

TOOLS AND TECHNIQUES FOR PRESERVING AGRICULTURAL LANDSCAPES IN THE UNITED STATES

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Abstract. This paper explores legal, economic and other tools and techniques that have been employed in the United States to sustain a rural way of life by maintaining the integrity of agricultural, natural and historic lands and resources and the viability of the rural economy. It focuses on protecting the land base, promoting environmental stewardship, maintaining cultural context, supporting appropriate agriculture-related economic development, and ensuring the next generation of farmers.

Agricultural landscapes are some of our most important and threatened cultural landscapes. They are being abandoned or developed at an unprecedented and accelerating rate. The American Farmland Trust estimates that every minute of every day the United States loses more than an acre of agricultural land to development. Much of this land is close to cities and easy to develop because it is flat, well-drained, affordable and convenient to existing development. It is also highly productive –91% of fruit and 78% of vegetables are produced on farms closest to cities. As Americans lose agricultural lands to farming, they are losing historic landscapes, communities and local economies. While the recent economic downturn has slowed this process in some areas, the loss of agricultural landscapes continues. Preservation of the land simply as open space is not the answer. Legal, economic and other tools and techniques have been employed in the United States to sustain a rural way of life by maintaining the integrity of historic agricultural and natural lands and resources and the vitality of the rural economy. The focus of these efforts is on protecting the land base, promoting environmental stewardship, maintaining cultural context, supporting appropriate agriculture-related economic development, and ensuring the next generation of farmers.

Each level of government – national, state and local – has a role in the protection of agricultural landscapes. Traditional approaches to the conservation of important resources in the United States typically involve both regulation and the provision of economic incentives. The national government tends to set standards and provide economic incentives contingent upon meeting those standards. For example, the Farmland

Protection Policy Act (7 U.S.C. §4201-4209) seeks to minimize detrimental impacts of federal projects through a review process and to provide technical assistance and guidance to state and nonprofit organizations dedicated to agricultural land protection. The Farm and Ranch Lands Protection Program provides matching funds to help purchase development rights to keep productive farm and rangeland in agricultural uses. States also use the taxing and spending powers to encourage desirable actions but rely as well on the “police power” – the inherent power of government to regulate, protect and promote the public health, safety, morals, and general welfare. Exercising this power, states have enacted laws regulating the use of land and have delegated some of their authority to local governments. It is generally at the state and local levels where some of the most effective programs have been developed to protect agricultural lands and communities.

A key component of land use regulation is comprehensive planning, a strategy used by local governments to target areas for specific uses of land and provide a framework for development. In some states, comprehensive planning is mandated; in all states it is recognized as a valuable tool to guide future development. While not targeted primarily at agricultural landscape preservation, it is nonetheless an important mechanism for identifying areas where growth is to be encouraged and other areas where traditional land uses should be preserved. If agricultural conservation is identified as a goal in the plan, it can serve as a basis for more specific regulations such as zoning. The purpose of agricultural zoning is to designate areas where farming and related activities are to be

the primary use of land. In designating these areas, local governments can discourage or restrict incompatible non-agricultural uses. Strictly enforced agricultural zoning can discourage land speculation and can preserve the traditional agricultural character of the area. The advantages of this approach are that it is mandatory, does not require incentives, and does not directly cost the local government. A weakness of this technique is that zoning is inherently political and is subject to amendment or repeal. An important component to any land use scheme designed to protect cultural values would be the enactment of a historic preservation or landmark ordinance, often as an overlay to existing agricultural zoning, which would protect buildings, sites and objects of cultural importance on the land.

A number of state legislatures have also enacted laws which protect farmers and ranchers from nuisance suits filed by nearby landowners as well as protecting them from restrictive local government ordinances that unduly restrict traditional agricultural activities. These so-called “right to farm” laws are generally targeted at situations where suburban expansion encroaches on agricultural areas and new residents object to the smells and sounds of traditional agricultural communities. The protection offered farmers is generally predicated on their adherence to generally accepted agricultural practices that comply with state and federal law.

Conservation easements are a widely-used tool to preserve important scenic, cultural, environmental and agricultural land areas. A conservation easement is a legal agreement between a landowner and governmental agency or non-governmental organization that permanently restricts future development on a piece of land to protect its key values. These legal devices are in use in every state and currently protect millions of acres of land. Among the non-governmental agencies that commonly use this protective tool are non-profit heritage organizations and land trusts, which hold over 17,000 conservation easements. Local governments, too, have increasingly established easement programs. Conservation easements are created through a legal document signed by a property owner (called a grantor) and an eligible organization (called a holder) and recorded in the official land records of the political jurisdiction where the property is located. These agreements apply to all future landowners. Easements are appealing because of their flexibility and their creation is a private transaction entered into voluntarily by the landowner and the easement-holding organization. The owner either donates an easement and receives

tax incentives for the donation or sells the easement to the holding organization at a price that is less than the cost of purchasing the property outright. Since the owner retains restricted use of the land, it remains productive and on the tax rolls while preserving specific conservation values.

Another promising technique, although less frequently used, is transferable development rights (TDRs). This legal mechanism allows a landowner to transfer rights to develop a parcel of land he owns to another parcel thereby limiting development on the first parcel and increasing the development potential on the second parcel. A feature shared by nearly all TDR programs is the designation of sending and receiving areas. Sending areas are designated where community plans call for development limitations and landowners are restricted from making the maximum economic use of their land by preservation and zoning ordinances or other regulations. Owners within these areas are permitted to sever and transfer their development rights. Receiving areas, on the other hand, are designated where more intensive development is deemed appropriate. Owners within these areas can purchase transferred development rights and develop at a higher or greater density than would otherwise be allowed by underlying regulations.

It is crucial for government to provide economic incentives as well as regulation to ensure agricultural land preservation. Differential assessment laws allow land to be valued for taxation based on its agricultural use rather than its full market value. A number of economic incentives are tied to conservation easements. If an owner donates a conservation easement meeting national standards, the donated value is available as a charitable income tax deduction from the federal income tax, and the state income tax in many states. The 2008 National Farm Bill provides a number of provisions to assist in the preservation of heritage agriculture. National programs such as the Farm and Ranch Lands Protection Program as well as state and local programs also exist for purchase of easements. With either the donation or sale of an easement, the market value of the land has been reduced by the transfer of development potential and property taxes are consequently reduced. While conservation easements are perpetual, some states provide property tax reductions in exchange for agreements to preserve the land in agriculture use for a number of years with penalties assessed if the owner withdraws from the program prior to the expiration of the required term. Other states provide “circuit breaker” tax credits to farmers to offset property taxes on their land, often based on the annual income of the farmer.

One type of program that combines a number of features of both regulation and incentives are agricultural districts. Several states such as California, Pennsylvania, and New York employ this voluntary approach for landowners who may apply for specified land use status based on their particular agricultural use or the agricultural character of the land (soil type, agricultural suitability). Parcels receiving local and state certification are included in a district that provides protections and incentives designed to prevent conversion of farmland to other uses. A key component is preferential real property tax treatment for agricultural lands, allowing owners to pay taxes based on their agricultural production rather than on potential development value. These districts also provide protection against overly restrictive local laws and private nuisance suits as well as government-funded acquisition or construction projects. If a landowner withdraws from the program, he may be subject to financial penalties.

One approach that may have potential for preserving many of the economic, natural, and cultural characteristic of a traditional agricultural landscape is the heritage area. These are areas where natural, cultural, historic, and recreational resources combine to create a distinctive and cohesive entity that represents important aspects of heritage. Although Congress creates National Heritage Areas, they depend for their success on a partnership forged in a particular geographical region by multiple political jurisdictions and many non-governmental organizations. Not only are the natural and manmade physical features important, but also the traditions of the people that created the cultural landscape. Here its setting is not only important as a visual enhancement of landmarks and monuments but has a greater significance in its own right. After Congress designates a heritage area, National Park Service staff work with local governments and residents to develop a cooperative agreement and management plan that identifies shared goals for heritage preservation and provides a legal basis for funding. The authority to implement the plan is rests with local government that may include a range of regulatory and protective activities described earlier in the paper. The federal government does not regulate land use in the area, but would maintain control of any parks or federal reserves included in the heritage area. The federal government does provide initial funding for the National Heritage Areas, along with expertise. This is clearly in line with the overall approach of the federal government toward heritage conservation: promulgating standards and best practices and providing incentives for their implementation. Activities in the

heritage area often include, in addition to protection, the development of an interpretation plan, rehabilitation of historic sites, opening and operating visitors' centers, creating a network of trails, etc. The overall goal of the heritage area is to promote the development of short and long-term solutions to conservation of the heritage resource by the local partners. In this way, not only will historic buildings be saved, but their context as well. The cultural landscape and the intangible aspects of heritage can be preserved for future generations. With decreased national funding, new National Heritage Areas may be difficult to create, but the idea is flexible enough to be implemented by state and local government without the federal component, if necessary.

To be successful, any program must use an integrated approach drawing on the tools most suitable for the agricultural landscape it is designed to preserve. These are some of the public and private legal tools that have been employed in the United States to control and protect the setting of heritage places, including agricultural landscapes. Other developments are also important in the equation: the growing interest in environmental sustainability, the local food movement including local farmers' markets and cooperatives, and others. Agri-tourism is also a major factor that can provide economic incentives for agricultural preservation. Areas such as the California wine regions, Kentucky horse country, Lake Erie Concord Grape Heritage Area, the Amish and Mennonite farming regions, and many others are attracting much public interest. Sustainable agricultural landscapes will help to conserve natural resources, strengthen local economies, preserve cultural heritage and a way of life, and strengthen the relationship between farmers and consumers. However, in a country where private property rights are highly valued, it takes more than the existence of these tools to ensure that heritage places survive into the future. It takes the active participation of citizens and non-governmental organizations, working with government, to employ the tools effectively and produce lasting results.

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