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An Agricultural Law Research Article

## **How to Save American's Depleting Supply of Farmland**

by

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# HOW TO SAVE AMERICA'S DEPLETING SUPPLY OF FARMLAND

*David L. Szlanfucht*

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## I. INTRODUCTION

Suburban sprawl has become a serious national problem.<sup>1</sup> Everyday throughout the nation, productive cropland is being replaced by highways, gas stations, strip malls, reservoirs, billboards, parking lots, bigger and uglier buildings, and, generally, unmanageable urban growth.<sup>2</sup> The Sierra

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1. See generally Timothy Egan, *Urban Sprawl Strains Western States*, N.Y. TIMES, Dec. 29, 1996, at A1 (explaining "[urban growth] was not supposed to be this way, this early."); James Howard Kunstler, *Home from Nowhere*, ATLANTIC MONTHLY, Sept. 1996, at 43 (observing the overwhelming cultural damage caused by suburban sprawl in the United States); Corwin W. Johnson & Valerie M. Fogleman, *The Farmland Protection Policy Act: Stillbirth of a Policy?*, 1986 U. ILL. L. REV. 563 (noting that farmland is becoming an endangered resource).

2. See, e.g., Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: *The Legal Context of Agricultural Workers Within the Rural Economy*, 26 N.M. L. REV. 9, 51 (1996) (explaining the enormous effects of suburban sprawl on communities); Kunstler, *supra* note 1, at 43 (noting that something must be done to stop the growth of cities); Johnson & Fogleman, *supra* note 1, at 563; Garry Lenton et al., *Paradise Lost to Pavement, Dream Homes: Suburban Sprawl Catches Midstate Poorly Prepared*, HARRISBURG PATRIOT & EVENING NEWS, Nov. 10, 1996, at B1 (discussing problems which accompany suburban sprawl); Neal R. Peirce, *Urban Sprawl Increasingly a Political Issue*, HOUSTON CHRON., Oct. 12, 1998, at 26 (describing the problems associated with suburban

Club<sup>3</sup> has labeled Atlanta as the most sprawl-threatened region in the United States, where each month 2000 acres of fields or farms are plowed under for "growth."<sup>4</sup> St. Louis, Kansas City, Washington, D.C., Denver, Minneapolis-St. Paul, Chicago, and Cincinnati were also labeled as sprawl-threatened regions.<sup>5</sup> Unfortunately, statistics indicate that this trend will continue<sup>6</sup> because, among other reasons,<sup>7</sup> developers are attracted to flat and well-drained farmland for commercial, industrial, and residential purposes.<sup>8</sup>

Congress has acknowledged this enormous problem by enacting, most notably, the Farmland Protection Policy Act of 1981 (FPPA),<sup>9</sup> the Coastal Zone Management Act (CZMA),<sup>10</sup> and the Federal Agricultural Improvement and Reform Act of 1996 (FAIR).<sup>11</sup> Unfortunately, the FPPA fell far short of its original promise due to ineffective enforcement mechanisms and procedures for accomplishing the stated goal.<sup>12</sup> The FPPA was merely a bland acknowledgment of concern, setting forth a very limited role for the federal government in this area.<sup>13</sup>

Similarly, the CZMA has proven fairly ineffective because it did not require states to enact farmland preservation plans but merely provided policies to guide

sprawl); Paul Souhrada, *Senate Approves Farmland Preservation Bill*, ASSOCIATED PRESS POL. SERV., Nov. 5, 1998 (noting the alarming rate of urban expansion).

3. "The Sierra Club is a nonprofit, member-supported public interest organization that promotes conservation of the natural environment by influencing public policy decisions: legislative, administrative, legal, and electoral." *Sierra Club* (visited Jan. 18, 1999) <<http://www.sierraclub.org/RightFrame.html>>.

4. See Peirce, *supra* note 2, at 26.

5. See *id.*

6. See Neil D. Hamilton, *Plowing New Ground: Emerging Policy Issues in a Changing Agriculture*, 2 DRAKE J. AGRIC. L. 181, 192 (1997) (citing Valerie Berton, *Harvest or Homes? AFT Research Highlights Need to Protect Ag as Central Valley Grows*, AM. FARMLAND, Fall 1995, at 12).

7. See discussion *infra* Part II.B.

8. See, e.g., Luna, *supra* note 2, at 51 (noting the underlying rationale for developers' attraction to the rural areas and stating several efforts initiated to protect farmland); H.W. Hannah, *Farming in the Face of Progress*, PROB. & PROP., Sept.-Oct. 1997, at 9 (explaining that urban areas are pushed even further into the country due to society's and developers' attraction to the rural landscape); Hamilton, *supra* note 6, at 192 (stating that although Iowa countryside roads are currently lined with bountiful farms, unless something is done to control suburban growth, most of these farms will not exist in five years).

9. Farmland Protection Policy Act of 1981, Pub. L. No. 97-98, 95 Stat. 1341 (codified as amended at 7 U.S.C. §§ 4201-4209 (1994)).

10. Coastal Zone Management Act of 1972, Pub. L. No. 92-583, 86 Stat. 1280 (codified at 16 U.S.C. § 1451 (1994)).

11. Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104-127, 110 Stat. 888.

12. See generally Johnson & Fogleman, *supra* note 1 (explaining the purposes of the FPPA are to minimize the extent to which federal programs contribute to farmland conversion to nonagricultural uses and to protect farmland).

13. See *id.* at 564.

states that decided to enact such preservation plans.<sup>14</sup> Another shortcoming of the CZMA is that funding may only be appropriated to those states which decided to develop coastal management plans in accordance with the policies enumerated by the Department of State.<sup>15</sup>

Finally, the FAIR contains minor but encouraging efforts by Congress to preserve farmland.<sup>16</sup> Title III contains the "Farmland Protection Program," which provides \$35 million to buy conservation easements to protect farmland.<sup>17</sup> Even though Congress appropriated only \$2 million in an effort to preserve farmland in 1997, the United States Department of Agriculture (USDA) did find \$15 million from other funds to use in 1996.<sup>18</sup>

As a result of both Congress' apparent inability to preserve farmland and current prevailing national sentiment,<sup>19</sup> the difficult task of preserving farmland has been left primarily to the state legislatures and local governments.<sup>20</sup> Iowa, for example, has enacted a policy in order to preserve the "availability and use of agricultural land for agricultural production."<sup>21</sup> The legislature intended to provide local citizens and local governments the means by which agricultural land could be "protected from nonagricultural land development pressures."<sup>22</sup> Unfortunately, this policy has proven largely ineffective due to inadequate enforcement mechanisms provided to local governments.<sup>23</sup>

Nearly every state legislature has enacted legislation to preserve farmland.<sup>24</sup> Some of these efforts have included property tax relief, land trusts, impact fees, conservation easements, governmental purchase of development rights, transfer of development rights, agricultural zoning, statewide or regional comprehensive land-use plans, differential assessments, right-to-farm laws, or a combination of these or other plans.<sup>25</sup> Unfortunately, many of the enacted programs to protect farmland have proven to be largely ineffective.

Even though this Note briefly discusses some rationale for preserving our rural landscape, the author makes the assumption that farmland should be

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14. See Sean F. Nolon Cozata Solloway, Note & Comment, *Preserving Our Heritage: Tools to Cultivate Agricultural Preservation in New York State*, 17 PACE L. REV. 591, 640 (1997).

15. See *id.* at 641.

16. See *id.* at 640.

17. See *id.*

18. See *Farmland Protection Gets First Year Jump Start of \$15 Million*, AGRI-PULSE, Sept. 2, 1996, at 2.

19. See, e.g., Johnson & Fogleman, *supra* note 1, at 577-78 (noting society's reluctance to limit growth).

20. See Luna, *supra* note 2, at 52.

21. IOWA CODE § 352.1 (1997).

22. *Id.*

23. See *id.*

24. See Johnson & Fogleman, *supra* note 1, at 577-78.

25. See Luna, *supra* note 2, at 52-53; Solloway, *supra* note 14, at 640.

preserved. Preserving rural landscape is the subject of many other articles and is beyond the scope of this Note. The purpose of this Note is to propose the most effective methods by which state legislatures may protect their rural landscape from suburban sprawl. Part II describes suburban sprawl, discusses why we should be worried about the rapid expansion of urbanities, and explains the profound effects suburban sprawl has on the local and national communities.<sup>26</sup> Part III analyzes some of the most recent and effective means by which states have attempted to preserve farmland.<sup>27</sup> Part IV summarizes the state utilizing perhaps the most successful farmland preservation program in the nation: Oregon.<sup>28</sup> Finally, Part V concludes by proposing the most effective means by which states can stop the rapid progression of suburban sprawl along its countryside roads.<sup>29</sup>

## II. THE CONCERN SURROUNDING SUBURBAN SPRAWL

Suburban sprawl can best be defined as the process by which urban growth and development swallow nearby rural land into nonagricultural uses.<sup>30</sup> The Sierra Club, along with many Americans, clearly considers suburban sprawl as the fastest growing threat to our quality of life and environment.<sup>31</sup> Although it is difficult to measure precisely the amount of farmland converted to nonagricultural uses, the USDA has made a conservative estimate of the average annual loss of productive farmland in the United States at one million acres.<sup>32</sup> However, other estimates have concluded that the average annual loss of farmland to other uses is 4.2 million acres.<sup>33</sup> No matter what figures one uses or believes, the loss of farmland to "growth" is a serious national and local problem, the gravity of which may soon, if it has not already, become completely out of control.

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26. See discussion *infra* Part II.

27. See discussion *infra* Part III.

28. See discussion *infra* Part IV.

29. See discussion *infra* Part V.

30. See Hamilton, *supra* note 6, at 192.

31. See Carl Pope, *Urban Sprawl/Preserve Open Spaces*, STATE J.-REG. (Springfield, Ill.), Oct. 4, 1998, at 15; Sue Lowe, *Urban Sprawl Called 'Destructive Trend'*, SOUTH BEND TRIB., Oct. 11, 1998, at D3; *Sierra Club Communications Manual: Suburban Sprawl* (visited Jan. 15, 1999) <<http://www.sierraclub.org/transportation/sprawl/Communications.htm>>.

32. See Hamilton, *supra* note 6, at 192 (citing Valerie Berton, *Harvest or Homes? AFT Research Highlights Need to Protect Ag as Central Valley Grows*, AM. FARMLAND, Fall 1995, at 12).

33. See Luther Tweeten, Essay, *Food Security and Farmland Preservation*, 3 DRAKE J. AGRIC. L. 237, 240 (1998). In 1945, there were 1.1416 billion acres of farmland in the United States. See *id.* The amount of farmland then fell to 945.5 million acres in 1992. See *id.* Thus, an average of 4.2 million acres had been lost annually during this time span. See *id.* Moreover, if the loss of farmland continued at this rate, all farmland would be exhausted in 227 years. See *id.*

Even though the loss of such an extraordinary amount of farmland is a national issue, the effects are most strongly felt in the local community.<sup>34</sup> This conversion of farmland occurs in nearly every community across the United States as development pushes along countryside roads that "serve as growth corridors."<sup>35</sup> When farmland is lost to production, adjacent farms are also jeopardized.<sup>36</sup> Professor Neil Hamilton explained this phenomenon by stating, "[w]hile those roads may now be lined with bountiful farms, the nearby growth and installation of services, such as sewer and water, means that in five years most of those farms will no longer exist."<sup>37</sup> For example, Iowa has lost nearly one million acres of its farmland from 1974 through 1994 and more than one-third of that has been lost since 1991.<sup>38</sup> Despite Iowa's current rich abundance in farmland, these figures indicate the rapidly increasing pace of Iowa's loss of farmland to nonagricultural uses.<sup>39</sup> Similarly, "Ohio is losing 10 acres of farmland per hour," and approximately 10% of its entire loss has occurred over the past twenty years.<sup>40</sup> Furthermore, New York's farms have decreased 70% since 1950 to 37,000 farms, with acreage of farm use falling 47.5% to 8,500,000 farms in 1987.<sup>41</sup> Finally, since 1950, Pennsylvania has lost productive farmland to nonagricultural uses equal in size to Connecticut and Rhode Island.<sup>42</sup>

#### A. Rationale for Preserving Farmland

There are several reasons why we should protect our farmland by slowing the rapid expansion of the urbanities into the rural community.<sup>43</sup> First, "family farming is a 'way of life,' and that 'way of life' is worthy of protection in and of itself."<sup>44</sup> Our desire to preserve agricultural land has been traced back to the

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34. See Hamilton, *supra* note 6, at 192; *The Sierra Club's Challenge to Sprawl Campaign* (visited Jan. 15, 1999) <<http://www.sierraclub.org/transportation?sprawl/Challenge/Techniq2.htm>>.

35. Hamilton, *supra* note 6, at 192 (explaining that if nothing is done to control suburban growth, much of the remaining farmland will disappear).

36. See *id.*

37. *Id.*

38. See Dan Eggen, *Road Map Urged for Suburban Sprawl: The Natural Resources Commission Plans to Debate Such Options as a Statewide Land-Use Strategy*, DES MOINES REG., Dec. 9, 1994, at 1A.

39. See, e.g., *id.*

40. *Stirrings Against the Tide*, DES MOINES REG., Aug. 11, 1996, at 1A.

41. See Solloway, *supra* note 14, at 595.

42. See Lenton et al., *supra* note 2, at B1.

43. This discussion is not meant to be exhaustive but merely to provide some arguments for preserving farmland.

44. Steven C. Bahls, *Preservation of Family Farms—The Way Ahead*, 45 DRAKE L. REV. 311, 322-23 (1997).

Roman empire.<sup>45</sup> Congress agreed with this rationale in the preamble to the Agriculture and Food Act of 1981 when it stated that "the maintenance of the family farm system of agriculture is essential to the social well being of the Nation . . . ." <sup>46</sup>

Second, farmland must be preserved because farms provide much of the nation's food and fiber and has a significant impact on the U.S. economy.<sup>47</sup> By enacting the Agriculture and Food Act of 1981, Congress agreed with this philosophy when it articulated that farming is "essential to . . . the competitive production of adequate supplies of food and fiber" in the United States.<sup>48</sup> Moreover, "cheaper local produce helps keep down the cost of imported farm products."<sup>49</sup> "Without planning to set aside [farmland and other open space for preservation], the last crop produced on much of the nations prime farmland will be asphalt."<sup>50</sup> "Farming is a valuable industry [to the United States], producing income for farmers, their employees, and farm-related businesses."<sup>51</sup>

Third, farmland must be preserved to protect the nature of rural America.<sup>52</sup> This rationale reflects our desire to preserve the lovable scenery and identity of rural America that has been with Americans since our founding.<sup>53</sup> The existence of open space, natural beauty, productive agricultural land, and a strong sense of community adds a value of many rural homesteads that simply does not exist in the overcrowded central cities.<sup>54</sup> Similarly, "maintaining the rural character and attractiveness" of farmland promotes tourism.<sup>55</sup> In addition, the crime rate in rural areas is significantly lower than that in urban areas.<sup>56</sup> Also, air and noise pollution

45. See, e.g., *id.* at 323 (citing Richard S. Kirkendall, *Up to Now: A History of American Agriculture from Jefferson to Revolution to Crisis*, 4 AGRIC. & HUM. VALUES 1, 4-5 (1987)).

46. Agriculture and Food Act of 1981, Pub. L. No. 97-98, § 1608, 95 Stat. 1213, 1347 (codified as amended at 7 U.S.C. § 2266 (1994)).

47. See Bahls, *supra* note 44, at 322-25 (explaining that society has a great interest in protecting the safety of its food).

48. Agriculture and Food Act of 1981, Pub. L. No. 97-98, § 1608, 95 Stat. at 1347.

49. Anthony R. Arcaro, Comment, *Avoiding Constitutional Challenges to Farmland Preservation Legislation*, 24 GONZ. L. REV. 475, 495 (1988-89).

50. Solloway, *supra* note 14, at 595.

51. Arcaro, *supra* note 49, at 495.

52. See Bahls, *supra* note 44, at 325-26.

53. See generally *Stirrings Against the Tide*, *supra* note 40, at 1A (noting that Ohio and New York have adopted several means by which to preserve its remaining farmland); Eggen, *supra* note 38, at 1A (explaining that as a matter of public policy, the Iowa state legislature should encourage the preservation of its farmland).

54. See, e.g., John Richardson, *Gray Faces Tug of War over Use of Rural Tract; A Debate Between Developers and Councilors over the Rezoning of 300 Acres*, PORTLAND PRESS HERALD, Nov. 3, 1995, at A1 (discussing the preservation of a 300-acre tract in Gray, Oregon).

55. Solloway, *supra* note 14, at 595.

56. See G. Robert Blakey, *Federal Criminal Law: The Need, Not for Revised Constitutional Theory or New Congressional Statutes, but the Exercise of Responsible Prosecutive Discretion*, 46

are both relatively absent in rural areas, in sharp contrast to that found in the urbanities.<sup>57</sup>

Finally, farmland must be preserved because farms contribute to the local and national economy, and are "less demanding on community services," in contrast to residential or commercial uses.<sup>58</sup> In essence, farms subsidize local governments by providing greater property taxes than they require in services, such as schools or police.<sup>59</sup> For example, an American Farmland Trust study conducted in New York and New England found that an average \$0.65 out of every farm property tax dollar could be used to offset the deficit created by residential uses.<sup>60</sup> Furthermore, although commercial, industrial, and residential uses provide more in taxes than they demand in services, they encourage residential growth and development, whereas farms do not.<sup>61</sup> Another economic incentive for local governments to preserve farmland is that communities with land preservation programs typically receive higher bond ratings.<sup>62</sup> Finally, public funds are saved from being spent on costly drainage projects when agriculture leaves open space in vital areas such as flood plains.<sup>63</sup> Therefore, protecting farmland is an effective way for local governments to control costs.<sup>64</sup>

### B. *The Problems of Suburban Sprawl*

Suburban sprawl has many effects on the local and national communities. This Note discusses the most profound and long-lasting effects of suburban sprawl. First, it has long lasting effects on the land and on the rural community.<sup>65</sup> As land

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HASTINGS L.J. 1175, 1183 n.16 (1995) (noting that between 1987 and 1989, the average annual rate of violent crimes "among city residents was higher than among rural residents"; "the rate of theft and household crimes" was 90% higher for city residents than for rural residents; and "city and suburban areas each accounted for approximately 42%" of nationwide violent victimization, while rural areas accounted for only 16%).

57. See Patrick J. Skelley II, Note, *Defending the Frontier (Again): Rural Communities, Leap-Frog Development, and Reverse Exclusionary Zoning*, 16 VA. ENVTL. L.J. 273, 287 (1997) (citing Henry A. Waxman et al., *Roadmap to Title I of the Clean Air Act Amendments of 1990: Bringing Blue Skies Back to America's Cities*, 21 ENVTL. L. 1843, 1850 (1991) (noting that approximately 90 of United States' urban areas violate the Clean Air Act's health standard for ozone levels)).

58. Solloway, *supra* note 14, at 593.

59. See HOLLY L. THOMAS, DUTCHESS COUNTY PLANNING DEP'T, TECH MEMO: THE ECONOMIC BENEFITS OF LAND CONSERVATION 1 (1991).

60. See *id.* at 1-2.

61. See *id.* at 2.

62. See *id.*

63. See *id.* at 3.

64. See, e.g., *id.* at 1-2; Solloway, *supra* note 14, at 594.

65. See Pope, *supra* note 31, at 15.



is continually being conscripted into residential or commercial uses, open space and what was once plentiful farmland, is substantially diminished.<sup>66</sup> This also creates a hardship for urban and suburban residents who want to take advantage of the countryside for recreational purposes because the countryside recedes farther and farther away from the city.<sup>67</sup> In addition, when businesses leave for the suburbs, many of these downtown buildings are not replaced.<sup>68</sup>

Similarly, suburban sprawl accelerates the decline and deterioration of cities and towns.<sup>69</sup> "Old buildings become obsolete and expensive to remodel or demolish."<sup>70</sup> Stringent environmental laws make contaminated urban sites "difficult and costly to remediate."<sup>71</sup> Consequently, banks and businesses become wary of the "liability in holding title to these parcels, and decrepit buildings and vacant lots are left as physical reminders of urban blight."<sup>72</sup> Moreover, because the population in the central cities is declining across the United States, one result is that "poverty is concentrated in urban areas, setting the stage for decline and loss of future economic development."<sup>73</sup>

The urban movement to the rural areas causes not only the loss of invaluable farmland, but also the natural resources contained within the rural environment.<sup>74</sup> Even though the construction of each individual house may seem harmless, the widespread expansion of public services such as sewers and septic systems, road building, and the clearing and leveling of lots can destroy existing ecosystems.<sup>75</sup>

Another effect of suburban sprawl is that pressure increases to develop the areas between the rural community and the suburbs with strip development in order to make services more readily accessible to new residents.<sup>76</sup> As more and more

66. See Skelley, *supra* note 57, at 287; Pope, *supra* note 31, at 15; *Rural Heritage and Watershed Initiative: Save San Diego's Backcountry from Rampant Suburban Sprawl!* (visited Jan. 15, 1999) <<http://www.rhwi.org/>>; *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All* (visited Jan. 15, 1999) <<http://www.sierraclub.org/transportation/sprawl/Factsheet.htm>>.

67. See Skelley, *supra* note 57, at 289 (explaining that such recreational activities include scenic drives, bicycling on rarely traveled roads, frequenting local restaurants, shops and roadside stands, and enjoying other fruits of rural culture).

68. See Lyle Wray, *Sprawl Steals More Than Urban Residents, It Undermines Business and Regional Health* (visited Jan. 15, 1999) <<http://woodrow.mpls.frb.fed.us/pubs/fedgaz/edi961B.html>>.

69. See *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All*, *supra* note 66.

70. Wray, *supra* note 68.

71. *Id.*

72. *Id.*

73. *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All*, *supra* note 66.

74. See James H. Wickersham, Note, *The Quiet Revolution Continues: The Emerging New Model for State Growth Management Statutes*, 18 HARV. ENVTL. L. REV. 489, 495 (1994); Pope, *supra* note 31, at 15.

75. See Wickersham, *supra* note 74, at 495.

76. See, e.g., Skelley, *supra* note 57, at 288-89 (noting that these services include commercial services such as shopping centers and restaurants).

residents flee downtown areas to the open space in rural communities, not only is that open space being swallowed by new residents' homes, but adjacent land is also being swallowed by construction related to the process of urbanization.<sup>77</sup> This extraordinary pressure results in the further loss of the beautiful rural landscape.<sup>78</sup>

Additionally, high demand, low costs, and the absence of developmental oversight by local governments encourage private development to outpace infrastructure, in which case many suburbs receive inadequate water, sewage, and utility service.<sup>79</sup> Furthermore, facing vast new infrastructural needs due to suburban sprawl, local governments impose soaring property tax rates.<sup>80</sup> Such public infrastructure includes schools, roads, and sewers.<sup>81</sup>

Furthermore, suburban sprawl causes a significant increase in the amount of impermeable surfaces, such as houses, driveways, and new roads.<sup>82</sup> Since 1970, nearly twenty million acres of rural land has been paved over and developed.<sup>83</sup>

This trend increases the rate of stormwater runoff, which in turn increases the flow of pollutants to discharge areas including rivers and streams. In addition, since many areas targeted for development are not serviced by municipal water and sewer services, the increase in the number of residential water wells and septic tanks puts a strain on existing water supplies, which are themselves threatened by the increase in sewage effluence.<sup>84</sup>

Another effect of suburban sprawl is that housing prices are affordable for everyone but the most impoverished individuals.<sup>85</sup> Statistics have repeatedly proven that the lower population density and lower land values exist in rural

77. See Hamilton, *supra* note 6, at 192 (describing examples of urban growth, including the construction of paved roads, grocery stores, shopping centers, post offices, gas stations, and restaurants).

78. See Wickersham, *supra* note 74, at 495.

79. See James Poradek, Comment & Note, *Putting the Use Back in Metropolitan Land-Use Planning: Private Enforcement of Urban Sprawl Control Laws*, 81 MINN. L. REV. 1343, 1349 (1997); *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All*, *supra* note 66.

80. See Robert H. Freilich & John W. Ragsdale, Jr., *Timing and Sequential Controls—The Essential Basis for Effective Regional Planning: An Analysis of the New Directions for Land Use Control in the Minneapolis-St. Paul Metropolitan Region*, 58 MINN. L. REV. 1009, 1015 (1974); *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All*, *supra* note 66.

81. See *The National Sprawl Fact Sheet: Suburban Sprawl Costs Us All*, *supra* note 66.

82. See Skelley, *supra* note 57, at 289; Chester L. Arnold, Jr. & C. James Gibbons, *Impervious Surface Coverage: The Emergence of a Key Environmental Indicator*, 62 J. AM. PLAN. ASS'N 243, 249-56 (1996) (discussing ways of minimizing damage from impervious service coverage).

83. See Lowe, *supra* note 31, at D3.

84. Skelley, *supra* note 57, at 289.

85. See *id.* (noting that the plethora of undeveloped land and the low population densities in rural areas has pushed housing prices somewhat high).

communities.<sup>86</sup> Many residents who live in the rural communities reside in substandard housing.<sup>87</sup> Nevertheless, rural housing is at least available to individuals of limited means.<sup>88</sup> Although rural housing itself may not be prime, for the most part it exists in a setting that is far more preferable than that found in urban areas.<sup>89</sup>

Suburban sprawl also causes the wildlife habitat to have nowhere to go.<sup>90</sup> The deer, for example, are now more visible than ever. Although growth is appropriate to a certain degree or in a particular situation, animals are the forgotten victims.<sup>91</sup> We must remember that animals were here first—toleration and understanding of their need to have open space is critical to their long-term survival, as well as our own.<sup>92</sup>

Finally, suburban sprawl adds to the already enormous problems of air pollution<sup>93</sup> and the pollution of underground water sources.<sup>94</sup> Scattered homes, jobs, and schools have forced suburban residents to depend on private automobiles as the sole form of transportation in and around the suburbs, even though the new highways and ad hoc secondary roads cannot handle the traffic created by the sprawling development.<sup>95</sup> For example, U.S. Census data suggests that “the new homeowner will drive ten to twenty miles to work daily and spend more minutes stalled in traffic, burn a little extra gasoline and pump a few extra micro-grams of

86. See, e.g., CHARLES M. HAAR & MICHAEL A. WOLF, *LAND-USE PLANNING* 2-3 (4th ed. 1989); see also Arcaro, *supra* note 49, at 479-80 (explaining that restricting land to agricultural use prevents rising land costs).

87. See Skelley, *supra* note 57, at 286 (citing Craig A. Arnold, Note, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 *STAN. L. & POL'Y REV.* 191, 193-94 (1990)).

88. See, e.g., Craig A. Arnold, Note, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 *STAN. L. & POL'Y REV.* 191, 194 (1990).

89. See Skelley, *supra* note 57, at 286.

90. See Pope, *supra* note 31, at 15; *Rural Heritage and Watershed Initiative: Save San Diego's Backcountry from Rampant Suburban Sprawl!*, *supra* note 68; *Transportation, and the Challenge to Sprawl* (visited Jan. 15, 1999) <<http://www.sierraclub.org/transportation/>> (stating suburban sprawl destroys wildlife habitats and wild areas and threatens endangered species).

91. See Pope, *supra* note 31, at 15.

92. See *id.*

93. See Skelley, *supra* note 57, at 287 (citing Lenton et al., *supra* note 2, at B1) (explaining that a new car owner will drive between 10 and 20 miles to work daily, spend more time in traffic, and emit more pollution into the atmosphere); see also Wickersham, *supra* note 74, at 495-96; Lowe, *supra* note 31, at D3 (stating we drive over 2 trillion miles and burn over 150 billion gallons of gasoline each year); *Rural Heritage and Watershed Initiative: Save San Diego's Backcountry from Rampant Suburban Sprawl!*, *supra* note 66.

94. See Lowe, *supra* note 31, at D3.

95. See Poradek, *supra* note 79, at 1349; American Planning Ass'n, *Solving Traffic Woes by Balancing Jobs and Housing*, in *BALANCED GROWTH* 42 (John DeGrove ed., 1991); Wickersham, *supra* note 74, at 495-96.

pollution into the air."<sup>96</sup> Moreover, diffusion of residential and industrial development causes mass transit to become a nonviable solution to the congestion problem because it is simply too expensive to develop public transportation systems, such as buses and railroads.<sup>97</sup> As a result, reliance on the automobile intensifies our already enormous air pollution problem.

### III. POTENTIAL SOLUTIONS TO CURTAIL SUBURBAN SPRAWL

State governments have attempted to curtail the growing problem of suburban sprawl in many ways. However, most of these programs have either failed or not lived up to their hype. Because the number of failed programs is so great, this Note analyzes the most widely implemented and effective solutions implemented to curtail suburban sprawl.

#### A. Conservation Easements

A conservation easement is an instrument that provides a landowner the power, either by donation, sale, or exchange, to voluntarily give up his or her rights to develop, manage or use land—thereby preserving it.<sup>98</sup> In other words, a conservation easement restricts the use of a particular plot of land to non-development uses.<sup>99</sup> Iowa law defines a conservation easement as an "easement in, servitude upon, restriction upon the use of, or other interest in land owned by another . . . ."<sup>100</sup> A conservation easement is a permanent control in maintaining the rural landscape in perpetuity.<sup>101</sup>

Conservation easements offer several advantages over other land preservation measures. First, they are more flexible than most other land preservation methods<sup>102</sup> in that they can be tailored to address the specific concerns of the

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96. Lenton et al., *supra* note 2, at B1.

97. See, e.g., Poradek, *supra* note 79, at 1349; ANTHONY DOWNS, *NEW VISIONS FOR METROPOLITAN AMERICA* 3, 8 (1994).

98. See generally George M. Covington, *Conservation Easements: A Win/Win for Preservationists and Real Estate Owners*, 84 ILL. B.J. 628 (1996) (noting that conservation easements are generally used to protect open space, such as farmland, and historical buildings); see also Skelley, *supra* note 57, at 305.

99. See Skelley, *supra* note 57, at 305 (citing John Casey Mills, Note, *Conservation Easements in Oregon: Abuses and Solutions*, 14 ENVTL. L. 555, 556-57 (1984)); see also Solloway, *supra* note 14, at 598-99 (noting that conservation easements preserve land by restricting the use of that land to agricultural uses or uses that are not inconsistent with agriculture).

100. IOWA CODE § 457A.2 (1997).

101. See Skelley, *supra* note 57, at 305; *Lancaster Farmland Trust: Saving Farms* (visited Jan. 15, 1999) <<http://www.savelancasterfarms.org/saving.html>>.

102. See John L. Hollingshead, *Conservation Easements: A Flexible Tool for Land Preservation*, 3 ENVTL. LAW. 319, 322 (1997).

involved parties.<sup>103</sup> Second, conservation easements are voluntary because the landowner elects to sell or donate the easement.<sup>104</sup> Furthermore, they are self-implementing, requiring no need for new governmental agencies or consultants.<sup>105</sup> Fourth, they are fairly efficient in that the "landowner retains what the public does not need and the public only pays for what it needs to achieve the desired conservation purpose, which is generally less than the cost of the land if it were taken by condemnation or purchased outright."<sup>106</sup> Conservation easements are also more economical for government and charitable organizations because the costs of maintaining the property remains with the landowner.<sup>107</sup> Finally, and perhaps most importantly, conservation easements are permanent controls to preserve farmland.<sup>108</sup>

Most conservation easements, depending on state law, may be extinguished under certain circumstances.<sup>109</sup> In New York, for example, termination is allowed in two situations: (1) when a provision of the instrument provides for destruction; and (2) when it is determined that the easement is of "no actual and substantial benefit" because of changed circumstances.<sup>110</sup> Similar to New York, the Iowa statute provides that a conservation easement is perpetual "unless expressly limited to a lesser term, or unless released by the holder, or unless a change of circumstances renders the easement no longer beneficial to the public."<sup>111</sup>

Congress and most states have encouraged the use of conservation easements by creating a number of tax incentives, including deductions for federal income, estate, and gift tax purposes for donations of qualified conservation contributions.<sup>112</sup> Because landowners typically retain their right to privately enjoy their property, they are usually willing to donate an easement.<sup>113</sup> In addition, governmental bodies

103. See Solloway, *supra* note 14, at 599.

104. See Hollingshead, *supra* note 102, at 322.

105. See Janet L. Madden, *Tax Incentives for Land Conservation: The Charitable Contribution Deduction for Gifts of Conservation Easements*, 11 B.C. ENVTL. AFF. L. REV. 105, 146 (1983).

106. Hollingshead, *supra* note 102, at 322-23.

107. See *id.* (citing Gerald Korngold, *Privately Held Conservation Servitudes: A Policy Analysis in the Context of In Gross Real Covenants and Easements*, 63 TEX. L. REV. 433, 443-46 (1984)).

108. See Skelley, *supra* note 57, at 305.

109. See Solloway, *supra* note 14, at 599.

110. N.Y. ENVTL. CONSERV. LAW § 49-0307(1) (McKinney 1995).

111. IOWA CODE § 457A.2 (1997).

112. See Hollingshead, *supra* note 102, at 337-58.

113. See Covington, *supra* note 98, at 628.

and private charitable organizations rely more on conservation easements to preserve farmland at minimal public expense.<sup>114</sup>

One of the most successful regions utilizing conservation easements as a tool to permanently preserve farmland is Lancaster County, Pennsylvania.<sup>115</sup> Local farmers donate or sell permanent conservation easements to the Lancaster Farmland Trust, a private, non-profit organization whose mission is to use conservation easements to permanently preserve farmland.<sup>116</sup> Through 1998, the Trust has preserved 100 farms and 6500 acres of precious farmland for perpetuity.<sup>117</sup>

### B. Purchase of Development Rights

A purchase of development rights program (PDR) "protects important resources such as farmland and open space by purchasing the development rights from willing sellers."<sup>118</sup> In this program, the purchaser only acquires the development rights to the land, whereas the seller retains all other rights, "such as the right to privacy and the right to lease or sell the land."<sup>119</sup>

The first PDR plan was implemented in Suffolk County, New York, to protect agricultural land from development pressures.<sup>120</sup> This PDR plan succeeded mainly due to the following reasons: farming provided many jobs in the county, farmland acted as a buffer against suburban sprawl, farming and farmland maintained the rural character of the area, and farming provided food and fiber to residents and tourists.<sup>121</sup> Another successful PDR program was enacted in Lancaster County, Pennsylvania. In 1993, Lancaster County was ranked fifth in the nation for farmland preservation, adding twenty-eight farms to its PDR plan in 1995.<sup>122</sup> In conjunction with its PDR program, Lancaster County has also

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114. See *id.* at 628 n.1 (stating that "[a]ccording to figures provided by the Land Trust Alliance, Washington, D.C., there are currently over 1,100 private not-for-profit 'land trusts' in the United States that acquire land in fee simple or through conservation easements.").

115. See *Lancaster Farmland Trust: Saving Farms*, *supra* note 101.

116. See *id.*

117. See *id.*

118. *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

119. *Id.*

120. See Solloway, *supra* note 14, at 600 (citing PATRICK G. HALPRIN, SUFFOLK COUNTY PLANNING COMM'N, FARMLAND PRESERVATION PROGRAM: HISTORY AND CURRENT PERSPECTIVE 1 (1990)).

121. See *id.*

122. See *id.* at 602 (citing Ed Klimuska, *County Ranks 5th in U.S. for Saving Farms*, LANCASTER NEW ERA, Nov. 12, 1993, at A1). The rankings and preservation of acreage were as follows:

City	Acres
Montgomery, MD	34,786
Marin, CA	23,224

implemented agricultural zoning, agricultural districts, and the purchase or gift of conservation easements.<sup>123</sup>

There are two significant problems associated with PDRs. One problem is that there is never enough funding to support all of the goals of a PDR program.<sup>124</sup> For example, over 150 farms have been placed on a waiting list in Lancaster County, Pennsylvania, to have their development rights purchased, and that PDR program is well-funded.<sup>125</sup> Another problem with PDR programs is that they tend to decrease a landowner's equity for credit and later sale.<sup>126</sup> This contention is disputed by some groups, which argue that such programs are similar to paying the farmer twice since it is the infrastructure improvements that give the land its value.<sup>127</sup>

### C. Transfer of Development Rights

"Transferable development rights [TDRs] are a mechanism for compensating owners for development restrictions placed on their land by agricultural zoning."<sup>128</sup> TDRs help preserve farmland by allowing owners to use only the farm-related portion of their property, whereas the development rights must be used outside the agricultural preservation area.<sup>129</sup> In other words, landowners in an area set apart for preservation would be barred from developing their own property, but they would receive development rights that could be applied to, or sold to the owner of, a piece of property in a developable area.<sup>130</sup>

There are two types of TDR programs. Under the first TDR program, "preservation and development districts are delineated, a procedure for assigning development rights is established, and TDRs are allotted to owners of land in the preservation district in a systematic manner."<sup>131</sup> Landowners in a preservation district are prohibited from developing their property, but the landowner may

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Carroll, MD	20,790
Caroline, MD	18,000
Lancaster, PA	16,400

*Id.* at 602 n.74.

123. For a more detailed discussion of Lancaster County's PDR program, see *id.*

124. See *id.* at 607-08.

125. See Daina Savage, *Preservationists Toast Another Big Year for Saving County Farms*, INTELLIGENCER J., Feb. 9, 1996, at B1.

126. See Solloway, *supra* note 14, at 609-10.

127. See *id.* at 602.

128. Arcaro, *supra* note 49, at 491.

129. See Dwight H. Merriam, *Making TDR Work*, 56 N.C. L. REV. 77, 81 (1978).

130. See Arcaro, *supra* note 49, at 491-92; Solloway, *supra* note 14, at 629-30.

131. Arcaro, *supra* note 49, at 491 (citing R. COUGHLIN ET AL., *THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS: EXECUTIVE SUMMARY* 26 (1980)).

transfer the TDRs to land they own in the development district, which would increase the building floor area beyond what is normally allowed in that zone.<sup>132</sup> The landowners may also sell the TDRs to a private or public developer who will use them in the same manner.<sup>133</sup> The second form of TDR program creates a development rights bank.<sup>134</sup> Under this program, the government utilizes its eminent domain power and condemns the excess development potential of a farm, paying the landowner just compensation.<sup>135</sup>

A major advantage of TDRs is the cost of preserving farmland is shifted from the government to private developers.<sup>136</sup> However, a major problem with this system of farmland preservation is that their value is often speculative; their worth will not be equal to the value of the development rights lost if there is no place to transfer them or no market for them.<sup>137</sup> Another problem with TDRs is that they are often the most expensive method for proscribing urban development.<sup>138</sup> Moreover, if TDRs do not provide just compensation for the landowner's loss of his investment-backed expectation, the preservation plan is likely to be challenged on taking and due process grounds and potentially found to be unconstitutional.<sup>139</sup>

The United States Supreme Court has yet to decide on the constitutionality of TDRs in agricultural preservation plans.<sup>140</sup> However, in another context, the Court held that the application of zoning ordinances using TDRs was not a violation of the Takings Clause of the United States Constitution.<sup>141</sup> When designing and executing a TDR program, legislatures must ensure that the zoning ordinance itself is constitutional.<sup>142</sup> Provisions should also be made for the use of the development rights.<sup>143</sup> To pass constitutional muster, the TDR program must provide just

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132. See *id.* at 491-92.

133. See *id.* at 492.

134. See Note, *The Unconstitutionality of Transferable Development Rights*, 84 YALE L.J. 1101, 1102 (1975).

135. See Arcaro, *supra* note 49, at 492.

136. See *id.* at 491 (citing R. COUGHLIN ET AL., *THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS: EXECUTIVE SUMMARY 24-26* (1980)). Another method of using development rights to preserve farmland requires that the government purchase development rights from the farm owner. See *id.* Consequently, the government then owns the rights—they are not resold and transferred to another area. See *id.*

137. See Note, *supra* note 134, at 1110-12.

138. See Arcaro, *supra* note 49, at 491 (citing R. COUGHLIN ET AL., *supra* note 133, at 24-26).

139. See *id.* at 491.

140. See *id.* at 492. The Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." U.S. CONST. amend. V.

141. See *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 138 (1978).

142. See Arcaro, *supra* note 49, at 494.

143. See Linda A. Malone, *The Future of Transferable Development Rights in the Supreme Court*, 73 KY. L.J. 759, 760 (1985).



compensation to the owner of restricted property.<sup>144</sup> On the contrary, a court is likely to hold that a TDR constitutes a taking and violates due process when property is rendered useless by a regulation and the TDR is also useless.<sup>145</sup> To avoid the speculative nature of TDRs, the legislature must ensure either that they have a market value or create a development rights bank that will purchase the TDRs, thereby giving them value even if there is no ready market.<sup>146</sup>

#### D. Agricultural Zoning

Agricultural zoning is the most widely used means by which municipalities restrict development and preserve farmland.<sup>147</sup> The advantages of this type of farmland preservation are that it is not voluntary, does not rely on incentives, and costs nothing to the community.<sup>148</sup> Agricultural zoning reduces two major factors which induce farmers to sell their land to real estate developers.<sup>149</sup> The first factor is the rising market value of the farmers' property.<sup>150</sup> However, agricultural zoning imposes restrictions on the amount and type of development in agricultural zones, thereby keeping land prices down and reducing the pressure to sell for the higher development value.<sup>151</sup> Second, farmers are induced to sell their land because of pressure exerted on them by neighbors who are offended by noxious farm odors and chemical spraying.<sup>152</sup> Agricultural zoning helps eliminate these problems by maintaining the rural character of the community, yet at the same time allows for development where it will not conflict with agricultural activities.<sup>153</sup>

However, there are two harsh effects that accompany agricultural zoning. First, this mechanism for land preservation tends to limit a farmer's rights by mandating agricultural use and removing both the equity and credit values from the land.<sup>154</sup> Consequently, farmers have less equity against which they may borrow to

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144. See Arcaro, *supra* note 49, at 494.

145. See Note, *supra* note 134, at 1112.

146. See *id.*

147. See Jerome E. Rose, *Farmland Preservation Policy & Programs*, 24 NAT. RESOURCES J. 591, 600 (1984); Solloway, *supra* note 14, at 623-24.

148. See Christopher P. Markley, Comment, *Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?*, 87 DICK. L. REV. 595, 626 (1983).

149. See Arcaro, *supra* note 49, at 479.

150. See *id.*

151. See *id.*

152. See, e.g., *id.* at 478-79 (noting that such pressure arises when neighbors file nuisance actions to stop these necessary farming activities).

153. See *id.* at 479-80.

154. See Solloway, *supra* note 14, at 628.

survive.<sup>155</sup> Second, agricultural zoning is not a permanent measure to preserve farmland because rezonings can occur by a vote of the local legislature.<sup>156</sup>

To minimize the above problems facing local legislatures regarding agricultural zoning, a TDR program should also be applied to the area, along with an allowance of accessory uses to promote economic feasibility for farmers.<sup>157</sup> Local governments may also minimize the problems of agricultural zoning by implementing a PDR program.<sup>158</sup> Finally, and most important to the success of any agricultural zoning plan, local governments must obtain support from the community.<sup>159</sup>

Agricultural zoning programs designed to preserve farmland are not presumed to be unconstitutional—they still must comply with some judicial standards to be considered valid land-use regulations.<sup>160</sup> To pass constitutional scrutiny, the zoning plans must first be consistent with the state's enabling legislation.<sup>161</sup> Second, most states require that zoning be applied in accordance with a comprehensive plan.<sup>162</sup> In some states, to prevent a court from finding a zoning plan as exclusionary, the plan should provide for all types of housing.<sup>163</sup> However, if agricultural zoning reduces the value of land, such an effect is likely to provoke a takings challenge from the owner of the affected property.<sup>164</sup> Similarly, land use regulations which are administered arbitrarily and capriciously often instigate due process attacks.<sup>165</sup> In most cases, however, courts have held that zoning plans designed to preserve farmland or other natural resources are ordinarily constitutional.<sup>166</sup>

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155. *See id.*

156. *See id.*

157. *See id.* at 629.

158. *See id.* (discouraging this solution because of the high costs which are inherent in a PDR program).

159. *See id.* (citing TOM DANIELS, FARMLAND PROTECTION WITH THE PURCHASE OF DEVELOPMENT RIGHTS: THE CASE OF LANCASTER COUNTY 14).

160. *See* Arcaro, *supra* note 49, at 478 (noting that the validity of a statute is fairly debatable, the courts will defer to the legislature and the enactment will be found constitutional).

161. *See id.* (discussing that enabling legislation is the power granted to municipalities by the state which empowers them to enact zoning regulations).

162. *See id.*

163. *See id.*

164. *See* Rose, *supra* note 147, at 620.

165. *See, e.g.,* Arcaro, *supra* note 49, at 478-79.

166. *See id.* at 479 (citing *Steel Hill Dev., Inc. v. Town of Sanbornton*, 469 F.2d 956 (1st Cir. 1972); *MacLeod v. County of Santa Clara*, 749 F.2d 541 (9th Cir. 1984); *Boundary Drive Assocs. v. Shrewsbury Township Bd. of Supervisors*, 491 A.2d 86 (Pa. 1985)).

### E. Comprehensive Land Planning Statutes

Confronted with inefficient, chaotic growth, many local and state governments have developed comprehensive land planning statutes, or statewide farmland preservation programs.<sup>167</sup> The premise underlying comprehensive land planning is that states are better equipped and more effective than local governments in controlling growth.<sup>168</sup> States which have enacted and enforced comprehensive land planning statutes have applied a broad spectrum of approaches in protecting America's farmland.<sup>169</sup> Eleven states have thus far passed comprehensive land-use statutes.<sup>170</sup> Oregon, Florida, and Rhode Island have all enacted comprehensive, statewide growth management plans that have existed for over twenty years.<sup>171</sup> Unfortunately, Iowa has yet to enact such a land preservation plan.<sup>172</sup> Several state leaders have repeatedly complained that Iowa does not have an effective approach to conserve its farmland as the suburbs rapidly push into neighboring farmlands.<sup>173</sup>

There are four basic elements of a successful comprehensive land-use statute. First, statewide land planning statutes require or, at a bare minimum, encourage local government and state agencies to develop plans that conform with state goals and policies.<sup>174</sup> Several states have not only defined a local role in growth management systems but also a regional role.<sup>175</sup> Some states such as Florida, Oregon, and Rhode Island *require* local planning and set deadlines for plan completion, while other states such as Georgia and Vermont merely *encourage* local planning via incentives, leaving the final decision on whether to participate to

167. See Poradek, *supra* note 79, at 1350.

168. See, e.g., Douglas R. Porter, *State Framework Laws for Guiding Urban Growth and Conservation in the United States*, 13 PACE ENVTL. L. REV. 547, 555 (1996).

169. See *id.* at 548.

170. See *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34. These states include: Florida, Georgia, Hawaii, Maine, Maryland, Minnesota, New Jersey, Oregon, Rhode Island, Vermont, and Washington. See *id.*

171. To analyze these growth management statutes, see FLA. STAT. ANN. §§ 163.3161-.3243 (West 1990 & Supp. 1999); OR. REV. STAT. §§ 197.005-.860 (1997); R.I. GEN. LAWS §§ 45.22.2-1 to -14 (1991 & Supp. 1997). Many other states, such as Minnesota, Vermont, Maine, New Jersey, Georgia, Washington, and Maryland, have all tried to imitate these programs. See, e.g., Porter, *supra* note 168, at 548.

172. See Jonathan Roos, *Branstad Says State Should Push for Both Urban and Rural Growth*, DES MOINES REG., Sept. 3, 1997, at 2A (stating that former Governor Branstad was firmly against devising a statewide land-use law because "[it] would be controversial").

173. See *id.*

174. See Porter, *supra* note 168, at 548-49; *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

175. See Porter, *supra* note 168, at 552.

the local governments.<sup>176</sup> Second, comprehensive land plans encourage neighboring local governments to coordinate their efforts for managing and curtailing urban growth and development with neighboring communities.<sup>177</sup> Thus, states that enact comprehensive land planning statutes emphasize consistency through intergovernmental responsibilities and actions.<sup>178</sup> Third, there must be clear mechanisms for implementing the plans.<sup>179</sup> The primary mechanism is the requirement that local plans be consistent with local development regulations and local government spending on infrastructure.<sup>180</sup> Finally, there must be financial and technical assistance provided by the states to assist the local governments to better achieve the goals of the program.<sup>181</sup>

Comprehensive land planning statutes offer several significant advantages.<sup>182</sup> First, comprehensive plans anticipate a dynamic range of developmental possibilities.<sup>183</sup> Through the enactment of a comprehensive land plan, local governments are able to consider land use as it relates to such areas as public finance, public works capacity, economic development, and population change.<sup>184</sup> Second, comprehensive land planning provides an efficient and legal method for local governments to coordinate their needs and resources.<sup>185</sup> Finally, and most importantly, comprehensive land planning provides for a more consistent way for a state to preserve rural land.

However, comprehensive land planning has one significant disadvantage. Such programs are not as "comprehensive" as their titles would suggest.<sup>186</sup> This is due to the problem that planning power remains primarily local.<sup>187</sup> Comprehensive land-use programs are limited by the political body that enacts such plans.<sup>188</sup> As a result, an inevitable tension surfaces between neighboring governments in their individual efforts to control urban growth.<sup>189</sup> Similarly, state agencies are "notoriously independent and reluctant to act cooperatively with each other or with

176. See *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

177. See Porter, *supra* note 168, at 549; *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

178. See Porter, *supra* note 168, at 549 (discussing several intergovernmental responsibilities); *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

179. See *The Sierra Club's Challenge to Sprawl Campaign*, *supra* note 34.

180. See *id.*

181. See *id.*

182. See Poradek, *supra* note 79, at 1350-51.

183. See *id.*

184. See Charles M. Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROBS. 353, 354-61 (1955).

185. See Poradek, *supra* note 79, at 1350.

186. See *id.* at 1350-51.

187. See *id.* at 1350.

188. See Freilich & Ragsdale, *supra* note 80, at 1011-13.

189. See *id.*

local governments," despite comprehensive land planning statutes promising to do exactly that.<sup>190</sup>

#### IV. OREGON'S COMPREHENSIVE LAND PLANNING STATUTE

In 1973, the state of Oregon enacted a statewide land use planning program<sup>191</sup> that has been credited as the most successful in the nation and has been imitated by several states, including Florida, Rhode Island, Maine, Washington, and Maryland.<sup>192</sup> Oregon's program includes exclusive agricultural districts, urban growth boundaries, restrictions on the development of exurban districts, and farm-use tax deferral and right-to-farm provisions.<sup>193</sup> Oregon's Land Conservation and Development Commission (LCDC) sets the standards for land-use planning.<sup>194</sup> "Of the state's 61.6 million acres of land, 55 percent is publicly owned, 2 million acres are contained in urban growth boundaries, and 25.8 million acres are restricted to resource and other rural uses."<sup>195</sup> Between 1982 and 1987, the state of Oregon lost proportionally fewer farms compared to the rest of the nation, and Oregon gained farms with more than five hundred acres.<sup>196</sup>

The Oregon statewide program requires local governments to do the following: (1) inventory agricultural land, (2) designate it in the comprehensive plan, (3) adopt policies to preserve it, and (4) zone it Exclusive Farm Use (EFU).<sup>197</sup> The state agency retains ultimate authority to approve local plans for consistency with state goals.<sup>198</sup> This program places major emphasis on preserving

190. Porter, *supra* note 168, at 550-51.

191. See, e.g., *Willamette Univ. v. Land Conservation & Dev. Comm'n*, 608 P.2d 1178, 1186 (Or. Ct. App. 1980); *Oregon's Department of Land Conservation and Development (DLCD): DLCD Farmland Protection* (visited Jan. 12, 1999) <<http://www.lcd.state.or.us/issues/rural/farmsumm.htm>>.

192. See 5 NORMAN WILLIAMS, JR. & JOHN M. TAYLOR, *AMERICAN LAND PLANNING LAW* § 160.16 (1985) (describing the Oregon plan as "by far the most advanced in the country"); see also John M. DeGrove & Patricia M. Metzger, *Growth Management and the Integrated Role of State, Regional, and Local Governments*, in *GROWTH MANAGEMENT: THE PLANNING CHALLENGE OF THE 1990s*, at 3, 7 (Jay M. Stein ed., 1993) (praising Oregon's success at curtailing suburban sprawl); *Oregon's Department of Land Conservation and Development (DLCD): DLCD Farmland Protection*, *supra* note 193.

193. See *Oregon's Department of Land Conservation and Development (DLCD): DLCD Farmland Protection*, *supra* note 191.

194. See *id.*

195. Arthur C. Nelson, *Preserving Prime Farmland in the Face of Urbanization, Lessons from Oregon* (visited Jan. 12, 1999) <[http://farm.fic.niu.edu/cgi-bin/reformat.cmd?main\bibs\preservation\documents\formatted\preserving\\_prime\\_farmland\\_oregon.txt](http://farm.fic.niu.edu/cgi-bin/reformat.cmd?main\bibs\preservation\documents\formatted\preserving_prime_farmland_oregon.txt)>.

196. See *id.*

197. See *Oregon's Department of Land Conservation and Development (DLCD): DLCD Farmland Protection*, *supra* note 191; OR. REV. STAT. §§ 197.005-.860 (1997).

198. See Porter, *supra* note 168, at 555.

commercial agriculture.<sup>199</sup> "EFU zoning limits development that could conflict with farming practices."<sup>200</sup> The program prevents farmland from being divided into parcels too small for commercial agriculture.<sup>201</sup> Furthermore, lands in these EFU zones are "automatically eligible for lower property taxes based on the land being farmed."<sup>202</sup> "All [thirty six] counties in Oregon have applied EFU zoning to their agricultural land."<sup>203</sup> Importantly, the Oregon land-use program provides a Land Use Board of Appeals, with three judges who decide exclusively land-use cases.<sup>204</sup> Their decisions may be appealed to state courts.<sup>205</sup>

Oregon is a model for all states in its effort to contain urban growth. Its success stems from procedural mechanisms that allow private citizens a right to a private right of action.<sup>206</sup> In 1973, the Oregon Supreme Court handed down the landmark decision, *Fasano v. Board of County Commissioners of Washington County*,<sup>207</sup> in which the court held that comprehensive planning superseded zoning criteria and that zoning decisions were quasi-judicial, and therefore no longer entitled to presumptive validity.<sup>208</sup> Importantly, *Fasano* shifted the burden of proof in land-use hearings and appeals to the local entity, requiring it to justify its land-use decisions against its comprehensive plan.<sup>209</sup> *Fasano* also established land-use hearing requirements to encourage public participation and appellate review.<sup>210</sup> Finally, Oregon courts have broadly construed standing so that anyone who participated in the local proceeding may appeal an adverse decision.<sup>211</sup>

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199. See Oregon's Department of Land Conservation and Development (DLCD): *DLCD Farmland Protection*, *supra* note 191.

200. *Id.*

201. See *id.*

202. *Id.*

203. *Id.*

204. See OR. REV. STAT. § 197.540 (1997).

205. See *id.*

206. See Robert L. Liberty, *Oregon's Comprehensive Growth Management Program: An Implementation Review and Lessons for Other States*, 22 ENVTL. L. REP. 10,367, 10,388 (1992) (giving an overview of Oregon's program and stating that "private enforcement may be the only effective way to enforce land use laws"); Poradek, *supra* note 79, at 1366-74 (distinguishing between Minnesota's and Oregon's comprehensive land planning statutes).

207. *Fasano v. Board of County Comm'rs*, 507 P.2d 23 (Or. 1973) (en banc), *overruled on other grounds* by *Neuberger v. City of Portland*, 607 P.2d 722 (Or. 1979).

208. See *id.* at 27-28.

209. See *id.* at 28.

210. See *id.* at 30.

211. See *Jefferson Landfill Comm. v. Marion County*, 686 P.2d 310, 313 (Or. 1984) (en banc) (establishing a broad test for standing).

## V. CONCLUSION

If American farmland is to be saved from the rapid movement of the urbanities, states must enact comprehensive land-use statutes. While any land preservation program is not without its difficulties, the most important components of any successful comprehensive land-use statute are: (1) its goals must be permanent in nature; (2) it must provide "incentives or requirements for comprehensive planning by local governments to guide their future development;" (3) it must provide a "process for ensuring that the plans are consistent with each other and with state goals;" (4) it must offer "clear mechanisms for implementing the plans;" (5) it must allow for "financial and technical assistance to help [local governments] successfully accomplish the goals of the program;" and (6) most importantly, it must allow for a private right of action.<sup>212</sup>

Comprehensive land planning statutes, enacted by state legislatures, offer the most advantages for any state in its effort to minimize suburban sprawl. Although several variations of statewide land-use statutes have been implemented and later failed, state legislatures can most effectively minimize urban growth by replicating Oregon's comprehensive land planning statute. As discussed above, a portion of such a plan must provide for a private right of action. A private right of action ensures that the government enforces its comprehensive land planning statute, keeps the local governments honest, and encourages it to more aggressively pursue its planning agenda.<sup>213</sup> In essence, private right of actions allow citizens to become involved in the fair and balanced growth of the region in which they live.

In addition to comprehensive land planning, states should utilize a conservation easement program.<sup>214</sup> While conservation easements fail to conserve rural land on a regional level, their advantages far outweigh their shortcomings, especially when applied in conjunction with a comprehensive land use statute. Conservation easements preserve farmland indefinitely and may be initiated only by the landowner.<sup>215</sup> To elicit the greatest advantages from conservation easements, however, they should conform to the comprehensive land plan, the land should be protected permanently, and the conservation easement should be tailored to the particular needs of the landowner.

State legislatures of all fifty states must not only recognize the rapidly growing problem of suburban sprawl but, more importantly, they must take action. If state legislatures across the nation fail to enact a comprehensive land-use statute that provides for a private right of action and contains the other essential components discussed above and which works in connection with conservation

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212. *Id.*

213. *See* Poradek, *supra* note 79, at 1366.

214. *See* IOWA CODE § 457A.2 (1997).

215. *See id.*

easements, then the cities will continue to swallow the peaceful and tranquil rural communities that surround them. Although this solution may not provide *immediate* relief from the rapid expansion of the cities, a comprehensive land-use statute, similar to Oregon's, will provide local governments the guidance and tools through which they can substantially slow suburban sprawl and preserve what little open space remains today.