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A Survey of Governmental Response to the Farmland Crisis: States' Application of Agricultural Zoning

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I. INTRODUCTION

Farmland preservation is a growing concern in the United States—especially in rural areas surrounding major metropolitan cities. In order to protect land on the urban-rural fringe, states have enacted legislation meant to slow the conversion of land from agricultural use to a multiplicity of urban uses. Most states that have promulgated such legislation have attempted to persuade the farm owner to continue using the land in an agricultural manner. On the other hand, some states have imposed limitations on urban expansion by disallowing urban growth into farming land. The land use control most often used to accomplish this goal is agricultural zoning. This article sets out the problem of farmland conversion; discusses various methods utilized to protect farmland from conversion—primarily focusing on agricultural zoning as a protectionary measure; and examines four states—Oregon, California, Pennsylvania, and Minnesota—regarding their application of the methods available.

II. ARE FARMLAND PRESERVATION TACTICS NECESSARY?

A. The Farmland Crisis Theory

According to farmland crisis theorists, prime agricultural farmland1 is disappearing in America.2 Therefore, they assert that, unless

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1. Duncan, Agriculture as a Resource: Statewide Land Use Programs for the Preservation of Farmland, 14 Ecology L.Q. 401, 402 n.7 (1987) [hereinafter Duncan] defines prime farmland as:

the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods.
the government intervenes to protect farmland, much of this land will be converted to nonagricultural uses as the urban sprawl spreads. Farms are forced to move to less desirable land as cities consume prime agricultural land. Conversion of this land to farming purposes is extremely expensive.

As urbanization spreads into rural areas, farmers near the urban fringe sell their land to be used for urban growth purposes. Farmers often become optimistic regarding the land's salability in terms of price and length of time necessary to sell the farmland. If a farmer believes that he or she will realize a greater profit in selling the farm than in agricultural income from production and that the land will sell within a short amount of time, the farmer will allow the land to lie fallow; thereby, he will not make necessary repairs or maintenance to equipment or property and will fail to realize any farming income on the property during that time. If the farmer was overly optimistic concerning the sale, the land and property will deteriorate, forcing the farmer to sell the land at a price far below what its market value would have been had the land been needed for urban growth. Urban growth, therefore, pulls the land from its agricultural use long before the need for land along the urban fringe arises.

Crisis theory proponents cite many factors as proof that farmland scarcity will occur in the future and that it will prove detrimental

See also Keene, Agricultural Land Preservation: Legal and Constitutional Issues, 15 GONZ. L. REV. 621 (1980).

2. See generally Duncan, supra note 1; Raup, Urban Threats to Rural Lands: Background and Beginnings, 41 J. AM. INST. PLANNERS 371 (1975) [hereinafter Urban Threats].

3. Fifty-nine percent of the prime agricultural land in the United States is located within a short distance of large metropolitan areas. See Urban Threats, supra note 2, at 375; Note, Farmland and Open Space Preservation in Michigan: An Empirical Analysis, 19 U. MICH. J. L. REFORM 1107, 1120 (1986) [hereinafter Michigan].

4. See Michigan, supra note 3, at 1120-21.


6. One-third of all land converted to urban use each year is prime farmland. See Duncan, supra note 1, at 402.


8. Id.

9. See Michigan, supra note 3, at 1123.

to the United States.\textsuperscript{11} They state that "the supply of farmland is declining at the same time that the demand for agricultural products is increasing."\textsuperscript{12} In support of this statement, the National Agricultural Lands Study (NALS)\textsuperscript{13} found that over one-third of the three million acres of agricultural land that undergoes conversion to nonagricultural uses yearly is prime agricultural farmland\textsuperscript{14} located on the urban fringe.\textsuperscript{15} Additionally, America currently exports over one-third of its crops to foreign countries.\textsuperscript{16} Crisis theory proponents state that the demand for exports will increase dramatically in the future.\textsuperscript{17} In order to meet these export demands, farmers will utilize more intensive farming methods that will, in turn, cause the loss of millions of tons of topsoil through erosion.\textsuperscript{18}

Aside from increased export demands, the United States’ domestic needs will increase by 1% annually in the 1980s and by .9% annually in the 1990s.\textsuperscript{19} This need may climb considerably higher if alternative forms of energy come to rely upon crops as a component in their production.\textsuperscript{20} If so, crop yields must also increase to meet this additional need.\textsuperscript{21} However, proponents of the crisis theory report that crop yield increases dropped during the 1970s.\textsuperscript{22} While many blamed the 1970s reduction in increased crop yield primarily on the unavailability of petro-chemical fertilizers because of oil shortages,\textsuperscript{23} crisis theory proponents argue that other unforeseen shortages can occur which will cause increases to again drop in the future.

\begin{itemize}
\item \textsuperscript{11} See generally Duncan, supra note 1; Urban Threats, supra note 2; Urban Pressures, supra note 10.
\item \textsuperscript{12} Rose, Farmland Preservation Policy and Programs, 24 NAT. RESOURCES J. 591 (1984) (analyzing the farmland crises from the perspective of the National Agricultural Lands Study) [hereinafter Rose].
\item \textsuperscript{13} R. COUGHLIN & J. KEENE, NATIONAL AGRICULTURAL LANDS STUDY, THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS (USDA, 1981) [hereinafter NALS].
\item \textsuperscript{14} See NALS, supra note 13; see also Rose, supra note 12, at 591 (for a synopsis of the NALS conclusions).
\item \textsuperscript{15} Id.
\item \textsuperscript{16} Note, Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?, 87 DICK. L. REV. 595, 598 (1983) [hereinafter Family Farm] (farming exports comprise nearly 20% of all United States exports).
\item \textsuperscript{17} According to one study, exports will increase 250% by the year 2000. Id. at 599 n.39.
\item \textsuperscript{18} See Rose, supra note 12, at 592.
\item \textsuperscript{19} See Family Farm, supra note 16, at 599 n.41.
\item \textsuperscript{20} One example of such an energy need is gasohol. See Rose, supra note 12, at 593.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} Id. (the rate dropped from an annual rate increase of 1.5% during the 1960s to a .75% increase in the 1970s).
\item \textsuperscript{23} See Family Farm, supra note 16, at 598 (lower increases were attributable to higher fuel and fertilizer costs, along with other reasons).
\end{itemize}
Some crisis theorists cite the farmers' personal reasons for leaving the farm as another factor which causes farmland to be sold. Farmers have lower profit margins\textsuperscript{24} and make less per capita than non-farm workers.\textsuperscript{25} Farmers have no control over climate, internal politics, and domestic policy—all elements that affect the farmer's net income.\textsuperscript{26} Farmers suffer from increased production costs.\textsuperscript{27} Additionally, government taxes cut into a farmer's profitability.\textsuperscript{28} A farmer may abandon farming because of age, health, or disability\textsuperscript{29} or may sell the land in order to obtain financing for retirement.\textsuperscript{30}

Farmers who live on the urban fringe, in addition to the aforementioned factors, deal with urban dwellers who complain about noxious farming odors,\textsuperscript{31} "litter deposited in fields,"\textsuperscript{32} vandalism of equipment,\textsuperscript{33} the danger of increased traffic,\textsuperscript{34} and urban dwellers who control the local government.\textsuperscript{35} Finally, farmers stop investing in their property because the land around them is being converted.\textsuperscript{36}

NALS suggests that legislatures do the following to avoid the farmland crisis:\textsuperscript{37}

1) implement a comprehensive growth management system;
2) clearly declare their commitment to protect agricultural farmland;

\begin{itemize}
\item \textsuperscript{24} Yearly, approximately 40% of all farms operate at a loss. \textit{Staff of Senate Comm. on Agriculture, Nutrition, and Forestry, 96th Cong., 2d Sess., Farm Structure: A Historical Perspective on Changes in the Number and Size of Farms 28-29} (Comm. Print 1980) [hereinafter \textit{CHANGES}].
\item \textsuperscript{25} \textit{Id.} (in 1975, farmers earned only 90% of nonfarmers per capita income).
\item \textsuperscript{26} \textit{See Family Farm, supra note 16, at 600.}
\item \textsuperscript{27} \textit{See York County Planning Commission, Agricultural Land Preservation Study 23} (1975) [hereinafter \textit{Preservation Study}]. \textit{See also Family Farm, supra note 16, at 600.}
\item \textsuperscript{28} These include property, estate, and inheritance taxes. \textit{Family Farm, supra note 16, at 600.}
\item \textsuperscript{29} \textit{See Family Farm, supra note 16, at 600.}
\item \textsuperscript{30} Currier, \textit{An Analysis of Differential Taxation As a Method of Maintaining Agricultural and Open Space Land Uses}, 11 \textit{Land Use \& Env't L. Rev.} 443, 456 (1980) (42% of all land sales in Maryland in the mid-1970s were due to retirement and death of farmers; a factor which was also responsible for 86% of the sales of residential development of agricultural land).
\item \textsuperscript{31} \textit{National Agricultural Lands Study, Zoning to Protect Farming: A Citizens' Guidebook 7} (1981).
\item \textsuperscript{32} \textit{Family Farm, supra note 16, at 601.}
\item \textsuperscript{33} \textit{Id.}
\item \textsuperscript{34} \textit{Id.}
\item \textsuperscript{35} \textit{Id.} Additionally, urban dwellers frequently request and receive the enactment of nuisance ordinances to restrict various farming activities. \textit{Id.}
\item \textsuperscript{36} \textit{See NALS, supra note 13, at 33-37; see also Family Farm, supra note 16, at 601.}
\item \textsuperscript{37} \textit{See Rose, supra note 12, at 593-94.}
\end{itemize}
3) enact programs immediately;
4) insure that their programs are based on accurate, up-to-date information;
5) provide more than just land use controls for farmers; and
6) institute programs so that they will withstand legal scrutiny.

B. Opponents of the Crisis Theory’s Viewpoint

Some argue that farmland losses are not creating a crisis because the loss is "more than offset by increased yields gained through technological advances." Farmers have increased productivity by: 1) energy intensive practices, 2) plant productivity advances, and 3) improved techniques in cultivation.

In addition, the Urban Land Institute (ULI) questions NALS figures, referring to them as exaggerated or unimportant. ULI contends that converted acreage is constantly being replaced by new land.

ULI also questions NALS predictions for future farmland demand. These questions arise because of over-production in the farming industry that has caused tremendous surpluses. In 1982 alone, the government retained 135 million bushels of wheat, 216 mil-

38. Farmers should also receive "adequate credit, suppliers, service businesses, labor, marketing facilities, and storage and processing facilities," along with land use controls, incentives, and comprehensive plans. Id. at 594.

39. See Rose, supra note 12. According to Rose, legislatures should base programs on sound enabling legislation, developed through comprehensive planning and policies that give appropriate recognition to low and moderate income housing, commercial and industrial development, and environmental protection objectives. At the same time, they must not contravene the fundamental safeguards accorded to private property by the due process, equal protection and taking clauses of the United States Constitution.

Id. at 594.


42. URBAN LAND 18 (July 1982) (policy statement of the Urban Land Institute Board of Directors) (according to the ULI, the data used by NALS is flawed and inconsistent; however, even assuming that the three million acres per year that NALS cites as being removed from agricultural use is correct, ULI contends that only a small portion of that land is prime).

43. See Rose, supra note 12, at 595.

44. Id.

45. Id. at 596.
lion bushels of corn, and 2.4 billion pounds of butter, cheese, and milk in surplus storage.\textsuperscript{46}

Finally, some opponents of the crisis theory claim that our export demands will not rise to the level expected by NALS.\textsuperscript{47} America's principal competitors in the world market for agricultural products are allies.\textsuperscript{48} "The fact that our allies in foreign relations are our principal competitors for sales to nations that have been international adversaries makes efforts by the United States to increase agricultural exports complicated by serious foreign policy implications."\textsuperscript{49}

III. THE FEDERAL RESPONSE

The federal government has taken a limited role in the preservation of agricultural land.\textsuperscript{50} In order to minimize the extent to which federal programs contribute to farmland conversion, Congress enacted the Farmland Protection Policy Act in 1981.\textsuperscript{51} In addition, the United States Department of Agriculture (USDA) issued policy statements that included directing the USDA to: advocate prime agricultural land protection from conversion that is premature or unnecessary; include consideration of prime farmlands when composing environmental impact statements; put forth programs to analyze and assess the nation's farmlands; and cooperate with local authorities in insuring that concern for food production is emphasized.\textsuperscript{52}

The federal government also enacted legislation to lessen the tax burden paid by farmers.\textsuperscript{53} The Federal Tax Reform Act of 1976\textsuperscript{54} allows a farmer special use valuation to qualified real estate\textsuperscript{55} with

\textsuperscript{46} U.S. NEWs & WORLD REPORT, Oct. 23, 1982, at 65.
\textsuperscript{47} See Rose, supra note 12, at 597.
\textsuperscript{48} These countries include: "Argentina (grain, soybeans, beef), Brazil (bean oil and meal), Canada (wheat and barley), Australia (grains) and the Common Market Countries (dairy products and grains)." Rose, supra note 12, at 597.
\textsuperscript{49} See Rose, supra note 12, at 597 (emphasis added).
\textsuperscript{50} Michigan, supra note 3, at 1109 (primarily, it has limited itself to educational programs and seminars such as the U.S. DEP'T OF AGRICULTURE, RECOMMENDATIONS ON PRIME LAND 17 (1975)).
\textsuperscript{52} U.S.D.A. POLICY STATEMENT, SEC'Y MEMORANDUM NO. 1827, SUPP. 1, STATEMENT ON PRIME FARMLAND, RANGE, AND FOREST LAND (June 21, 1976). See also Growth Pressure, supra note 41, at 290-91 n.18 and accompanying text.
\textsuperscript{53} See Family Farm, supra note 16, at 607-08.
\textsuperscript{55} I.R.C. § 2032A (West Supp. 1983). The list of requirements includes:
(1) Fifty percent of tax adjusted value of the estate must consist of real or personal property used for farming;
(2) During the eight year period prior to decedent's death, the property must have
conditions. Additionally, estates may defer tax payments on qualified property for five years after the farmers' death. Unfortunately, the federal government restricted these provisions in such a manner that few family farms can qualify.

Congress did attempt to pass legislation for national land use planning in the 1970s. However, Congress never implemented these programs and, therefore, "farmland and open space preservation programs remain an area of state and local prerogative."  

IV. STATE AND LOCAL GOVERNMENT RESPONSE

State and local governments are primarily responsible for the preservation of agricultural farmland. However, even though the state may have considerable regulatory control, the municipality governs most land use control. Accordingly, because of political and economical considerations, rural land use management leads to friction between state and local government. "[C]ounties continue to disagree with the state over how much land to allocate for rural residential use, how large a minimum lot size standard to use, and how rigidly to enforce the statewide standards for land divisions and new farm and non-farm dwellings in (agricultural) zones."

A. State Programs for Farmland Preservation

State governments have promulgated a variety of regulations to aid in preservation of agricultural farmland and open spaces. Classifications include: 1) differential assessment for tax purposes; 2) circuit breaker programs; 3) public acquisition of development rights; 4) inheritance and estate tax reforms; 5) legislation to govern nuisance suits against farming activities; and 6) agricultural districting and zoning.

1. Preferential Assessment Programs

Increased development on the urban fringe raises farmers' tax rates because the land is taxed at its market value, which reflects "the land's 'highest and best,' or most intensive use." Differential assessment statutes classify real property and varying levels of property classification receive different tax treatment. An assessment is regarded as "preferential" if it operates as incentive to maintain the land in its current use. Rather than classifying agricultural farm-land at its market value, these statutes classify the land by its current use—farming—and preferentially assess the land for that use. Differential assessment programs include: pure preferential assessment programs, deferred taxation programs, and voluntary restrictive agreements.

2. Circuit Breaker Programs

Some states have adopted circuit breaker programs to provide

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65. See Duncan, supra note 1, at 416.
67. Id.
68. Id.
69. See Duncan, supra note 1, at 416; Family Farm, supra note 16, at 603.
70. Under this method, "eligible land is assessed at the preferred current-use value. Ineligible land is assessed at market value. If the owner of eligible land... put(s) it in an ineligible use, the land is simply assessed at market value from that time forward." Michigan, supra note 3, at 1131. See also Family Farm, supra note 16, at 603 n.86.
71. This program requires "that the landowner pay back some or all of the property tax relief gained through preferential assessment if he converts his land to an ineligible use." Michigan, supra note 3, at 1131. Some states, such as Alaska, Illinois, Nebraska, North Carolina, Virginia, Washington, and Wisconsin, impose additional interest penalties.
72. "Restrictive agreement programs generally provide for preferential assessment and for some penalty or rollback tax. They go farther, however, by requiring an eligible landowner to agree not to convert his land to an ineligible use for a specified term of years." Michigan, supra note 3, at 1132.
farmers with relief from property tax burdens in excess of a certain percentage of the farmers' income. Like preferential assessment, circuit breakers offer tax relief as an incentive. Additionally, circuit breakers may be a pure circuit breaker program, a deferred taxation program, or a restrictive agreement program. The major difference between a preferential program and a circuit breaker program lies in the taxing burden: the state pays the cost of the circuit breaker programs, whereas the tax burden falls on the individual taxing district in preferential programs.

3. Public Acquisition of Development Rights

A number of states have programs to purchase development rights from farm owners. These programs base purchase price for the development easement upon the difference between the value of the land when used for agriculture and the value of the land if used for nonagricultural purposes. Once the government has acquired a development easement, it may exclude all development of the land. Generally farmers' participation in these programs are voluntary.

74. Michigan, supra note 3, at 1133.

75. These programs operate similarly to the pure preferential assessment program, the deferred taxation program, and the voluntary restrictive agreements of the preferential assessment programs. See, e.g., supra notes 69-71.

76. See Michigan, supra note 3, at 1134.

77. See Dunford & Marousek, Sub-County Property Tax Shifts Attributable to Use-Value Assessments on Farmland, 57 LAND ECON. 221 (1981).


79. Some states refer to these development rights as development easements. See, e.g., Pa. Stat. Ann. tit. 3, § 903 (Purdon Supp. 1988) (an easement is "[a]n interest in land, less than fee simple title, which interest represents the inchoate right to develop such lands for residential, commercial or industrial uses").

80. See Michigan, supra note 3, at 1139.

81. This would even include development by the original owner. Michigan, supra note 3, at 1139.

Even though public acquisition of development rights is laudatory, states seldom purchase these easements because of the high costs involved.83

4. Inheritance and Estate Tax Reforms

Often times, legislatures base inheritance and estate taxes upon the market value of agricultural land. Because urbanization inflates the market value84 of agricultural land85 on the urban fringe, recipients of the farm owner's estate suffer a great tax burden.86 In order to lessen inheritance and estate taxes on farm estates, the federal government enacted the Federal Tax Reform Act of 1976.87 This piece of legislation allows farmers some relief from estate tax problems;88 however, provisions are so narrowly written that the average family farm does not qualify.89

While the federal tax reform program is extremely restrictive, some states have inheritance and estate tax provisions with less onerous guidelines.90 Because these programs can apply to the family farm situation, they are more widely used than the federal program.91 In addition, some states have adopted programs which are as restrictive, or nearly as restrictive, as the federal program92 or have enacted special estate tax treatment for farms participating in a comprehensive farmland preservation program.93

5. Nuisance Suits

Some states have enacted statutes to protect farmers from nui-
sance suits. On the urban fringe, landowners often sue farmers claiming that the farm operations are a nuisance to the surrounding community. Because farmers find that defending such actions can be very expensive and time consuming, they have requested help from their state governments. Many refer to anti-nuisance suit legislation as “right-to-farm” laws.

Some states protect farms from local government units by limiting the local municipality’s ability to pass ordinances that restrict farming practices by labeling the farm operation a public nuisance. While some of these statutes protect farmers from public actions, they fail to protect the farmer from private nuisance suits. In response to this problem, some states have adopted legislation to protect farmers from private suits. North Carolina, for example, limits a farmer’s liability for damages. In addition, states, such as Tennessee, go so far as to exempt farming activities from some anti-pollution requirements. While states have enacted statutes to protect farming activities, it is still too early to assess their effectiveness.

6. Agricultural Districting

Some states have implemented agricultural districts to preserve blocks of farmland which are large enough to “maintain a dominant farm voting block capable of advancing issues of priority to the farming community.” Twelve states currently have agricultural district-

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94. See NALS, supra note 13, at 21.
95. Id.
96. Id.
97. See Family Farm, supra note 16, at 611.
99. See Family Farm, supra note 16, at 611.
100. These states include, but are not limited to: ALA. CODE § 6-5-127 (Supp. 1988); DEL. CODE ANN. tit. 3, § 1401 (1985); FLA. STAT. § 823.14 (1985); GA. CODE ANN. § 41-1-7 (1985); KY. REV. STAT. ANN. § 413.072 (Michie/Bobbs-Merrill Supp. 1988); MINN. STAT. ANN. § 561.19 (West Supp. 1984).
101. NALS, supra note 13, at 21.
102. Id.
103. Most of these statutes were first enacted in 1980. See NALS, supra note 13, at 21. Minnesota’s private nuisance legislation was adopted as late as 1982. MINN. STAT. ANN. § 561.19 (West Supp. 1985).
104. Michigan, supra note 3, at 1138.
ing provisions. Under some statutes, farmers must collectively own 500 acres of land or more to qualify as a district. Farmers may then apply for district status with county and state approval. Additionally, under some plans, a state may create a district. Under this method, the state may require the district to contain as many as 2000 acres. The power of eminent domain, then, is often restricted within these districts.

7. Agricultural Zoning

Zoning is a method of land use control whereby a municipality divides an area into districts and then prescribes and applies regulations in each district dealing with structural and architectural guidelines. According to some authors, zoning has been one of the most unpopular methods of rural land use control because: 1) zoning in rural areas creates animosity between farmers, who wish to sell their land, and city planners; and 2) zoning may collide with constitutional doctrines. Traditionally, local government zoned land as agricultural until the communities needed the land for some other


109. New York, for example, requires at least 2000 acres of "unique and irreplaceable" agricultural land be within the district boundaries before the Commissioner of Environmental Conservation may create the district. Id.


111. Black's Law Dictionary 1450 (5th ed. 1979) defines zoning as "[t]he division of a city by legislative regulation into districts and the prescription and application in each district of regulations having to do with structural and architectural designs of buildings and of regulations prescribing use to which buildings within designated districts may be put."

112. Kartez, A Zoning Administrator's View of Farmland Zoning, 35 J. Soil & Water Conservation 265 (1980) (this article describes zoning problems with the farming community and suggests ways in which to avoid those problems).

113. Constitutional questions regarding due process, equal protection, and the "taking" issue have arisen in the zoning context in general. In addition, agricultural zoning may have problems with exclusionary zoning doctrines. S. Redfield, Vanishing Farmland 55-67 (1984).
purpose. Therefore, local governments historically used land to protect future urban growth. Local governments, which find urbanization appealing because of the added financial benefits, now face the difficulty of shifting their emphasis to protect rural areas located within the locality.

Even though agricultural zoning may have problems, municipalities are employing measures such as this to combat the tremendous pressure to convert farmland on the urban fringe where the land is worth more when developed, to nonagricultural uses. In fact, agricultural zoning is the most common form of land use control. However, some critics claim that agricultural zoning is “unlikely to withstand substantial and long-term economic pressures” for urban growth.

Currently, ten states zone land for agricultural use. Agricultural zoning consists of nonexclusive agricultural use ordinances and exclusive agricultural use ordinances. Nonexclusive agricultural zones do not prohibit nonfarm uses; however, they discourage nonfarm activities by: requiring large minimum lot sizes; allowing landowners to build one dwelling unit for each specified land unit under a fixed area based allocation plan; allowing landowners to


115. Id.

116. Benefits include an increased tax base and more business dollars.

117. See Daniels & Nelson, supra note 114, at 29.

118. See generally Duncan, supra note 1, at 478.

119. Rose, supra note 12, at 600.

120. Baden, supra note 41, at 189.


122. See generally Rose, supra note 12, at 600-02; Growth Pressure, supra note 41, at 296-97; NALS, supra note 13, at 22.

123. Lot sizes range from 10 to 640 acres depending on the type of agriculture in the area. NALS, supra note 13, at 22.

124. A specified land unit may range from 10 to 160 acres in size. NALS, supra note 13, at 22.

125. For a complete description of fixed area-based allocation, see Growth Pressure, supra note 41, at 297.
build dwellings based on a sliding scale area-based allocation system,\textsuperscript{126} and conditional use zones, which allow nonfarm dwellings if they meet specified criteria.\textsuperscript{127} In order to develop a nonfarm use in nonexclusive agricultural zones, the landowner must put forth evidence that the nonfarming use is compatible with the local agricultural uses.\textsuperscript{128}

On the other hand, exclusive agricultural zoning ordinances prohibit nonfarm dwellings on land that is agriculturally zoned.\textsuperscript{129} These ordinances define farms by farming performance and uses rather than on minimum lot size or area-based allocation.\textsuperscript{130} While exclusive agricultural zoning is preferable to nonexclusive zoning because the former minimizes conflict between residential and farm uses due to the absence of nonfarm dwellings,\textsuperscript{131} the exclusive ordinance is far more restrictive and its validity will "depend upon a judicial weighing of the public purpose to be achieved as compared to the confiscatory impact of the regulation upon the owner's reasonable use of the property."\textsuperscript{132}

8. \\textit{Constitutional Ramifications of Agricultural Zoning}

The initial issue to address regarding zoning of agricultural land is whether agricultural preservation is a proper purpose for local government control.\textsuperscript{133} Some states allow the courts to determine this issue,\textsuperscript{134} while other states do so legislatively.\textsuperscript{135} Either way, most states have determined that zoning for agricultural preservation is a proper function of government at the local level.\textsuperscript{136}

\begin{itemize}
  \item \textsuperscript{126} This plan is similar to the fixed area-based allocation system; however, the "number of dwellings allocated per acre decreases as farm size increases." NALS, supra note 13, at 22.
  \item \textsuperscript{127} These criteria are "based on the compatibility of the proposed dwelling with surrounding agricultural uses." NALS, supra note 13, at 22. Additionally, conditional use zones are characterized by small lot sizes and case-by-case review. Growth Pressures, supra note 41, at 296 n.63.
  \item \textsuperscript{128} Rose, supra note 12, at 600.
  \item \textsuperscript{129} NALS, supra note 13, at 22.
  \item \textsuperscript{130} \textit{Id}.
  \item \textsuperscript{131} \textit{Id}. Additionally, there is evidence that in areas which adopt exclusive zones, land speculation shifts to areas designated for development purposes. Rose, supra note 12, at 601.
  \item \textsuperscript{132} Rose, supra note 12, at 600.
  \item \textsuperscript{133} See Family Farm, supra note 16, at 620.
  \item \textsuperscript{134} California, for instance, in Gisler v. County of Madera, 38 Cal. App. 3d 303, 112 Cal. Rptr. 919 (1974).
  \item \textsuperscript{135} See, e.g., N.J. STAT. ANN. § 40: 55D-2 (West Supp. 1988).
  \item \textsuperscript{136} See supra notes 134-35 and accompanying text. See also Family Farm, supra note 16, at 620.
\end{itemize}
a. Due Process\textsuperscript{137} and the "Taking" Issue

Opponents have sometimes defeated zoning ordinances using substantive due process arguments.\textsuperscript{138} Substantive due process, derived from the fifth and the fourteenth amendments, establishes that the government cannot deprive a person of life, liberty, or property unless the deprivation bears a reasonable relation to a proper governmental purpose.\textsuperscript{139} For a zoning ordinance to be within the state's power, the regulation must be substantially related to the general public health, safety, or welfare.\textsuperscript{140} Therefore, a party who wishes to fight an agricultural zoning ordinance on due process grounds will argue that the ordinance is unreasonable and does not bear a rational relation to a proper governmental purpose or that the regulation is not substantially related to the public health, safety, or welfare.

In \textit{KMIEC v. Town of Spider Lake},\textsuperscript{141} the court invalidated an agricultural zoning classification partly on due process grounds.\textsuperscript{142} The land owner had not utilized the farmland at issue in \textit{KMIEC} in a farming capacity for at least eleven years.\textsuperscript{143} Additionally, it would cost the landowner between $150 and $200 per acre to restore the land to a farming condition.\textsuperscript{144} Once in its farming capacity, the land would be worth $75 per acre.\textsuperscript{145} The court found that at least 216 of the 296 acres involved had a substantial negative value when classified as agricultural land.\textsuperscript{146} The court stated that the record contained no justification for classifying this land as agricultural, especially when all surrounding land was classified as residential or recreational.\textsuperscript{147} Therefore, the court held that the classification, as applied to the plaintiff's land, violated due process because the classification was

\begin{itemize}
\item \textsuperscript{137} For the purposes of this article, "due process" will refer to substantive due process only.
\item \textsuperscript{138} \textit{Growth Pressure}, supra note 41, at 306.
\item \textsuperscript{139} \textit{See Babineaux v. Judiciary Comm.}, 341 So. 2d 396, 400 (La. 1976) ("Substantive due process' may be broadly defined as the constitutional guarantee that no person shall be arbitrarily deprived of his life, liberty, or property."). \textit{See also City of Edmond v. Wakefield}, 537 P.2d 1211, 1213 (Okla. 1975) ("in essence, substantive due process . . . is the general requirement that all governmental actions have a fair and reasonable impact on the life, liberty, or property of the person affected. Arbitrary action is thus proscribed.").
\item \textsuperscript{140} \textit{See, e.g.}, Williamson County Regional Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 198 (1985).
\item \textsuperscript{141} 60 Wis. 2d 640, 211 N.W.2d 471 (1973).
\item \textsuperscript{142} The court also invalidated the classification on equal protection grounds. \textit{Id.} at 652, 211 N.W.2d at 477.
\item \textsuperscript{143} \textit{Id.} at 647, 211 N.W.2d at 474.
\item \textsuperscript{144} \textit{Id.}
\item \textsuperscript{145} \textit{Id.}
\item \textsuperscript{146} \textit{Id.} at 652, 211 N.W.2d at 477.
\item \textsuperscript{147} \textit{Id.} at 651, 211 N.W.2d at 476.
\end{itemize}
unreasonable.\textsuperscript{148}

Traditionally, if an ordinance violates due process, the court must invalidate the ordinance\textsuperscript{149} and the ordinance cannot remain in effect.\textsuperscript{150} In comparison if an ordinance creates a "taking" of property in violation of the just compensation clause,\textsuperscript{151} the ordinance may remain in effect so long as the government pays just compensation.\textsuperscript{152} A "taking" occurs when the government, under its power of eminent domain, "substantially" deprives the landowner of his/her use and enjoyment of his/her land.\textsuperscript{153} In an agricultural "taking" challenge, the landowner asserts that the land has been "taken" because the government zoned that land in such a way that the landowner has now lost his/her use of the land. Therefore, according to the farm owner, the government must provide just compensation for the property interest taken.\textsuperscript{154}

Usually, to determine whether a "taking" has occurred, the court will balance the ordinance's economic impact with the government's purpose for enacting the legislation.\textsuperscript{155} According to the United States Supreme Court in \textit{Penn Central Transportation Co. v. City of New York},\textsuperscript{156} to determine whether a "taking" has occurred, the court must examine the nature of the government action and the extent of interference on the landowner's property interests.\textsuperscript{157} The Court stated that a diminution in property value that resulted from enactment of the ordinance did not establish a "taking."\textsuperscript{158} According to the Court, if the restriction served a substantial public purpose, then no "taking" had occurred.\textsuperscript{159} The Court also stated that no "taking" occurs if the zoning ordinance only prohibits the most beneficial use of the land.\textsuperscript{160} Therefore, if other uses of the land remain; no "tak-

\textsuperscript{148} Id. at 652, 211 N.W.2d at 477.
\textsuperscript{149} At least as regards the party whose due process rights have been violated.
\textsuperscript{151} U.S. CONST. amend V ("nor shall private property be taken for public use without just compensation").
\textsuperscript{152} See \textit{id. See also Growth Pressure, supra} note 41, at 307.
\textsuperscript{154} See \textit{Growth Pressure, supra} note 41, at 298.
\textsuperscript{155} See \textit{Family Farm, supra} note 16, at 622.
\textsuperscript{156} 438 U.S. 104 (1978).
\textsuperscript{157} \textit{Id.} at 124-28.
\textsuperscript{158} \textit{Id.} at 131-33.
\textsuperscript{159} \textit{Id.} at 127.
\textsuperscript{160} \textit{Id.} at 125-27. California courts have held that an ordinance is only invalid if it deprives the landowner of substantially \textit{all} reasonable use of the property. \textit{See, e.g.,} Agins v. City of Tiburon, 24 Cal. 3d 266, 598 P.2d 25, 157 Cal. Rptr. 372 (1979); Furey v. City of Sacra-
ing" has occurred. However, the Court plainly stated that a "use restriction on real property may constitute a 'taking' if [it is] not reasonably necessary to the effectuation of a substantial public purpose." The Court has, therefore, scrutinized the "taking" issue in language used under a due process analysis.

In *Agins v. City of Tiburon* the Court considered a zoning ordinance to determine whether it constituted a "taking" per se. The landowner argued that the ordinance, which was designated to preserve open space, constituted a "taking" because it deprived him of his right to build apartment complexes. The Court held that the ordinance did not constitute a "taking" because preservation of open space was a legitimate government interest and because the landowner was not deprived of all land uses. Also, the Court stated that the ordinance benefitted the public by encouraging orderly land planning and development.

Because the Supreme Court has not defined how drastic the loss of use must be before a "taking" occurs, the circuit and state courts have adopted differing tests. In order for an ordinance to constitute a "taking" in the Ninth Circuit, the ordinance must deny a property owner all economic use. If the owner still retains some use, a "taking" has not occurred. The Sixth Circuit, however, found that a diminution in value can constitute a "taking." In addition, the State of Minnesota found that a zoning ordinance constituted a "taking" when the land classification substantially decreased the property's value.
In *Sanderson v. City of Willmar* the City rezoned property from business and commercial use to automobile parking use. The zoning ordinance required the landowner to give the City first right of refusal in the event the landowner chose to sell the property. According to the plaintiff, the ordinance substantially diminished the value of the land without offering a substantial benefit to the public.

The court found that the rezoning seriously affected the land value by eliminating all competitive bidding on the land, thereby eliminating commercial buyers. The court held that a zoning plan "which results in a total destruction or substantial diminution of value of the property affected thereby without just compensation therefor constitutes a taking of the property without due process." Thus, in *Sanderson* the court applied a test wherein a substantial diminution in value constituted a "taking."

b. Equal Protection

Equal protection, in general, means that the government cannot deny a person or class of persons the same protection under the law that is enjoyed by other persons in like circumstances. Equal protection as applied to zoning ordinances puts forth the issue of whether a zoning regulation imposes a disproportionate burden on similarly situated individuals. If a landowner is treated differently from all similarly situated landowners under a zoning regulation, then the ordinance violates equal protection.

Some state courts have found equal protection violations under certain zoning ordinances. In *Hopewell Township Board of Supervisors v. Golla* an ordinance permitted division of tracts into five lots per tract regardless of the original tract's size. The Pennsylvania court held that the ordinance treated landowners differently because it imposed a lesser burden on small tract property owners. The court held that the regulation was discriminatory in its effect on landowners

170. *Id.*
171. *Id.* at 2, 162 N.W.2d at 495.
172. *Id.* at 3-4, 162 N.W.2d at 496.
173. *Id.* at 4, 162 N.W.2d at 496.
174. *Id.* at 4-5, 162 N.W.2d at 497.
175. *Id.* at 5, 162 N.W.2d at 497 (emphasis added).
177. *See Growth Pressure, supra* note 41, at 308.
178. 499 Pa. 246, 452 A.2d 1337 (1982) (the court also analyzed the case under a due process analysis and found that the ordinance violated due process because it was not the least restrictive means available to preserve farmland).
and, because the court found no public interest strong enough to outweigh the discriminatory treatment, it held that the ordinance violated equal protection.

The Minnesota Supreme Court in Northwestern College v. City of Arden Hills\textsuperscript{179} found that two private colleges similarly situated had received disparate treatment.\textsuperscript{180} Both colleges were located in areas zoned for residential purposes.\textsuperscript{181} The ordinance in question designated private colleges as a special-use within the residential areas. Bethel College had received various special-use building permits to construct a seminary building, housing, a chapel, a fine arts center, and other facilities.\textsuperscript{182} In contrast, on the one occasion when Northwestern sought to receive a special-use permit to build a fine arts center, the city declined to grant the school the permit.\textsuperscript{183} The city based its denial on the fact that local residents fought the special-use permit.\textsuperscript{184} The court stated that a "zoning ordinance must operate uniformly on those similarly situated."\textsuperscript{185} The court asserted that, while neighborhood sentiment may be taken into consideration in a zoning decision, "it may not constitute the sole basis for granting or denying a . . . permit."\textsuperscript{186} Therefore, the court found that the legitimate governmental interest was insufficient to justify differential treatment of the two schools.\textsuperscript{187} The court held that the denial of the special-use permit was patently arbitrary and a denial of equal protection of the law.\textsuperscript{188}

In comparison to the state courts, federal courts are less likely to invalidate a zoning ordinance based on an equal protection challenge.\textsuperscript{189} In Rogin v. Bensalem Township\textsuperscript{190} the court refused to find an equal protection violation regarding an ordinance amendment that disallowed development rights to developers even though the devel-

\textsuperscript{179} 281 N.W.2d 865 (Minn. 1979).
\textsuperscript{180} Id. at 867.
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id. The city applied the same interpretation to the zoning permit in Northwestern's case as it previously had on all of the occasions when Bethel had received permits, but the city based the different result in Northwestern's case on the fact that local residents fought the special-use permit for Northwestern, whereas no residents fought the Bethel permits.
\textsuperscript{184} Id. at 869.
\textsuperscript{185} Id. See generally 3 Anderson, American Law of Zoning §§ 19.05, 19.28 (2d ed. 1977).
\textsuperscript{186} Northwestern, 281 N.W.2d at 869.
\textsuperscript{187} Id.
\textsuperscript{188} Id. at 868.
\textsuperscript{189} See Growth Pressure, supra note 41, at 308.
\textsuperscript{190} 616 F.2d 680 (3d Cir. 1980).
oper had previously obtained approval. The court stated that the developer must prove that the ordinance did not have a rational relationship to the public interest. The court refused to apply a strict scrutiny analysis because the ordinance did not involve a suspect classification such as race, national origin, or alien status. Therefore, the plaintiff had the difficult task of proving that there was absolutely no legitimate reason for the ordinance.

c. The Exclusionary Zoning Doctrine

Exclusionary zoning occurs when an ordinance excludes certain classes of persons from a particular area. Exclusionary zoning is a hybrid constitutional challenge based on equal protection and due process language, which litigants originally advanced to challenge regulations enacted to keep blacks from moving into certain neighborhoods. Municipalities may not put forth invalid reasons for a restrictive zoning scheme, such as: excluding certain undesirable persons in order to maintain property values, protecting the community's character, or maximizing the tax base. However, a municipality may put forth a restrictive zoning scheme to encourage orderly growth. The courts will carefully scrutinize this regulation to insure that the municipality has adopted the least restrictive alternative. If an agricultural zoning ordinance results in exclusion of any class of persons from a certain area, the courts will strictly scrutinize the ordinance. Exclusionary zoning challenges, therefore, can pose a serious threat to agricultural zoning regulations.

B. Comprehensive Zoning Plans

Some states offer programs such as preferential assessment tax relief plans, circuit breaker programs, public acquisition of development rights, inheritance and estate tax reforms, right-to-farm legislation, agricultural districting, and agricultural zoning to

191. *Id.* at 687 n.29.
193. *See Growth Pressure, supra* note 41, at 308-09.
195. *See Developments, supra* note 194, at 1657-58; *Growth Pressure, supra* note 41, at 309.
196. *Growth Pressure, supra* note 41, at 310.
197. *See supra* text accompanying notes 66-72.
198. *See supra* text accompanying notes 73-77.
199. *See supra* text accompanying notes 78-83.
200. *See supra* text accompanying notes 84-93.
201. *See supra* text accompanying notes 94-103.
preserve farmlands. A few states have adopted some of these programs in combination under a general comprehensive plan in the hope of controlling and directing property use and development. A few states are adopting comprehensive plans in an effort to shift land use management from local government control to state and regional control. This shift is necessary to address statewide problems such as: "pollution, destruction of fragile natural resources, the shortage of decent housing, and many other problems which are . . . beyond the capacity of local governments acting alone." Additionally, there is great pressure on local governments to expand their own economic and tax bases, sometimes at the expense of sensitive environmental areas. Because development of land is extremely profitable for local governments, they might "ignore the adverse regional effects of local action." Therefore, to prevent communities from injuring one another and the environment, a few states have adopted comprehensive plans.

Wisconsin's Farmland Preservation Act represents one example of a comprehensive plan which combines circuit breaker tax relief with zoning, planning, and voluntary agreements. Another example is Oregon's Land Use Planning Act, a plan that treats farmland preservation as an equal goal to land development.

1. The Oregon Land Use Planning Act

a. History

Oregon has a long history of encouraging environmental protec-

202. See supra notes 104-10 and accompanying text.
203. See supra notes 111-32 and accompanying text.
204. See Damick v. Planning and Zoning Comm'n of Town of Southington, 158 Conn. 78, 256 A.2d 428 (1969) (where the court found that a comprehensive zoning plan was a "general plan to control and direct the use and development of property in a municipality or in a large part thereof by dividing it into districts according to the present and potential use of the properties").
206. Id. at 3 (emphasis added).
208. Duncan, supra note 1, at 408.
209. Id.
212. See Duncan, supra note 1, at 407.
Protection of agricultural land was the primary reason for enactment of the Oregon Land Use Planning Act, known as Senate Bill 100 (S.B. 100). Prior to enacting S.B. 100, Oregon had implemented legislation granting preferential tax assessments to agricultural land and requiring local governments to adopt comprehensive plans and zoning regulations. However, neither act curbed the conversion of agricultural land to urban development. Oregon then initiated S.B. 100 to give state control to a strong state agency, with permit granting authority.

b. S.B. 100

Under S.B. 100, land use planning occurs at the local government level, but the state oversees local governmental decisions. Zoning characterizes the land as either urban or agricultural. An urban area has urban growth boundaries (UGB) which include land already in urban use, plus all land necessary for urban growth until the year 2000. Agricultural areas are zoned for exclusive farm use (EFU). EFU zoning is required, not voluntary, and all land outside UGBs is ordinarily zoned EFU.

While the main purpose of UGBs is to "avoid unplanned and

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215. 1973 Or. Laws 80 (codified at OR. REV. STAT. §§ 197.005 to .855, 215.203 to .337 (1985)).


218. Rampant conversion continued in Oregon. In 1973 30,000 acres of agricultural land in the Willamette Valley alone were developed. H.J. LEONARD, MANAGING OREGON'S GROWTH—THE POLITICS OF DEVELOPMENT PLANNING 65 (1983) [hereinafter LEONARD].

219. See Duncan, supra note 1, at 461-63.

220. 1973 Or. Laws 80 (codified at OR. REV. STAT. §§ 197.005 to .855, 215.203 to .337 (1985)).

221. OR. REV. STAT. §§ 197.030 to .060 (1985).

222. OR. ADMIN. R. § 660-15-000 Goal Fourteen (Appendix A). Sections of this rule may also be found reprinted in LEONARD, supra note 218, at app.

223. Id.

224. LEONARD, supra note 218, at 67-68.

225. OR. ADMIN. R. § 660-15-000 Goal Three (Appendix A). See also Duncan, supra note 1, at 470-71 (Land may be excepted from EFU designation if: 1) the land is already developed or is "irrevocably committed" to non-farm uses because the surrounding land uses make agricultural use impracticable, OR. REV. STAT. § 197.732(1)(a) to .732(1)(c); or if 2) there is a justification for not applying state policy, and if the use can only occur in an area that is otherwise ineligible for an exception, and that the adverse effects are no greater at the proposed site than at another excepted site, and if the proposed use is compatible with surrounding uses. Gustafson, Daniels & Shirack, The Oregon Land Use Act, 48 J. AM. PLAN. A. 365, 367 (1982) [hereinafter Gustafson, Daniels & Shirack]. See also Duncan, supra note 1, at 466.
scattered development, the device also is intended to protect farmland.” To that end, “urban growth is directed toward the least productive farmland.” While the Act presumes that local governments will permit only agricultural uses in EFUs, the Act allows some development which is not inconsistent with farming use, such as schools and churches. However, the Act severely restricts new farm dwellings.

Because S.B. 100 was extremely unpopular with farmers who thought they could make a financial gain on development of their land, the legislature also enacted certain provisions intended to aid the farmer. These provisions entitle EFU land to preferential tax assessment, and exemption from certain other assessments. Additionally, these provisions exempt EFU land from government legislation which regulates pollution so long as such conditions do not affect the public health, safety, or welfare. S.B. 100 also eliminates problems associated with farmers speculating in land sales. Therefore, farmers do not stop farm production to prepare for the sale of farmland.

c. S.B. 100's Effectiveness Assessed

Commentators generally agree that S.B. 100 has stopped massive conversion of farmland to urban uses. By 1987 local governments had zoned as EFU almost ninety percent of the land which analysts had predicted. In addition, local governments have not redesignated EFU land for urban use on a very large scale. Ana-

226. Duncan, supra note 1, at 466.
227. Id.
231. EFU zoned land is generally exempt from special benefit district assessments. OR. REV. STAT. § 308.401 (1987). These assessments are used to finance urban growth. Duncan, Toward a Theory of Broad Based Planning for the Preservation of Agricultural Land, 24 NAT. RESOURCES J. 61, 74-76 (1984).
233. See supra notes 7-10 and accompanying text.
234. See EBER, OREGON'S AGRICULTURAL LAND PROTECTION PROGRAM, PROTECTING FARMLANDS 161 (Steiner & Theilacker ed. 1984); R. BENNER, ADMINISTRATION OF EXCLUSIVE FARM LANDS IN TWELVE OREGON COUNTIES: A STUDY OF COUNTY APPLICATION OF STATE STANDARDS TO PROTECT OREGON FARMLAND 1 (Mar. 1981) [hereinafter BENNER].
235. See Duncan, supra note 1, at 471.
236. See id. at 472 n.522 and accompanying text. According to Richard Benner, Staff Attorney for 1000 Friends of Oregon, there has been "no genuine loss of EFU land to residential subdivisions in the last seven years." Id.
ysts claim that S.B. 100 is successful because the Act is compulsory and because agricultural land protection is "not left entirely to the judgment of local governments." Comparing the amount of land requested for rezoning to UGBs to the amount of land actually rezoned provides one example of S.B. 100's effectiveness. In one case, a party requested rezoning of 53,000 acres from EFU to UGB status. While the local government rezoned 12,000 acres under certain exceptions, the local government refused to reclassify 41,000 acres. Even though S.B. 100 has stopped large scale land conversion, spot development still occurs because local governments are failing to implement the program.

According to one study conducted during a six month period in 1980, local governments approved ninety percent of all applications for development, and seventy percent of these approvals were improper. In a 1982 study conducted by an environmental group, the results showed that from September 1981 to January 1982, local governments approved eighty-six percent of development applications either without findings or improperly. Additionally, the study found "large-scale" violations of the Act that "violated farmland protection standards." According to one commentator, local government land conversion continues in Oregon because "at the urban fringe, where the most pressure exists, the priorities of the local community further tilt the decisionmaking process toward development. As a result, the cumulative effect of development on agricultural land as a resource is ignored." Therefore, despite the statewide focus, problems still exist with Oregon's comprehensive plan because the local level fails to implement the plan properly or at all. However, one commentator states that discovery of local level abuse shows that the plan is working because the legislature can then correct the abuse at the state level.

237. Id. at 472 n.523 and accompanying text.
238. Id. at 472.
239. Id. (the rezoning was only allowed because the 12,000 acres "contained hilly terrain, poor soils, and some existing development").
240. See BENNER, supra note 234, at 17-19; see also Duncan, supra note 1, at 473 (the approvals were improper because "[e]ither the required findings had not been made or they were obviously inadequate").
241. 1000 FRIENDS OF OREGON, FARMLAND IN JEOPARDY: COUNTY ADMINISTRATION OF EXCLUSIVE FARM USE ZONING (Mar. 26, 1982).
242. Duncan, supra note 1, at 477.
243. Id.
244. Id.
245. Id.
246. Id. at 478.
Agricultural Zoning

According to other commentators, the fact that Oregon has not reached the ideal level of collaboration between state and local government is not a reason for distress. They state that recognition of different motivations at the state and local level will help Oregon to better attain its goals. To achieve a better balance between the two governmental levels and to obtain fulfillment of the Act at the local level, they suggest that Oregon: "(1) reduce the divergence between the structure of incentives at the state and local levels, (2) provide sufficient opportunity for appeal of local decisions, and (3) identify legislative alternatives to improve county performance without unreasonably reducing local autonomy." In addition, some amount of rural residential zoning outside of EFU areas is necessary in order to obtain stability. In conclusion, these commentators state that the Oregon plan has probably helped to conserve Oregon’s prime agricultural land. However, they note that pressure for urbanization may detrimentally affect plans such as Oregon’s.

2. California’s Coastal Act of 1976

Whereas Oregon’s Land Use Planning Act applies to the entire state, California’s plan applies only to the coastal area. “California has not gone as far as Oregon, which requires that all farmland be zoned for exclusive farm use;” however, like Oregon, California has adopted a philosophy that “farmland should not be developed except

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247. See Gustafson, Daniels & Shirack, supra note 225, at 372.
248. Id.
249. “The Oregon experience has also demonstrated the importance of providing rural residential housing opportunities outside of the zone of protected farmland. Rural residential zoning is highly complimentary to minimum lot size restrictions in maintaining the stability of commercial agriculture in exclusive farm use zones.” Id.
250. Id. (“[T]he early adoption of land use controls has probably helped minimize the magnitude of adverse land value impacts. Once exurban sprawl and parcellation are well along, overly optimistic expectations about future capital gains may make untenable what would earlier have been a reasonable regulatory program.”).
251. See id.
253. See supra notes 213-51 and accompanying text.
254. See Duncan, supra note 1, at 461.

The zone extends ... from the state’s seaward jurisdictional limit to 1,000 yards inland from the mean high tide line. In significant estuarine and habitat areas, it extends to the first major ridgeline or five miles from the mean high tide line, whichever is less. In developed areas, it generally extends inland less than 1,000 yards. CAL. PUB. RES. CODE § 30103. The zone encompasses 1.3 million acres. Legislators did not respond to pleas for the protection of broader swaths of coastal farmland because they expected to consider a comprehensive farmland retention bill the next year. The bill failed to pass in both 1977 and 1978. R. HEALY & J. ROSENBURG, LAND USE AND THE STATES 112 (2d ed. 1979). Id. at 451-52 n.370.
in a manner consistent with the long-term viability of agriculture."  

a. History

California was the first state to pass legislation intended to preserve coastland.\textsuperscript{256} Even so, development threatened coastland.\textsuperscript{257} Additionally, development of coastal areas threatened agricultural land use, which is the primary land use along the coast.\textsuperscript{258} Even though land in California is extremely valuable in terms of agriculture,\textsuperscript{259} "one out of every twelve acres of coastal county farmland was converted to other uses during the 1960s."\textsuperscript{260} To combat this coastland conversion, conservationists\textsuperscript{261} drafted Proposition 20\textsuperscript{262} which eventually led to the enactment of the California Coastal Zone Conservation Act of 1972.\textsuperscript{263} Under this Act, regional commissions drafted long-term plans for coastal preservation and acted as interim permit-granting authorities for development.\textsuperscript{264} The California Coastal Act of 1976\textsuperscript{265} implemented long-term plans drafted by the commissions.

b. Structure of the 1976 Act

Each community in the coastal zone prepares a local Coastal Program (plan).\textsuperscript{266} The California Coastal Commission must then approve these plans. Once the Commission approves a plan, control passes back to the local government who must, in turn, follow their plan.

To protect agriculture, the Act requires that the "maximum amount of prime agricultural land shall be maintained in agricultural production . . . ."\textsuperscript{267} The Act restricts land conversion to situations where the "land's economic viability for agricultural purposes already

\textsuperscript{255} Duncan, supra note 1, at 452.
\textsuperscript{256} See Duncan, supra note 1, at 446-47.
\textsuperscript{257} Id.
\textsuperscript{258} Id. at 447.
\textsuperscript{259} See, e.g., Duncan, supra note 1, at 447-48 (for a discussion of economics in terms of California's money invested in agriculture).
\textsuperscript{260} Id. at 448.
\textsuperscript{261} Conservationists formed the California Coastal Alliance.
\textsuperscript{262} See Adams, Proposition 20—A Citizen's Campaign, 24 SYPACUSE L. REV. 1019, 1024-29 (1973); see also Duncan, supra note 1, at 448.
\textsuperscript{263} CAL. PUB. RES. CODE §§ 27000 to 27650 (Deering 1976) (repealed 1977 and replaced by CAL. PUB. RES. CODE §§ 30000 to 30900 (Deering Supp. 1987)).
\textsuperscript{264} Duncan, supra note 1, at 448-49.
\textsuperscript{265} CAL. PUB. RES. CODE §§ 30000 to 30900 (Deering Supp. 1987).
\textsuperscript{266} Duncan, supra note 1, at 451-52.
\textsuperscript{267} CAL. PUB. RES. CODE § 30241 (Deering Supp. 1987).
is severely limited by conflict with urban uses or where development would complete a logical and viable neighborhood and help create a stable limit for urban development."268 In the event expansion must occur in areas where agricultural activity remains viable, the Act directs expansion to nonprime lands.269 California, when analyzing an issue regarding agricultural development, takes an integrated perspective and primarily considers how proposed development will affect agriculture as a whole.270

c. Santa Barbara County Coastal Plan271

Under the Santa Barbara Plan, if a landowner must convert part of a farm parcel to a nonagricultural use to preserve the balance of the parcel in its agricultural use, then the plan allows the conversion, but only to uses given priority under the Act.272 This exception exists because the supplemental income gained in the converted use "may allow the rest of the parcel to remain in agricultural use."273 If the only way to save the farm is to convert a portion of the parcel, then the plan allows conversion.

Under Policy 8-8 of the Santa Barbara Plan, residential development may occur on ranches larger than 10,000 acres, but "only if it's clustered on no more than 2% of the gross acreage."274 Policy 8-8 reserves one percent for public recreation and commercial visitor-serving uses,275 and grants the development rights of the remaining ninety-seven percent to agencies such as the California Coastal Con-

268. Duncan, supra note 1, at 453.
269. CAL. PUB. RES. CODE § 30241 (Deering Supp. 1987). The Act accomplishes this:
(a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses . . . .
(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.
(f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of prime agricultural lands.

Id.

270. Duncan, supra note 1, at 454.
271. SANTA BARBARA COUNTY COASTAL PLAN (Jan. 1980).
272. These uses include coast dependent industry, public recreation, and commercial use for visitors. Duncan, supra note 1, at 454.
273. Duncan, supra note 1, at 458.
274. Id. at 459.
275. See supra note 271, at Policy 8-8.
All of the landowners in the development must hold this ninety-seven percent in common. They must belong to a homeowner's association which is "responsible for the permanent maintenance of agricultural and open space areas."277

d. Assessments of the California Coastal Act of 1976

As regards California, it is difficult to fully assess the plan until all local coastal plans are in place.278 However, California Coastal Commission (CCC) decisions have apparently furthered the purposes of the Act.279 In one case, the CCC refused to grant a development permit to a greenhouse expansion onto prime land because the conversion did not guarantee that the landowner would use the maximum amount of prime agricultural land in its agricultural use.280 Additionally, the CCC found that the heavy water use threatened the agricultural viability of the area.281 In another situation, the CCC overturned the regional commission's grant of a permit for agricultural land conversion.282 The CCC based this decision on the fact that allowance of the development would result in development occurring on the wrong side of a natural boundary between agricultural and nonagricultural land uses. The natural boundary was a major road. The CCC feared that assessments pressure on adjoining agricultural land might occur if they allowed the conversion.

While the CCC has acted appropriately in denying permits, it also appears to grant permits consistently with the Act.283 In one case where multiple family dwellings, a shopping center, major roads, and other development surrounded the prime agricultural land, the CCC granted a land conversion permit in an effort to condense development.284 But, while the CCC appears to make decisions consistent with the Act, it is still too early to determine whether California will have local level problems similar to Oregon285 until the local govern-

276. Id. at condition (c).
277. Duncan, supra note 1, at 459.
278. Id. at 460, 481.
279. Id. at 460.
281. Id.
283. Duncan, supra note 1, at 455.
284. Id. This occurred on a 50 acre tract in Port Hueneme.
285. See supra notes 31-37 and accompanying text.
ments implement their plans.

C. Nonintegrated State Plans

Whereas comprehensive plans require a great deal of state government intervention and regulation of local level decisions,286 nonintegrated state plans allow the local government entity a certain degree of autonomy in matters such as zoning. Some states have enacted statutes to slow farmland conversion;287 however, most of these states have adopted "a collection of non-interrelated measures that primarily attempt to facilitate continued agricultural production."288 Pennsylvania provides one example of a state that has adopted statutes to protect agricultural land in a nonintegrated way.

1. Pennsylvania's Response to Farmland Conversion289

a. Legislative Protection

Annually, landowners convert 125,000 acres of farmland in Pennsylvania to nonagricultural uses.290 To combat this problem, the legislature enacted such measures as: preferential assessment programs for tax purposes to encourage farmers to keep their farms in an agricultural capacity;291 preferential inheritance tax legislation to encourage farm heirs to maintain farms as farms;292 limitation on the ability of municipalities to enact ordinances restricting farming based upon the concept of farming as a nuisance;293 limitations on a municipality's ability to use eminent domain to condemn land in an agricultural area;294 government purchase of development easements;295

286. See Duncan, supra note 1, at 406.
287. See supra note 12.
288. Growth Pressure, supra note 41, at 295 (referring to Pennsylvania's nonintegrated system).
289. Two articles discuss Pennsylvania's system in detail: Family Farm, supra note 16 and Growth Pressure, supra note 41.
290. These nonagricultural uses include: highway easements, water storage reservoirs, and shopping centers. Family Farm, supra note 16, at 595 n.6 and accompanying text.
294. "No Commonwealth agency, political subdivision, public utility or other body can condemn land contained in an agricultural area without prior approval from the Agricultural
creation of agricultural areas, and agricultural zoning legislation.

b. Zoning Legislation

Agricultural land preservation techniques at the state level are voluntary on the part of the farmland owner. These measures primarily operate as incentives to farmers to continue land operations in an agricultural use. These measures also enable municipalities to enact their own ordinances to preserve farmland. The Agricultural Area Security Law [hereinafter AASL] expresses Pennsylvania's policy of farmland preservation. However, Pennsylvania's only involvement in agricultural zoning on the state level is the passage of zoning enabling legislation, conferring zoning powers on municipalities. Under this legislation, (1) municipalities may enact legislation for the protection of land, and (2) legislation shall be designed to preserve prime agricultural land.

On the municipal level, agricultural zoning ordinances vary. Pennsylvania has adopted a nonexclusive agricultural form of zoning. Nonexclusive agricultural ordinances do not prohibit nonfarm uses; however, they discourage nonfarming activities by a variety of measures. To discourage nonfarm uses of agricultural lands, municipalities in Pennsylvania require: 1) a large minimum lot size; 2) fixed area-based allocation, which limits the number of

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Lands Condemnation Approval Board. The Board grants such approval only if no reasonable and prudent alternative exists to utilization of land within the agricultural area." Family Farm, supra note 16, at 612 (emphasis added).


298. Family Farm, supra note 16, at 617; Growth Pressure, supra note 41, at 312.

299. See Growth Pressure, supra note 41, at 312.


304. This classification shall be based on "topography, soil type and classification, and present use." PA. STAT. ANN. tit. 53, § 10604(3) (Purdon 1972 & Supp. 1988).

305. See Growth Pressure, supra note 41, at 315.

306. See supra notes 122-28 and accompanying text.

307. See supra notes 123-27.

308. Some zoning ordinances require minimum lot sizes of 40 acres, which allows some large private estates, "but make concentrated residential development impossible." Family Farm, supra note 16, at 618. See also supra note 123.
AGRICULTURAL ZONING

units on a tract of land;\textsuperscript{309} and 3) sliding scale area-based allocation, which resembles a fixed area-based allocation, "but the number of dwellings allocated per acre decreases as farm size increases."\textsuperscript{310} This sliding scale area-based allocation system has grown in popularity in Pennsylvania,\textsuperscript{311} while very few municipalities now use the fixed area-based allocation system.\textsuperscript{312}

c. Assessments of Pennsylvania's Farmland Preservation Legislation

The greatest criticism regarding Pennsylvania's land preservation statutes is that they are not part of an integrated plan.\textsuperscript{313} While, the AASL arguably is a minor attempt by Pennsylvania to integrate, one commentator complains that the program offers participants "inadequate incentives to encourage participation."\textsuperscript{314} Additionally, the fact that participation in AASL is voluntary does not help enforce farmland preservation.\textsuperscript{315} According to one commentator, "the state has failed to articulate a strong policy in favor of zoning to protect agricultural land and has not mandated or even encouraged comprehensive planning by localities."\textsuperscript{316} In comparison, another commentator found that "Pennsylvania ... has an express policy supporting the preservation of farmland with local governments as the locus of activity."\textsuperscript{317} Both commentators base their viewpoints on an analysis of the AASL. The difference in opinion arises primarily on the former commentator's belief that Pennsylvania must enact a comprehensive preservation plan.\textsuperscript{318}

Even though this commentator does not believe that Pennsylvania's nonintegrated program works, he does state that "[z]oning, as a tool of agricultural land preservation, has numerous advantages"\textsuperscript{319} over other methods of farmland preservation. Zoning does not rely on voluntary compliance, it costs less than purchase of devel-

\textsuperscript{309} The limitation is directly proportional to the size of the tract. \textit{Family Farm}, \textit{supra} note 16, at 618. \textit{See also supra} note 123.
\textsuperscript{310} \textit{NALS, supra} note 13, at 22.
\textsuperscript{311} \textit{Growth Pressure, supra} note 41, at 315-16.
\textsuperscript{312} \textit{Id.} at 315.
\textsuperscript{313} \textit{Family Farm, supra} note 16, at 627. Other criticisms include: creation of agricultural areas are difficult and time consuming, \textit{id.} at 615, and that farmers are not penalized for withdrawing from an agricultural area. \textit{Id.} at 627.
\textsuperscript{314} \textit{Family Farm, supra} note 16, at 627.
\textsuperscript{315} \textit{Id.}
\textsuperscript{316} \textit{Id.} at 628.
\textsuperscript{317} \textit{Growth Pressure, supra} note 41, at 327.
\textsuperscript{318} \textit{See Family Farm, supra} note 16, at 625.
\textsuperscript{319} \textit{Id.} at 626.
opment easements, and it "effectively preserves agricultural land."\textsuperscript{320} Accordingly, he believes that Pennsylvania should implement zoning in compliance with a comprehensive plan.

2. \textit{Minnesota's Response to Farmland Conversion}

Similar to Pennsylvania, Minnesota has a nonintegrated state plan for agricultural land preservation. Minnesota utilizes such methods as: preferential tax assessment programs so that farmers will not have to pay taxes based on nonagricultural use value;\textsuperscript{321} agricultural districting;\textsuperscript{322} statutes designed to protect farmers from public and private nuisance suits;\textsuperscript{323} and zoning statutes.\textsuperscript{324}

\begin{itemize}
  \item a. An Analysis of Minnesota Zoning Statutes and Ordinances
  
  Under Minnesota's Agricultural Land Preservation Program,\textsuperscript{325} the primary goals of the Act are to "preserve and conserve agricultural land . . . for long-term agricultural use in order to protect the productive natural resources of the state, maintain the farm and farm-related economy of the state, and assure continued production of food and timber and agricultural uses . . . ."\textsuperscript{326} Secondly, the Act seeks to protect water and soil resources.\textsuperscript{327} Lastly, the Act encourages "orderly development of rural and urban land uses."\textsuperscript{328} The Metropolitan Agricultural Preserves Act\textsuperscript{329} states that "[i]t is the policy of the

\begin{footnotes}
\item 320. \textit{Id.}
\item 329. \textit{Minn. Stat. Ann.} ch. 473H (West Supp. 1989). The Act applies to the metropolitan area which is: "the area over which the metropolitan council has jurisdiction, including only the counties of Anoka, Carver, Dakota excluding the city of Northfield, Hennepin excluding the city of Hanover, Ramsey, Scott excluding the city of New Prague, and Washington." § 473.121(1) (West Supp. 1989). If a farmer chooses for his land to become designated as long-term agricultural use under this Act, the farmer will receive such benefits as: preferential tax assessment, § 473H.10 (West Supp. 1989); protection from certain public projects, § 473H.11 (West Supp. 1989); protection for normal farm practices, § 473H.12 (West Supp. 1989); protection from annexation, § 473H.14 (West Supp. 1989); and protection from eminent domain actions, § 473H.15 (West Supp. 1989). Even though the land is to be protected in long-term
state to encourage the use and improvement of its agricultural lands for the production of food and other agricultural products. Because the state does not have an integrated plan, however, the Act leaves implementation and enforcement of these goals to the local municipalities. In some municipalities, the local government unit seeks to achieve the state’s goal of farmland preservation for long-term agricultural use. In other municipalities, however, the local unit does not address the state’s goals.

In Minnetrista, for instance, the municipality seeks to implement zoning ordinances that comply with Minnesota’s stated goals. To that end, Minnetrista designates agricultural districts as: 1) agriculture preservation districts (AP); 2) agriculture districts (A); and 3) agricultural residence districts (R-A). The city intends for the AP district to preserve and maintain areas designated for long-term agricultural purposes. In addition, the city protects these areas from encroachment by nonagricultural uses. While the AP area constitutes a large portion of Minnetrista, no reclassification of land has occurred in the AP area since the city implemented the zoning law.

The A district includes areas “appropriate for small scale rural activities which will not conflict with existing agricultural activities.” As with the AP district, the city intends to protect the A district from nonagricultural use encroachment. The A district land constitutes approximately one-half of Minnetrista.

The city reserved R-A district land for residential use, and this

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331. MINN. STAT. ANN. § 40A.01(2) (West Supp. 1989).
332. Special thanks to David Rubedor, Assistant Zoning Administrator of the City of Minnetrista, for his help in locating and understanding the MINNETRISTA, MINN., CITY CODE OF ORDINANCES, ch. 23.
333. MINNETRISTA, MINN., CITY CODE OF ORDINANCES § 23-97(1) (1987). Lot sizes in AP districts must be 40 acres or greater in size. Id. § 23-99.
334. Id. § 23-97(2). Lot sizes in A districts must be at least 10 acres. Id. § 23-99.
335. Id. § 23-97(3). RA districts require a 3 acre minimum lot size. Id. § 23-99.
336. Id. § 23-97(1)(a).
337. Id. § 23-97(1)(b).
338. Approximately 25% of the city is so designated.
339. Interview with David Rubedor, Assistant Zoning Administrator of the City of Minnetrista, in Minnetrista (Apr. 30, 1988) [hereinafter Rubedor].
341. Id. § 23-97(2)(2).
342. Id. § 23-97(3)(1).
land should remain in agricultural use until the city needs the land for development.343 R-A district land covers approximately twenty percent of Minnetrista.

In analyzing Minnetrista’s ordinances, one sees that the city intends to protect approximately seventy-five percent344 of its land in long-term agricultural uses to meet the state’s mandate of farmland preservation. In addition, the city has achieved these goals by not reclassifying agriculturally zoned property.345

In comparison, Brooklyn Park designated only one district, “R-1” Single Family, for agricultural activity.346 This city designated this area to allow “very low density residential development, agricultural activity and to maintain an urban development reserve for some future time when urban services can be fully provided.”347 “R-1” zoning currently covers approximately one-third of Brooklyn Park. Brooklyn Park divided the “R-1” district into seven areas designated A through G, which the city will gradually convert to nonagricultural uses.348 The city is currently converting areas A, B, and C. The city intends to convert areas D and E during the years 1990 to 2000, area F during the years 2000 to 2020, and area G after that.349 Therefore, by the year 2020, Brooklyn Park plans to develop all land designated “R-1.” Brooklyn Park, then, is making no attempt to preserve any land in long-term agricultural use. While Brooklyn Park does seek to achieve orderly development of its rural areas in compliance with one goal of Minnesota’s Metropolitan Agricultural Preserves Act,350 the municipality fails to preserve any land for long-term agricultural use.351

Brooklyn Park does not meet Minnesota’s goal of farmland preservation as put forth in the Agricultural Land Preservation Program and the Metropolitan Preserves Act; however, the municipality is not entirely at fault—the two programs are voluntary on the part of the

343. Id. § 23-97(3)(2).
344. AP districts comprise approximately 25% of Minnetrista, while approximately 75% of Minnetrista is A district zoned.
345. See Rubedor, supra note 339.
346. BROOKLYN PARK, MINN., ZONING REGULATIONS § 366.03(e)(3) (1988) (R-1 zoned land must have a minimum lot size of 5 acres).
347. Id. § 366.03(a) (emphasis added).
348. Refer to Appendix A of this article, Growth Management Phased Areas (1973). All dates in the phased areas are approximations.
349. Brooklyn Park has already converted a small portion of land in all areas to development purposes.
municipality or county. Additionally, Minnesota failed to incorporate cities located on the urban-rural fringe, where the majority of prime agricultural land is located,\textsuperscript{352} into the statewide Agricultural Land Preservation Program. While the Agricultural Land Preservation Program purports to have statewide application, the program does not apply to municipalities or counties located within the metropolitan area.\textsuperscript{353}

In order to achieve some amount of statewide zoning control, the program states that counties, located outside of the metropolitan area, \textit{may} submit a proposed agricultural land preservation plan to the commissioner\textsuperscript{354} or regional development commission, if one exists.\textsuperscript{355} The program then requires the commissioner to review the plan for consistency with the state program.\textsuperscript{356} If the commissioner determines that the plan is consistent with the state program, the county shall adopt the plan within 60 days.\textsuperscript{357} If the commissioner determines that the plan is inconsistent with the state program, the county must amend the plan.\textsuperscript{358} The program does not require the counties to implement such a preservation program.

If a county does not implement a plan by January 1, 1990, a municipality \textit{may} request that the county submit a plan to the com-

\textsuperscript{352} See supra note 3.
\textsuperscript{353} See supra note 329.
\textsuperscript{354} \textsc{Minn. Stat. Ann.} \textsection{} 40A.02(5) (West Supp. 1989) ("Commissioner" means the commissioner of agriculture).
\textsuperscript{355} \textsc{Minn. Stat. Ann.} \textsection{} 40A.01(l) (West Supp. 1989).
\textsuperscript{356} Id. For a plan to be consistent with the state program, it must address the following elements:

1. integration with comprehensive county and municipal plans;
2. relationship with shoreland, surface water, and other land use management plans;
3. identification of land currently in agricultural use, including the type of agricultural use, the relative productive value of the land based on the crop equivalent rating, and the existing level of investment in buildings and equipment;
4. identification of forest land;
5. identification of areas in which development is occurring or is likely to occur during the next 20 years;
6. identification of existing and proposed public sanitary sewer and water systems;
7. classification of land suitable for long-term agricultural use and its current and future development;
8. determination of present and future housing needs representing a variety of price and rental levels and an identification of areas adequate to meet the demonstrated or projected needs; and
9. a general statement of policy as to how the county will achieve the goals of this chapter.

\textsc{Minn. Stat. Ann.} \textsection{} 40A.05(2) (West Supp. 1989).
\textsuperscript{357} \textsc{Minn. Stat. Ann.} \textsection{} 40A.04(1) (West Supp. 1989).
\textsuperscript{358} Id.
missioner. 359 If the county still fails to implement such a plan within one year, the municipality may perform duties of the county and adopt a farmland preservation program. 360 Again, however, a municipality is not required to take action.

Minnesota had adopted a nonintegrated plan similar to Pennsylvania's, but Minnesota utilizes exclusive agricultural use zoning, 361 which prohibits nonfarm dwellings on land that is agriculturally zoned, 362 whereas Pennsylvania utilizes nonexclusive zoning. 363 Additionally, an application for creation of an exclusive agricultural use zone 364 is relatively easy for the applicant. 365 Once the local government zones property for exclusive agricultural use, certain projects (such as public sanitary sewer systems, public water systems, and public drainage systems) are prohibited, 366 unless the owner of the land chooses to use such projects. 367

b. Assessment of Minnesota's Agricultural Land Preservation Program and the Metropolitan Agricultural Preserves Act

Even though the state lists lofty goals of farmland preservation and promotion of long-term agricultural use, 368 the state programs fail miserably because they do not protect prime agricultural farmland located on the urban-rural fringe. Additionally, because the programs are voluntary on the part of counties and municipalities, the two pieces of legislation do not protect any farmland located within the state. While Minnesota does offer greater protection of farmlands than other states because Minnesota prohibits nonfarm dwellings on agriculturally zoned land, 369 the exclusive agricultural use designa-

360. Id.
361. See supra notes 129-32 and accompanying text.
362. NALS, supra note 13, at 22.
363. See supra notes 306-10 and accompanying text.
365. The application must contain: (a) a legal description of the area to be designated an exclusive agricultural use zone; (b) name and address of the owner; (c) a witnessed signature of the land owner promising to keep the land in an exclusive agricultural use; and (d) a statement that the covenant will be binding on the owner and will run with the land. MINN. STAT. ANN. § 40A.10(a)-(d) (West Supp. 1989). The applicable counties and agencies will then review the application and either accept or reject the application. MINN. STAT. ANN. § 40A.10(2)-(4) (West Supp. 1989).
368. See supra note 326.
369. See supra note 362 and accompanying text.
tions do not protect the land from development by a farm owner because the farm owner may simply opt out of the zoning classification at any time. Additionally, even though the farm owner may wish the land to remain zoned for exclusive agricultural use, the county may terminate the classification. Therefore, while the legislature meant well by enacting these statutes, the legislation is totally impotent.

V. CONCLUSION

From the foregoing comparisons of states which utilize state level comprehensive plans and states that employ nonintegrated farmland preservation tactics, it is blatantly apparent that the comprehensive programs are far superior. While comprehensive programs may have some implementation problems at the local level, these plans, overall, work. Most commentators agree that comprehensive plans succeed because they are mandatory. While states, such as Minnesota, profess farmland preservation as a goal, the nonintegrated preservation statutes fail to protect agricultural land because the state does not control the program at the state level and because the plans are not mandatory. Nonintegrated, voluntary systems such as Minnesota’s are merely rhetoric put forth to quiet farmland crisis theorists.

370. Termination by owner.
The owner may initiate expiration of an exclusive agricultural use zone by notifying the county on a form prepared by the commissioner and available in each county. The notice must describe the property involved and must state the date of expiration. The notice may be rescinded by the owner during the first two years following notice.


Note: Areas and dates are not precise.

Growth Management Phased Areas