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EXCLUSIVE AGRICULTURAL ZONING: A VIABLE PLANNING TOOL FOR RHODE ISLAND?

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EXCLUSIVE AGRICULTURAL ZONING: A VIABLE
PLANNING TOOL FOR RHODE ISLAND?

BY

THOMAS E. MARTIN

A PROJECT SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS OF THE DEGREE OF
MASTER OF COMMUNITY PLANNING

UNIVERSITY OF RHODE ISLAND
1978

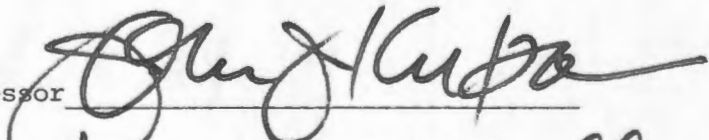
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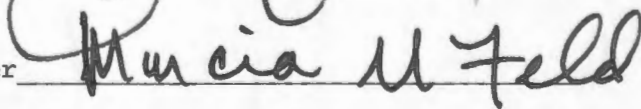
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UNIVERSITY OF RHODE ISLAND

1978

TO MY PARENTS

ABSTRACT

This project assesses the suitability of state mandated exclusive agricultural zoning for Rhode Island. First, the state's previous attempts at agricultural preservation are discussed. The limitations of the acquisition and use value assessment approaches are emphasized. The problems of critical areas as an agricultural preservation tool are raised.

The project then develops criteria that an agricultural preservation policy in Rhode Island must meet. The policy chosen must preserve all the state's prime and unique agricultural land. Preservation action must come soon, or large portions of the state's remaining farmland will be lost. It is stressed that an agricultural preservation policy must conflict minimally with the state's housing needs and political tradition of local control of land use.

Various land management techniques are measured against these criteria. It is found that state controlled zoning, agricultural districts and Transfer of Development Rights are unsuitable for Rhode Island. Purchase of Development Rights have potential, but it appears that they will be inadequately funded. State mandated exclusive agricultural zoning does appear an alternative for Rhode Island.

Based on the British Columbian experience and a bill in California, the process by which state mandated exclusive agricultural zoning

might be applied to Rhode Island is detailed. Tentative definitions for prime and unique agricultural land are formed, with interim controls for all farmland in the state recommended until the final definitions are reached.

Although non-farm development would not normally be permitted on the prime and unique lands, provisions are made for exceptions in certain cases. To mitigate the impact of use value assessment, the granting of state tax subsidies to the towns with prime and unique lands is proposed.

National and Rhode Island case law is reviewed to show that exclusive agricultural zoning would probably be upheld as a valid exercise of the police power. The problems of the technique are discussed with particular attention to its political feasibility and its impact upon farmowners. To aid farmers in the state, it is urged that Rhode Island develop a comprehensive agricultural policy. The project concludes by recommending that an exclusive agricultural zoning bill be introduced into the Rhode Island legislature where it would be subject to scrutiny and public debate.

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TABLE OF CONTENTS

CHAPTER I	PAGE
Rhode Island's Search for An Agricultural Preservation Policy. . .	1
The History of Rhode Island Agriculture.	1
The Importance of Agriculture to Rhode Island.	2
The Green Acres Land Acquisition Act	4
The Farm, Forest and Open Space Act.	6
Agricultural Land as an Area of Critical State Concern	8
Conclusions.	12
CHAPTER II	
Criteria for an Agricultural Preservation Policy in Rhode Island .	15
Economic Conditions.	15
Demographic Conditions	17
Housing Conditions	21
Political Conditions	22
Agricultural Land Use Conditions	25
Conclusions.	29
CHAPTER III	
A Survey of Agricultural Preservation Techniques	32
State Controlled Zoning.	32
Agricultural Districts	33
Transfer of Development Rights	35
Public Purchase of Development Rights.	38
Specialized State Zoning	40
Conclusions.	41
CHAPTER IV	
How State Mandated Exclusive Agricultural Zoning Might be Applied to Rhode Island.	44
An Introduction to State Specialized Zoning.	44
How State Directed Zoning Could be Applied to Prime and Unique Agricultural Land in Rhode Island.	47
British Columbia's Land Commission Act	47
How to Define Prime Agricultural Land.	49
The Restriction of Development from the Classified Lands	51
State Compensation for Tax Losses Resulting from Use Value Assessment	54
Conclusions.	58

CHAPTER V	Page
The Legal Aspects of Exclusive Agricultural Zoning.	61
Court Attitudes Towards Intervention in Legislative Matters.	62
Factors Courts Consider in Determining Takings	64
Exclusive Agricultural Zoning Cases in Other States.	66
Natural Resource Preservation Cases.	69
Conclusions.	72
CHAPTER VI	
The Problems of State Mandated Exclusive Agricultural Zoning	76
The Housing Impacts of Exclusive Agricultural Zoning	77
The Costs of Exclusive Agricultural Zoning	77
Exclusive Agricultural and Local Political Control	78
The Political Acceptability of Exclusive Agricultural Zoning to Rhode Island Voters	80
Agricultural Preservation and Landowner Rights	82
Conclusions.	86
CHAPTER VII	
Is Exclusive Agricultural Zoning a Viable Planning Tool for Rhode Island?.	89
Some Criticisms of Exclusive Agricultural Zoning	90
Areas Requiring Further Research	93
A Final Assessment on the Viability of Exclusive Agricultural Zoning for Rhode Island.	96
Conclusions.	99
SELECTED BIBLIOGRAPHY.	102

Chapter I

Rhode Island's Search for Agricultural Preservation Policy

Introduction

In this chapter, existing and proposed agricultural preservation legislation in Rhode Island will be reviewed. The limitations of these policies in meeting the goal of agricultural preservation will be discussed. In addition to dealing with the problems of the specific acts, some general issues of the conceptual approach behind these acts will be raised. Thus, problems inherent in a particular law will be distinguished from those related to the philosophy behind that law.

First however, the issue of agricultural preservation will be set in its historical context. This will be done through a brief summary of agricultural land use trends in the state. In addition, the importance of agriculture to Rhode Island will be stressed.

I

The History of Rhode Island Agriculture

As of 1800, virtually all of Rhode Island was farmed. With the advent of the Industrial Revolution, many of the more marginal hill farms were abandoned. By 1840, industry was the state's major employer.¹ Agriculture continued to decline throughout the nineteenth century. By 1905, there were 5,577 active farms (or 479,960 acres in agriculture) left in the state.² Already, state officials were

expressing concern over the future of Rhode Island agriculture.³ However, 479,960 acres meant that 69 percent of the state was still in agriculture.

Since 1905, improved food shipment methods weakened the competitive position of Rhode Island agriculture against the larger scale farms and better soils of the Mid-west. The suburbanization trends, especially following World War II, increased the demand for urban land. High property taxes and low demand for Rhode Island produce drove many farmers out of business.

Today, there are approximately 63,000 acres of active agricultural land in Rhode Island or less than nine percent of the state's land area.⁴ This land is in fewer than 700 farms. Some of these farms however are prosperous and it is not too late for the state to implement an agricultural preservation policy. The next section will show that it is in the state's interest to preserve these lands.

II

The Importance of Agriculture to Rhode Island

Since, as will be seen, agriculture plays such a minor role in the state's economy, its importance may be questioned. Agriculture however is valuable to the state both as an economically productive form of open space and for its intrinsic values.

Agriculture can fulfill many of the functions of open space. Since some of the state's farmland coincides with aquifer recharge areas, preserving it can help protect the state's groundwater supplies.

Agricultural preservation can also be a form of flood control since it provides land for storm water runoff and protects some floodplains from development. It can also be used to help shape urban growth. Farmland adds variety to state's landscape and can be aesthetically pleasing.

Some of the values of agricultural land are economically significant. For example, costly damage may occur to structures built on floodplains. If the state's groundwater supplies aren't effectively protected, expensive forms of water supply such as surface reservoirs may have to be developed. Since tourism is an important part of Rhode Island's economy, it is essential that the state remain aesthetically attractive.

Agriculture is also intrinsically important to Rhode Island. Local farms can readily supply the state with fresh produce. Goods such as dairy products are expensive to safely ship long distances. The real value of Rhode Island agriculture may be in the future. According to a recent report by the Deans of Agriculture of the New England Land Grant Universities, higher transportation costs may result in exorbitant food prices or even food shortages for the Northeast.⁶

Rhode Island alone can do little to combat this trend. The state however contains some of the more productive farmlands in New England. If the country does eventually face food shortages, all productive land will be treasured. Were the other New England States to take similar measures to protect their better farmland, the region would be assured of producing at least a portion of its food needs.

III

The Green Acres Land Acquisition Act

The Green Acres Land Acquisition Act of 1964 (G.L.R.I. 32-4-1-15) was the first major piece of legislation in Rhode Island that dealt with agricultural preservation, although it did so tangentially. The main purpose of the Green Acres act was to acquire land for public recreation and conservational purposes. Agriculture is considered as a land use suited for such purposes. (G.L.R.I. 32-4-3c)

This act has been ineffective in preserving agriculture. Most of the 13,000 acres purchased under the act has been woodland.⁷ The main problem in using this act to preserve agriculture is that farmland is rarely suited for recreational purposes. Crops usually suffer as a result of public access.

An approach similar to Green Acres could be developed emphasizing the public acquisition of agricultural land for agricultural purposes only. This approach has been proposed in various states. Its main advantage would be to guarantee that the land would not be converted to urban uses. Such an approach would have several limitations. One is that public acquisition is expensive. Rhode Islanders appear reluctant at this point to spend large amounts of money on agricultural preservation.⁸

Even if a public acquisition scheme were to be funded, this does not mean that the acquired land would continue to be farmed. This problem could be overcome by a leaseback arrangement to those farming the land prior to acquisition. Leasing land for agricultural purposes

may require complex stipulations regarding the use of fertilizers, cultivation methods and other activities that may discourage farmers.

Assuming that a satisfactory leaseback scheme were developed that ensured that the land would continue to be farmed, public acquisition would still raise other issues. The publically acquired land would be removed from the tax rolls. While this fiscal impact may be mitigated by revenues earned by leasebacks,⁹ it is unclear how much farmers would be willing to pay to lease land that was, in many cases, formerly theirs. The revenue loss will have to, in some cases, be made up by higher taxes for the rest of the municipality. Since property taxes are generally regressive, this may be an inequitable way to preserve agriculture.

A more fundamental problem with a public acquisition scheme is that it runs against the American tradition of private ownership of land.¹⁰ This means that even if the intrinsic limitations of the approach could be overcome, it may not be politically acceptable to Rhode Island voters.

To summarize, the Green Acres act with its emphasis on recreational land was not an effective agricultural preservation technique. Although a public acquisition approach to preserving agriculture would have the advantage of permanently protecting the land from urban encroachment, such a scheme has several limitations. One is that it would probably not be adequately funded. In addition, it would entail a complex leaseback arrangement to the farmers and remove land from the tax rolls. Finally, an acquisition approach is probably incongruent with American political values concerning private land ownership.

IV

The Farm, Forest and Open Space Act

The next major piece of agricultural preservation legislation passed in Rhode Island was the Farm Forest and Open Space Act of 1968, (G.L.R.I. 44-27-1-6.) This act is an example of the use value assessment approach to agricultural preservation. Use value assessment is a response to the high property taxes that are often assessed on farmland.

To understand use value value assessment, some background on property taxation techniques is helpful. Land in the United States is normally taxes at its market value, a practice known as ad valorem assessment. This means that a parcel of farmland that might be worth 1,000 dollars an acre if its use were restricted to agriculture, while it would be worth 10,000 dollars an acre if developed into residential or commercial uses, would be assessed as if it were worth 10,000 dollars. Thus, under ad valorem assessment the farmer may incur a very heavy tax burden. Such taxes may at times render profitable farm operation impossible.

Under use value assessment, land is taxed at its actual not potential use. This may make farming more profitable and thus make it less likely that the land would be converted to a higher use. Under the Rhode Island Farm Forest and Open Space Act, the municipalities may at their discretion give the owners of open land, including farmland, the option of use value assessment. The act includes a tax deferral or roll back clause which specifies that if the land is

converted to a higher use while under use value assessment, the owner is subject to taxes that would have been paid under ad valorem assessment for the year of the change in use and the two previous years. This clause was meant as a further deterrent to converting the land to a higher use.

The act has been minimally used by the towns and thus has generally been ineffective in preserving agricultural land.¹¹ One reason the towns have been reluctant to give landowners the option of use value assessment is that would mean lower tax revenues. This is particularly true in the few towns that have significant amounts of farmland. Here, there would either be a large loss of revenue or a heavy tax shift onto the town's more developed properties. This could increase taxes for those owning urbanized land.

The roll-back clause is probably not sufficiently strong to prevent the act from being abused by speculators. A landowner wishing to hold a tract until it is ripe for development, may pay less taxes under the act, than would have been paid under ad valorem assessment, even with the roll-back clause. Although no data are available on the employment of the act by speculators in Rhode Island, the practice is extensive in other states with comparable acts.¹²

It is unclear however if a stronger roll-back clause would deter speculators. Other states such as Alaska, Hawaii, Illinois and Maine have added interest charges to their use value assessment acts. It has been asserted in a recent Council on Environmental Quality publication that the interest charges deter conversion to higher uses only to the extent that the interest rate charged is greater than that

which "the landowner would have to pay were he to borrow from a commercial lending institution."¹³ Although interest rates as high as ten percent have been charged in Washington and Hawaii, studies have shown that they cannot offset the increased capital gain usually realized when the land is converted to higher uses.¹⁴

Use value assessment raises equity issues. As C. Lowell Harris points out, use value assessment reduces the sacrifice involved in waiting for land to ripen for development by increasing the landowners unearned increment, while adding to the tax burden of the rest of the community.¹⁵

To summarize, the effectiveness of use value assessment in preserving agricultural land is very limited in an area such as Rhode Island where that land is in demand for other uses. A landowner who wants to develop his/her land will probably not be deterred by lower taxes or a roll-back clause. Use value assessment is valuable however in that it can reduce a farmer's operating costs. It may in fact be an essential component of an effective agricultural preservation policy.

V

Agricultural Land As An Area Of Critical State Concern

This section of the chapter will evaluate a proposed agricultural preservation technique, critical areas, under the proposed State-Local Land Management Bill. First, the critical area concept will be described and evaluated on its general merits. Then it will be examined for its

general merits. Then it will be examined for its effectiveness in preserving agricultural land.

Prime agricultural lands are recognized as an Area of Critical State Concern under the proposed State-Local Land Management Bill scheduled to be voted upon the Rhode Island legislature later this year, (1978). Under the critical area approach, the state could designate certain land areas as requiring special protection and set standards for these areas that local land management ordinances would have to be met. These standards may include the total restriction of development from an area.

The critical areas technique is a subject of national attention. They are in the proposed National Land Use Policy Act as well as the American Law Institute's Model Land Development Code. The philosophical basis of critical areas is that there are certain land use features that it is in the state interest to preserve or regulate. Local governments may be unable or unwilling to protect such areas themselves, so that state must intervene.

Under the Rhode Island legislation, critical areas have a very broad scope. Prime agricultural land is merely one of several areas listed in the bill as containing or having a significant impact upon a natural resource. Other potential critical areas include areas significantly affected by or affecting existing or proposed major public facilities, areas with historical resources of statewide importance, areas of major economic development potential of at least 100 acres of contiguous parcels of land and land within a municipality that at any time within three years after the passage of the

Land Management Bill has no land management ordinance in effect.
(77H 6299-29.93-1)

The critical area approach may appear reasonable on its face. Local government control of land use may, at times, mean that valuable land use features won't be preserved. As discussed above in the case of agriculture, there are economic, ecological and aesthetic costs of allowing these features to be destroyed. The state has asserted its interest in areas such as wetlands and the coastal zone. Critical areas could be considered the logical extension of this assertion.

Critical areas, as proposed in Rhode Island, encourage state regulation of considerable amounts of land now under local control. It is uncertain exactly how much land would be subject to state control, since designation of critical areas is an on-going process and areas may be designated as the need arises. Equally uncertain, are the land use standards that the state will mandate for the different areas. Thus, the state has a rather vague discretion over local land use.

This discretion makes an accurate assessment of the ramifications of critical areas difficult. As Robert H. Nelson points out:

Based on historical experience, it seems almost a rule that new land use controls will eventually be used for purposes never intended by their designers. Court interpretations, popular pressures and other factors tend to be just as important, perhaps more important than designer intent in determining the fate of land use controls.¹⁶

Critical areas should be reviewed with this caveat in mind. In their current form, they appear subject to abuse.

Assuming that critical areas are desirable for Rhode Island, questions remain about their efficacy for agricultural preservation. As will be seen, the state's prime agricultural land is dispersed meaning that several designations would be required before all of it would be preserved. Given the state's broad discretion, there is no guarantee that all or even any of the state's prime agricultural lands would be designated.

Critical areas contain no provision for use value assessment. As stated above, this is an essential part of any land regulatory technique aimed at agricultural preservation. High taxes may drive the farmer out of business. Idle farmland will, within a few years, be covered with secondary growth making it expensive and often economically impractical to return to agricultural uses. Also, as will be mentioned in Chapter V, legal challenges of taking could be raised.

To summarize, although critical areas as a concept may have merit, they also have several problems. Their scope is uncertain and their ramifications are unknown. Even if the critical areas section of the Land Management Bill were passed, there is no guarantee that prime agricultural land would be preserved.

VI

Conclusions

Rhode Island does not at this point have an effective agricultural preservation policy. Green Acres was not primarily intended to preserve agriculture and it appears that an acquisition approach is not viable, at least in Rhode Island. Although use value assessment, as authorized in the Farm, Forest and Open Space Act, is an essential part of a regulatory (as opposed to acquisition) preservation technique, it alone will not preserve agriculture in Rhode Island. Based on the experience of other states, it appears unlikely that use value assessment can deter someone who wants to from developing his/her land. Critical areas, in their proposed Rhode Island form, have limitations both as a general planning technique and as an agricultural preservation tool.

One of the major limitations of the techniques reviewed here may be that they do not reflect Rhode Island's needs. In areas with a different political culture and socio-economic conditions, an acquisition approach to agricultural preservation might be feasible. In more rural areas, use value assessment might be viable with only minor modifications. In areas where there is a tradition of strong state land use control, critical areas could have merit.

The first step to developing an agricultural preservation policy for Rhode Island is to determine what needs this policy must meet. The following chapter will suggest some criteria that can be used to evaluate an agricultural preservation policy. Then, techniques use, and proposed elsewhere in the United States and Canada will be measured against these criteria.

Footnotes

1

Robert W. Sutton Jr., "A History of local government in Rhode Island," in Rhode Island Local Government: Past, Present, Future, ed. Robert W. Sutton Jr. (University of Rhode Island: Bureau of Government Research, 1974), p. 9.

2

State of Rhode Island and Providence Plantations, Twentieth Annual Report of the State Board of Agriculture made to the General Assembly at its January Assembly 1905 (Providence: E.L. Freemont and Sons, 1905), p. 95.

3

Ibid.

4

William P. MacConnel, Remote Sensing Land Use and Vegetative Cover in Rhode Island, Cooperative Extension Bulletin No. 200, (Kingston: University of Rhode Island), p. 49.

5

William Leshner, Land Use Legislation in the Northeast: Rhode Island, A Northeast Regional Research Project 90 Report, (Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975), p. 26.

6

A Report on the Future of Food Production, Marketing, Nutrition and Related Consumers Concerns in New England, (Prepared at the request of the Presidents of the New England Land Grant Universities by the Deans of Agriculture, January 1976), p. 6.

7

Leshner, Land Use Legislation in the Northeast: Rhode Island, p. 28.

8

Phone conversations with State Representative James Auckerman and Steven Morin, Agriculture Division, Department of Environmental Management.

9

Marion Clawson and Harvey S. Perloff, "Urban Land Policy Alternatives for the Future," in Management and Control of Growth, ed. Randall W. Scott, 3 Vols. (Washington: Urban Land Institute, 1975), III: 17.

10

Ibid.

11

Leshner, Land Use Legislation in the Northeast: Rhode Island, p. 23.

12

Melvin R. Levin, Jerome G. Rose and Joseph S. Slavet, New Approaches to State Land Use Policies, (Lexington, Mass: Lexington Books, 1974), p. 49.

13

Council on Environmental Quality, Untaxing Open Space: An Analysis of Differential Assessment on Farms and Open Space, Principal Investigator: John C. Keene (Washington: U.S. Government Printing Office, April 1976), p. 71.

14

Ibid., p. 71-73.

15

C. Lowell Harris, "Property Tax Redesign Options: Productive of Counter Productive," in Property Taxation, Land Use and Public Policy, ed. Arthur Lynn, Jr. (Madison: University of Wisconsin Press, 1976), p. 210.

16

Robert H. Nelson, Zoning and Property Rights: An Analysis of the American System of Land Use Regulation, (Cambridge: M.I.T. Press, 1977), p. 128.

Chapter II

Criteria for an Agricultural Preservation Policy in Rhode Island

I Introduction

This chapter will indicate criteria that an agricultural preservation policy must meet in Rhode Island. Explicit criteria are needed to review the various preservation techniques that are to be presented in Chapter III. Policy makers should keep in mind that these techniques have been used or proposed in states with different conditions than Rhode Island. This means that they should not be applied here without careful examination.

An effective agricultural preservation policy must be congruent with the state's needs. It must reflect specific socio-economic and land use conditions. This chapter will indicate economic, demographic, housing, political and land use conditions relevant to agricultural preservation. Specific criteria which a state agricultural preservation policy must meet will be drawn from these conditions.

II Economic Conditions

The section will review economic conditions relevant to agricultural preservation in Rhode Island. These will include the urban orientation of the state's economy, employment trends and the economic significance of agriculture. The implications of these factors will be discussed.

Rhode Island is a highly urbanized state. Its population is 91.3 percent urban and only eight towns, (Glocester, Foster, West

Greenwich, Middletown, Exeter, Charlestown, New Shoreham and Newport) are not within a SMSA.¹ Most of the state's employment opportunities are in urban areas. The major employment sectors are manufacturing and government respectively.² Agriculture is a very minor employer, less than one percent of the state's labor force is primarily engaged in farming.³

Unemployment is a major concern of many in the state. Although the unemployment rate has been dropping since its peak in 1973, it is still above the national average.⁴ It is understandable then that the creation of sufficient, suitable, employment opportunities for the labor force and a "reversal of the existing unemployment trend will continue to dominate the activities of the state's government."⁵

The highly urbanized population, the relatively low economic significance of agriculture and the high unemployment rate implies that agricultural preservation may have a low priority in Rhode Island. This does not mean that there is a lack of interest in preserving farmland, rather that it is not a major focus of state policy as it is in Hawaii, New York and California. Thus, a successful agricultural preservation policy in Rhode Island must recognize that the state has other priorities. This recognition can be achieved by minimizing conflicts with these priorities. For example, a conflict could arise over the allocation of major sums of money for agricultural preservation that could be used for other programs. Thus, one criterion for agricultural preservation in Rhode Island is that the technique chosen not require extensive expenditures.

To summarize, Rhode Island is a highly urbanized state. It has a higher than average unemployment rate and agriculture plays a very

minor role in the state's economy. Agricultural preservation has a relatively low priority in the state. This implies that an effective agricultural preservation policy must conflict minimally with other state policies. Specifically, an important criterion for an agricultural preservation policy is that the technique be as inexpensive as possible so that it will not divert funds from other needed state programs.

III

Demographic Conditions

This section will discuss demographic trends relevant to agricultural preservation in Rhode Island. Specifically, population movements will be examined. These trends may serve as an indicator of the state's general economic conditions and explain in part why the demand for rural land is increasing. The implications of these trends for agricultural preservation will be emphasized.

Rhode Island as a whole has lost population since 1970. The population of the state as of July 1, 1976 was 927,000, while it was 949,723 in 1970.⁶ This drop is related in part to the navy base closings. It is also an indicator that Rhode Island is not an area with expanding employment opportunities as is the Southwest. The state does not appear to face rapid population growth in the foreseeable future.

There is however a second population movement occurring in Rhode Island. This is the movement from the central cities and more built up suburbs to the less densely populated areas of the state. This can be seen in table one. The table shows that the coastal

TABLE 1
RHODE ISLAND POPULATION TRENDS BY COUNTY, CITY AND TOWN
(in thousands)

	<u>1960</u>	<u>1970</u>	<u>1980¹</u>
<u>Bristol County</u>	<u>37.1</u>	<u>45.1</u>	<u>48.4</u>
Barrington	13.8	17.6	17.6
Bristol	14.5	17.9	19.7
Warren	8.7	10.5	11.1
<u>Kent County</u>	<u>112.6</u>	<u>142.4</u>	<u>166.0</u>
Coventry	15.4	22.9	30.4
East Greenwich	6.1	9.6	11.2
Warwick	68.5	83.7	93.6
West Greenwich	1.1	1.8	2.8
West Warwick	21.4	24.3	28.0
<u>Newport County</u>	<u>81.4</u>	<u>94.2</u>	<u>82.7</u>
Jamestown	2.2	2.9	3.9
Little Compton	1.7	2.7	3.3
Middletown	12.6	16.6	29.3
Newport	47.0	31.0	34.6
Portsmouth	8.2	12.5	13.7
Tiverton	9.4	12.6	14.2
<u>Providence County</u>	<u>568.7</u>	<u>581.5</u>	<u>608.4</u>
Burrillville	9.1	10.1	11.9
Central Falls	19.8	18.7	17.6
Cranston	66.7	74.3	81.2
Cumberland	18.7	26.6	28.9
East Providence	41.9	48.2	54.8
Foster	2.0	2.6	3.5
Glocester	3.3	5.2	6.7
Johnston	17.1	22.0	27.5
Lincoln	13.5	16.2	18.1
North Providence	18.2	24.3	28.8
North Smithfield	7.6	9.3	11.0
Pawtucket	81.0	77.0	75.0
Providence	207.4	179.1	170.1
Scituate	5.2	7.5	8.8
Smithfield	9.4	13.5	15.5
Woonsocket	47.0	48.5	49.
<u>Washington County</u>	<u>59.5</u>	<u>86.2</u>	<u>94.9</u>
Charlestown	1.9	2.9	4.0
Exeter	2.2	3.2	4.4
Hopkinton	4.1	5.4	6.5
Narragansett	3.4	7.1	10.0
New Shoreham ²	.48	.5	.5

TABLE 1 (Continued)

	<u>1960</u>	<u>1970</u>	<u>1980</u>
North Kingstown	18.9	29.8	25.3
Richmond	1.9	2.6	3.6
South Kingstown	11.9	16.9	21.6
Westerly	14.2	17.2	19.0

1
estimated

2
New Shoreham transferred from Newport to Washington County, 1963.

SOURCE: Rhode Island Department of Economic Development, Rhode Island Basic Economic Statistics...the economy, summary and trends 1977-78. p. 41., Rhode Island Statewide Planning Program Rhode Island Population Projections By County, City and Town. April 1975, p. 20

and rural towns have been increasingly rapidly in population. This means that although the state has lost population, the demand for urban land has increased significantly in many parts of the state.

An agricultural preservation policy must recognize the implications of this increase. As indicated in chapter one, urban land uses will easily outbid agricultural uses. Thus, agricultural land in Rhode Island is being put under increased development pressure by this population influx. This means that if market forces are left unguided, the state may lose significant amounts of its remaining farmland. The state has little time left to preserve its 700 farms.

One criterion then for an agricultural preservation policy in Rhode Island is that action must come soon. The policy chosen must be one that is readily implementable. A technique requiring several years to develop and apply would be ineffective, since by then much of the state's farmland might be lost.

To summarize, although Rhode Island as a whole is losing population, its more rural areas are growing rapidly. This means that, irregardless of the state's economic problems, demand for urban land is increasing in many parts of the state. This has put increased pressure on Rhode Island's agricultural land. Therefore, if the state's farms are to be preserved, action must come soon. An important criterion then for an agricultural preservation policy in Rhode Island is that it be readily implementable.

IV

Housing Conditions

In this section, the relationship of housing to agricultural preservation will be discussed. First, the need for low and moderate cost housing will be briefly documented. Then potential direct and indirect impacts of restrictive land use controls on the availability of low and moderate cost housing will be reviewed. Finally, the implications of these impacts for Rhode Island's agricultural preservation policy will be indicated.

Rhode Island has experienced shortages in the production and availability of housing. The migration to the more rural parts of the state and the decreased purchasing power of many households in the state between 1960 and 1970 evidenced "potent restrictions on the capacity of the private market to adequately house the people of Rhode Island."⁷ This implies a need for increased public intervention in the housing market. The state was estimated to need a total of 46,235 housing units as of 1976. Of these, 6,670 units were needed for those with incomes of 6,000 dollars and less a year.⁸

The direct relationship of the availability of low cost housing to land use controls must be made clear. If large amounts of land are limited to non-urban uses, the price of land available for urban uses will increase thus increasing housing costs. This relationship is not rigid however, careful planning can assure that land is reserved for lower cost housing. As will be seen, some preservation techniques impact the housing market more than others.

There is also an indirect relationship between agricultural preservation the availability of lower cost housing. Public expenditures

are necessary to meet the state's housing needs. This means that housing is competing with agricultural preservation for funding. The reiterates the criterion that the preservation technique chosen for Rhode Island require minimal expenditures of funds.

To summarize, there are potential direct and indirect impacts of agricultural preservation techniques on the supply of low and moderate cost housing. Restrictive land use controls may limit the land available for housing. An expensive preservation technique would divert funds from other needed sources such as subsidized housing. An important criterion for a state agricultural preservation policy then would be minimal direct and indirect impact on the supply of lower cost housing. The various techniques will be reviewed with this criterion in mind.

IV

Political Conditions

This section will present the political framework within which an agricultural preservation policy must be developed. Reviewed here are attitudes towards state control of land, the political influence of farmers and farmowners and their attitude towards agricultural preservation and the recent increased interest in agricultural preservation. Voter willingness to fund a preservation scheme is also discussed.

An agricultural preservation policy in Rhode Island must recognize the tradition of local political control. Town governments have been traditionally very strong in Rhode Island. According to Elmer Cornwell,

the towns are very reluctant to see more planning power go to the state.⁹ An indicator of this reluctance may be the substantial political resistance that the State-Local Land Management Bill initially faced.

It should be made clear however that the political preference for local control is not absolute. There are precedents for state intervention into local land use in Rhode Island. A notable example can be seen with the Coastal Resources Management Council Act Of 1971, (G.L.R.I. 46-23-1-16.) This legislation gave the state authority to regulate certain land use activities in the coastal zone. Thus, there is some flexibility in the tradition of local control. If a clear need for a particular state intervention can be expressed, it may be politically acceptable to the state's voters.

In some states, farmers have been a significant group lobbying for agricultural preservation. This is not the case in Rhode Island. The farmer in this state has little political influence, primarily because of the fractional percentage of people employed in agriculture.

Moreover, it is unclear if the state's farmers and landowners are interested in a long range preservation policy. This may be the major dilemma of agricultural preservation in a relatively urbanized area such as Rhode Island, where substantial profits may be realized by converting farmland into more intensive uses. Farming is generally not a well paying occupation, for many, the financial reward comes at retirement when the farm is sold to developers or speculators. Some may be committed to keeping their land in agriculture, but would want to retain the right to sell should extra cash suddenly be needed. Thus, a policy

that would prohibit the conversion of agricultural land to higher uses may be strongly opposed by many of its owners.

Political interest in agricultural preservation has been increasing. There are currently two preservation bills before the legislature and a third is being prepared by the Department of Environmental Management. (These bills will be described in the following chapter.) Governor Garrahy has expressed interest in agricultural preservation and is supporting the bill sponsored by DEM.

It is less clear however if there is a deep commitment to preserving the state's farmland. An effective preservation policy will require perseverance and some landowner and local government sacrifices. There is a definite reluctance among voters to fund a farmland protection scheme. It is very unlikely that any of the three preservation bills currently proposed in the state will be funded.¹⁰ This reiterates the criterion that a preservation technique in Rhode Island must not require large expenditures.

To summarize, the towns are generally reluctant to relinquish planning control to the state. Although farmers and farmowners are a very small group in Rhode Island, at least some will strongly oppose legislation that would deprive them of the right to develop their land without compensation. Interest in agricultural preservation is increasing, but it is unclear if there is a strong commitment by many in the state to saving Rhode Island's farmlands.

From this discussion of the state's political climate, another criterion for a Rhode Island agricultural preservation policy can be derived. The technique chosen must respect the tradition of local political control. As will be indicated, some state intervention is

necessary to protect the state's farmlands. The techniques will thus be reviewed on the extent and nature of their impact on local governments.

V

Agricultural Land Use Conditions

This section will review agricultural land use characteristics relevant to developing a preservation policy. First, the amounts of farmland in the state will be given. Tentative definitions of prime and unique land will be developed and the acreages of each will be indicated. The reasons why only these lands will be protected by the state will be explained. The locations of the state's prime land will be listed. The section will then discuss why all the state's prime and unique land must be protected.

It must be emphasized that Rhode Island does not have large amounts of productive farmland. Under a very broad definition that included uses such as heath and the powerline rights of way, William MacConnel estimated that 13 percent of the state was in agriculture.¹¹ There were only 45,801 acres of agricultural land in intensive uses, (tilled, cranberry bogs, orchards and nurseries,) or 6.5 percent of the land area of the state.¹² Only a portion of this intensive land is capable of sustaining significantly profitable farm operations.

The most socially and economically valuable farmlands in the state are the prime and unique lands. It is difficult to define prime agricultural land since there are many factors that may make a given parcel of land productive. The definitional problem will be dealt with in greater detail later in this thesis-project. A working definition

of prime farmland could be the land currently being farmed or which could readily be put into agricultural uses that has soils and operating characteristics that make it the most suited land for agriculture in the state.

Unique agricultural land is relatively easy to define. It is the land whose soils may not be the best, but still produces a rare or needed crop.¹³ The only land that would be considered unique in Rhode Island would be cranberry bogs.¹⁴ According to MacConnel, there were 3,474 acres of cranberry bogs in the state in 1970.¹⁵ Preserving cranberry bogs would in most cases involve little conflict with other uses since their poorly drained soils limit their suitability for urban development. They are also protected under state wetland laws.

A precise acreage of prime agricultural land cannot be arrived at here. A rough estimate can be made with an update of a 1961 study by Arthur D. Jeffrey. Through a windshield survey of the entire state, he estimated that there were about 10,000 acres of farmland with good soils and a sufficient land base to support an economically viable agriculture.¹⁶ Approximately 273 acres of this land has gone into urban uses as of 1975.¹⁷ A qualification must be made about this update, it would be dangerous to assume that all land not converted into urban uses is still in or could readily be put into agriculture. For lack of better data however, it will be assumed that there are still approximately 10,000 acres of prime agricultural land in Rhode Island.

Only the prime and unique agricultural lands should be protected by the state. The other farmlands, often not capable of sustaining a substantial profit, would be an inappropriate target for a state preservation policy. One reason for this is the legal ramifications of prohibiting

development on land which does not have a reasonable economic use. Another reason is that a policy controlling 6.5 percent of the state's land area might encounter hostility.

Prime and unique agricultural land comprise about 13,500 acres or about 1.9 percent of the state's land area. Although other definitions of prime might include more land, the amount would probably still be a comparatively minor portion of the state's land area. This indicates that the state could implement a restrictive agricultural preservation policy without unduly affecting the amounts of land needed for other uses.

The small amounts of prime and unique land indicate the scarcity of good farmland in Rhode Island. This means that the state cannot afford to pick and choose among its prime lands as some states have done. There have been predictions that if present trends continue, the state will soon be farmless, one source claims this may happen as early as 1984.¹⁸ This implies that all the state's prime and unique land must be permanently preserved. It also re-iterates the criterion mentioned above that action on an agricultural preservation policy for Rhode Island must come soon.

This section will now discuss the location of the state's prime agricultural land and the implications this may have for a preservation policy. Rhode Island's prime land is in three major clusters, one in western Cranston, Johnston and Scituate, another in North Kingstown, South Kingstown and Exeter and one in Tiverton and Little Compton. There are also smaller tracts in Westerly, Hopkinton, Cumberland and Coventry.

Agricultural land in Rhode Island is thus dispersed and in relatively small clusters. This implies that if the state is committed to preserving its farmlands, it must take a statewide approach. The towns have not been preserving the prime and unique lands on their own. Although state guided preservation may interfere with the tradition of local control, it is necessary in this case. As indicated earlier, ways must be found to minimize and mitigate the impact of this state control.

To summarize, Rhode Island does not have large amounts of farmland and only about 13,000 acres of prime and unique land. Due to its scarcity, all prime and unique agricultural land in the state must be permanently limited to agricultural uses. This land must be controlled by the state since the towns have been unable or unwilling to preserve it on their own.

One criterion drawn from this discussion of the state's farmland is that all prime and unique land must be permanently preserved from non-farm development. Another criterion is that effective preservation action will only come from the state level. The scarcity of prime and unique land further emphasizes that action to preserve the state's farmland must come soon.

VI

Conclusions

Several criteria for a state agricultural preservation policy have been drawn from this chapter. One is that the technique chosen recognize that the state has other priorities. This recognition can be achieved by requiring that the technique be as inexpensive as possible so that large amounts of resources will not be diverted from other needed programs.

An effective agricultural preservation policy must be able to be quickly implemented. Increased population pressures in the less urban parts of the state mean that agricultural land is under continued demand for other uses. If preservation action does not come soon, large portions of the state's remaining prime agricultural land may be lost. Since farmland is so scarce in Rhode Island, all prime and unique agricultural land must be permanently preserved.

The political tradition of local government control of land use must be recognized by the preservation technique chosen for Rhode Island. Although state intervention is necessary, it should be minimized. The technique must also have minimal impact on the availability of land for housing.

Footnotes

- 1
Rhode Island Department of Economic Development, Rhode Island Basic Economic Statistics 1977-78, (Providence: Rhode Island Department of Economic Development, 1977), p. 47.
- 2
Ibid., p. 65.
- 3
Ibid., p. 177.
- 4
Ibid., p. 87.
- 5
American Institute of Planners Research Office, State Land Use Activity, (Washington: U. S. Department of Housing and Urban Development, HJD Research Contract No. 2275, January 29, 1976), p. 37.
- 6
Rhode Island Department of Economic Development, Rhode Island Basic Economic Statistics, p. 39.
- 7
Rhode Island Department of Community Affairs, Housing Assistance Section, Information Report: The Outlook for Housing-Rhode Island to 1976 (Providence: Rhode Island Department of Community Affairs, May 1971), p. 2.
- 8
Ibid., p. 3.
- 9
Elmer E. Cornwell, "The Politics of Local Government," in Rhode Island Local Government, Past, Present and Future, ed. Robert W. Sutton, (Kingston: Bureau of Government Research, University of Rhode Island, 1974,), p. 62.
- 10
From conversation with Steven Morin, Division of Agriculture, Department of Environmental Management, Susan Morrison, Division of Statewide Planning, State Representative James Auckerman.
- 11
William P. MacConnel, Remote Sensing Land Use and Vegetative Cover in Rhode Island, (Kingston: Cooperative Extension Service, Bulletin No. 200, University of Rhode Island, 1974), p. 24.
- 12
Ibid., p. 24, 49.

13

Thomas E. Fenton, "Definitions and Criteria for Identifying Prime and Unique Lands" in Perspectives on Prime Lands: Background papers for the Seminar on Retention of Prime Lands, (Washington, D.C.: U. S., Department of Agriculture, July 1975), p. 143.

14

Ibid.,

15

William P. MacConnel, Remote Sensing Land Use and Vegetative Cover in Rhode Island. p. 49.

16

Figure measured by the author with a planimeter on Rhode Island Development Council Planning Division, Economic Classification of Non-Urban Land (map issued by the Rhode Island Development Council Planning Division, 1961).

17

This figure was arrived at through the author's measurements of April 1975 aerial photographs of the State of Rhode Island for the amount of land that had gone out of agriculture since 1961. The 1960 data were derived from notations on U. S.D.A. 1951 air photos of the state which were made by Arthur Jeffrey's team during their windshield survey of the entire state.

18

William Leshner, Land Use Legislation in the Northeast: Rhode Island, A Northeast Regional Research Project 90 Report, Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975,) p. 26.

Chapter III

A Survey of Agricultural Preservation Techniques

I Introduction

In this chapter, various agricultural preservation techniques will be surveyed and evaluated in terms of the criteria developed in Chapter II. The techniques reviewed here are state controlled zoning as currently exists in Hawaii, agricultural districts, transfer and purchase of development rights and specialized state zoning of a particular land use feature.

State controlled zoning and agricultural districts are discussed only briefly since a quick review indicates that they are not suitable for Rhode Island. More in-depth treatment is given to the other techniques. A judgement is made on the suitability of each technique for Rhode Island.

II

State Controlled Zoning

In Hawaii, all land is zoned by the state. The classifications are rural, urban, conservation and agriculture. Studies have shown that the Hawaiian zoning system has cut deeply into the supply of low and moderate cost housing.¹ The criterion of minimal conflict with housing needs is clearly not met by this technique. Hawaii has very different social and political traditions than Rhode Island. 85 percent of the land in the state is held by less than 100 individuals, corporations, trusts and the government.² There is a clear corporate interest in preserving the state's large plantations.

Hawaii has a tradition of centralized land use control dating back to the Polynesian Monarchy.³ Such centralization of planning power in Rhode Island would clearly not meet the criterion of minimal interference in local land use control. Even if the political barriers could be overcome, and it appears certain that they could not, the technique would probably not meet the criterion of being readily implementable. By the time the state's planning process could be restructured, much of Rhode Island's prime and unique land might be lost.

To summarize, state controlled zoning is definitely not suited for Rhode Island. It would have significant negative housing impacts. It was developed in a state with very different conditions than Rhode Island. Politically, the technique is unrealistic given the preference in this state for local land use control.

II

Agricultural Districts

The agricultural district approach to agricultural preservation was developed in New York. A group of adjacent farmers who desire to keep their land in agriculture who have a minimum of five hundred acres of land between them may petition the county legislative body to be declared a district. The minimum size requirement provides the farmers with protection from encroachment from urban uses. The district is usually approved if found to be located in an agriculturally viable area and agricultural uses within that area would be in accordance with state and county plans.⁴

Those owning farmland within the boundaries of a district agree to keep their land in agriculture. Their land in return is assessed at farm value. In addition, local governments may not enact ordinances that would restrict or prohibit farm operations within the district beyond the requirements of health and safety. Another protective measure is the mandate that public agencies give serious consideration to alternative sites before district farmland can be taken by eminent domain. Also, the construction of utilities that might encourage non-farm development is limited or prohibited. The power of special tax districts to tax agricultural land is similarly limited.⁵

Agricultural districts have been popular with landowners in New York. About one-fourth of the state's farmland is now in districts.⁶ The approach however would probably not be practical for Rhode Island. Since farmland in Rhode Island is dispersed, it would be difficult to form districts. It would definitely not be suitable for the smaller tracts of prime and unique land in the state.

The technique has been employed mainly in the more rural parts of New York. Much of "rural" Rhode Island would be considered semi-rural or semi-suburban by New York standards. The districts have not been formed closer to New York's cities. Farmowners there have been reluctant to commit their land to agriculture since a substantial profit could be realized by selling it for urban uses.⁷ As indicated in the previous chapter, many farmowners in Rhode Island are not willing to commit their land to agriculture. This means that the criterion of perserving all of the state's prime and unique land would not be met by agricultural districts.

To summarize, agricultural districts are suitable to areas more rural than Rhode Island where there is landowner commitment to preserving farmland. The technique would probably not be applicable to Rhode Island. Most farmland in the state is not in sufficiently large clusters to constitute a district. Many landowners in the state are not willing to commit their land to agricultural uses.

III

Transfer of Development Rights

Transfer of Development Rights (TDR's), or Development Right Transfers (DRT's) are relatively recent planning tools in the United States, although they have been used in England since 1947. In fact, according to a March 1977 source, there are only seven TDR ordinances being used to preserve open space and agricultural land in this country, (the approach is also used in historic preservation and to control density in large cities.)⁸

The TDR concept recognizes that the landowner possesses rights that can be separated from the land. For example, a landowner may sell or lease mineral rights or the right of access. Similarly, the right to develop may be transferred or sold. An area wishing to employ TDR's to preserve agricultural land would designate a preservation and a development district. The goal of the technique is to channel growth from the preservation district into the development district.

The number of development rights for a given type of construction in the development district would be specified. A higher density land use would require additional development rights. The owners of land

in the preservation district would receive certificates of development rights in an amount that "represents the percentage of assessed value of all undeveloped land in the jurisdiction."⁹ If a landowner in the development district desired to develop his/her land at a higher density than normally permitted, he/she would have to purchase development rights from the landowners in the preservation district. Once the landowner has parted with the right to develop, that land is permanently restricted to non-urban uses.

A jurisdiction wishing to employ TDR's must have a master plan clearly specifying which land is to be preserved and which land is to be developed. In addition, there must be demand for construction in the development district. This demand must exceed what is permitted by the density controls.¹⁰ For example, if the minimum lot size in the development district is one acre, there must be sufficient demand for higher density dwellings so that it is economically worthwhile for the developer to purchase additional rights.

TDR's do meet the criterion of minimal cost. Although the technique would have some administrative costs, most of the financial costs would be carried by those wishing to develop the land. Those in the preservation district receive compensation when they part with the right to develop. The approach thus has the potential of mitigating any hostile reactions of farmland owners towards a strict preservation policy. Since development rights are permanently transferred, the criterion of permanency is met. There are no property tax losses with TDR's since the assessment is transferred along with the right to develop.

TDR's would have difficulty meeting some of the other criteria developed in this project for an agricultural preservation policy in

Rhode Island. It is such a new technique that its implications have not been fully explored. As Costinis says: "the pick and shovel work to be done on DRT's is Herculean."¹¹ The planning processes of the towns would have to be substantially restructured before TDR's could be employed. Thus, the technique would not meet the criterion of being readily implementable.

TDR's may also negatively impact the availability of lower cost housing. Mandelker fears that TDR's may distort police power controls. In order to create a demand for development rights, a TDR ordinance may have to starve the market. Such an ordinance would mean severe restrictions on development without the purchase of supplemental development rights. Mandelker feels this has enormous legal implications.¹² One clear implication is that the price of development rights will increase the cost of low and moderate income housing.¹³ The TDR approach thus would not appear to meet the criterion that the state's agricultural preservation policy interfere minimally with the availability of lower cost housing.

Transfer of development rights would probably not meet the criterion of preserving all of the state's prime and unique agricultural lands. There is no guarantee that any rights would be actually transferred from the state's farmland. Very few development rights have been exchanged in the communities currently employing TDR's. In fact, according to a 1977 source, no development rights have been sold by owners of open space and agricultural land to other landowners.¹⁴ There is an apparent reluctance among landowners to exchange the rights.

To summarize, although TDR's offer an inexpensive and permanent way to preserve agricultural land, they do not appear suitable for

Rhode Island. TDR's require substantial time to implement. They would increase housing costs. There is no guarantee that sufficient development rights would be transferred to preserve all or even a substantial portion of the state's prime and unique lands.

IV

Public Purchase of Development Rights

The public purchase of development rights (PDR's) differs from TDR's in that the right to develop is purchased by the government. PDR's would appear to meet several of the criteria for an agricultural preservation policy in Rhode Island. The purchase of the right is permanent, so the criterion of permanency is met. The technique focuses only on the land to be preserved, it does not add to the direct cost of non-agricultural land as do TDR's. Thus, there is minimal direct interference with the housing market.

In some PDR schemes, the sale of the right to develop is optional. Given the criterion that all the state's prime and unique lands must be preserved, it is clear that the sale of development rights must be mandatory in Rhode Island. This approach would probably be resisted by some affected landowners. They would however receive significant compensation, the price of the rights may run as high as 90 percent of actual land value.¹⁵ This compensation provides farmers with funds that can be used to invest in farmland improvements.

PDR's are gaining political acceptability. A pilot PDR bill was passed in Massachusetts in December 1977. A similar bill is before the Connecticut legislature. PDR's are also being employed on a trial basis in New Jersey. The implementation of these acts should be followed closely by Rhode Island policy makers. The experiences of these states

may indicate problems and potentials of the technique not dealt with here. Although PDR's have many advantages, they do fail to meet the key criterion of minimal cost. As discussed above, the cost of purchasing development rights is almost as much as fee simple acquisition, eminent domain court cases may result in grossly inflated payments to the landowner. Furthermore, as mentioned in Chapter II, Rhode Island voters do not appear willing to adequately fund such a scheme.

To summarize, PDR's would appear to have many advantages for agricultural preservation in Rhode Island. They have little direct impact on the availability of low cost housing. A mandatory acquisition scheme could mean that all the state's prime and unique agricultural would be preserved. Although landowners may resent being deprived of the right to develop, PDR's at least offer them compensation, while some other techniques do not.

Although PDR's are gaining popularity among state governments, it is less clear if they will be adequately funded. It appears virtually certain that they will not be sufficiently funded in Rhode Island, at least for the next few years. This limits their viability for agricultural preservation. Policy makers however should carefully consider PDR's. If federal financing were to become available, they might be an effective way to save the state's farmlands. This project however will attempt to find a less expensive technique.

V

Specialized State Zoning

Specialized state zoning involves the direct or indirect state control of a particular land resource. It differs from state controlled zoning in that only one portion of the state's land is involved such as the coastal zone or wetlands, instead of the entire state.

Specialized state zoning for agricultural land was proposed in California in 1974. The legislation would have created a State Agricultural Resources Council which would identify, classify and map prime agricultural land in the state. Subdivisions of less than 80 acres would not be permitted on the prime lands. The towns could request that a given parcel of farmland be excluded from the prime classification. But once the Agricultural Resources Council had decided on the classification, it would be considered "final and conclusive in the absence of fraud or prejudicial abuse and discretion."¹⁶ The only non-farm development permitted on the prime lands would be public facilities such as power lines. The subdivision restriction would not be substantially modified or removed in the foreseeable future.¹⁷

State mandated exclusive agricultural zoning, as proposed in California, would appear on its face to have many advantages for Rhode Island. It could be implemented relatively quickly and inexpensively, It could permanently preserve all the prime and unique lands in the state. The technique however does imply interference with local land use controls.

VI

Conclusions

State controlled zoning is clearly unsuited for Rhode Island. Agricultural districts were developed in New York where farming conditions are very different from this state. They appear inappropriate in an urbanized area such as Rhode Island. TDR's appear to have limited potential for preserving farmland in Rhode Island. It is doubtful that sufficient rights would be transferred to protect significant amounts of the state's prime and unique land.

PDR's may well have potential for preserving agriculture in Rhode Island. Their major limitation is their cost. It is doubtful that they will be funded in the next few years. This means a less expensive technique must be found.

An alternative may be state mandated exclusive agricultural zoning. The next chapter will describe in detail how this technique might be applied to Rhode Island. The following chapters will discuss the problems of exclusive agricultural zoning and its viability for Rhode Island.

Footnotes

1

U. S. Council on Environmental Quality, prepared by Fred Bosselman and David Callies, The Quiet Revolution in Land Use Controls, (Washington, D.C.: U. S. Government Printing Office, 1971), p. 25 and R. Robert Linowes and Don T. Allensworth, The States and Land Use Control, (New York: Praeger Publishers, 1975), p. 61.

2

Linowes and Allensworth, The States and Land Use Control, p. 61.

3

Council on Environmental Quality, Quiet Revolution in Land Use Controls, p. 6.

4

William Leshner. Land Use Legislation in the Northeast: New York, A Northeast Regional Research Project, (Ithaca: Cornell University Agricultural Experiment Station, Northeast Center for Rural Development, December 1975), p. 27-28.

5

William Bryant and Hugh Conklin, "New Farmland Preservation Programs for New York," Journal of the American Institute of Planners, 40 (November 1975), p. 391-392.

6

Joseph P. Sullivan, "Agricultural Districts: The New York Experience," in Land Use: Tough Choices in Today's World, The Proceedings of a National Symposium, (Ankeney, Iowa: Soil Conservation Service of America, March 1977), p. 125.

7

Leshner, Land Use Legislation in the Northeast: New York, p. 30.

8

John C. Keene, "Transferrable Development Rights: An Evaluation" in Land Use: Tough Choices in Today's World. The Proceedings of a National Symposium, (Ankeney, Iowa: Soil Conservation Service of America, March 1977), p. 254.

9

Melvin R. Levin, Jerome G. Rose and Joseph S. Slavet, New Approaches to State Land Use Policies, (Lexington, Mass: Lexington Books, 1974), p. 62.

10

John J. Costinis, "Development Rights Transfer: Descriptions and Perspectives for a Critique" in Management and Control of Growth eds. Randall W. Scott with David J. Brower and Dallas D. Miner, (Washington: Urban Land Institute, 1975) 2:96.

- 11
Daniel R. Mandelker, "Putting Together the Policy and Legal Decisions." in Land Use Tough Choices for Today's World, p. 423.
- 12
Keene, "Transferable Development Rights: An Evaluation", p. 254.
- 13
Ibid.
- 14
Steven Woodbury. "Transfer of Development Rights: A New Tool for Planners." Journal of the American Institute of Planners, 41 (January 1975):5.
- 15
Richard C. Collins, "Agricultural Preservation in a Land Use Planning Perspective." in Perspectives on Prime Lands: Background Papers for the Seminar on the Retention of Prime Lands, (Washington, D.C. U. S. Department of Agriculture, July 1975), p. 34.
- 16
Ibid.
- 17
Ibid.

Chapter IV

How State Mandated Exclusive Agricultural Zoning Might Be Applied to Rhode Island

This chapter will discuss how state mandated exclusive agricultural zoning might be applied to Rhode Island. The first part of the chapter will introduce the reader to the concept of state specialized zoning. Some differences between using this technique for preserving agriculture and certain other natural resources will be pointed out. Then drawing from the examples of British Columbia and the California Assembly 15 mentioned in Chapter II, some general policy steps that Rhode Island might take to implement exclusive agricultural zoning will be presented.

The chapter will then attempt to deal with the fiscal problems of exclusive agricultural zoning. It is assumed that use or farm value assessment will be an integral part of the zoning scheme presented here. To reduce local property tax losses, the granting of state tax subsidies to local communities will be proposed.

II

An Introduction to State Specialized Zoning

State governments have been increasingly extending their land use authority. There are many examples of state mandated protection of particular natural resources. For example, twenty-one states had wetlands management acts of 1976.¹ Another example is with state shoreland protection laws. Maine has mandatory shoreline zoning. If a municipality does not develop zoning regulations within 250 feet of the shoreline, the state can establish a development moratorium

for that area until an ordinance is developed.² In Tennessee, the Tennessee Scenic River Act regulates what uses are permitted along scenic rivers.³

In Rhode Island, the Coastal Resources Management Law (G.L.R.I. 46-23-1-16) authorizes the Coastal Resources Management Council to adopt regulations over land use activities that might have damaging effects on the coastal environment. Regulations have been promulgated prohibiting development on undeveloped barrier beaches.⁴

These examples indicate that there are precedents for the state directed land use control of natural resource areas. A state directed agricultural zoning law could be developed with a rationale similar to many of the laws mentioned here. Agriculture is a valuable natural resource that like shorelands or the coastal zone is in many cases not receiving the protection needed by local communities if it is to be preserved.

There are some differences between agricultural land and some of the other natural resources that have been the target of state control. First, agricultural land is often considered by developers as among the lands best suited for urban uses. It is open and usually flat thus requiring minimal site preparation. Wetlands, floodplains and barrier beaches by comparison have several immediate physical constraints to development. Many landowners, if properly informed would probably be reluctant to construct buildings on land subject to regular flooding. The destruction wrought by the 1938 hurricane illustrates the risks inherent in construction on barrier beaches. There are no comparable direct risks involved in construction on prime agricultural land except when it coincides with other hazard areas such as floodplains.

This means that the costs of construction on agricultural land are not readily visible to the individual landowner.

The benefits of preserving agriculture in Rhode Island are just beginning to be recognized while the value of the coastal zone is comparatively well appreciated. Arguments can easily be made that agriculture fulfills many open space functions and adds to the quality of life in the state. Such benefits however are not as tangible as those associated with the preserving of the coastal zone such as protecting the state's economically important fishing industry.

However, the intrinsic values of agriculture may be increasingly important to Rhode Island in the future. Although prime agricultural land in Rhode Island may be less productive than that of Iowa or California, other factors may increase Rhode Island's competitive advantage. One is that food shipment costs are rising. This means that it may be more economical to produce some crops locally. Droughts in other parts of the country may also make Rhode Island more attractive agriculturally. This is not to imply that Rhode Island will become a major agricultural state, but rather that its prime lands have definite agricultural importance.

It appears then that one task that policy makers face is to publicize the importance of agricultural preservation. If the rationale for preserving the state's prime and unique lands is not made clear, the legislation proposed here will not receive support comparable to that received by other state land use regulations.

To summarize, many state governments have expanded their role in land use control. Many valuable resources are now protected by the

states. Since agriculture is a scarce natural resource in Rhode Island, it would appear an appropriate target for state land use regulation.

III

How State Directed Zoning Could Be Applied to Prime and Unique Agricultural Lands in Rhode Island

In this section, specific actions that the state could take to implement exclusive agricultural zoning will be presented. The legislation discussed here has been influenced by the British Columbia preservation policy and the proposed California Assembly Bill 15 mentioned in Chapter II.⁵ The British Columbia Act will be briefly reviewed.

After this review, the first phase of the agricultural preservation policy proposed here for Rhode Island will be presented. The state's prime and unique agricultural lands must be identified. The problems entailed in this phase will be discussed and some guidelines for identification will be suggested. Then, the process by which the lands would be restricted from development will be explained. There will then be a short discussion of how and when development would be permitted on the restricted lands.

British Columbia's Land Commission Act

There are few policy models to help explain how state directed exclusive agricultural zoning might be applied to Rhode Island. The closest United States example is California's Assembly Bill 15. The bill however was drafted for very different land use conditions than exist in Rhode Island. A similar act was implemented in British Columbia. The British Columbia Land Commission Act was in response to problems

similar to those faced by agriculture in Rhode Island. Although a large Province with vast tracts of open space, most of British Columbia's farmland is concentrated in two valleys where there are intense pressures for urban expansion.⁶ Thus, like Rhode Island, agricultural land in British Columbia is scarce and in demand for other uses.

Recognizing that the Province could lose all its prime farmland, the Provincial government ordered an agricultural land freeze in December 1972. This meant that subdivisions or non-agricultural uses of farmland were prohibited.⁷ The land freeze was a form of interim control until a permanent act could be drafted.

In 1973, the Provincial legislature passed the Land Commission Act. The act created a Land Commission with broad authority to regulate the use of farmland in the Province. It established Agricultural Land Reserves (ALR's), or zones of exclusive agricultural use.⁸ The Commission identified those lands with soils and operating conditions best suited for agriculture. The regional governments were required to submit ALR plans for these lands. Urban development would not be permitted within the ALR's.

The Land Commission Act had mechanisms for citizen input into the drawing of the ALR maps. There were provisions for an appeals process for subdivision permits and requests for exclusion from the ALR's. Subdivision would be permitted only if the Land Commission felt that a smaller size parcel would lead to more efficient agricultural use. Most requests for exclusion from the ALR's are not approved.⁹

There are many differences between British Columbia and Rhode Island. But the Land Commission Act and California's A.B. 15 can

suggest steps that Rhode Island might take to implement exclusive agricultural zoning. The agricultural land freeze was a form of interim control in British Columbia. Rhode Island should consider implementing similar controls while final regulations are being developed. The advantage of such controls would be to prevent last minute changes of farmland to a higher use while the act is being implemented.

The legal and political implications of interim controls should be researched. Such controls have been generally upheld in court if they are used pending the adoption of permanent zoning controls, "are reasonable and related to the health, safety or general welfare of the community."¹⁰

How to Define Prime Agricultural Land

Both the Land Commission Act and the Assembly Bill 15 had provisions by which prime agricultural lands would be identified. In California, an Agricultural Resources Council would be created with the responsibility for identifying, classifying and mapping prime agricultural land. A similar inventory phase existed in the Land Commission Act.

Defining and mapping prime and unique land is a complex task, which would best be handled by a state agency in Rhode Island. One possibility would be to create an Agricultural Land Preservation Advisory Commission which could work with the Department of Environmental Management, this is proposed in a PDR bill currently before the Rhode Island General Assembly.¹¹ Policy makers can offer the agency some general guidelines by which lands might be defined. The

final criteria for determining prime and unique classifications must be clear. This is important if appearances of seemingly unequal classification which may cause landowner resentment are to be avoided.

The criteria used to identify prime and unique lands should reflect Rhode Island's needs. There are limitations in the State-Local Land Management Bill's definition of prime agricultural land which is "as defined for Rhode Island by the soil conservation service of the U.S. Department of Agriculture."¹² This definition is:

land best suited for producing food, feed, forage ornamental plants, sod fiber, and oilseed crops and also available for these uses: (the land could be cropland, pastureland, forest land, or other land but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to produce sustained high yields of crops economically when treated and managed, including water management, according to modern farming methods.¹³

A major problem with the SCS definition is that it does not indicate the actual use of the land. The ambiguous term "or available for these uses" needs clarification. What constitutes availability? As discussed in Chapter I, fallow agricultural land will within a few years become covered with secondary growth. A more precise definition might specify that the land either be in agriculture or be available for agricultural uses with a minimum of site preparation. This would reduce the likelihood of land requiring extensive clearing being considered as prime.

The SCS term "high yields" needs clarification. One approach that has been recommended is to develop an index of relative productivity.¹⁴ Only the most productive lands in the state should

be considered prime. The index should measure the productivity of all plant and animal products produced for commercial purposes. This would allow for uses not always considered agricultural such as turf to be included in the definition. Land in turf is valuable since it could be converted back to the production of food.

Although some reasonably clear guidelines for the definition of prime agricultural land have been advocated here, the definition must be flexible at the same time. Agricultural technology is subject to change, this means that at some future date different lands may be considered prime.¹⁵ Thus, the legislative mandate to the agency responsible for definition might stipulate that revisions will be necessary if there are significant changes in agricultural techniques.

To summarize, the prime agricultural land definition used for exclusive agricultural zoning must reflect Rhode Island's needs. Although the legislature itself could not classify the prime and unique lands in the state, it can designate an agency to carry out this task and give this agency some general guidelines on how these lands might be defined. The SCS definition would be inadequate since it encompasses much land currently in agriculture and includes land that is relatively unproductive.

The Restriction of Development from the Classified Lands

Once the agricultural land inventory had been completed, the towns with prime and unique land would be required to enact ordinances prohibiting development on these lands. Similar to the Maine Shorelands Law, the state would enact ordinances for prime and unique lands not protected by the municipalities.

The interim controls would be lifted for the other agricultural lands in the state after exclusive agricultural zoning ordinances were implemented for the prime and unique lands. Municipalities however would be given the authority to extend exclusive agricultural zoning to other agricultural land. Those towns committed to agricultural preservation could thus enact stronger ordinances. They may however risk legal challenges of "taking" if they prohibited development on the more marginal farmland.

An exclusive agricultural zoning ordinance must determine the types of development permitted on the prime and unique lands. A total prohibition would interfere with farm operations. Farm related development such as the construction of barns, tool sheds and roadside stands must be permitted if the goal of agricultural preservation is to be achieved.

The permission of residential development on the protected lands deserves very careful examination. A total prohibition of housing construction would be a hardship. A farmer with an expanding family would be unable to add on to his/her house. Difficulties could arise in adequately housing farm laborers and their families. On the other hand, a relatively permissive approach to residential development could result in the incremental conversion of prime and unique farmland to urban uses. Over time, this could result in the loss of significant amounts of farmland.

A compromise approach would be to allow development in special circumstances by permit. A permit would be issued only after a hearing by the local planning board where the applicant would establish a clear need for a residential dwelling for either the

owner of the farm or its employees. These permits would be subject to approval by the Agricultural Resources Council. No permits would be issued if a definite need for the dwelling weren't shown by those connected with the operating of the farm.

Other types of development would be allowed in unusual circumstances. For example, non-agricultural uses should be permitted during a national or state emergency "for a facility or activity which is necessary for public health, safety or welfare."¹⁶ Public utilities should also be permitted if the consequences of using alternative sites were found more disruptive than using farmland. For example, prime agricultural land should not take precedence over a residential area or a critical natural resource. Since much of Rhode Island's farmland is surrounded by woodland or wasteland, it would usually be easy to find alternative sites for public utilities.

Since not all circumstances in which farmland might be needed for other uses can be anticipated, it appears that an agricultural land appeals process is necessary. This could be done through the Agricultural Preservation Advisory Commission. The Commission would hear requests for exclusion from the prime and unique land classification. Exclusions would be granted only when a town could prove that a classification caused a major hardship to the community as a whole. This would give exclusive agricultural zoning the flexibility needed to permit non-agricultural uses of prime and unique land should some unexpected event occur.

To summarize, only farm related development would be normally permitted on prime and unique agricultural lands. Emergency facilities would be allowed as well as public utilities if alternative sites

were unfeasible. Since unforeseen events in the future may make a prime or unique classification unreasonable, an appeals process to request exclusion from such a classification would be necessary.

IV

State Compensation for Tax Losses Resulting from Use Value Assessment

In this section, the granting of state subventions (tax subsidies) to local communities with prime and/or unique land will be discussed. The subventions are proposed to remove the burden placed on the towns by use value assessment.

As has been discussed, use value assessment would be an essential part of any agricultural preservation policy under the police power. In 1975, Rhode Island property taxes averaged about 29.1 percent of farm income. Only Massachusetts at 40.8 percent, New York at 31.4 percent and New Jersey at 31.5 percent taxes at higher percentages of farm income. The national average (excluding California at 24.7 percent) was 8.1 percent of farm income.¹⁷

The impact of high taxes on Rhode Island farmland has been discussed by Richard B. Davis and Arthur D. Jeffrey. After interviewing 33 or the 39 tax assessors in the state, they decided that taxes of over 20 percent of net farm revenue put "definite" pressure on commercial agricultural land. Taxes of between 10 and 20 percent put "considerable" pressure on such land.¹⁸ It should be emphasized that their data are from 1961, but it still may serve as a rough indicator of tax pressures.

One implication of this high tax rate is that farm value assessment will mean a considerable reduction in tax revenues for communities with prime and/or unique land. Since it is the state that has required the towns to preserve these lands, it seems reasonable that the state mitigate the local tax losses. Only a few towns have significant amounts of prime and unique land and yet the whole state benefits from these lands. Therefore, the state as a whole could share the costs of preservation.

Such a statewide sharing of tax losses resulting from use value assessment has been employed in California as part of the California Land Conservation Act (C.L.C.A.), commonly referred to as the William-¹⁹son Act. Under this act, landowners could form 10 year duration agricultural districts and receive use value assessment. The amount to be paid to the local communities was calculated by determining the difference in the value of the land in the district immediately before and after its formation. The state paid 17 million dollars in subvention payments during 1973-1974.²⁰

The CLCA subvention scheme, according to W. Gary Kurtz, has been unpopular because the local communities still lost significant tax revenue. The subvention distribution scheme gave the school districts first priority in funding with the towns receiving what was left over. The subvention program covered 24.9 percent of the estimated local tax revenue difference resulting from use value assessment in 1974-1975.²¹

It would appear that a subvention program could be more inexpensively implemented in Rhode Island. Subventions were being

distributed at a much larger scale in California than they would be in Rhode Island. The California program was subsidizing 13.7 million acres which were under use value assessment.²² This is an area almost 20 times the size of Rhode Island. It should be kept in mind that less than two percent of Rhode Island's land would be protected under the legislation proposed here. This means that the cost of the program would be relatively low even on a per capita basis.

This low cost implies that the state could afford to subsidize the towns with prime and unique land for 100 percent of their tax loss. This would be an attractive offer to the towns since agricultural land requires comparatively few services. Towns may in fact lose revenue by converting land into urban uses. Under the subvention program, the towns would receive the advantages of agricultural land and at the same time experience no tax losses either directly through use value assessment or indirectly as a result of extending municipal services onto the farmlands. This may help reduce the town's resistance to state control over part of their land.

The subvention program as proposed here will probably generate several criticisms. One is that the program may be abused by the towns. Knowing that subventions will be part of upcoming legislation, they may increase assessments on their prime and unique lands, thereby enjoying extra revenue when the subsidies begin. This problem could be overcome with a subsidy formula that paid the towns on the basis of the assessment two years previous to enactment of the bill.

Another question that could be raised is would it be equitable to tax all agricultural uses at the same rate. Turf for example earns a significantly higher rent than corn. It would seem reasonable that the different agricultural uses be taxed according to their earnings.

The long range viability of subventions is unclear. Non-farm communities may resent subsidizing farms. The exact cost of subventions cannot be determined here. Since only about 13,000 acres would be subsidized the cost of subventions would appear nominal compared to the cost of acquiring development rights. If subventions were employed in perpetuity, their cost may be significant. An appropriate time limit for subventions must be determined. This should be done by those knowledgeable with tax assessing procedures. Subventions should be in effect long enough to allow towns to adjust to the revenue loss resulting from use value assessment.

To summarize, high property taxes play a strong role in making farming difficult in Rhode Island. Therefore, use value assessment must be employed on the state's prime and unique lands. To mitigate the local tax losses resulting from subventions, state tax subsidies, or subventions, to the towns with prime and unique lands has been proposed. The subventions would allow the towns with prime and unique land the time to adjust to the revenue loss.

Conclusions

Although state specialized zoning has been used for resource protection, it has not been employed in this country for agricultural preservation. But, based on a Canadian experience, and a proposed California bill, some steps that Rhode Island might take to use state guided exclusive agricultural zoning have been proposed. These steps are defining and inventorying the state's prime and unique lands, requiring the local communities to restrict virtually all development from these lands and the creation of an agricultural appeals process. In addition, to mitigate the fiscal impacts of use value assessment on the local communities, the granting of state subventions is proposed.

The next chapter will discuss the legal questions raised by exclusive agricultural zoning. Chapter VI will discuss the problems and limitations of the technique.

Footnotes

1

Council on Environmental Quality, Environmental Quality: The Seventh Annual Report of the Council on Environmental Quality, (Washington, D.C.: U.S. Government Printing Office, 1976), p. 68.

2

William Leshner, Land Use Legislation in the Northeast: Maine, A Northeast Regional Research Project 90 Report, (Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975), p. 12-13.

3

Tenn. Code Ann. 11-1401, et seq.

4

William Leshner, Land Use Legislation in the Northeast: Rhode Island, A Northeast Regional Project 90 Report, (Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975), p. 10.

5

Province of British Columbia, Statutes Passed in the Session Held in the Twenty-First Year of the Reign of Her Majesty Queen Elizabeth II, (Victoria: K.M. MacDonald, 1973) and California, Assembly Bill No. 15, December 1974, with amendments of 1975 and 1976.

6

G.G. Runka, "British Columbia's Agricultural Preservation Program," in Land Use: Tough Choices for Today's World, (Ankeney, Iowa: Soil Conservation Service of America, 1977), p. 135.

7

Ibid., p. 136.

8

Ibid., p. 135.

9

Ibid., p. 140.

10

Robert H. Freilich, "Interim Development Controls-for flexible planning/zoning," in Management and Control of Growth: Issues - Techniques, Problems, Trends, 3 Vols. eds. Randall W. Scott, David J. Brower, Dallas D. Miner, (Washington: D.C., Urban Land Institute, 1975) II.

11

Rhode Island, 78-S 2205, An Act Relating to the Preservation of Prime Agricultural Land and Establishing an Agricultural Land Preservation Appropriation.

12

Rhode Island, 77-H6299-Substitute "A", An Act Establishing a State-Local Land Management Program, 28.1-2-2.-7.

13

From U.S. Soil Conservation Service Pamphlet.

14

Thomas E. Fenton, "Definitions and Criteria for Identifying Prime and Unique Lands," in Perspectives on Prime Lands: Background Papers for the Seminar on Retention of Prime Lands, (Washington, D.C.: U.S. Department of Agriculture, July 1975), p. 139.

15

Richard D. Chumney, "Reviews" in Perspectives on Prime Lands: Background Papers for the Seminar on Retention of Prime Lands, p. 139.

16

California, A.B. 15-67713.3.

17

Gregory T. Gustafson and L.T. Wallace, "Differential Assessment as Land Use Policy: The California Case", 40 Journal of the American Institute of Planners, (November 1975): 382.

18

Richard B. Davis and Arthur D. Jeffrey, "The Taxation of Rural Land in Rhode Island," (mimeograph 1961), p. 2.

19

California Government Code 51201 et seq.

20

W. Gary Kurtz, "The Dilemma of Preserving Open Space Land-How to Make Californians an offer they can't refuse." 13 Santa Clara Lawyer, (Winter, 1972): 293.

21

Ibid., p. 295.

22

Gustafson and Wallace, "Differential Assessment as Land Use Policy: The California Case," p. 382.

Chapter V

The Legal Aspects of Exclusive Agricultural Zoning

I Introduction

In this chapter, the legality of exclusive agricultural zoning will be discussed. The case law reviewed indicates that exclusive agricultural zoning would probably be upheld as a valid exercise of the police power by the Rhode Island court. Since the main challenge to the legislation proposed in this thesis-project would be the taking of private property without just compensation, most of the cases cited concern taking. The factors a court may consider in determining if a taking has occurred will be reviewed.

First, it will be shown that courts are reluctant to intervene in legislative matters and are more prone to uphold regulations with an explicitly stated public purpose. Then, through a survey of cases, the importance of diminished property values in assessing a taking will be emphasized. Since there are currently no exclusive agricultural zoning ordinances in Rhode Island, cases from other states will be reviewed. It will be shown that exclusive agricultural zoning has been upheld as a valid exercise of the police power.

Agriculture will be considered here as a natural resource. This will allow parallels to be drawn between national natural resources preservation cases and those in Rhode Island. From these parallels and the review of factors considered in determining taking, the reactions of the Rhode Island court to exclusive agricultural zoning will be predicted.

It should be cautioned that this chapter cannot reach a final conclusion on the legality of exclusive agricultural zoning. This is because it is difficult to predict a court's reaction to a given land use regulation. Precedents in land use law do not offer as much guidance as they do in other fields. As one commentator has said, "each case has seemingly resulted in a new rule which is abandoned in the succeeding case."¹ A regulation is more likely to be upheld however if it meets some of the general guidelines discussed in this chapter.

II

Court Attitudes Towards Intervention in Legislative Matters

The courts have made clear their reluctance to intervene in legislative matters such as land use regulation. This can be seen in Bartlett v. Zoning Commission. The court said judicial intervention was justified "only under certain circumstances, where the zoning classification is found to be unjust, unconstitutional and the reasons for such a change are unusual and compelling."² A further point in favor of a regulation being upheld is that the burden of proving a regulation invalid lies with the plaintiffs.

Courts generally won't intervene except under certain circumstances such as those cited in Bartlett. The general attitude of the Rhode Island courts towards regulations under the police power can be seen in Goldstein v. Zoning Board of Review:

This court has had occasion in the past to point out that by its very nature zoning interferes with and restricts the right of the property owner to devote his property to uses that would be proper at common law....Nevertheless such...restrictions will be countenanced if the regulation out of which they arise constitute a valid exercise of the police power in that they tend to promote the public health, safety, morals and the general welfare.³

Thus, the promotion of the general welfare is important in determining the extent of the police power in Rhode Island. This would mean that if exclusive agricultural zoning were considered as promoting the general welfare by preserving farmland, it would more likely be upheld in court.

Courts generally allow the legislature broad discretion in determining the general welfare. This can be seen in Steel Hill Development Inc. v. Town of Sanbornton. Here, the court said that it could not rule on the basic value judgements made by legislatures and voters. Its role rather was to determine if the laws resulting from these values "were permissible within the relevant statutory and constitutional framework."⁴

Regulations are more prone to be upheld if their stated objectives are clear. In Just v. Marinette, a Wisconsin shorelands case to be further discussed below, the public purpose was explicitly stated: "to protect navigable waters and the public rights there-in from degradation and deterioration which results from uncontrolled use and development of shorelands."⁵ In Potomac Sand and Gravel Co. v. Governor of Maryland, a wetlands preservation case, the public purpose was also clearly stated by outlining the values and functions of wetlands.⁶

To summarize, courts are generally reluctant to intervene in legislative matters. Regulations will be generally upheld if they are clearly to the general welfare. Thus, if an exclusive agricultural zoning ordinance were to be drafted in Rhode Island, its legislative findings should state that it is in the public interest to preserve agriculture. The public purpose could be further emphasized by clearly outlining the values and functions of agricultural lands as was done with wetlands in the law upheld by Potomac.

III

Factors Courts Consider in Determining Takings

In this section, some of the factors a court may consider in determining a taking are explored. The major factor has traditionally been the extent to which a regulation diminishes property values. This is relevant to any agricultural preservation legislation since, as discussed previously, farmland may earn a significantly higher return if converted to more intensive uses. It will be shown however that courts are now considering other factors besides diminution of property value.

The classic taking case, dating from 1922, is Pennsylvania Coal v. Mahon. This case claimed that some diminution of property values without compensation was necessary for the proper functioning of government. The state however, does not have unlimited powers to reduce property values. If it did, the contract and due process clauses of the United States Constitution would be gone. One factor that the courts consider in determining the regulatory limits of the government's

power is the extent to which property values are diminished. After a certain point, "in most, if not all cases, there must be an exercise of eminent domain and compensation to sustain the act."⁷

It will now be shown how this case has been qualified. Diminution of value is no longer determined by the highest and best use for a given parcel of land in some courts. As will be seen, new theories of taking have evolved regarding the preservation of natural resources.

It should be made clear, as Kusler points out, that no rigid rules are available on whether a particular regulation validly controls or invalidly takes property.⁸ This can be seen in Golden v. Ramapo: "Diminution is a relative factor and though its magnitude is an indicia of taking, it does not itself establish confiscation."⁹

In deciding whether a taking has occurred, courts often balance the societal benefits of a particular regulation against how it impacts an individual landowner.¹⁰ If mitigating measures such as lower taxes are available to the landowner to offset the burden posed by the ordinance, some courts will be less prone to claim a taking. Exclusive agricultural zoning would offer the societal benefit of preserving the state's farmland and farm value assessment would mitigate the burden of the regulation on the individual landowner.

Another factor that courts look at in determining taking is whether the property is left a reasonable economic use. In Dooley

v. Town Planning and Zoning Commission for example, the court ruled that a floodplain ordinance reduced the land to a practically unusable state and thus constituted a taking.¹¹

Courts however are beginning to look more at other factors. This can be seen in Brecciaroli v. Connecticut Commissioner of Environmental Protection. Here, it was emphasized that the police power may properly regulate the use of property where the uncontrolled use would be harmful to the public interest. The case stated that taking must be determined on the facts "of each case with consideration being given not only to the degree of diminution in the value of the land, but also to the nature and degree of public harm to be prevented and the alternatives available to landowner."¹²

To summarize, although diminution of value is a factor considered by the courts in determining a taking, many other factors are involved. If the public interest is a stake and the property is left a reasonable economic use, courts are less prone to claim a taking. If the regulation includes mitigating measures such as lower taxes, courts are more likely to uphold it.

IV

Exclusive Agricultural Zoning Cases in Other States

This section will review court reaction to agricultural zones in other states. It will be shown that such zones have been upheld by courts as a valid exercise of the police power. According to Norman Williams, recent cases have recognized agriculture as a

"normal use which (if feasible) is quite sufficient to satisfy the requirement that the regulations must permit some reasonable use of the land."¹³

Agricultural zoning has been upheld even in cases where more intensive uses could earn significantly higher rent. In Chevron Oil Co. v. Beaver County for example, land zoned for grazing was upheld over highway service land although the former was worth twenty to thirty dollars an acre while the later was worth \$10,000 an acre. The court was aware that the plainfliffs had purchased the land for its speculative value.¹⁴

The court said: "we see nothing arbitrary or discriminatory in the refusal to rezone the plaintiff's land. They bought grazing
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land and they still own grazing land." This seems part of a national trend of courts judging land less on its speculative value. This is important to agricultural preservation in Rhode Island since it appears that many owners of farmland are interested in its potential value for other uses.

It is important however to be aware of the facts behind Chevron. The ordinance was not upheld to preserve scarce natural resources, but to prevent development from occurring around a highway interchange that would compete with an established Central Business District.

In Oregon, an agricultural zone was upheld in an area that the plaintiff testified was not well suited for agriculture. The court responded: "Hence, the plaintiffs tacitly admit that their property can be beneficially used for agricultural purposes, albeit not as suitably or economically as before the change."¹⁶

Exclusive agricultural zoning would probably not be upheld for a parcel of land unsuited for farming. This can be seen in the Wisconsin case, Kmiec v. Town of Spider Lake where the court ruled against an agricultural zone on land that had not been farmed for eleven years. They said the most frequent judicial interference with land use regulations occurs when the court concludes "the property in question is unfit for the use to which the ordinance restricts it."¹⁷ This is one reason why the definitions developed for prime and unique agricultural land, as discussed in Chapter IV, are so important. If the definitions encompassed lands unfit for agriculture, the regulation might not be upheld.

Exclusive agricultural zoning ordinances on the municipal and county level have been upheld in California. In Gisler v. County of Madera, such an ordinance was deemed reasonable in object, not arbitrary in operation and a valid exercise of the police power. The court commented that the State legislative policies strongly favor agricultural zones. Although the property had been platted for 2 1/2 acre lots in 1913, it had continued to remain in
18
agriculture.

The court mentioned Sladovich v. County of Fresno where an agricultural zone had been upheld although an industrial zone was abutting.¹⁹ The fact that down zoning, the rezoning of a parcel of land from a higher to lower use, was permitted and abutting property uses overlooked may be significant to the Rhode Island case. Portions of the state's prime agricultural land are zoned industrial and much of it is threatened with encroachment from surrounding uses.

Down zoning has been upheld in Rhode Island. This can be seen in Golden Gate v. Town of Narragansett. Here, the court stated that there were no vested rights in the continuance of existing zoning classifications "because all property is subject to a municipality's exercise of the police power."²⁰

To summarize, agriculture has been considered by the courts as a reasonable economic use. This means that if land zoned for agriculture is suitable for that purpose, an exclusive agricultural zoning ordinance would probably not be considered a taking. Courts have also upheld the down zoning of land to agriculture from higher uses.

V

Natural Resource Preservation Cases

This section will draw parallels between some major natural resource preservation cases across the country and those in Rhode Island. The attitude of the Rhode Island court toward land use regulation will be discussed. A tentative prediction on the court's reaction to exclusive agricultural zoning will be postulated.

As mentioned above, the courts are paying less attention to the diminution of value in determining taking. In fact, a new theory of taking has evolved, the natural use theory. Courts have recognized that certain lands have limited natural uses and thus uphold regulations restricting more intensive uses from these lands.

An example of this reasoning can be seen in Just v. Marinette. In this case, a strict shorelands ordinance was upheld. Stopping the despoilation of natural resources was seen in the public interest and was a valid exercise of the police power since it prevented a public harm rather than encouraging a public good which would have fallen under eminent domain.²¹

The changing philosophy of the courts is reflected in the statement:

An owner of land has no absolute and unlimited right to change the essential natural character of his land so as to use it for a purpose for which it was unsuited in its natural state and which injures the rights of others.²²

Similar reasoning was used in Potomac Sand and Gravel Co. v. Governor of Maryland. This case upheld strict regulations protecting wetlands. Emphasizing the ecological and economic importance of wetlands, the court said: "The current trend is for the courts to consider the preservation of natural resources as a valid exercise of the police power."²³

There are relatively few environmental cases in Rhode Island. The taking question is comparatively unsettled in this state.²⁴ According to Norman Williams however, the Rhode Island court is usually very solicitous to developers rights.²⁵

In spite of this, there have been cases in the state upholding the preservation of natural resources. One is J.M. Mills v. Murphy. The plaintiffs wanted to rechannel part of the Blackstone River. Their plan would have damaged a freshwater wetland. The court said the legal theory prevailing at the time of their decision was that

the public's interest in a zoning scheme outweighs the individual's right to obtain a permit to alter a wetland, "at least in the situation where the landowner has not relied to his detriment on the original ordinance."²⁶ This reasoning seems similar to that of Brecciaroli, the public interest is being heavily weighed in determining if a taking has occurred.

The Mills case obliquely refers to the natural use concept. It cites the Freshwater Wetland Act (G.L.R.I. 2-1-18-21-1-24) which regulated the uses that would not be suited to the land in its natural state. The court admitted that the impact of the statute was ambiguous but "This court must construe a duly enacted statute to be constitutional if such a construction is reasonably possible."²⁷

The facts of the Mills case indicate that the Rhode Island court does see the restricted use of natural resources as reasonable. They allude to the natural use concept, but it is not clear that they fully accept it.

The natural use argument is also alluded to in the Superior Court case John Lyons et al v. Nancy Filmore. Here, a regulation that prevented a landowner from building on beachfront property was upheld. Citing Turnpike Realty Co. v. Town of Dedham, the court said that substantial diminution of value may not render a regulation an unconstitutional deprivation of property.²⁸ The court also quoted the Just reasoning cited above about the defendants having no right to alter the natural character of the land.

In the John Lyons case, property values were greatly diminished but a reasonable use, that of recreation remained. If the Rhode

Island courts continue to apply such reasoning, it would seem likely that exclusive agricultural zoning would be upheld. Agriculture would appear to be a reasonable use on the prime and unique agricultural lands. The courts' tendency to uphold statutes if reasonably possible, as seen in the Mills case, indicates that they would probably uphold exclusive agricultural zoning.

To summarize, there are several factors that lead to the conclusion that exclusive agricultural zoning would be a valid exercise of the police power in Rhode Island. Agriculture would appear a reasonable economic use. The legislative findings of the bill could state that prime and unique lands are naturally best suited for farming so that the natural use argument could be used. Courts will uphold statutes when reasonably possible.

VI

Conclusions

From this review of national and Rhode Island case law, it appears as though an exclusive agricultural zoning ordinance would not be construed a taking by the Rhode Island court. This would seem particularly likely if only prime and unique lands were restricted to agriculture. Precise definitions of prime and unique are necessary not only to assure that the land zoned for agriculture is guaranteed a reasonable economic use, but also to reduce the chances of the ordinance being construed as arbitrary.

An exclusive agricultural zoning bill should stress the values and functions of prime and unique land. The public interest in agricultural preservation must be clearly emphasized in the bill's legislative findings. Courts are reluctant to overturn regulations related to a valid public purpose.

It will be cautioned again that a court's reaction to a given regulation cannot be predicted. This means that any conclusion reached here that exclusive agricultural zoning would be upheld by the Rhode Island court is tentative. A final conclusion cannot be reached until the regulation is challenged in court.

Footnotes

- 1
James S. Wershow, "Taking Versus Reasonable Regulation: A Reappraisal in Light of Regional Planning and Wetlands," University of Florida Law Review, 25 (Fall 1972) p. 2.
- 2
161 Conn. 25 (1971).
- 3
227 A2d 195, (1967).
- 4
469 F2d 956, (1972).
- 5
201 N.W. 2d 761, (1972).
- 6
266 Md 358, 293 A2d 241, 248.
- 7
260 U.S. 393, 413 (1922).
- 8
Jonathan A. Kusler, "Open Space Zoning: Valid Regulation or Invalid Taking," Minnesota Law Review, 57 (November 1972) p. 11.
- 9
30N.Y. 2d 359, 334N.Y.S. 2d 138, 258N.E. 291, (1972).
- 10
Kusler, "Open Space Zoning," p. 11.
- 11
151 Conn. 304, 197 A2d 770, (1964).
- 12
362 A2d 948, 951 (1975).
- 13
Norman Williams Jr., American Planning Law: Land Use and the Police Power, 1977 Supplement to Volume V (Chicago; Callaghan Co., 1975) p. 14.
- 14
22 Utah 2d 143, 449 P2d 989, (1969),
- 15
Ibid.

16

Joyce v. City of Portland 546 P2d 1100, 1102 (1976).

17

Cushman v. Racine Wis 2d 307, 159 N.W. 2d 67 cited in Kniec
211 N.W. 471 (1973).

18

38 Ca3d 303, 122 Cal Rptr 919, (1974).

19

158 Cal Ap2d, 230, 240-1, 322 P2d 565.

20

359A2d 321,328 (1976).

21

201 N.W. 2d 761, (1972).

22

Ibid.

23

266 Md 358, 293 A2d 241 (1972).

24

From a Presentation of the Audubon Society of Rhode Island, The Natural Resources Defense Council, Ecology Action of Rhode Island, Inc. and the American Littoral Society of Rhode Island to a hearing on July 26, 1976 before the Rhode Island Coastal Resource Management Council to determine the eligibility of Rhode Island's proposed Coastal Resource Management Program.

25

Norman Williams, American Planning Law, p. 27.

26

3352A2d 661, (1976).

27

Ibid.

28

Turnpike Realty Co. v. Town of Dedham, 284NE2d 891 (1972) cited in John Lyons, ca. 72-182, 1973.

Chapter VI

The Problems of State Mandated Exclusive Agricultural Zoning

I Introduction

This chapter will discuss the problems state mandated exclusive agricultural zoning faces in meeting the criteria developed in Chapter II for a Rhode Island agricultural preservation policy. One criteria was that the policy chosen permanently preserve all the state's prime and unique agricultural land. Another was that it be readily implementable. The other criteria were: that the technique used conflict minimally with the availability of land and resources for housing, that it not require large expenditures of funds and that it respect the tradition of local political control.

Exclusive agricultural zoning clearly can permanently preserve all the state's prime and unique agricultural lands. It can be readily implemented, since it does not require a major restructuring of state and local planning. The ability of the technique to meet the other criteria deserves more examination. The housing and expense issues are relatively less complex and will be reviewed here briefly. The issue of the perceived threat of exclusive agricultural zoning to local political control requires more in-depth treatment. The general political acceptability of the technique to the state's voters will also be discussed. In addition, the normative implications of requiring farm owners to sacrifice the right to develop will also be raised. Some of the non-land related factors that may discourage farming will be mentioned.

II

The Housing Impacts of Exclusive Agricultural Zoning

This section will discuss the housing impacts of exclusive agricultural zoning. Reserving land for non-urban uses such as agricultural reduces the amount of land available for urban uses. However, less than two percent of the state's land area would be zoned for agriculture exclusively, and there are other sources of undeveloped land in the state. In some cases, more site preparation may be required for the non-agricultural lands than for farmland, but this is a minor portion of total building costs.

The secondary impacts of exclusive agricultural zoning on housing availability and cost would also appear minimal. Purchase of Development Rights by comparison requires a large expenditure of funds which means money foregone for other state programs such as subsidized housing. It should be made clear that land use regulations alone are not responsible for the state's low and moderate income housing shortage. Other state policies must be developed to meet these needs.

III

The Costs of Exclusive Agricultural Zoning

The direct financial costs of exclusive agricultural zoning would appear to be minimal. The main cost would be the state tax subventions. This cost could be determined by estimating the amount of revenue that would be lost by the towns if use value assessment were employed on their prime and unique lands. Such an estimate would be beyond the scope of this project. The cost however would

only be a fraction of the cost of development rights. As discussed in Chapter II, development rights may cost as much as 90 percent of the total land value. As with any new planning technique, there would also be administrative costs.

As will be seen later in this chapter, other policies will have to be developed to complement exclusive agricultural zoning if agriculture is to be effectively preserved. The costs of these policies cannot be estimated here. It appears however that they would be less than those associated with development rights.

IV

Exclusive Agricultural Zoning and Local Political Control

This section will assess the impact of exclusive agricultural zoning on the local government control of land use. Such a bill may be unpopular among some home rule advocates on account of its mandate to the localities to restrict prime and unique land to agricultural uses. It will be shown however that it is a comparatively minor assertion of state authority.

Exclusive agricultural zoning is a clear intrusion into an area traditionally the concern of municipalities in Rhode Island. The initial political opposition to the critical areas section of the State-Local Land Management Bill by many in the more rural parts of the state may be an indicator of the resistance to further state involvement in local land use decisions. Another possible indicator of the unpopularity of exclusive agricultural zoning could be the strong political resistance in other states to proposals for greater state control over agricultural land.

These two examples are not necessarily good indicators of how exclusive agricultural zoning would be received in Rhode Island. Critical areas have a broad and relatively undefined scope while exclusive agricultural zoning is very specific. Linowes and Allensworth point out that such a highly focused state directed planning technique may appear less threatening to voters than the vaguely defined critical areas.¹

Increased state control of agricultural land in other states would involve a much larger land area than in Rhode Island. About 13,500 acres of land would be subject to the state mandated to zone for agricultural uses only. Thus, the state is regulating only 1.9 percent of Rhode Island's land area. The prime agricultural land is divided up among twelve towns, this means that less than one-third of the towns will be impacted by the state mandate. All of these towns have other sources of open land. Unique agricultural lands, (cranberry bogs) are already somewhat protected by state wetland laws and are generally not in demand for urban uses. This means exclusive agricultural zoning would minimally impact municipal authority to regulate unique lands.

The subvention scheme, the granting of state tax subsidies to communities employing use value assessment, further mitigates the impact of exclusive agricultural zoning on the municipalities. Subventions may in fact temporarily improve a locality's tax base. If the prime lands were developed, it is possible that the costs of development to the town would not be met by the tax revenues generated by the land. Thus, the communities might actually save money through the subvention scheme.

To summarize, only a well defined and relatively small amount of land would be subject to state mandated exclusive agricultural zoning. Although some localities will lose control of a portion of their land area, they also receive the benefit of state tax subventions. Since over 98 percent of the land in the state is unaffected by exclusive agricultural zoning, the technique would appear to meet the criterion of minimal conflict with the tradition of local land use control.

V

The Political Acceptability of Exclusive Agricultural Zoning to Rhode Island Voters

This section will assess the political acceptability of exclusive agricultural zoning. Although the technique may meet the criteria developed in this thesis-project, this does not mean that such a bill would be enacted into law in Rhode Island. Potential supporters and opponents of the technique will be indicated here.

There are several factors which would positively influence the passage of an exclusive agricultural zoning bill. One is the attitude of many in the towns towards uncontrolled growth. The rapid in-migration into the less developed areas of the state has meant increased citizen concern over the loss of rural amenities. Many in the towns are ambivalent or even hostile to the prospect of continued unguided growth. Thus, a policy to help preserve open space would be welcome by at least some in the towns. The tax savings involved in the subvention scheme would probably also increase support for the bill.

There has been increased interest in agricultural preservation over the past two years. Governor Garrahy expressed interest in agricultural preservation in his 1978 state of the state address and is supporting the PDR bill drafted by the Agriculture Division of the Department of Environmental Management.² The Committee to Preserve Rhode Island's Farmland has been lobbying for agricultural preservation as have other environmental groups. This interest is another factor that could lead to the passage of an exclusive agricultural zoning bill.

Exclusive agricultural zoning would probably encounter vigorous resistance from the effected landowners. It should be kept in mind however that there are less than 700 farms in the state and just a portion of these contain prime and unique land. This means a very small group of people would be directly effected by the legislation proposed here. There may also be political resistance by other groups such as those favoring home rule and personal property rights. It would appear however, given the small number of farmowners, that opposition to exclusive agricultural zoning would not be as fierce as in other states.

To summarize, although exclusive agricultural zoning may be bitterly opposed by some in the state, it also has many possible supporters. While the likelihood of its passage into law cannot be predicted here, there are, as mentioned in earlier chapters, many potential benefits the entire state could enjoy from preserving agriculture. A relatively small group, those owning the state's prime farmland, could suffer by being deprived of the right to develop it.

There are dangers involved however in evaluating the merits of a policy solely on the basis of its political acceptability. Responsible policy making demands that other factors be taken into account. An important factor may be the equity issue of requiring a minority to suffer for the majority's benefit. This issue will be discussed in the next section.

VI

Agricultural Preservation and Landowner Rights

This section will deal with the impact of exclusive agricultural zoning on the landowner and the farmer. First, there will be a general discussion of the issue of private sacrifice for the public good with particular reference to the public trust doctrine. The issue will then be set in the context of agricultural preservation. It will also be shown that land regulations alone will not assure the preservation of agriculture.

Agricultural land is a scarce natural resource in Rhode Island and deserves protection. It has been argued in other states that prime agricultural lands be held in the public trust.³ Public trust is a legal doctrine holding that certain resources are "so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace."⁴ This would appear an appropriate doctrine for prime agricultural land in Rhode Island. The doctrine has been applied to shorelines, and as with shorelines, the quality of life would be harmed by the loss of farmland. There are no legal precedents for applying the doctrine to agricultural land in Rhode Island, it is referred to here for its philosophical as opposed to legal merits.

Under the public trust doctrine, the state may retain certain rights over privately held land such as the right to develop. The stress of the doctrine is on the public benefits of resource preservation not on the individual's right to maximize his/her personal profit. In the words of Governor Richard Lamm of Colorado:

We must consider our land as a precious natural resource, not a commodity to be sold or traded, and we must turn inward toward spiritual and education rewards and less to materialistic rewards.⁵

Difficulties arise when this doctrine is applied to agricultural preservation. As John McClaughry responded to Governor Lamm's comments on spiritual rewards: "Whether this thought comforts a farmer...struggling through a sub-zero night with a first calf-heifer remains to be seen."⁶

Applying the public trust doctrine to agricultural preservation overlooks the impact strict land use regulations may have on the economic well being of the farmer. Chauncey T.K. Ching described farming as a low-private-high-public return use of land.⁷ Thus, while society as a whole benefits from agriculture, the farmer in Rhode Island is generally not being well paid for this benefit. Therefore, understandably many farmers want to retain the right to develop their land so that they may have another source of income. But if the continued conversion of farmland into urban uses is permitted, the state will soon be farmless. The state as a whole would thus lose the ecological, aesthetic, economic and psychic values associated with the presence of farms.

Policy makers must ask themselves how agricultural land can be equitably preserved. The needs of the farmer must be taken into account. As Joseph L. Sax cautions:

Certainly even the most representative legislature may act in highly unsatisfactory ways when dealing with minority rights, for then it confronts the problem of majority tyranny.⁸

To understand the farmers needs, it should be made clear that although exclusive agricultural zoning may preserve prime and unique lands, it does not by itself keep farmers farming. There are other non-land related factors that may discourage farming. One is demographic, as farmers approach retirement, they find that their children are uninterested in farming as a career.⁹ This appears particularly the case in Rhode Island.¹⁰ Recent federal regulations on pesticides and fertilizers may also discourage farmers.¹¹ Another factor that may make farming difficult is local government ordinances restricting farm operations. These often arise as a result of neighbors' objections to the noises, smells and dust associated with farm operations. An example might be an ordinance restricting the operation of farm equipment to certain hours.

It would be beyond the scope of this thesis-project to deal with the demographic issue, but ways clearly must be found to make farming more attractive to young people. Alternative forms of fertilizer and pest control need to be developed. The problem of local communities limiting farm operations could be dealt with in Rhode Island as it was in New York under the Agricultural District

legislation reviewed in Chapter III. The power of local governments to restrict farm operations beyond the needs of health and safety could be limited.

The above factors discouraging agriculture are secondary to the economics of farm operation however. Land regulations:

can have little effect on the basic economics of agriculture as reflected ultimately in the price a farmer can get for his commodities and the costs he must incur for seed, feed, fertilizer, equipment, fuel labor, transportation and storage.¹²

Therefore, an effective agricultural preservation policy must deal with the farmers economic needs. This points out a major advantage of Purchase of Development Rights over exclusive agricultural zoning. PDR's can help farmowners by giving them money that could be used to invest in farm operations. Exclusive agricultural zoning does not offer comparable compensation.

It is uncertain if, at this time, PDR's are an actual alternative for Rhode Island. As discussed in Chapter III, it appears unlikely that any of the three PDR bills currently proposed in the state will receive adequate funding. Many farmers in the state are apparently not interested in selling the right to develop.¹³ Another question is, if the PDR scheme were adequately funded, would the farmers use the money for agricultural purposes. Since the stated goal of such legislation is the preservation of agriculture, this is a reasonable question. How would PDR's help those farmers who are leasing land?

Alternative forms of aid to the state's farmers are needed. An example might be greater tax subsidies and low interest loans

for capital investments. Since agricultural preservation is a national issue, state policy makers could look to the federal level for help. A long range agricultural preservation policy must create incentives to keep farmers farming.

To summarize, although there are many potential public benefits to agricultural preservation, the landowner may resent a policy depriving him/her of the right to develop. Ways must be found to ensure that agriculture remains a reasonable economic use so that farmers will not suffer unduly as a result of exclusive agricultural zoning.

VII

Conclusions

Exclusive agricultural zoning would appear to meet the criteria for an agricultural preservation policy in Chapter II. It can permanently preserve all the state's prime and unique land. It conflicts minimally with the availability of land and resources for housing. Its direct financial costs are low compared to PDR's. Although it does interfere with the tradition of local control of land, this interference is minimal and mitigated by the subvention scheme.

The technique may be politically unpopular since it deprives the landowner of the right to develop, but very few in the state are directly affected by this deprivation. There are many other potential political supporters. The passage of an exclusive agricultural zoning bill cannot be predicted here however. To mitigate the impact of the technique on owners of prime and unique land, other policies to keep farming viable in Rhode Island must be developed.

Footnotes

1

R. Robert Linowes and Don T. Allensworth, The States and Land Use Control, (New York: Praeger Publishers, 1975) p. 124.

2

From conversations with Eliot Roberts, College of Resource Development, University of Rhode Island and Steven Morin, Division of Agriculture, Department of Environmental Management, March 8, 1978.

3

Victor John Yannacone, Jr., "Agricultural Lands, Fertile Soils, Popular Sovereignty, the Trust Doctrine, Environmental Impact Assessment and the Natural Law," North Dakota Law Review 51 (Spring 1975), 615-53.

4

Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," Michigan Law Review, 68 (January 1970), 484.

5

John McClaughry, "Farmers, Freedom and Feudalism: How to Avoid the Coming Serfdom," South Dakota Law Review, 21 (Summer 1976) 498.

6

Ibid.

7

Chauncey T.K. Ching, Effects of Alternatives to Ad Valorem Taxation on Land Use, Research Report Number 4 (Durham: New Hampshire Agricultural Experiment Station, September 1968), p. 3

8

Joseph L. Sax, "The Public Trust Doctrine," p. 559.

9

Council on Environmental Quality, Untaxing Open Space: An Analysis of the Effectiveness of Differential Assessment on Farms and Open Space, Principal Investigator: John C. Keene, (Washington: U.S. Government Printing Office, April 1976), p. 49.

10

Conversation with Steven Morin, March 8, 1978.

11
Council on Environmental Quality, Untaxing Open Space,
p. 49.

12
John C. Keene, "Keeping Farmers Farming," Environmental
Comment (January 1978) p. 9.

13
Conversation with Steven Morin, March 8, 1978.

Chapter VII

Is Exclusive Agricultural Zoning a Viable Planning Tool for Rhode Island?

This chapter will arrive at a final assessment of state mandated exclusive agricultural zoning for Rhode Island by first examining some probable criticisms of the technique and subsequently indicating areas requiring further research. The concluding section will summarize the viability of exclusive agricultural zoning for Rhode Island.

Section one will first deal with criticisms that the legislation proposed here may be overly rigid to take local needs into account. Then, arguments that the legislation does not go far enough to protect agricultural lands will be reviewed. The reasons for the technique's proposed scope will be reiterated. The issue of landowner rights discussed in Chapter VI will be summarized and set in perspective.

Section two will show the limitations of this thesis-project and indicate the prerequisites needed if an exclusive agricultural zoning bill is to be introduced into the General Assembly. The limitations will be focused on areas requiring further research as follows: developing a comprehensive agricultural policy for Rhode Island and a study of the political feasibility of exclusive agricultural zoning. One prerequisite to such a bill being introduced into the legislature is a catalyst to increase public interest and commitment to agricultural preservation. It will be recommended here that this be done through the creation of a Governor's Commission on Agriculture. Another prerequisite is extensive clarification of the procedure by which exclusive agricultural zoning would be implemented.

Section three will assess the viability of exclusive agricultural zoning. Its limitations and advantages will be restated. It will be compared to its alternatives. A summary recommendation about the technique will be offered to state officials.

I

Some Criticisms of Exclusive Agricultural Zoning

Two possible criticisms of exclusive agricultural zoning will be discussed. One is that the technique is too rigid to respect local needs. The other is that it is insufficient to protect the agricultural land in the state. An attempt is also made to balance the impact of the legislation on the landowner against the needs of the state as a whole.

Problems may arise when the state orders a municipality to prohibit urban uses on a given parcel of land, as would be done under exclusive agricultural zoning. Such a development restriction may have unintended consequences. The state may unintentionally overlook certain local needs. Thus, an argument can be made for a more flexible technique such as one that would give local communities the option to create exclusive agricultural zones.

The author believes that this rigid approach is justified. The towns have not been protecting their prime and unique lands by themselves and without state intervention, it appears as though the conversion of farmland into urban uses will continue. It should be remembered that such conversion is generally irreversible. The whole state would suffer were its prime and unique land to be completely destroyed. This intervention into local affairs is based upon a clear public interest.

If state mandated exclusive agricultural zoning is to be equitably implemented, a process by which land may be specially exempted from a zone is needed. This is why an agricultural land appeals process has been proposed. It would be used in exceedingly unusual circumstances which aren't foreseeable here. Local needs are recognized by the special provisions for farm dwellings, emergency facilities and public utilities.

Exclusive agricultural zoning can also be criticized for insufficiently preserving farmland. State mandated protection does not extend to the less productive lands, although these lands do have scenic and other values. Nor has the impact of surrounding uses on farmland, such as storm water run-off from a parking lot, been considered by the proposed legislation.

One reason that exclusive agricultural zoning has not been given a broader scope is for possible legal challenges of taking. Another reason is out of respect for the tradition of local control. Also, since the profit derived from the other farmlands is minimal, development restrictions without compensation would be inequitable. By comparison, farmers of prime agricultural land may operate at a reasonable profit.

The state should however encourage the towns to extend protection to other farmlands. Enabling legislation for exclusive agricultural zoning for lands other than prime and unique and for low density uses in agricultural buffer strips would be developed. Towns must be cautioned however about possible legal challenges of taking. The state could further encourage the preservation of other than prime

and unique farmland by offering subventions, (defined here as tax subsidies), for protected land. This idea deserves further study. Were towns to remove development restrictions from a parcel of farmland, subventions would be a de facto subsidy to the land speculator. He/she would enjoy use value assessment until the land was developed. This problem could be mitigated with a 100 percent tax roll-back charge plus interest to the landowner.

This thesis-project may also be criticized for inadequately dealing with the impact of exclusive agricultural zoning on the landowner. Although the need for a comprehensive agricultural policy to aid the farmer has been indicated, the specifics of this policy have not. Legislation is not always enacted comprehensively, it is quite possible that exclusive agricultural zoning would be signed into law while a comprehensive agricultural policy would not. This would mean that the non-land factors discouraging agriculture would remain.

It is useful here to set the farmers problems in perspective. Many farmers of prime land in Rhode Island are making a reasonable living. Although the creation of incentives is needed if farming is to remain attractive, this should not be overly difficult for the prime lands in Rhode Island which are among the best in New England. As indicated in Chapter V, police power restrictions on the right to develop land have been accepted by the courts and society especially when the public interest is at stake. Although some landowners will bitterly oppose losing the right to develop,

they are not being deprived of all uses of their land. If agriculture is to be preserved in Rhode Island, the first step must be to preserve farmland. This action must be taken as soon as possible. Although developing a comprehensive agricultural policy is important, it should not take priority over exclusive agricultural zoning.

To summarize, a rigid preservation technique has been advocated and appears the only way to assure that the state's prime and unique lands will be preserved. Exclusive agricultural zoning includes only a portion of the state's agricultural lands. A broader state mandate would have greater political and legal ramifications than would the relatively narrow mandate proposed here. Discretionary local control over other farmland would be encouraged however. Finally, although Rhode Island does need a long range agricultural policy, the first priority must be to preserve the state's prime and unique farmlands.

II

Areas Requiring Further Research

This section will indicate research needs beyond the scope of this thesis-project. If agriculture is to be preserved in Rhode Island, these needs must be met. They include readily accessible information on the importance of agriculture to Rhode Island and the components of a comprehensive agricultural policy. The author believes that these issues would be most effectively addressed through a Governor's Commission on Rhode Island Agriculture. In addition, a detailed study on the political feasibility of exclusive

agricultural zoning is needed. Also, before such a bill is drafted, considerable clarification of its mechanics is needed.

One of the major impediments that an agricultural preservation policy faces in Rhode Island is lack of interest. Although concern about agricultural preservation has been increasing, few in the state are deeply committed to the idea.¹ Agricultural preservation thus needs a catalyst to action. The Coastal Resources Management Council Act was sparked, at least in part, by a 1969 report to the Governor on the importance of the coastal zone to Rhode Island.² The cause of agriculture in Rhode Island might be helped by a similar report.

The Governor could, as was done before the CRMC Act was passed, appoint a special technical committee on Rhode Island agriculture. This committee would have two goals. One would be to produce a report on the importance of agriculture to Rhode Island. The other would be to determine what needs a comprehensive agricultural policy should meet.

A report on the importance of agriculture would have to go far beyond what has been stressed in this project. It would have to include the importance of agricultural lands to future generations as well as its ecological, economic and aesthetic attributes. The costs and benefits of agricultural preservation should be clearly delineated. The report should be in a readable form so that interested citizens as well as state officials and professionals will understand it. Although such a report will not ensure the preservation of agriculture by itself, it will at least give the issue increased publicity.

The report on a comprehensive agricultural policy would have to consider many factors. Proposals on how to make farming more attractive to the younger generation must be made. Alternative forms of economic aid to farmers could be explored. Innovative land regulatory techniques could be considered and compared to exclusive agricultural zoning and PDR's. Such a report could serve as a basis upon which a long range agricultural policy could be developed.

Research is also needed on the political acceptability of exclusive agricultural zoning. Many in the state currently reject the technique as politically unacceptable on its face. A thorough report would probably be done most effectively by a citizen or university group working with state legislators. It would appear an inappropriate task for a governmental agency since it is such a sensitive issue. The goal of the report would be to provide information to fairly evaluate the technique's political ramifications.³

It appears that the major barrier to exclusive agricultural zoning being enacted into law is the political acceptability of the technique to the state's voters. This potential barrier however deserves thorough exploration before a judgement can be made. Rhode Island, as seen in Chapter II, is agriculturally different from most states. This means that the proposition that exclusive agricultural zoning might be politically acceptable must be examined.

Another research area concerns the mechanics of exclusive agricultural zoning. This report would require substantial legal and other technical input. It would have to deal with issues such

as interim controls. Detailed recommendations on the drafting of such controls are needed to minimize the likelihood of court challenges.

The land inventory phase of exclusive agricultural zoning needs clarification. It appears as though a new agency, such as the Agricultural Land Preservation Commission mentioned in Chapter IV must be created or an existing agency must be substantially modified. Its research responsibilities should be made clear. This agency would have to develop the final definitions of prime and unique lands.

To summarize, many tasks remain before an exclusive agricultural zoning bill can be introduced into the state legislature. The tasks of emphasizing the importance of agriculture to Rhode Island and developing a comprehensive agricultural policy would be most effectively performed by a Governor's Commission on Agriculture. The political issues would be best explored by a consumer and university group working with legislators. The procedural problems could be explored by a technical team reporting to the legislative subcommittee responsible for the bill.

III

A Final Assessment on the Viability of Exclusive Agricultural Zoning for Rhode Island

This section will make a final assessment on the suitability of exclusive agricultural zoning for Rhode Island. This will be done by first reviewing the technique in terms of the criteria

developed in Chapter II. A more general discussion will follow with some caveats about the technique's application. Then, a concluding judgement on the technique will be made.

As seen in Chapter V, exclusive agricultural zoning generally does meet the criteria delineated in this project for an agricultural preservation tool in Rhode Island. It can permanently protect all the state's prime and unique agricultural lands from non-farm development. It does not require an extensive reordering of state and local planning procedures, (as would Transfer of Development Rights for example,) and thus can be readily implemented. Since less than two percent of the state's land area is involved, there is relatively minor direct interference with local land use control. It should be made clear that the towns with relatively with large amounts of prime or unique land would be impacted more by the technique than the state as a whole. All these towns however do have other sources of open land. The technique does not require large expenditures as do PDR's and thus meets the criterion of minimal cost.

The technique also appears suitable from a statewide perspective; it conflicts minimally with other state policies. For example, it has little impact on housing supply nor does it divert large sums of money from other state programs. The state as a whole benefits from agricultural preservation under exclusive agricultural zoning while its financial costs are minimal.

PDR's have the advantage of compensating the landowner while exclusive agricultural zoning does not. It appears very unlikely however that PDR's will be funded in the foreseeable future. Thus, PDR's are not readily implementable at this time while exclusive

agricultural zoning is. The impact of the proposed legislation on the landowner is a trade-off the state must accept if agriculture is to be preserved under the police power as opposed to an acquisition scheme.

Policy makers should be cautioned not to eliminate the subvention provisions of the bill. Subventions help reduce the impact of the legislation on the towns and the landowners. Policy makers should also be urged to consider exclusive agricultural zoning as the beginning of Rhode Island's farmland preservation efforts rather than a panacea. As indicated earlier, a comprehensive agricultural policy must be developed.

It must be strongly emphasized that this assessment of exclusive agricultural zoning is for Rhode Island only. Rhode Island with its small number of farms and highly urbanized environment, is different from most states which are searching for an agricultural preservation policy. The merits of exclusive agricultural zoning for other states must be determined on a case by case basis.

State directed exclusive agricultural zoning, in spite of its limitations, appears to be a viable planning tool for Rhode Island. It gives the state an alternative to the Purchase of Development Rights. It has been adjusted to fit the state's particular needs. It deserves careful consideration by state officials; such a bill should be introduced into the Rhode Island Assembly where it would be subject to public debate and scrutiny.

IV

Conclusions

State mandated exclusive agricultural zoning does have some limitations. A land regulatory technique permanently restricting non-farm uses from 1.9 percent of the state's land may have unanticipated consequences. However, an appeals process has been provided to consider such cases.

Another limitation of the legislative concept proposed here is that it preserves only a portion of the state's farmland. It also neglects the impact of surrounding uses on farm operation. These two factors were not considered for political and legal reasons. As an alternative, specific state enabling legislation for other than prime and unique agricultural zones has been proposed. However, towns creating such zones may risk legal challenges of taking.

Exclusive agricultural zoning, as does any land regulatory technique under the police power, reduces the value of some private property. This means farmowners may be deprived of an anticipated source of revenue, the profit realized from converting their land to urban uses. To mitigate this impact, research is needed on ways to keep farming profitable in Rhode Island.

Before state mandated exclusive agricultural zoning can be implemented in Rhode Island, certain needs must be met. A Governor's Commission on Rhode Island Agriculture could help the state develop a comprehensive agricultural policy. It could also produce a report

on the importance of agriculture in Rhode Island. Such a report would hopefully increase public interest in agricultural preservation. The political feasibility and the mechanics of the technique deserve more research.

In conclusion, state mandated exclusive agricultural zoning, not withstanding its limitations, appears a viable planning tool for Rhode Island. Such a bill should be introduced into the Rhode Island General Assembly. It does significantly alter other state policies. It is a technique than can be readily implemented and can permanently remove all the state's prime and unique lands from development pressures.

Footnotes

1

Phone conversation with Susan Morrison, Division of Statewide Planning, March 22, 1978.

2

William Leshner, Land Use Legislation in the Northeast: Rhode Island, A Northeast Regional Research Project 90 Report, (Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975), p. 5.

3

Such a report would have several parts. One would be a scientifically conducted opinion poll on exclusive agricultural zoning. Another could study the proposed Assembly Bill 15 in California and the Land Commission Act in British Columbia. The focus should be on who were the opponents and proponents of these bills. An attempt should be made to see if comparable interest group configurations exist in Rhode Island. Another section of the report could examine in detail the Rhode Island reaction to other restrictive land use legislation such as the Coastal Resources Management Act.

SELECTED BIBLIOGRAPHY

- Arnold, Michael, and McDonald, Anne B., A Summary of State Land Use Controls. Washington, D.C.: Land Use Planning Reports, 1976.
- American Institute of Planners Research Office, Survey of State Land Use Activity. Prepared for the Department of Housing and Urban Development, Washington, D.C.: 1976.
- Bellandi, Robert M.; Hayes, Robert D.; and Thomson, Rebecca, Land Use and TDR: A Draft Bill. Testing Emerging Land Use Concepts in an Urbanizing Region, SUNY College of Environmental Science and Forestry, 1976.
- Brooks, Richard Oliver, Municipal Environmental Ordinances. 2 Vols. Kingston: Bureau of Government Research, 1977.
- Bryant, William, and Conklin, Hugh, "New Farmland Preservation Programs for New York." Journal of the American Institute of Planners. 40(November 1975) 391-397.
- Bunn, Paul, "Farmland Preservation in a Semi-Suburban Area: Slocum, Rhode Island." M.C.P. Research Project, University of Rhode Island, 1976.
- Ching, Chauncy T.K., Effects of Alternatives to Ad Valorem Taxation on Land Use. Research Report Number 4. Durham, New Hampshire: Agricultural Experiment Station, September 1968.
- Chummev, Richard D. "Reviews," in Perspectives on Prime Lands: Background Papers for the Seminar on the Retention of Prime Lands. Washington, D.C.: U.S. Department of Agriculture, July 1976.
- Clawson, Marion and Perloff, Harvey S. "Urban Land Policy Alternatives for the Future." in Management and Control of Growth. 3 Vols. ed. Randall W. Scott, Vol. 3, Washington, D.C., Urban Land Institute, 1975.
- Collins, Richard C. "Agricultural Preservation in a Land Use Planning Perspective." in Perspectives on Prime Lands: Background Papers for the Seminar on Retention of Prime Lands. Washington, D.C.: Department of Agriculture, July 1976.
- Cornwell, Elmer E., "The Politics of Local Government." in Rhode Island Local Government, Past, Present, and Future. ed. Robert W. Sutton, Kingston: Bureau of Government Research, 1974.

- Costinis, John J. "Development Rights Transfer: Descriptions and Perspectives for a Critique." in Management and Control of Growth, 3 Vols. ed. Randall W. Scott, Vol. 3, Washington: Urban Land Institute, 1975.
- Council on Environmental Quality, Environmental Quality: The Seventh Annual Report of the Council on Environmental Quality. Washington, D.C.: U.S. Government Printing Office, 1976.
- _____, Untaxing Open Space: An Evaluation of the Effectiveness of Differential Assessment on Farms and Open Space. Principal Investigator: John C. Keene. Washington, D.C.: U.S. Government Printing Office, April 1976.
- _____, The Quiet Revolution in Land Use Controls. Prepared by Fred Bosselman and David Callies. Washington, D.C.: U.S. Government Printing Office, 1971.
- Council of State Governments. "State Response to Growth and Change." Prepared for the Department of Housing and Urban Development as supplement I to the Bicentennial Report on National Growth and Development. Washington, D.C.: U.S. Government Printing Office, 1976.
- Davis, Richard B. and Jeffrey, Arthur D., "The Taxation of Rural Land in Rhode Island." (Mimeograph, 1961).
- Fenton, Thomas E., "Definitions and Criteria for Identifying Prime and Unique Lands." in Perspectives on Prime Lands: Background Papers on the Retention of Prime Lands. Washington, D.C.: U.S. Department of Agriculture, July 1976.
- Freilich, Robert H., "Interim Development Controls for Flexible Planning Zoning." in Management and Control of Growth: Issues-Techniques, Problems Trends. ed. Randall W. Scott, 3 Vols. Vol. 2, Washington D.C.: Urban Land Institute, 1975.
- Gustafson, Gregory T. and Wallace, L.T. "Differential Assessment as Land Use Policy: The California Case." Journal of the American Institute of Planners. 40 (November, 1975) 379-389.
- Harris, C. Lowell. "Property Tax Redesign Options: Productive or Counter Productive." in Property Taxation: Land Use and Public Policy, edited by Arthur Lynn Jr. Madison: University of Wisconsin Press, 1976.
- Hassinger, Mark Scott, "Suburbanization Trends in Selected Rhode Island Towns: 1960-1975. An Analysis of Non-Urban Land Uses and Soils." M.C.P. Research Project, University of Rhode Island, 1976.
- Healy, Robert G. Land Use and the States. Resources for the Future, Baltimore: Johns Hopkins University Press, 1976.

- Keene, John C. "Keeping Farmers Farming." Environmental Comment. (January 1978) p. 9.
- _____. "Transferrable Development Rights: An Evaluation." in Land Use Tough Choices in Today's World. The Proceedings of a National Symposium. Ankeney, Iowa: Soil Conservation Service of America, March 1977.
- Kurtz, W. Gary. "The Dilemma of Preserving Open Space Land-How to Make Californian's an Offer They Can't Refuse." Santa Clara Lawyer. 13(Winter 1972) 290.
- Kusler, Jonathon A. "Open Space Zoning: Valid Regulation or Invalid Taking." Minnesota Law Review. 57(November 1972) 1-81.
- Leshner, William. Land Use Legislation in the Northeast: Maine. A Northeast Regional Project 90 Report. Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975.
- _____. Land Use Legislation in the Northeast: New York. A Northeast Regional Project 90 Report. Ithaca: Cornell University Agricultural Experiment Station, Northeast Regional Center for Rural Development, November 1975.
- _____. Land Use Legislation in the Northeast: Rhode Island. A Northeast Regional Project 90 Report. Ithaca: Cornell University Agricultural Experiment Station, Northeast Center for Rural Development, November 1975.
- Levin, Melvin R; Rose Jerome G; and Slavet, Joseph S. New Approaches to State Land Use Policies. Lexington, Massachusetts: Lexington Books, 1974.
- Linowes, R. Robert and Allensworth, Donald T. The States and Land Use Control. New York: Praeger Publishers, 1975.
- Listokin, David, ed. Land Use Controls: Present Problems and Future Reform. New Brunswick: Center for Urban Policy Research, Rutgers University, 1974.
- McClaughry, John, "Farmers, Freedom and Feudalism: How to Avoid the Coming Serfdom." South Dakota Law Review. 21 (Summer 1976) 496-520.
- MacConnel, William P. Remote Sensing Land Use and Vegetative Cover in Rhode Island. Cooperative Extension Service Bulletin No. 200. Kingston: University of Rhode Island, 1974.
- Mandelker, Daniel R. "Critical Areas Controls: A New Dimension in American Land Development Regulation." Journal of the American Institute of Planners. 41(January 1975) 21031.

- _____. "Putting Together the Policy and Legal Decisions." in Land Use: Tough Choices for Today's World. The Proceedings of a National Symposium. Ankeney, Iowa: Soil Conservation Service of America, March 1977.
- Miner, Dallas. "Agricultural Preservation: A New Issue in Open Space Preservation." in Management and Control of Growth: Issues-Techniques-Problems-Trends. 3 Vols., Vol 2. ed. Randall W. Scott, Washington: Urban Land Institute, 1975.
- Nelson, Robert H. Zoning and Property Rights: An Analysis of the American System of Land Use Regulation. Cambridge: M.I.T. Press, 1977.
- Note, "State Land Use Regulation-A Survey of Recent Legislative Approaches." Minnesota Law Review. 56 (April 1972).
- A Presentation of the Audubon Society of Rhode Island, The Natural Resources Defense Council, Ecology Action of Rhode Island Inc. and the American Littoral Society to a hearing on July 26, 1976 before the Rhode Island Coastal Resources Management Council to determine the eligibility of Rhode Island's proposed Coastal Resource Management Program. (mimeograph)
- Proceedings: Setting a Statewide Land Use Policy. eds: Ruth Kreplick, Warren Litsky, Hain B. Gunnar, University of Massachusetts: Technical Guidance Center for Environmental Quality held June 12-13, 1973.
- Raup, Philip M. "What is Prime Land?" in Retention of Agricultural Land. Special Publication No. 19. A Series of articles of the Journal of Soil and Water Conservation.
- A Report on the Future of Food Production, Marketing, Nutrition and Related Consumer Concerns in New England. Prepared at the request of the Presidents of the New England Land Grant Universities by the Deans of Agriculture, January 1976.
- Runka, G.G. "British Columbia's Agricultural Preservation Program." in Land Use: Tough Choices for Today's World. The Proceedings of a National Symposium. Ankeney, Iowa: Soil Conservation Service of America, 1977.
- Sax, Joseph L. "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention." Michigan Law Review. 68 (January 1970) 471-566.
- Sullivan, Joseph P. "Agricultural Districts: The New York Experience." in Land Use: Tough Choices for Today's World. The Proceedings of a National Symposium. Ankeney, Iowa: Soil Conservation Service of America, March 1977.

- Sutton, Robert W., Jr. "A History of Local Government in Rhode Island." in Rhode Island Local Government: Past, Present, Future. ed. Robert W. Sutton, Jr. Kingston: Bureau of Government Research, 1974.
- Wershow, James S. "Taking versus Reasonable Regulation: A Reappraisal in Light of Regional Planning and Wetlands." University of Florida Law Review. 25 (Fall 1972).
- White, James Wilson, "Effectiveness and Economic Impact of the Green Acres Act and Other Land Use Controls in Preserving Open Space in Rhode Island," M.C.P. Thesis, University of Rhode Island, 1971.
- Williams, Norman Jr. American Planning Law: Land Use and the Police Power. 5 Vols. 1977, Supplement to Volume 5. Chicago: Calaghan Co. 1975.
- Woodbury, Steven. "Transfer of Development Rights: A New Tool for Planning." Journal of the American Institute of Planners. 41 (January 1975) 3-14.
- Yannecone, Victor John Jr. "Agricultural Lands, Fertile Soils, Popular Sovereignty, The Trust Doctrine, Environmental Impact Assessment and the Natural Law." North Dakota Law Review 51 (Spring 1975) 615-53.

State Publications

- Rhode Island Department of Community Affairs, Housing Assistance Section. Information Report: The Outlook for Housing-Rhode Island to 1976. Providence: 1971.
- Rhode Island Department of Economic Development. Rhode Island Basic Economic Statistics 1977-78. Providence: 1977.
- Rhode Island Development Council Planning Division, Economic Classification of Non-Urban Land. Providence: 1961 (map)
- Rhode Island Statewide Planning Program, Rhode Island Population Projections by County, City and Town. Technical Paper Number 25, Providence: April 1975.
- State of Rhode Island and Providence Plantations, Twentieth Annual Report of the State Board of Agriculture Made to the General Assembly at its January Assembly 1905. Providence: E.L. Freemont and Sons, 1905.

Laws

California, Government Code, 51201 et seq.

Province of British Columbia, Statutes Passed in the Session Held in the Twenty-First Year of the Reigh of Her Majesty Queen Elizabeth II. Victoria: K.M. MacDonald, 1973.

Rhode Island, General Laws of Rhode Island.

Tennessee, Tennessee Code Annotated.

Bills

California, Assembly Bill 15. An Act to Add Title 7.9 (Commencing with Section 67700) to the Government Code, and to Add Section 402.3 to the Revenue and Taxation Code Relating to Agricultural Lands. December 1974, Amended 1975, 1976.

Rhode Island, 77-H 6299. An Act Establishing a State-Local Land Management Program.

_____. 77-H 6299-Substitute "A". An Act Establishing a State-Local Land Management Program.

_____. 77-H 6112. An Act Relating to the Preservation of Rhode Island Agricultural Lands and Establishing an Agricultural Preservation Trust.

78-S 2205. An Act Relating to the Preservation of Prime Agricultural Land and Establishing an Agricultural Land Preservation Appropriation.