program

Competitive acquisition programs rewarding localities with growth management tools:

- Great Valley Center, CA: Agricultural Transactions Program
- Maryland: Rural Legacy Program

Acquisition programs requiring local regulatory protection:

- Maryland: MALPF Proposal for "Priority Preservation Areas"
- Lancaster County, PA: PDR Program with Effective Ag Zoning Requirement

Conservation programs embedded in regional growth management systems

- New Jersey: Pinelands Development Credit (PDC) Program
- Fayette County, KY: Conservation Easement Program
- Florida: Rural Land Stewardship Program
- Montgomery County, MD: Transfer of Development Rights Program

Two state-level programs are particularly instructive**.**

Delaware Linkage Programs

Delaware demonstrates how to link open space preservation, local planning and state investments in a mutually supportive fashion[48]. The *Delaware Land Protection Act*[49] declares it to be the purpose of the state, among other things, to "connect existing open spaces into a cohesive system of greenways and resource areas." To accomplish this, the legislation mandates creation of a detailed statewide open space plan, and establishes requirements and incentives for incorporation into local plans and regulations. To encourage consistency between local-, county- and state-level planning, the *Delaware Quality of Life Act* requires counties to coordinate their comprehensive development plans with state policies, municipal

[48] This section draws heavily on James McElfish's work in *Smart Links: Turning Conservation Dollars into Smart Growth Opportunities.* Environmental Law Institute. 2002.
[49] *Delaware Land Protection Act*, title 7, Part VII, Para. 7502 - 7510

plans, and plans of adjacent counties, and provides for state-level review. A statewide *Investment and Resource Management Strategy Map* identifies different types of investment areas by land use and directs state investments to support the planning goals for each.

Under the *Land Protection Act,* open space acquisition is focused on identification by the state of "State Resource Areas," or SRAs, which are to be shown "on maps of sufficient scale to identify individual properties for planning and zoning purposes." The state is further required to adopt a priority ranking system for their acquisition. Copies of the SRA maps are to be sent to each county and municipality for "inclusion in the conservation element of their respective comprehensive plan." Counties must further incorporate the SRAs into local plans and regulations by adopting special overlay zoning ordinances and environmental performance standards to protect ecological functions and historic sites. A one-time planning grant of $100,000 is offered as an incentive to those who comply with the legislation within 18 months. The legislation also encourages counties to consider adoption of transfer-of-development rights and other incentive programs. Delaware's open space program has identified more than 250,000 acres of SRAs; and through 2001, 135,985 acres of SRA land have been protected by easement or acquisition.

Maryland Linkage Programs

Maryland supports land conservation through the coordinated use of a statewide investment strategy and a four-pronged land acquisition effort that combines careful planning with incentives for local growth management. In 1997, Maryland adopted smart growth legislation that required designation of Priority Funding Areas (PFAs) – areas where growth is appropriate, and outside of which the state is prohibited from funding growth-related infrastructure such as roads and sewers.

Maryland's open space programs have evolved over the years and now consist of four complementary programs. Program Open Space, created in 1969, continues as the state's biggest program for local open space and recreational initiatives. Each county receives an allocation of funds based on its population, and real estate tax revenues – conditioned upon adoption of a comprehensive plan defining acquisition and development goals. In 1997, the Rural Legacy Program was created to encourage the preservation of *regions* with special natural and agricultural features that are threatened by sprawl. Application to this competitive program is open to counties and private land trusts (or partnerships thereof). Applications are ranked not only on natural and cultural resources, but also on the "degree to which existing planning, zoning, and growth management policies contribute to land conservation," and, "the degree to which the proposed plan is consistent with the applicable local comprehensive plan," among other criteria.

To ensure that the state's most critical ecological lands are preserved in an interconnected network, the GreenPrint Program was created. The open space network – approximately two million acres – was carefully identified and mapped under the direction of the state Department of Natural Resources. Acquisitions are prioritized and managed by that state agency along with the Maryland Agricultural Land Preservation Foundation (MALPF) which responsible for Maryland's farmland preservation effort.

The "Hybrid Approach" and Equity Protection Measures

This paper has argued that land conservation goals can best be met by linking strong regulatory measures with acquisition, all within a regional and local planning context. We have provided examples in New Jersey and from other states as to how this policy has worked. Ed Thompson of the American Farmland Trust has provided additional support in what he has referred to as a "hybrid approach" that

utilizes both "carrots" and "sticks."[50] In Thompson's analysis, regulations and compensation complement each other, with the strengths of one neutralizing the weaknesses of the other as demonstrated in the chart below:

	Incentives "Carrots"	**Regulations "Sticks"**
Examples	Purchase of land or easements	Restrictive zoning
	Use-value taxation	Environmental regulations
		Urban growth boundaries
Strengths	Voluntary	Low public cost
	Compensatory	Quick
	Permanent	Comprehensive
Weaknesses	High public cost	Compulsory
	Slow	Confiscatory
	Patchwork	Temporary

Restrictive zoning, for example, buys time by slowing the rate of development, while acquisition ultimately provides permanent protection.

In areas with development pressure, restrictive regulations that limit development yields may reduce perceived landowner "equity," which can create fierce political opposition. Such equity concerns led to the adoption of amendments to the *Garden State Preservation Trust Act* that required acquisition prices (through June 30, 2004) to be based on the zoning in place in 1998, and acquisition prices (through January 3, 2007) to be based on water-related rules and standards in place in 1998. Local governments that have relied upon such "equity-protection measures" include East Amwell Township in New Jersey, Kentucky's Lexington-Fayette County, and to a partial extent, Montgomery County, Maryland through its TDR program. Equity protection measures have many supporters and some critics.

The arguments against equity protection measures are both philosophical and practical. Critics argue that landowners have no inherent right to any specific property value that may have been created (and then diminished) by government regulations. This belief is supported by the courts: New Jersey's Supreme Court upheld government's authority to restrict land use in the public interest when supporting the Pinelands Commission's farmland restrictions.[51] The court wrote that, "… there exists no constitutional right to the most profitable use of property." The practical concern is based on the price of land: if not allowed to reflect restrictive regulatory changes, land may cost more, leading to an inefficient use of public funds and ultimately less land preservation.

The arguments in favor of equity protection include the conservative belief in property rights as well as the planner's pragmatic perspective. Both public and private practitioners of land conservation often support equity protection measures because they ease the acquisition process, making the conservation option more attractive in strict dollar terms. (An offer from a developer based on a development yield limited by restrictive regulations may well be lower than one from a public or private conservation program based on earlier, less-restrictive regulations.) Because voluntary land conservation programs must entice participation by landowners, this represents an important advantage. Planners may also favor equity protection measures, because they are able to achieve the environmental protections

[50] Edward Thompson, Jr., "Hybrid Farmland Protection," 23 Wm. & Mary Envtl. Law & Pol'y Rev. 831 (1999) (reprinted with the permission of William and Mary Environmental Law and Policy Review).
[51] Gardiner v. New Jersey Pinelands Commission, 125 N.J. 193 (1991).

offered by restrictive regulations while mitigating political opposition from landowners. And, landowners have nothing to lose from equity protection measures, which are likely to provide an attractive option to sale for development.

It is important to note that the impact on land prices of restrictive regulations, and thus equity protection measures, can vary tremendously. They make the greatest difference in active land markets where landowners have real opportunities to sell to developers and speculators. In farming regions with little development pressure, land prices are low and adjustments in development yields make less difference. An exception can occur in estate areas where restrictive regulations enhance or maintain property values by protecting the rural nature of the environs.[52]

[51] See The Valley's Planning Council and Thomas L. Daniels, "A Study of Bare Land Sales in the RC-2 and RC-4 Zones of Baltimore County, Maryland", April 1996 and also the Superior Court decision for New Jersey Farm Bureau v. Township of East Amwell, August 2002, p. 67.

VI. Smart Conservation Policy Recommendations for New Jersey

1. Integrate Existing Land Conservation Plans into ONE Statewide Open Space Plan

1.1. Integrate statewide open space planning to guide land acquisition and growth management decisions at all levels of government. Adopt plans by rule for greater weight.

1.2. Meld the following open space planning activities in to a single plan, providing opportunities for local review:

- *Open space master plan mandate in Ch 76, P.L. 2002 (the Smith Bill)*
- *Farmland preservation program, Strategic Targeting Project*
- *The New Jersey Conservation Foundation Greenways Plan*
- *The NJDEP Landscape Project biodiversity plan*

1.3. Ensure the statewide open space plan is consistent with the *State Plan*.

1.4. Deliver the plan(s) to county and municipal government in an accessible, usable format.

1.5. Revise SADC and Green Acres ranking formulas to give highest priority to properties identified in the statewide open space plan.

2. Mandate Consistent Local Conservation Plans

2.1. Amend the *Municipal Land Use Law* and County Planning enabling statute to require: 1) mandatory master plan conservation elements, and 2) mandatory farmland preservation elements in all towns with significant agricultural resources.

2.2. Require a municipal master plan conservation element as a condition of any Green Acres grants and loans to local government. Amend the Green Acres Planning Incentive Acquisition (PI) program to require that Open Space and Recreation Plans (OSRPs) be adopted as part of the municipal master plan conservation and recreation elements

2.3. Amend the Green Acres PI program to require the OSRP (except for neighborhood parks and active recreation facilities) be consistent with the statewide open space plan as a condition of PI funding.

2.4. Require a municipal master plan farmland preservation plan element as a condition for all farmland preservation funding in towns with significant agricultural resources. Require the farmland preservation element to be consistent with the statewide open space plan as a condition of PIG and county grant programs.

3. Use Green Acres and Farmland Preservation Spending to Encourage Smart Conservation at the Local Level.

3.1. For areas identified in the statewide open space plan, encourage local governments to adopt protective zoning regulations (that encourage conservation clustering where possible) and infrastructure restrictions, by offering incentives through the Green Acres and Farmland Preservation programs such as higher annual funding caps, a higher state cost share, or prioritization in ranking systems.

3.2 Eventually, in "undeveloped" regions of the state (e.g. Planning Areas 3, 4, 5), condition state open space grants on municipal adoption of protective, flexible zoning.

4. Provide Additional Smart Conservation Tools to State and Local Government

4.1. Provide legal defense, from the State Attorney General or otherwise, for towns that have adopted growth management measures consistent with the *State Plan*.

4.2 Amend the *Municipal Land Use Law* to extend authorization for transfer of development rights (TDR), and access to the state TDR bank for municipalities across the state.

4.3 Rewrite the provisions of the "Conservation Element" of the municipal and county master plans to incorporate language on preservation of steep slopes, scenic areas, wildlife habitats, biodiversity, ecosystems and critical water resources that is keyed to statewide initiatives. Clarify that municipalities may mandate cluster development, lot averaging and similar flexibility provisions.

4.4 Grant the state easier access to the power of eminent domain in areas prioritized by the state open space plan.

5. Pilot the Smart Conservation Recommendations in the New Jersey Highlands

5.1. Link the $75 million in new funding for land preservation in the Highlands to Smart Conservation recommendations as described in these pages.

6. Reconfigure the Farmland Assessment Program to Achieve Conservation Goals

6.1. Broaden the farmland assessment program to cover other natural areas with approved conservation plans. Adopt biodiversity as a permitted goal of woodland management.

6.2. Restrict use-value farmland assessment to areas designated for conservation by the *State Plan* (e.g., Planning Areas 4 and 5) or, to areas that have adopted restrictive zoning, infrastructure limits, etc.

6.3. Adopt a means to discourage the conversion of land from agriculture, such as the adoption of a conversion tax or extension of the roll-back tax. Target the new revenues for farmland preservation projects in areas with agriculture protection zoning.

VII. Conclusion

As the nation's most densely populated state, New Jersey faces the possibility of total build out in some 30 to 50 years. Rejecting border-to-border development, New Jerseyans have embraced funding measures for open space and farmland preservation repeatedly over the last 40 years. Yet effective land conservation faces many challenges, including the state's fragmentation into 566 municipalities, deference to property rights, conflicting government policies and programs and an onerous property tax system. The broadest compilation of the state's natural resource goals can be found in the *State Development and Redevelopment Plan*, which identifies critical regions for environmental resource protection and farmland preservation as well as locations for compact development.

This paper has examined the practice of land conservation in New Jersey at all levels of government to see if public dollars are being used in the most effective and efficient way to preserve open lands and create better park systems. Despite rising preservation levels, the state's land acquisition programs are likely to achieve, at most, 65 percent of the million-acre goal endorsed by voters. The state's Green Acres program has virtually no control over where local and non-profit acquisitions occur, while direct acquisitions are made without the clearly defined priorities of a statewide open space plan. Concerned about the "checkerboard" pattern of its acquisitions, the farmland program has released a draft Strategic Targeting Project including a map of proposed preservation priorities. Recent initiatives at both programs have encouraged many local governments to adopt dedicated funding sources and conservation plans, yet the plans are haphazard and inconsistent when viewed on a regional scale. Conservation and recreation goals will not be fully realized unless both state and local land acquisitions are more carefully chosen.

With the lion's share of land conservation funding and authority, local government performance demands attention. New Jersey Future's research demonstrates that municipal performance in resource conservation is uneven. Different levels of government often work at cross-purposes, with one arm zoning land for development and another arm spending public funds to preserve it. Without regional planning, conflicting policy goals such as the need for affordable housing complicate land acquisition projects. Many counties fail to provide leadership in local land preservation. The farmland assessment program supports agriculture in New Jersey but lacks connections to land policy. In sum, land acquisition efforts often lack critical support from local plans, regulations and taxation programs.

New Jersey Future's project goal is to support the land acquisition programs of both government and independent conservancies in New Jersey by proposing and building support for Smart Conservation measures that would more fully protect ecosystems, watersheds, farmlands and urban recreational systems – on an integrated, regional basis. Smart Conservation is not only achievable, it is being implemented in jurisdictions around the country as well as in innovative New Jersey towns determined to shape their future. However, to realize widespread improvements, the state government must become more strategic in its land conservation programs and provide new guidelines, tools and incentives to local governments. With more than 40 years of experience with our "Green Acres" program, and almost 20 in farmland preservation, New Jersey has a great record and a lot of experience to build on. There simply isn't enough money to buy land sufficient to fulfill the public's expectations. We need "Smart Conservation."

APPENDIX A

Selected Smart Conservation Programs

In order of increasing effectiveness

Type of Program	Program	Jurisdiction	Requirements for Participation	Project Ranking Criteria	Acres Preserved
Acquisition programs requiring dedicated local funds and supportive planning	Green Acres Planning Incentive Acquisition ("PI") Program	State of New Jersey	Localities may apply for annual 50% matching grant for open space preservation projects. Requires approved Open Space and Recreation Plan and local funding mechanism.	Open Space and Recreation Plans (OSRPs) are reviewed for completeness only. Annual block grants are made for Individual projects identified in the OSRP based on the locality's track record.	4,981 acres *Oct 1997 – Dec 2001*
	Farmland Preservation Planning Incentive Grant ("PIG") Program	State of New Jersey	Localities may apply for annual block grant of up to $1.5m in state matching funds for agricultural easement purchases. Requires approved application including: municipal or county farmland preservation element* with delineated project area, agricultural advisory committee, dedicated funding source, and right-to-farm ordinance. **Must be part of municipal master plan.*	Applications are ranked. If approved, annual block grants are made for projects in the farmland preservation plan based on the locality's track record.	Three farms purchased. 52 farms are in process with approved funding. *1998 – October 2002.*
	Community Preservation Funds	State of Massachusetts	Municipalities may create a local Community Preservation Fund funded thru a surcharge of up to 3% of the real estate tax levy. The Fund must be spent on: historic preservation, open space protection and affordable housing, with at least 10% going to each area. The state provides $25m in matching funds annually. Towns that created Community Preservation Funds in 2001 received 100% state matching funds.	Localities control decision making about how to spend funds.	In 2001 34 municipalities approved Community Pres Funds and received $17.8 m in state matching funds. In 2002, 15 towns adopted Community Pres. Funds.

APPENDIX A

Selected Smart Conservation Programs

In order of increasing effectiveness

Type of Program	Program	Jurisdiction	Requirements for Participation	Project Ranking Criteria	Acres Preserved
Competitive acquisition programs rewarding localities that have growth management tools	Rural Legacy Program	State of Maryland	Local governments and/or land trusts may apply to competitive state program for designation of a region with natural or agricultural resources as a "Rural Legacy Area". Approved applicants receive block grants to purchase easements or land in fee simple.	Application review criteria include: natural features, development threat, supportive planning and zoning, contiguity with other preserved land, etc. Individual projects are not ranked. Annual grant based on quality of original plan and sponsor's track record.	38,314 acres. *1998-12/18/02* (Of these, 35,228 acres represent easement purchases.)
	Agricultural Transactions Program	Great Valley Center, CA (Regional Nonprofit)	Counties may apply in a competitive process for access to $5m in acquisition funds and other support.	Application review criteria include: policies and actions supporting preservation and cooperative relationships with municipalities. Individual projects evaluated on: strategic location, risk of development, value as farmland, etc.	101 acres on 3 farms. 1,500 acres in pipeline. *11 /2002*.
Acquisition programs requiring local regulatory protection	Agricultural Preservation Program	Lancaster County, PA	County program for purchase of agricultural easements requires farm properties to be in agricultural zone with 20-acre zoning. (Note that municipalities are responsible for zoning.)	Individual properties are ranked.	39,500 acres. *1982-2001*
	Maryland Agricultural Land Preservation Foundation (MALPF)	State of Maryland	MALPF Task Force recommends focusing new state farmland preservation funds in" Priority Preservation areas." Counties would apply for designation of specific preservation areas.	Applications for Priority Preservation Areas would be reviewed based on goals, strategies to achieve them in county plan and supportive zoning and other techniques.	Proposal stage

Appendix A

Selected Smart Conservation Programs

In order of increasing effectiveness

Type of Program	Program	Jurisdiction	Requirements for Participation	Project Ranking Criteria	Acres Preserved
Conservation programs embedded in regional growth management systems	Comprehensive Management Plan for the NJ Pinelands	Pinelands Region created by State of New Jersey	Agricultural and environmentally constrained land was down-zoned as part of comprehensive plan. Compensation offered to landowners through assignment of "Pineland Development Credits", or PDCs, which can be sold.	Rights are sold voluntarily, mostly on the private market. (About 70% of rights have been bought with private funds; remainder purchased by state.) Activity levels follow the real estate market.	36,750 acres preserved through PDC program. *1982-Nov 2002*
	Master Plan for Preservation of Agricultural and Rural Open Space	Montgomery County, MD	Rural land was down-zoned to 1 unit/25 acres as part of a new master plan. Compensation offered thru voluntary sale of Transferable Development Rights and publicly funded PDR & other programs. Number of TDRs based on *previous* zoning density: 1 TDR per five acres.	Most rights are sold voluntarily on the private market, although some are sold through state- and county-funded Purchase of Development Rights programs.	TDR program: 41,663 acres *1981-July 2002* PDR program & donations: 10,428 acres *1981-July 2002*
	Rural Land Stewardship Program	State of Florida	State law allows creation of five pilot TDR programs in rural areas of 50,000 – 250,000 acres. Areas would contain both sending and receiving zones. No land would be down-zoned as part of program. Innovative landowner compensation through partnerships with developers.	Development rights would be sold or traded voluntarily	First county program underway in Collier County. Master Plan amendments adopted 10/22/02.
	Rural Land Management Plan	Lexington-Fayette County, KY	In 1999, most of county's Rural Service Area was down-zoned from 10- to 40-acre lots. A Purchase of Development Rights program was adopted to compensate landowners, based on densities in place before down-zoning.	Parcel must be located in rural zone with 40-acre lots. Ranking criteria include parcel size, soils, etc. Penalty if in or near urban service area, sewered area or highway.	2,393 acres. *2001 - 2002*

APPENDIX B

Model for Projections of Land Acquisition

February 2003

1. Start date for counting: May 1997. (Per date of million-acre goal recommendation by Governor's Council on NJ Outdoors as cited in GSPT 2001 Annual Report)

2. End date: June 30, 2009. (GSPT Act enacted on 6/30/99; cites 10-year period.)
   Includes all land purchased with funds <u>appropriated</u> during the period. (Some would be bought later.)

3. <u>What Is Included</u>:
   - Land acquired by Green Acres (GA) using any source of funds.
     - 100 percent of local acquisitions, despite only partial funding from Green Acres
     - Only the portion of direct state acquisitions funded by Green Acres (which is probably all state acquisitions)
   - Acquisitions by the SADC
   - Land preserved through the Pinelands PDC program
   - Land acquired by US Fish and Wildlife
   - Land donated to Green Acres
   - Acquisitions by nonprofits and local governments without state funds, based on 2000 survey by Green Acres
   - Land acquired by the state as a result of negotiations dealing with development affected by DEP regulations (e.g. Renault Winery, PSEG plant).

   <u>Does Not Include</u>: Donations, except those made to Green Acres or local governments, including developer exactions.

4. Assumptions for Farmland Projections
   - Use acquisition goal adopted by the Department of Agriculture of 20,000 acres/year. Based on assumption of 250 closings per year and average property size of 80 acres.
     - Assumes GSPT annual funding cap of $80 million
     - Acquisition levels for last two fiscal years: about 14,000 acres
     - If all appropriations were spent at last year's per acre cost: 24,727 acres could be purchased

5. Assumptions for Green Acres Funding
   - Assume that Green Acres acquisitions will be constrained by funding.
   - Assume funding from GSPT and federal government for acquisitions will remain at February 2003 levels. $136 million will be available: $120m from GSPT, $22m from recycled loan funds and interest payments from previous bond issues, $4m from the federal LWCF, less $10m for development projects.
   - Assume Green Acres will spend all appropriated but unexpended funds. The amount available for acquisition is estimated at $256 million.
   - Trends in acreage costs are assumed to continue. A regression model was used to predict changes in acreage costs based on past trends**.**