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Solicitation of articles: All AALA members are invited to submit articles to the Update. Please include copies of decisions and legislation with the article. To avoid duplication of effort, please notify the Editor of your proposed article.

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Regulation through litigation: CERCLA and CAFOs

In 2004, the City of Waco filed suit against fourteen CAFO dairies in federal court in Waco, Texas. The City's allegations mirrored the allegations made by the City of Tulsa in an earlier case filed against poultry industry defendants. Though other claims were asserted, the essential feature of both complaints was the use of CERCLA to allege that agricultural producers had "arranged" to transport and store animal wastes in the waterways of the state. This same theory now forms a part of the Oklahoma Attorney General's allegations against various poultry industry defendants in a suit pending in Oklahoma. The Waco suit was resolved early this year by a global settlement among the City and all remaining defendants. The settlement was accomplished after many days of negotiations led by U.S. Magistrate Judge Jeffrey C. Manske and SMU Environmental Law Professor Jeffrey M. Gaba.

The City of Waco's suit was preceded by a lengthy and involved administrative rulemaking that took place before the Texas Commission on Environmental Quality ("TCEQ"). The City of Waco was an active participant in this process, submitting written comments and technical information to persuade TCEQ to adopt more strict regulations on dairies in Erath County, Texas. TCEQ did accept many of the City of Waco's suggestions for changes and in the Spring of 2004 announced new stricter rules to be imposed upon the dairies as new permits were granted. The City of Waco was displeased because TCEQ did not adopt all of the new rules that the City had requested. Before the new State of Texas Rules were final, the City of Waco filed its suit against fourteen dairies. The lawsuit sought to impose the proposed rules that the TCEQ had rejected and alleged that the fourteen individual dairy farms should be held jointly and severally liable for the capital costs of the City's new multi-million dollar water treatment plant.

The City of Waco's suit was a response to what the City regarded as a less than
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Help decide whether to change the AALA logo

The AALA Board of Directors is investigating the possibility of changing the logo of the AALA. Although there has been no expressed general dissatisfaction with the current logo, the board felt that any organization should take an occasional fresh look at its public face and its identifying marks. The process involves three steps before any final decision will be made:

Step 1 The board was presented with seven alternative logos proposed by a professional design firm, Vitek Design of Bartlett, IL which has done some design work for the Farm Foundation. The current AALA logo was included as an eighth choice. The board discussed the designs at the October 12, 2006 meeting in Savannah and eliminated two of the new designs.

Step 2 The remaining five new designs and the current logo were presented on plaques to the attendees at the annual conference in Savannah and they were asked to cast up to two votes. The attendees could use those two votes to vote twice for one design or once each for two designs. The three winning logos are presented below. A note on the voting: the three finalists were clearly favored by the attendees with nearly equal votes each.

Step 3 The three finalists logos are now presented to the current AALA members

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perfect result in the administrative process. The litigation was not an act of last resort, but instead was a calculated effort to win new administrative requirements by subjecting producers to legal expenses and potential damages apt to induce bankruptcy. The use of CERCLA in this manner is a newly devised litigation shortcut to avoid the thorough and sometimes disappointing results of statewide environmental regulation. Citing the multiple settlements, the City of Waco declared that the lawsuit was "highly effective." In the end, the City expended nearly \$3 million dollars of taxpayer money to fund the lawsuit. The defense of the case was no less expensive and very little was accomplished after two years of protracted litigation.

The City of Waco's suit was a calculated plan to conduct a "private rulemaking" under the threat of CERCLA litigation. As a condition to dismissal, the City demanded that each dairy sign what amounted to a private permit enforceable by the City of Waco. The City of Waco thereafter presented the settlements to TCEQ and EPA as evidence that the regu-

latory authorities should impose Waco's conditions on new permits.

There is a grave threat posed by the boundless use of CERCLA as a class action device by governmental entities that have given up on state regulatory authority. CERCLA is being utilized by the City of Waco and others to push EPA and state regulators for additional permit requirements outside of the administrative process. Small operators have to pay a ter-

rible price. The City of Waco's lawsuit, as well as the other lawsuits employing this CERCLA strategy, are a misuse of federal environmental law, which if left open will signal an abandonment of the established process of administratively regulating agricultural producers.

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AALA logo/Cont. from page 1

for voting on the AALA website (www.aglaw-assn.org) in the "members Login" portion of the web site. Each logo has a vote button for you to select. Please choose one logo as your preference and click on the "submit" button at the bottom of the page. Each vote will be "tagged" with your ID to prevent duplicate voting. Please vote by December 12, 2006. The votes will be automatically tallied by the web site and will be reported to the AALA board at the December 13, 2006 board meeting, at which time the board will further discuss the issue of the AALA logo. If you do not have your username and/or password, send me an e-mail. If you do not have access to the AALA web site, photocopy this page, circle your choice and mail (P.O. Box 2025, Eugene, OR 97402) or fax (541-302-1958) your vote to me.



If you have any concerns about your vote or other comments, please send me an e-mail. RobertA@aglaw-assn.org Robert P. Achenbach, Jr, AALA Executive Director.

Report on the 2006 Symposium in Savannah, GA

Judging by the high number of compliments I received from attendees, the 27th Annual Agricultural Law Symposium in Savannah, GA was one of the best conferences for the AALA. We hope all who attended will continue to draw on new insights and information throughout the year from the many fine presentations. Over 200 attendees, speakers and guests gathered in the Hyatt Regency on the Savannah River and enjoyed the friendly and most helpful Georgia hospitality of the staff and people of Savannah.

We extend our special thanks to an excellent faculty who collectively made 31 presentations during the two day symposium. These papers included a series of "Update" programs on core subject matter important to agriculture and other presentations addressing a wide range of topics from food safety to the environment. The presentations included over 500 pages of written materials.

A highlight of this year's conference was the lunch speech given by U.S. Senator Saxby Chambliss, chair of the Senate Agriculture Committee. Senator Chambliss spoke about the challenges and successes of the current farm bill and the current discussions and issues for the next farm bill.

Although it is hard to upstage a U.S. Senator, the Savannah River managed to do just that by having a huge ocean freighter pass by the hotel and fill the lunch room glass wall with its massive bulk and cargo in the middle of the Senator's speech—just about the time he was discussing the U.S. trade deficit.

The association was very fortunate to have several sponsors who generously provided funds or equipment for the conference. The Farm Foundation provided a

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Farmland protection

By Jesse J. Richardson

The vast majority of localities in the United States express, in comprehensive plans and otherwise, a desire to protect farmland. Citizens voice a similar desire at public hearings, in polls, and other forums. Farmland protection¹, however, differs significantly from the protection of most other critical environmental areas. The prohibition of development or elimination of development rights by voluntary donation or otherwise (sometimes accompanied by the prohibition of human intrusion in the area) achieves the objective of protecting wetlands, historic areas, or mountainsides, for example. In contrast, if one truly wishes to protect farmland, the industry of agriculture must be maintained. Merely prohibiting development of a parcel of land fails to ensure that the land will be farmed, either today or in the future. Put more simply, as the American Farmland Trust says, farmland cannot exist without the farmer.

This article briefly discusses standard farmland protection tools, while questioning the true motives of citizens and localities that claim a desire to protect farmland. The author also suggests some actions that may truly advance the industry of agriculture.

Traditional tools

Despite this obvious distinction between farmland protection and protection of other resource lands, local governments generally use the same traditional land use tools for the purported goal of farmland protection. Commentators focus almost exclusively on land use tools to protect farmland.² These same commentators extol the "effectiveness" of these land use tools in protecting farmland. However, "effectiveness" appears to be measured only in terms of the number of farms and number of acres "protected" from development. Whether these "farms" maintain production, or produce agricultural products at all, seems of little consequence.³ This lack of production measurement causes a disconnect with the rhetoric supporting farmland protection, which cites the need to maintain food and fiber production for food security and other reasons.

Commonly used farmland protection tools include agricultural zoning (generally in the form of large-lot, sliding-scale or other low density zoning), agricultural and forestal districts, use-value real property tax assessments, and purchase of development rights programs. In addition, most

programs pursue multiple goals of open space, forestland, and farmland protection within one program, using the same tools and criteria for each objective. Not surprisingly, these programs show a clear history of failure to promote and maintain the industry of agriculture.

In fact, many of these tools accelerate the destruction of our best farmland. "Agricultural zoning" proves particularly destructive. Large-lot and other low density zoning schemes result in land consumptive development patterns (also called "sprawl"). In addition, these zoning dictates almost always require on-site septic systems. Land most appropriate for on-site septic systems also proves to be the best farmland. Hence, land consumptive development is encouraged on the best farmland, converting farmland to development at a rapid rate.

Cluster development in rural areas represents an improvement on traditional large lot development. However, if overall densities remain the same, the resulting land use patterns amount to "pretty sprawl". Density bonuses should accompany clustering provisions to reduce land consumptive development patterns.

Protect or exclude?

Despite the rhetoric otherwise, use of traditional land use tools to purportedly protect farmland leads to the inescapable conclusion that the desire to exclude motivates policy makers much more than the desire to truly protect farmland.⁴ The actions of the citizens who advocate "farmland preservation" further support this conclusion. Although citizens claim to desire to protect "farmland", objections to generally accepted agricultural practices such as land application of biosolids and intensive livestock and poultry raising operations indicate otherwise.

The severe underzoning of many rural and suburban localities across the country exacerbates the rapid development of the best agricultural land. When a locality zones 80%, 90% or even more of the area as "agricultural", "conservation" or other purportedly protective⁵ designations, the local governing body fails to prioritize land protection. In such cases, the unfettered market decides which land to develop.

Land use tools to protect the industry of agriculture

The best way to protect farmland is to make the industry of agriculture profitable. This task proves difficult, at best, in practice. Land use tools, unless accompanied by some cash payments or other actions that impact farm activity profitability, fail to advance true farmland pro-

tection. Often, reservation of land for wealthy country estate owners or hobby farmers results.

Some land use tools, however, can aid in promoting the agriculture industry. Smart growth consists of two pillars: (1) discouraging development on resource lands, such as prime farmland; and, (2) encouraging development on land more appropriate for development. The latter pillar often proves to be the most important. If governments fail to plan to accommodate inevitable development, sprawl development on farmland results.

If a local government truly wishes to protect farmland, for example, the governing body should use market incentives to direct development away from farmland and towards areas appropriate for growth.⁶ Further, dense development should be encouraged to reduce the development pressure on agricultural lands. In short, properly planned and implemented smart growth protects farmland. "Slow growth", "no growth" or "controlled growth" policies fail to designate enough land for development and force development onto farmland. Instead of designating nearly the entire land area for protection, local governments must prioritize protection areas and encourage development in areas not designated for protection.

Our land use policies to protect farmland are backwards. To protect farmland, local governments should extend water and sewer to areas around towns, villages and other population centers to encourage dense development in these areas. Too often, local governments (and neighbors to the project, displaying severe Not In My Back Yard (NIMBY) disorder) view density as "evil".

To the contrary, increased densities in appropriate areas satisfy some market demands for housing and, consequently, take development pressure off of farmland that local governments wish to protect. Local governments must set priorities, however. In addition, market demands for country estate living exist and should be planned for. A local government could choose an area within the jurisdiction that, for reasons of poor soils or otherwise, present poor conditions for commercial agriculture. This area could be used to satisfy demand for hobby farms, while not interfering with substantial farm operations.

Many local governments in rural areas also lack planned unit development ordinances.⁷ Such ordinances should be devised and implemented in rural areas to encourage dense "village" development in appropriate areas.

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Cluster development provisions⁸ can be improved to aid agriculture. Even when density bonuses accompany cluster development, the homeowners taking residence in the cluster housing tend to interfere with any attempted agricultural activity on the open space lot or lots by complaining about noise, dust, and odors, protesting generally accepted agricultural practices and trespassing upon the farmland, among other things.

Hence, residential development in agricultural areas should be required to include buffers between the residences and the agricultural land to minimize intrusions. Note that developers will not pay for these buffers. The cost of new housing will increase to cover the cost.

Many land use regulations serve to hinder, rather than aid, agricultural operations. Many sectors of the agriculture industry must change to meet changing market conditions. Land use regulations have remained static for several decades, hindering this flexibility.

Most land use regulations still view agriculture as a production activity. However, profitable operations must often direct market products to the consumer. Local ordinances often prohibit farm markets and other marketing activities outright or indirectly, through prohibitions on paved parking and the like.

These regulations often also prohibit corn mazes, haunted houses, hay rides, or other activities now a routine part of commercial agriculture. Bed and breakfast operations, restaurants, or inns are also normally prohibited, but could be integral parts of a farm operation. Local governments often resist state efforts to allow these activities, fearing loss of control. Local planners should examine and overhaul land use ordinances to provide maximum flexibility for agricultural operators.⁹

The X-factor: agritourism and niche agriculture

A large number of local comprehensive plans set out the goal of becoming the next Lancaster County, Pennsylvania. These aspirations declare that agritourism and niche agriculture will become the economic savior of the locality, generating millions of dollars in revenue.

The pollyannaish and ill-conceived nature of these plans provides another indication of the true motives of "farmland preservation"-exclusion. Agritourism and niche agriculture hold the promise of aiding a relatively small percentage of farmers in the quest for profitability. The likelihood of more than 3 or 4 counties in Virginia deriving significant economic benefits from agritourism and/or niche agriculture is extremely small.

These plans are ill-conceived, and further indicate ulterior motives, by failing to match the lofty goals with strategies for

coping with the effects of success. Successful agritourism within a locality will generate significant traffic, requiring infrastructure improvements. The tourism will generate needs for more hotels, bed and breakfast facilities, restaurants, campgrounds, and other facilities. Of course, these support operations will need employees, and the employees will need housing, preferably within the locality. These plans fail to consider or plan for these impacts, perhaps because the true desire is to insure that things remain the same.

Forward-looking tools to protect the agriculture industry

More importantly, to promote the industry of agriculture, local government policies must go beyond merely preventing development on desirable farmland. A survey of local farmers may help to ascertain measures that may truly help the industry.

A simple examination of the Census of Agriculture reveals the type of agriculture within a community. Not all agricultural enterprises require large parcels of land or prime farmland soils. A simple survey and some study could fine tune the goals and methods to achieve these goals.

The simplest and perhaps best way to improve agricultural profitability involves direct payments. Environmental groups steadfastly oppose federal government subsidies. However, practice indicates that these subsidies help to promote agriculture in the Midwest, where most of the farm subsidies are utilized. Direct payments, including "green payments" (payments for the implementation of conservation practices by farmers) supplement farm income and helps keep land in agriculture.

Complaints about farm subsidies center on the fact that the subsidies are merely incorporated into the land price, increasing the value of land for agriculture. The rhetoric continues by alleging that this increases the market value of the land. This assertion is not true, unless the subsidies increase the value of land for agriculture above the value of land for development. In many parts of the country, particularly along the East and West coasts, this result would never occur. Land values for agriculture would increase, but remain below the value of the land for development. Narrowing the gap, however, would help keep the land in agriculture.

Another way that local governments may supplement farm income would be to use term easements. Term easements involve an agreement to not develop property for a time period (10 years, 20 years, 25 years, etc.) in exchange for periodic payments from the local or state government. Since neighboring properties and

the local area benefit from the positive externalities provided by agriculture (pretty views, environmental amenities, etc.), fairness dictates that local taxpayers pay for the privilege.

Many object to term easements on the grounds that the protected property may be developed when the term expires. This objection seems to arise from a fallacious view that perpetual easements somehow permanently reduce the amount or rate of development. Perpetual easements merely shift development to other parcels, which may or may not promote smart growth and environmental protection.

Use-value assessment also appears to promote agriculture by reducing the expenses of the farm operation. However, given the very liberal rules for qualifying for use value assessment in some states, the promise of lower taxes may not prove true for farmers, particularly if a large percentage of the locality qualifies for the treatment.

A better approach eschews a general use value assessment ordinance and uses agricultural and forestal districts (AFDs) in a strategic manner. Landowners within an AFD under many state statutes receive use value assessment whether the county has adopted an ordinance or not, so long as the landowner otherwise qualifies. If local governing bodies grant AFD classification to aggregations of "real" farmers, while denying the privilege to hobby farmers and country estate owners, the industry of agriculture receives tangible cost reductions. Increased taxes paid by other taxpayers seem "fair", since these taxpayers receive the benefit of positive externalities from farm operations.

Community supported agriculture also promotes agriculture in the locality. Local governments can advertise and promote the use of advance purchase of local farm produce by citizens. In addition, local restaurants, stores and schools can be encouraged to use local products.

Conclusions

Protection of promotion of the agriculture industry requires a casting away of long-held notions about farming and farmland protection. First, however, a locality must decide what the populace truly desires to protect. If commercial agriculture fails to fit the bill, then the farmland preservation charade should end immediately. Open space and farmland are not the same.

However, if the cries for farmland protection merely mask exclusionary, and unlawful, motives, new goals must be established. Development will continue to occur and must be accommodated. If local citizens desire open space, then development densities must be increased sig-

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If you desire a copy of any article or further information, please contact the Law School

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scholarship fund that allowed students to attend the conference at a greatly reduced out-of-pocket cost --something the Farm Foundation has graciously provided at many past conferences. The Florida Bar, through the efforts of Michael Olexa, provided a grant to sponsor the Friday morning breakfast. The law firm of Alston & Bird, Atlanta, GA provided a grant to help sponsor the Saturday breakfast and also provided an LCD projector. The law firm of Moore, Clarke, DuVall & Rodgers of Albany, GA hosted a reception for the law students at a Savannah restaurant on Friday evening. The Georgia Bar Association also provided a grant that was used to help Georgia and South Carolina law students offset travel and other costs of attending the symposium. Ted Feithans, Terry Centner and Allen Olson also provided LCD projectors. The loan of these projectors saved the association over \$3,000 in rental costs for the conference. As conference costs continue to rise, contributions from our sponsors become increasingly important to the financial health of the association. Many, many thanks to all our sponsors who supported the goals and purposes of AALA through their generosity.

The annual symposium depends on the generous efforts of many people throughout the association but we would like to especially recognize the efforts of Allen Olson of Moore, Clarke, DuVall & Rodgers of Albany, GA for his tireless and thorough efforts in making this symposium financially viable and educationally rewarding for everyone.

President Don Uchtman (now past-president) performed his last official duties as President for 2006 by presiding over the annual business meeting. Executive Director Robert Achenbach reported on the financial status of the association, noting that some conference costs and revenues were still unknown. The new 2007-2010 board members are William (Bill) Penn and James Baarda, and the president-elect for 2007 is Roger McEowen. Don Uchtman presented certificates of appreciation to out-going board members Ted Feithans and Anne Hazlett for their service from 2004 through 2006 and to outgoing Past President Bill Bridgforth.

Library nearest your office. The National AgLaw Center website < <http://www.nationalaglawcenter.org> > <http://www.aglaw-assn.org> has a very extensive Agricultural Law Bibliography. If you are looking for agricultural law articles, please consult this bibliographic resource on the National AgLaw Center website.

— Drew L. Kershen, Professor of Law, The University of Oklahoma, Norman, OK

New President Steve Halbrook presented a plaque to Don Uchtman in appreciation of his valued service to the association as president in 2006.

During lunch on Saturday, Don Uchtman delivered his President's Address which thoughtfully reviewed the genesis of the AALA, his first tenure as AALA president compared to his second, and some thoughts about the future. Awards Committee chair Jesse Richardson then presented the Distinguished Service Award to Sarah Vogel in appreciation for her service to agricultural law, in particular her role in the case of *Coleman v. Block*.

Jesse also presented a special Distinguished Service award to the Farmers Legal Action Group for its service to agricultural law through its staff and many articles. Jesse announced the Professional Scholarship Award recipient, Margaret Rosso Grossman, for "Traceability and Labeling of Genetically Modified Crops, Food, and Feed in the European Union," 1 Journal of Food Law & Policy 43-85 (Spring 2005). The Student Scholarship Award recipient was William J. Even, for his article, "Green Payments: The Next Generation of U.S. Farm Programs?" 10 Drake J. Agricultural Law 173, (2005). Jesse reminded everyone to submit nominations for these awards throughout the year. E-mail your nominations to jessej@vt.edu.

AALA members may obtain a CD of the conference written materials for \$45.00 or the printed handbook for \$90.00 — an offer that may be especially appealing if you were unable to attend the 2006 conference. The CD features an interactive table of contents with click-through titles which take you automatically to the beginning of each paper. The CD also includes an archive of several years of past issues of the *Agricultural Law Update*.

Request your CD by e-mail, RobertA@aglaw-assn.org, with your mailing address. The CD will be mailed to you with an invoice.

As has occurred in the past, a major factor in maintaining, if not increasing the AALA membership, was a well-attended conference in Savannah, GA. A good number of new members are attracted each year by the conference. We especially

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encourage our members from California and other southwestern states to suggest speakers, topics and sponsors for the next conference. President-elect Roger McEowen has already begun planning for the 2007 program at the Wyndham Hotel in sunny downtown San Diego, October 19-20, 2007. He welcomes your ideas and may be reached at mceowen@iastate.edu or 515-294-4076. We will be connecting with the state bars in the region to spread the word that the most comprehensive and professional conference on agricultural law is coming to their neighborhood.

We also welcome any suggestions for what the Executive Director can do to help make the conference more enjoyable for all attendees and their guests.

Hope to see you there.

—Robert P. Achenbach, Jr., AALA
Executive Director; Steve Halbrook,
AALA President

Farmland protection/Cont. from page 5
nificantly to compensate. In addition, publicly accessible open space should be strongly encouraged.

Do we desire a vibrant agriculture industry in our communities or do we really wish to bring to life the fantasy of a Norman Rockwell print? If the latter, local citizens must be willing to pay for nostalgia, through patronage and increased taxes.

Editor's note: An earlier version of this article appeared in the Spring 2006 *Citizens Planning Education Association of Virginia Newsletter*.

¹ The author abhors the use of the term "farmland preservation". This term connotes, for the author, a static process that resembles placing farmland in a test tube of formaldehyde or in a museum.

² See, e.g., Seznec, Gwenann, Note, *Effective Policies for Land Preservation: Zoning and Conservation Easements in Anne Arundel County, Maryland*, 23 Va. Env'tl. L. J. 479 (2005);

Thompson, Jr., Edward, 'Hybrid' Farmland Protection Programs: A New Paradigm for Growth Management?, 23 Wm. & Mary L. and Pol'y Rev. 831 (1999); Szlanfucht, David L., Note, *How to Save America's Depleting Supply of Farmland*, 4 Drake J. of Agric. L. 333 (Spring, 1999); White, Jeanne S., *Beating Plowshares into Townhomes: The Loss of Farmland and Strategies for Slowing its Conversion to Agricultural Uses*, 28 Env'tl. L. 113 (Spring 1998).

³ See Richardson, Jr., Jesse, Survey, "Motivations of Characteristics of Owners of Conservation Easement Land in Virginia", results and other information found at www.uap.vt.edu/cesurvey; finding that land encumbered by conservation easements in Virginia produce insignificant levels of agricultural products.

Federal Register Summary from September 23, 2006 to November 3, 2006

BRUCellosis. The APHIS has issued interim regulations amending the bovine tuberculosis regulations regarding State and zone classifications by raising the designation of Texas from modified accredited advanced to accredited-free. 71 Fed. Reg. 58252 (Oct. 3, 2006).

COTTON. The CCC has adopted as final regulations implementing the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery of 2006 to provide assistance to producers and first-handlers of the 2005 crop of cottonseed in counties which were declared a natural disaster area by the President of the United States, and contiguous counties, due to Hurricanes Katrina, Ophelia, Rita, Wilma or a related condition in 2005. 71 Fed. Reg. 63665 (Oct. 31, 2006).

CROP INSURANCE. The FCIC has adopted as final regulations amending the common crop insurance regulations, peanut crop insurance provisions, to remove all references to quota and non-quota peanuts and add provisions that will allow coverage for peanuts whether or not they are under contract with a sheller to better meet the needs of insured producers. The changes will apply for the 2007 and succeeding crop years. 71 Fed. Reg. 55995 (Sept. 26, 2006).

CROP INSURANCE. The FCIC has issued proposed regulations replacing the provisions currently found at 7 C.F.R. 457.107 with new Florida Citrus Fruit Crop Insurance Provisions to provide policy changes and clarify existing policy provisions to better meet the needs of insureds and to restrict the effect of the current Florida Citrus Fruit Crop Insurance Provisions to the 2007 and prior crop years. 71 Fed. Reg. 60439 (Oct. 13, 2006).

DAIRY. The CCC has adopted as final regulations governing the 2005 Dairy Disaster Assistance Payment Program for dairy production and milk spoilage losses due to hurricanes or a related condition in 2005. 71 Fed. Reg. 63668 (Oct. 31, 2006).

ENVIRONMENT. The FSA has issued a

Finding of No Significant Impact (FONSI) consistent with the National Environmental Policy Act of 1969 with respect to the implementation of the following Disaster Assistance Programs: (1) Hurricane Indemnity Program, (2) Feed Indemnity Program, (3) Livestock Indemnity Program, (4) Tree Indemnity Program, and (5) Aquaculture Grant Program as well as (6) the 2006 Livestock Assistance Grant Program. 71 Fed. Reg. 59718 (Oct. 11, 2006).

SECURITY INTERESTS. The GIPSA has issued interim regulations to allow states to use an approved unique identifier as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. The interim regulations also make additional changes to the clear title regulations as required by amendments made by the 2002 Farm Bill. The intended effect of these changes is to protect the identity of the producers of farm products. 71 Fed. Reg. 56338 (Sept. 27, 2006).

WAREHOUSES. The FSA has announced that it will allow licensing of temporary storage space for 2006-crop rice and soybeans under the following terms and conditions: (1) such space may be used from the time of initial licensing until March 31, 2007; (2) temporary storage structures must be operated in conjunction with a USWA-licensed warehouse; (3) an asphalt, concrete, or other approved base material must be used; (4) rigid self-supporting sidewalls must be used; (5) aeration must be provided; (6) acceptable covering, as determined by FSA, must be provided; (7) the commodity must be fully insured for all losses; (8) warehouse operators must meet all financial and bonding requirements of the USWA; (9) warehouse operators must maintain a separate record of all rice and soybeans stored in temporary grain storage space and must account for rice and soybeans in the daily position record. 71 Fed. Reg. 58576 (Oct. 4, 2006).

—Robert P. Achenbach, Jr., AALA
Executive Director

⁴ See, e.g., Richardson, Jr. Jesse J., John Christman and Melissa Morrow, "Twenty Years of Sliding-Scale Zoning in Clarke County, Virginia: The Good, the Bad and the Ugly", Paper Presented at the Association of Collegiate Schools of Planning Conference, November 10, 2001, Cleveland, Ohio.

⁵ Question what or who we are protecting and from what.

⁶ "Appropriate areas for development" do not include "the next county over".

⁷ Planned Unit Developments consist of a mixture of land uses and housing types

and usually include cluster development and dedication of open space.

⁸ Cluster development groups the residential units on one part of the lot, dedicating the remaining property as open space or farmland.

⁹ See, e.g., Branan, Robert Andrew, "Zoning Limitations and Opportunities for Farm Enterprise Diversification: Searching for New Meanings in Old Definitions", The National Agricultural Law Center Reading Room, http://www.nationalaglawcenter.org/assets/articles/branan_zoninglimitations.pdf.

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