PRESERVATION OF RURAL CHARACTER AND PROTECTION OF NATURAL RESOURCES

APRIL 1991
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INTRODUCTION

Rural communities across New York State have been experiencing an increase in development activities. This has led to increased interest in rural planning and rural growth management. The issue is of particular concern, since some rural communities still have not enacted zoning, and many of these communities may only have a few scattered land use regulations in place. A 1986 survey conducted by the New York State Department of State Office of Local Government Services found that 31% of New York's municipalities did not have any zoning regulations, 42% of all municipalities lacked subdivision regulations, and 50% did not have a comprehensive plan. This, coupled with the lack of expertise in many rural municipalities on subjects pertaining to growth management and preservation of rural character, threatens the preservation of rural character and protection of natural resources in these communities.

One example of increasing development activity in New York's urban fringe can be found in the Catskill region. A 1988 study of growth and development in Delaware County revealed a 135% increase in the number of land parcels in the County from 1950 to 1988. The study also found that by 1988, 38.49% of all land parcels in the
county were owned by nonresidents. This trend is not unique to New York, in fact rural counties close to urban areas are the fastest-growing communities in the country. This new rural "sprawl" is consuming large amounts of land, once prized for scenic open space, agriculture, wildlife habitats, and forest land. It comes as no surprise that without proper planning, residential use often conflicts with agricultural and other traditional rural land uses.

Historically, zoning has been perceived as an unwelcome rural land use control by farmers and other community residents who mistrust the "sophisticated" urban planners. Additionally, there is a prevailing attitude of "don't tell me what to do with my private property." More and more, however, zoning is slowly being accepted as a method of growth management and rural character preservation.

In 1988, Renew America issued a "State of the States" report on Land Use Planning. The authors observed that, "As public concerns over air pollution, toxic waste, solid waste, groundwater, farmland and urban development continue to grow, calls for stronger, more integrated state regulation is inevitable. Timing, foresight, and a willingness to compromise will be essential. Policymakers in each state will have to decide on whether land use planning will be crisis management or management to avoid or minimize crisis."
The purpose of this paper is to inventory what land use techniques exist in New York and other states to implement planning objectives designed to preserve farmland and rural character and to protect natural resources.
I. PRESERVATION OF FARMLAND

It is important to begin with a clear distinction between the preservation of farmland and the promotion/preservation of agriculture. A public policy determination must be made as to whether programs which serve to ensure the existence of farmland will or can also ensure the continued use of that farmland for agricultural purposes. While many tools exist for the preservation of farmland, a number of them simply ensure that current farmland is not sold to developers for residential or commercial uses. In effect, many of the "farmland preservation" tools may be better considered as open space preservation techniques.

Preservation of farmland for agricultural purposes is an important planning and zoning concern in New York State since approximately one-third of the land in this state is used for agricultural purposes.\(^6\) Between 1982 and 1987, approximately 140,000 acres (out of a possible 2.6 million acres) of prime farmland went out of cultivation in New York State.\(^7\) Of this number, approximately 27,000 acres, or 5,000 acres per year, were lost to further agricultural use.\(^8\) In 1990, there were 1,800,000 acres of prime agricultural land left in cultivation in New York State, and this number continues to decrease at a rate of one out of every 360 acres per year.\(^9\) There are a variety of farmland preservation techniques which may help to reverse or slow the permanent loss of agricultural land. This section focuses on these land use/public policy mechanisms.
According to Renew America's 1988 State of the States report, local
governments in 28 states now have some type of agricultural land preservation
program. State programs which are designed to preserve farmland include: agricultural
districts; authorization to implement agricultural preservation zones; special agricultural
assessments; agricultural conservation easements; transfer of development rights; cluster
development; and purchase of development rights. In addition, urban limit lines (or
growth boundaries), and fee simple acquisition can also be effective in farmland
preservation. Finally, preservation of agricultural land can be accomplished through a
variety of techniques discussed in the Government Law Center's report on the
comprehensive plan and comprehensive planning, including the adoption of growth
management plans and local comprehensive plans.

A. AGRICULTURAL DISTRICTS

Farmers can receive the following benefits under various state agricultural
district laws: differential property tax based upon an agricultural use value; exemptions
from certain special assessments; limitations on acquisition of land by eminent domain
and annexation; limitations on rate of tax increases; anti-nuisance provisions; zoning of
adjacent lands to reduce conflict (not in New York); and conformance of state agency
regulations and procedures to support agriculture within the district.
Agricultural districts are a comprehensive approach to agricultural preservation, and they provide the following advantages: retention of land ownership by the farmer, avoidance of "taking issues" since the restrictions placed on the land are voluntary; promotion and protection of a "critical mass" of land for agricultural purposes. Since there is local control and involvement with the creation of agricultural districts, such programs are more responsive to local needs.

According to the National Association of State Departments of Agriculture, twelve states have enacted statutes which authorize the creation of agricultural districts.\textsuperscript{11} New York's Agricultural District Law was first enacted in 1971,\textsuperscript{12} and later amended in 1987 and 1990. The legislature determined, "The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally-initiated mechanism for the protection and enhancement of New York State's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance."\textsuperscript{13} Any owner or owners of land used in agricultural production (at least 10 acres), may submit a proposal to the county legislative body for the creation of an agricultural district therein; provided said owner(s) own at least 500 acres or at least 10% of the land proposed to be included in the district, whichever is greater.\textsuperscript{14} In return for agreeing to use their land only for agricultural purposes for a designated
period of time, farmers receive special agricultural assessments, limitations on local regulations, limitations on the exercise of eminent domain and limitations on power to impose benefit assessments or special ad valorem levies in certain improvement districts or benefit areas.\textsuperscript{15}

\textbf{PENNSYLVANIA}

Creating an agricultural security area (Area) in Pennsylvania is a relatively simple five step process. It is initiated by petition to the local government wherein the property lies (the property must be productive farmland of at least 500 acres). The governing body then gives public notice of the proposal, inviting objections or modifications thereto to be submitted to both the governing body and the planning commission within 15 days. After the 15 day period, the matter is referred to the local planning commission and the specially created Agricultural Security Area Advisory Committee, which begins a 45 day review period. A public hearing must be held on the proposed Area, and after such time, if an Area is formed, it has only a 7 year renewable life span.

Other features and safeguards contained in the statute include: If the governing body fails to act within 180 days from the date the petition was filed, an Area is automatically formed as proposed; during the life span of the Area, if 10\% of the land is diverted to nonagricultural use, the governing body may call for an interim review;
landowners may add farmland to an existing designated Area during its 7 year designation so long as the procedures outlined above are repeated.

Similar to the New York program, benefits to farmers include: special protection so that local ordinances do not unreasonably restrict farm structures or practices within the Area; State agencies are required to conform their rules, regulations and procedures to encourage viable farming within the Area; and protection from eminent domain.16

MARYLAND

The Maryland Agricultural Land Preservation Foundation Act is unique in that it requires a minimum "critical mass" of land in order to create an agricultural district.17 That minimum amount is deemed essential to support necessary services for agriculture related needs. For example, many of the businesses which provide equipment and supplies would be forced to close down without enough operating farms in the area. In addition, without a "critical mass," it may not be possible to preserve agriculture per se, as all that will be protected is land once used in agriculture. Four other states also require the availability of nearby land which could be used for possible expansion of agricultural activity in the district.18
CALIFORNIA

California's Williamson Act\(^9\) allows landowners to maintain their agricultural land in a designated agricultural preserve, and thus receive special tax treatment. The law provides landowners with a combination of preferential assessment and deferred taxation. Voluntary contracts for the placement of land in the agricultural preserve are for terms of ten years. If during the ten year period, the landowner converts the land to a noneligible use, the statute provides a schedule of tax penalties which will require payment of some or all of the exempted back taxes on the land.\(^{20}\) While the program is successful in that it offers farmers a tax incentive to keep their land in agricultural production, one study found that the incentives to farmers have proven to be inadequate to induce landowners in the rural-urban fringe to participate.\(^{21}\) Furthermore, as with other state agricultural district laws, the Act does not provide a guarantee that the land will permanently remain in agriculture since: 1) a developer or farmer can petition for a cancellation of the contract if they are willing to pay the penalties; and 2) landowners can wait until the ten year contract period has expired and then develop the land.\(^{22}\)
B. AGRICULTURAL ZONING

1. AGRICULTURAL ZONING DISTRICT

Different from agricultural districts, agricultural zoning is a method whereby local governments designate certain areas as agricultural districts in the local zoning ordinance and map. Hawaii is the only state which zones agricultural land on a statewide basis (the entire state is divided into four types of zoning districts, one of which is agriculture). While some states provide specific statutory authority for the creation of local agriculture zoning districts (California, Idaho, Iowa, Massachusetts, Minnesota, Nebraska, New Jersey, Oregon and Wisconsin), this authorization is clearly implied in the zoning powers granted to local governments in New York.

In creating a local agricultural zoning district, local governments may design the ordinance to make the permitted use in the agricultural district either exclusive or nonexclusive. If the district is zoned "exclusively" agricultural, it means that all non-farm buildings are prohibited. If, on the other hand, the district is zoned "non-exclusive," non-farm dwellings may be permitted but larger minimum lot sizes may apply, and permitted uses may be granted only if specific criteria are met. It has been found that local "non-exclusive" ordinances have failed to retain agricultural land for production purposes, because so many other uses are permitted. In addition, often times local regulations which permit "non-exclusive" uses fail to protect
agribusiness within the district.

Today, local agricultural zoning ordinances are as varied as the communities which enact them. Choosing the proper zoning technique depends on community characteristics and goals including land development patterns, parcel sizes and unique local concerns. Ordinances typically may provide for large lot zoning, sliding scale zoning, conditional use zoning, quarter/quarter zoning, buffer zoning, or the establishment of a farm use district, where nonagricultural dwellings are prohibited.

2. LARGE LOT ZONING

Large lot zoning used to be the preferred method of zoning to protect farmland. Traditionally, the local government would establish a relatively large minimum acre requirement for nonfarm residential uses, presumably to discourage nonfarm use in the district. In some cases, this number was as high as 640 acres, and as low as 10 acres. At least one study found that this method of zoning for farmland protection is flawed, because it not only fails to discourage nonfarm use, but in several Michigan townships it actually spread residential development. Rather than acting as a disincentive to development, the minimum lot size of ten acres merely spread development throughout the countryside. Furthermore, it was found that a home built on a ten acre parcel used only one acre of the lot. However, large lot zoning,
combined with a mandatory cluster development program may prove to be a promising technique for the preservation of farmland. Each method alone falls short of accomplishing farmland preservation, but a combination of the two can serve to shift the density in a tract of land while at the same time providing for a large enough amount of open space which can be used for agricultural purposes.

3. SLIDING SCALE ZONING

Sliding scale zoning is a method whereby landowners in an agricultural zone are allowed to develop a stated number of nonfarm lots on their property. A scale, based upon the total number of acres in the parcel, is established by the municipality. Smaller parcels are permitted more proportionate splits (or development lots), thereby preserving agricultural land in larger parcels. For example, a scale may provide that a parcel of between ten and twenty acres may have a maximum permitted lot density of two, while a parcel of between eighty and one hundred sixty acres may have a maximum lot density of five. This technique was challenged in Pennsylvania in 1985, and upheld by the State Supreme Court. Sliding scale zoning permits nonfarm use as of right, whereas conditional use zoning and quarter/quarter zoning do not.
4. CONDITIONAL USE ZONING

Conditional use zoning, also referred to as special use/permit zoning, permits nonagricultural uses in the district provided certain established criteria are met. These criteria typically require the issuing agency to make determinations as to whether the proposed use: is compatible with surrounding uses, would adversely affect the surrounding environment/natural resources, and how much it would add to public service costs.37 Some rural planning authors believe that these criteria leave too much discretion to local decision-makers, thereby making it difficult to assume there will be equal treatment of all applications and that the original goals in designating the conditional uses will be achieved.38

5. QUARTER/QUARTER ZONING

Quarter/quarter zoning, used extensively in Michigan, entitles a landowner to only one lot per forty acres of farmland, and once that lot is developed, the owner is prohibited from future nonfarm development on that parcel.39 This approach will work well only in communities where there are sizeable tracts of agricultural land (for example tracts of 40, 120 or even 360 acres).
6. BUFFER ZONING

Buffer zoning allows municipalities to require a certain amount of distance and/or landscaping between tracts of land within a district. This technique should be considered along with many of the other agricultural zoning tools. Including a buffer zone district in the local ordinance will help to minimize incompatibilities between agricultural uses and other residential/commercial uses. Obvious incompatibilities include noise and odor. The specific criteria for this type of zoning district will vary from community to community depending upon location and surrounding permitted uses.

C. AGRICULTURAL CONSERVATION EASEMENTS

A conservation easement is a voluntary restriction placed upon land by the owner and a qualified conservation organization (or government body) which restricts use of the land to open space or conservation purposes. In return for a cash payment from the organization or as a donation, the owner grants an easement, thereby giving up the right to use the property for non-agricultural uses. In the case of agricultural conservation easements, the use is restricted to agriculture. (For a general discussion of conservation easements, see Section II.A.)
PENNSYLVANIA

In 1988 Pennsylvania enacted a statewide program to purchase agricultural conservation easements from landowners whose land is enrolled in an agricultural security area. In order to be eligible for the easement program, the landowner must demonstrate that: (1) the farm is capable of generating gross receipts of $25,000 annually; (2) s/he has practiced good stewardship of the land; and (3) there is a likelihood of conversion of the land to nonfarm use without the easement purchase. A State Agricultural Land Preservation Board was created to oversee the program, which is funded from the 1987, $100 million bond issue. Of the funds available, half go to participating counties in the form of grants to administer the program, and the other half is used by the State board for county matches to funds allocated for purchase. Counties choosing to participate in the program must assemble a county preservation board, which, among other things, establishes local priorities for buying easements. The price paid for a perpetual easement is the difference between the market value and the agricultural value of the land. In the event the landowner wishes to sell only a 25 year easement, the price paid is 1/10 of the aforesaid easement value.

CALIFORNIA

A December 1989 report of the California State Coastal Conservancy evaluated the potential for using nonprofit agricultural land trusts to preserve productive
agricultural lands. The Conservancy found that land trusts can successfully provide long-term protection for locally threatened agricultural land if the trusts have sufficient financial support and receptive local agricultural leaders and landowners.\textsuperscript{41} The study also concluded that local nonprofit land trusts have several advantages over state agencies in administering agricultural conservation programs. These advantages include: familiarity with the area, greater success at negotiating transactions at a reasonable price, and the fact that many farmers prefer not to deal with a governmental body.\textsuperscript{42} Furthermore, the study reported: acquisition of nonpossessory interests such as agricultural easements is less costly on a per acre basis than fee simple acquisition; agricultural trusts which have a single purpose may have an easier time successfully implementing agricultural programs than land trusts with broader environmental goals; and the availability of funding is crucial to helping land trusts complete projects, establish a track record and undertake new projects.\textsuperscript{43}

Agricultural land trusts differ from the land trusts discussed in Section II.B. of this paper in that they are generally characterized as: having significant representation of agricultural interest on the board of directors; having a reference to agriculture in their name; and having protection of agricultural land as a primary purpose in their legal incorporation papers.
D. PURCHASE OF DEVELOPMENT RIGHTS

Purchase of Development Rights (PDR) is a governmental program primarily aimed at agricultural land protection. It allows landowners to sell a development interest in their property, while still retaining all other ownership in the land. The program sets forth a formula where the one time price to be paid for the development rights is intended to reflect the difference between market value for farm use and market value for development use. Since PDR programs are designed to be voluntary, offering this "incentive" to owners of agricultural land may allow them to resist the temptation to sell their land for the potentially high profits of development. Purchasing development rights is less expensive for state and local governments than purchasing the land in fee simple.

While local governments in New York have the power to create local PDR programs, New York is the only Northeast state which does not yet have a State supported PDR program. This is especially significant in light of the 1990 Federal Farms for the Future Act which was signed by President Bush on November 28, 1990. The purpose of Chapter 2 of the Act is to promote a national farmland protection effort. States eligible for the five-year Agricultural Resource Conservation Demonstration Program include any state that: 1) operates or administers a land preservation fund that invests funds in the protection or preservation of farmland for
agricultural purposes; and 2) works in coordination with local governments or private not-for-profit or public organizations to assist in the preservation of farmland. To be eligible for federal subsidies, states must have the aforesaid programs in place by August 1, 1991. States may be eligible for up to $10,000,000 in federal aid per year for this program. A bill has been introduced in the New York Legislature which would, if enacted, authorize a $100 million farmland preservation bond act to be presented to the voters at the November 1991 general election (S.2262/A.3398; introduced by Senator Lavalle and Assemblyman Behan). Funds would be used to support local PDR programs.

In March 1990, American Farmland Trust published a chart [see Appendix A] detailing the status of current state PDR programs in the Northeast. The chart, which contains information for Connecticut, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island and Vermont, indicates the number of farmland acres protected, the funds expended to do so, and the funding source. Of particular note is the varied approaches used by the Northeast states to provide funding for these programs. Such methods include: state bonds (Connecticut, Maine, Massachusetts, New Jersey, Pennsylvania, Rhode Island); general appropriations (Maryland, New Hampshire, Vermont); transfer tax (Maryland, Vermont); and county/local matches (Maryland, New Jersey, Pennsylvania). [see Appendix A for a copy of the chart and enabling statutes].
In April 1990, American Farmland Trust published a chart containing a sampling of countywide PDR programs from around the country [see Appendix A]. Many of the funding sources for the local programs are generated from the real property tax (Boulder, Co., Forsyth, NC, Marin, Ca.). Suffolk County, New York, (the only municipality in New York State currently utilizing this tool) initiated a local PDR program in 1974 which has protected 6,000 acres of farmland. The program is funded through county bonds.

For farmers who wish to continue farming, PDR offers incentives including the availability of ready capital without having to mortgage their land, lower real property taxes reflecting a decrease in the value of the land once the development rights are severed, and potential estate or inheritance tax benefits as a result of the decrease in value of the land.46

In order to make a PDR program truly successful, the state and/or local government purchasing the development rights will have to carefully design a set of criteria to determine which development rights should be purchased. For example, the cost of the development rights should be balanced against the likelihood that the land will remain in viable agricultural production for a certain number of years. In addition, the pressure for development of the farmland should also be considered a factor.
Without establishing a set of criteria, PDRs would be a first come, first served program without any controls to make sure that farmland, not simply open space, is preserved.

E. TAX CREDITS FOR FARMLAND PRESERVATION

In 1990, Minnesota implemented a statewide tax credit farmland preservation program. In order to participate in the program, counties must prepare preservation plans which include the designation of land for long term agricultural use and land for development. The State Commissioner of Agriculture must approve the county plan. After the county plan is approved, owners of farmland within long term agricultural use districts may place restrictive covenants on their property. If such a covenant is placed on the land, owners will receive a $1.50 per acre annual tax credit, protection from nuisance suits, protection from eminent domain and annexation, and special assessments for public water and sewer construction.47

F. OTHER APPROACHES

OREGON

In 1973, Oregon enacted a State Land Use Act (Act), which provides for the placement of agricultural land in exclusive preservation zones.48 All local comprehensive plans must conform to the Act. The Act sets forth 19 "Statewide
Planning Goals," two of which specifically provide for farmland preservation. One of the goals requires the establishment of exclusive farm use zones. These zones must be separated from urban growth areas by buffers of "transitional areas of open space." Counties are required to submit semi-annual reports to the State Land Conservation and Development Commission (LCDC), which in turn reports to the Joint Legislative Committee on Land Use. This reporting helps monitor activity in exclusive farm use zones to make certain that farmland and agricultural preservation goals and policies are being achieved. The LCDC is currently conducting a study in response to an increase in new nonfarm dwellings in exclusive farm use zones. This study is expected to be completed in the spring of 1991.

The other statewide goal impacting farmland preservation is the requirement that all cities establish "urban growth boundaries" in order to prevent sprawl. Cities are required to consider farmland protection in determining the location of urban growth boundaries and in planning for the expansion of urban services. The urban growth boundaries define the outer limits of planned growth through the year 2000. These boundaries limit "rural sprawl" and protect farmers from being forced to compete with developers and to pay resulting higher prices for farmland.
WISCONSIN

The Wisconsin Farmland Preservation Act (Act) goes beyond the agricultural districting approach, but falls short of the Oregon comprehensive state program for farmland protection.\textsuperscript{52} The Act provides tax benefits and incentives to farmers based upon a two-stage approach. In the first stage, farmers who enter into contracts with the State receive certain benefits as of right.\textsuperscript{53} In the second stage, availability of benefits is contingent upon the county having a farmland preservation plan or the municipality zoning the land for exclusive agricultural use.\textsuperscript{54} An initial determination to enter into a farmland preservation agreement is made by the local governing body upon consideration of enumerated State criteria which include: existence of an applicable plan or exclusive agricultural ordinance; consistency with that plan; productivity and viability of the land for agricultural use; predominance of the agricultural use; and inclusion of contiguous land of the same landowner.\textsuperscript{55}

G. TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights programs ("TDRs") allow for the shifting of density from one parcel of land to another. The following ten states presently provide authority for TDRs: California, Florida, Illinois, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Tennessee and Vermont.\textsuperscript{56} [see Appendix B for a statutory compilation]. New York, New Jersey, Pennsylvania and Vermont all passed
some form of state legislation authorizing TDRs in the past few years. The New
Jersey statute\textsuperscript{57} is the most restrictive, containing the detailed provisions set out in the
New York Law\textsuperscript{58} and then some. Vermont, at the other extreme, merely states that
TDR programs are authorized. In their 1990 report, the ABA Subcommittee on
Transfer of Development Rights cited the New York TDR statute as the one which
strikes the best balance of detail and openness.

The New York TDR statutes were enacted in order to "... protect the natural,
scenic or agricultural qualities of open lands, to enhance sites and areas of special
caracter or special historical, cultural, aesthetic or economic interest or value and to
enable and encourage flexibility of design and careful management of land in
recognition of land as a basic and valuable natural resource."\textsuperscript{59} The statutes further
provide that a local TDR scheme is to be established in accordance with a
comprehensive plan.\textsuperscript{60} The statute then articulates the procedure to be followed when
authorizing TDRs, including the designation of sending and receiving districts (and
requirements therefor), and a requirement for the preparation of a generic
environmental impact statement pursuant to Article 8 of the Environmental
Conservation Law.\textsuperscript{61} In addition, the local legislative body is required to evaluate the
impact of TDRs upon the potential development of low or moderate income housing in
both the sending and receiving districts, and reasonable action must be taken to
compensate for any negative impacts in such housing caused by the TDRs.\textsuperscript{62}
Since the New York enabling legislation is fairly new, not enough time has elapsed in order to evaluate its success or lack thereof. Certainly, the statute is comprehensive, and it permits local governments to adopt TDR regulations only after careful planning and review. A bill has been introduced in the 1991 Legislative session which would authorize local governments which acquire development rights for open space preservation to establish a development rights bank (S.1966 introduced by Senator Ororato).

In 1989, the New Jersey State Legislature passed the Burlington County Transfer of Development Rights Demonstration Act which permitted the county to test TDR viability for the entire State. Burlington County is the largest agricultural county in the State. Under the Act, municipalities in the county are required to provide estimates of anticipated population and commercial growth; identify all prospective sending and receiving areas; estimate land values in the sending area; estimate the existing and proposed infrastructure in the receiving area; and assess the general real estate market. The Act also permits two or more municipalities to develop a joint program for transfers. One interesting component of the New Jersey Act is that it allows land enrolled in the State's easement program to be transferred into TDR credits and sold. This allows the State to generate additional revenue for the easement program.⁶³
In addition, the New Jersey Pinelands Act provides for transfer of development credits to provide a mechanism to facilitate the preservation of resources and accommodation of regional growth. The Pinelands Development Credit Bank was established to purchase and sell such development credits.64

After three TDR bills failed last year, the 1990 Virginia General Assembly created a joint subcommittee to study TDR. The subcommittee is expected to report its findings and recommendations in 1991. The 1990 Kentucky General Assembly enacted a TDR bill, SB 405, which authorizes local governments to include TDR programs in their comprehensive plans.

II. PRESERVATION OF OPEN SPACE

Preserving open space helps to protect the rural character of the countryside, natural resources, environmentally sensitive areas, and visually significant resources in the State. A variety of tools can be employed at both the state and local levels to achieve a balance between development and open space. While some of the techniques require significant financial support, other no-cost innovative methods have been created which involve a shifting or transferring of density. The New York General Municipal Law specifically authorizes municipalities to expend or advance
public funds in order to acquire land for open space.\textsuperscript{65} The law defines "open space" or "open area" as "... any space or area characterized by (1) natural scenic beauty or, (2) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic resources."\textsuperscript{66} Agricultural lands used in bona fide agricultural production are also considered open space under the law. The statute authorizes municipalities, after a hearing on notice, to acquire open space by purchase, gift, grant, bequest, devise, lease or otherwise, the fee or any lesser interest, development right, easement, covenant, or other contractual right.\textsuperscript{67} The law further provides that in the event the municipality obtains a less than fee interest in the open space, the landowner should receive special consideration as to the value of the land for the purposes of real estate taxation, taking into account the limitations placed on future use of the land.\textsuperscript{68}

In 1990, the State of Delaware enacted the Delaware Land Protection Act (Act) in order to preserve land available for public recreation and natural resources conservation.\textsuperscript{69} The Act, which creates a nine member Open Space Council, also calls for the protection of open space through the use of land trusts, conservation easements, purchases of less than fee simple property rights, and incentive programs for private sector contributors. In addition, the Act requires county governments to adopt overlay zoning ordinances, guidelines and performance standards, design criteria
and mitigation requirements to significant ecological, historical and archeological lands. The Act also provides one time grants of up to $100,000 to each county to assist with compliance.

What follows is a discussion of a variety of techniques which are employed around the country for the purpose of preserving open space.

A. CONSERVATION EASEMENTS

Although this section deals with conservation easements, which are primarily used to protect open space, easements may also be described as "scenic," "open-space," "facade," or "historic preservation," depending upon the use. The use of conservation easements as a tool for the preservation of open space and the protection of scenic and ecologically significant property has increased during the last decade. New York, along with approximately 30 other states, authorizes conservation easement programs. The 1986 New York Environmental Bond Act provided dedicated revenue for the purchase of conservation easements. With the defeat of the 1990 Bond Act, new revenue sources to continue and enhance land acquisition activity in the State will need to be identified. (See Section II.I. for a discussion of potential revenue sources.)
New York law defines a conservation easement as "... an easement, covenant, restriction or other interest in real property ... for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property ...." The easement is a recorded agreement in which the owner of the property restricts the type and amount of development permitted on the particular parcel of land by the current and future owners of the land. This tool allows landowners to convey only their rights to develop their land, not actual ownership of the land, usually in return for monetary consideration. New York law presumes that all easements are perpetual in duration, unless otherwise specified in the written agreement. State statutes usually provide that the conservation easement (or conservation restriction) may be purchased by governmental bodies (See N.Y. GML § 247 which permits municipalities to purchase and accept easements) or by private not-for-profit conservation organizations (in New York, such organizations must be qualified as exempt for federal tax purposes). There is also a significant benefit to the landowner conveying the easement, in that if s/he decides to donate an easement rather than sell it, it may be deducted from federal income tax as a charitable gift (provided the easement is made in perpetuity, exclusively for conservation purposes and is given to a qualified conservation organization or public agency). New York law does not specifically provide for special real property tax assessment for lands burdened with conservation easements (in fact state-held conservation easements in lands located within the Adirondack or
Catskill Parks are subject to taxation). At least twenty-three states which have enacted conservation easement laws have provided by statute that imposition of conservation restrictions shall affect the real property tax valuation of the burdened land. These policies reflect the fact that the conveyance of an easement restricts the economic and development uses of the property, thereby reducing its fair market value. The issue of real property tax exemptions or special assessments for lands restricted by conservation easements is ripe for discussion in New York. State and local cooperation will be necessary in order to move in the direction of special assessments since it will mean a decrease in real property tax revenue at the local level. A bill is currently before the New York State Legislature which would provide a property tax abatement for lands classified as farmland or open space land (1991 - S.2098/A.3210; introduced by Senator Lavalle and Assemblyman Behan).

Land owners interested in land conservation usually have two primary objectives. The first is a desire for their property to remain undeveloped even after they sell or convey their interest and the second is a financial concern in achieving a balance between the cost of conservation and the financial value/benefit of their investment in the land. The major incentive for landowners to donate an easement is its federal income tax deductibility as a charitable donation. Some obstacles which must be overcome in order to ensure viable conservation easement programs include: 1) making certain that if the State does not have the funds to purchase the easements, there are
enough local not-for-profit organizations with the capability to do so; 2) encouraging local assessors to take into account the impact of conservation easements on the fair market value of the property; and 3) creating a state-implemented property tax incentive program. States which have specific property tax incentives for land held in conservation easements include California, Florida and New Hampshire.\textsuperscript{78}

States with notable local conservation easement programs include California, Colorado, Connecticut and Pennsylvania. In 1987, a state referendum was passed in Pennsylvania which established a $100 million fund for a state conservation easement program as well as the Pennsylvania Bureau of Farmland Protection. In 1989, $25 million in matching funds was allocated to counties for the purchase of conservation easements.

In 1989, the State of Maryland adopted new criteria for appraising farmland easement value. These criteria include: development pressure, location, interest rates and potential for agricultural use, as well as other factors affecting farm value. A point system is used to appraise the farmland. Rhode Island, New Hampshire and one county in Pennsylvania also utilize a point system. According to the Executive Director of the Maryland Land Preservation Fund, the new point system is designed to more accurately reflect agricultural values, which means an increase in the difference between the market value and the agricultural value, thus an increase in the easement value. In
addition, many counties in Maryland have adopted programs which help in the farmland preservation effort. For example, several counties offer a 100% tax abatement for lands in the easement program, and one county offers a tax break for land in an agricultural district.79

B. LAND TRUSTS

A land trust is a local or regional nonprofit group that holds land and other property interests for the benefit of the public. An example of a regional organization in New York is the Adirondack Land Trust, which serves twelve counties. More common are the local land trusts which service all or part of a specific county. Trusts protect land by directly acquiring an interest therein through a gift or purchase. Land Trusts may purchase or accept easements, negotiate limited development, and assist in a variety of activities designed to conserve and protect land. "Limited development" is a tool used by more and more land trusts to protect significant environmental resources/lands while at the same time permitting compatible development (with certain restrictions).

As of 1989, there were forty-seven land trusts operating in New York State.80 These trusts employ a variety of land protection methods including: easement and land donation, easement and land purchase, revocable agreement, land transfer, land
negotiation, land managing and improving, land exchange, limited development, and urging and working with governmental bodies to purchase and preserve open space.  

(See Appendix C for a listing and description of land trusts in New York.)

Land trusts can provide an opportunity for cooperative efforts between government and private organizations to preserve open space. According to a 1989 survey, there are now over 700 land trusts in the United States, almost fifty percent of which are located in New England. While New York State does not directly provide funding for land trusts operating within the State (although there is a cooperative effort in so far as targeting certain lands for protection), several states do provide direct financial assistance to land trust organizations. The Land Trust Alliance has provided the following information on state funded/subsidized land conservation programs with nonprofit roles:

**California: The California State Coastal Conservancy.** The Conservancy, a state agency established in 1976, makes grants and loans to land trusts for a wide range of conservation purposes, including acquisition. It also provides technical assistance in property acquisition transactions, offers community-based workshops, and produces publications of general interest to trusts.

The Conservancy is funded by bonding and by periodic grants from other state funds, such as the Environmental License Plate Fund and the Energy and Resources Fund.

**Wisconsin: The Stewardship Fund.** The Stewardship Fund, a 10-year, $250 million program was created by the state legislature in 1989. Funded by bonding, it is used for a broad range of conservation purposes, including land acquisition, restoration of wetlands and grasslands, and streambank protection.
Nonprofits can apply for matching grants for a variety of conservation activities, including the acquisition of urban green space, wildlife habitat restoration, and the planning of trails.

**Vermont: The Vermont Housing and Conservation Board.** The Vermont Housing and Conservation Board, established in 1987 to provide affordable housing and to protect the state’s historic and conservation resources administers the Vermont Housing and Conservation Fund. The Fund is supported by bonding ($7.25 million in FY 1991) and a real estate transfer tax (approximately $3 million annually).

Nonprofits can obtain grants and loans to cover part of the cost of a wide range of activities, including property acquisition and feasibility studies.

**New Jersey: Green Acres.** Initiated in 1961, the state’s Green Acres Program (funded by bonding) has received more than $1 billion since its establishment and has protected some 264,000 acres of recreational and open space lands. The $300 million bond in 1989 provided, for the first time, for $10 million in matching grants to nonprofits for land acquisition for conservation and recreation purposes.

**Florida: Florida Communities Trust Act.** The Florida Communities Trust Act, passed in 1989, created a nonregulatory state agency, the Florida Communities Trust, to assist local governments in implementing the conservation elements in their comprehensive plans. The Trust can make grants or loans to nonprofits for land or easement acquisitions and other types of conservation projects; it also provides technical assistance to nonprofits.

Funding for the Trust is provided partially by receipts from the sale of vanity and environmental license plates totalling $1-5 million yearly. In addition, the Florida Preservation 2000 Trust Fund, approved by legislators in June, 1990, will provide some $30 million in bonding funds by the spring of 1991. An initial state appropriation was used to hire staff.

**New Hampshire: New Hampshire Land Conservation Investment Program.** The New Hampshire Land Conservation Investment Program (LCIP) was created in 1987 to purchase land and development rights "of special natural resource significance." Funded by bonding and state surplus funds, by 1990 the program had received $38 million in state funds.
The LCIP works in conjunction with the private, nonprofit Trust for New Hampshire Lands, which is privately funded and which provides administrative and land agent services for LCIP. Local land trusts participate in the program by assisting municipalities in identifying potential acquisition properties and in securing money or property to match state acquisition funds.

**Maryland: Program Open Space.** Under the Department of Natural Resources’ Program Open Space, funded by part of the proceeds from a 1/2 per cent real estate transfer tax, grants may be made to land trusts for acquisition of land and conservation easements. Funding (now at $39 million per year) will increase to $108 million by 1996.

**Maryland: Maryland Environmental Trust Local Land Trust Assistance Program.** The Maryland Environmental Trust, a quasi-governmental agency created in 1967, is funded primarily by appropriations from the state legislature. The Local Land Trust Assistance Program, however, is funded by a federal Coastal Zone Management Grant to the Coastal Resource Division of the state’s Department of Natural Resources; the federal grant is matched by state funds.

The Assistance Program (which is based on cooperative agreements between MET, local land trusts, and the Chesapeake Bay Foundation) provides for a broad range of services to local trusts, including help in getting started in monitoring and enforcing easements; and in training board members and staff. The MET can also act as co-grantee on easements held by local land trusts and reimburse easements donors for part of the costs associated with donations.

**Iowa: Resources Enhancement and Protection Program (REAP).** In 1989 the state created REAP to provide $285 million over a 10-year period for open space acquisition, land management, wildlife habitat protection, and other conservation programs. A portion of the money is available as matching funds to private conservation organizations for acquisition purposes. REAP is funded partially by a lottery and partially by appropriated funds.

**Connecticut: The Recreation and Natural Heritage Trust.** Established in 1986, and funded by bonding, ($75 million in 1988), monies from the Trust are used to acquire recreational and "ecologically diverse" lands. Nonprofits can assume management of the acquired properties and be reimbursed by the Trust for management expenses. They can also work with the Trust to identify land for acquisition and to raise matching
funds.83

A bill has been introduced in the 1991 New York Legislative session which would authorize the Commissioner of the Department of Environmental Conservation to contract with not-for-profit land trusts for the preservation of scenic, historic, cultural, ecological, agricultural, forestry, recreational, geological or other open space or historic lands (A.2894 introduced by Assemblyman Grannis). Passage of the bill is unlikely in light of the State’s fiscal crisis since it contains an appropriation of $375,000.

As with any land preservation program, in order to be efficient and successful, each trust must develop a conservation strategy, which should generally reflect the natural resources in need of protection in the area.84 For example, specific criteria identified by the Adirondack Land Trust include: productive agricultural and forest soils, key tracts essential for the protection of critical state lands, major scenic vistas, important travel corridors, significant natural resources areas (including shoreline, wetlands and other important habitats), designated agricultural districts, wild, scenic and recreational corridors, and land designated by the State as critical open space.85

A coordinated public/private partnership to support land trusts would be beneficial for the preservation and stewardship lands in New York State. Land trusts spend a significant portion of their budget on stewardship for monitoring the
lands/easements they hold. This is a perpetual administrative expense which escalates with each new acquisition (through purchase or donation). One area identified for legislative action by proponents of land trusts, is an examination of real property tax incentives for landowners who donate easements or other interests and the trusts who accept the land interests. The state, or a dedicated state fund, could provide whole or partial reimbursement for lost local tax revenues resulting from a real property tax incentive.

A 1989 report of the Governor's Task Force on Forest Industry contained twelve recommendations for an action plan of land use and ownership stability. Although the work of the Task Force focused on the forest industry, its recommendations could be equally beneficial for preservation efforts beyond New York's forest lands.86 These recommendations included: more flexibility in the State conservation easement program; a review of current appraisal and valuation procedures including an investigation of new appraisal strategies and/or legislative initiatives which take into account the public benefit associated with easement acquisition by the State; immediate State action to form a partnership with non-profit conservation organizations (such as land trusts); and expanded funding for acquisition of easements. In his 1991 Message to the Legislature, Governor Cuomo indicated that he will implement a number of the Task Force's recommendations this year, although no specific reference was made to aforesaid recommendations.87 The Governor indicated that he would appoint a Forest Resources
Development Council to, "... ensure a continuing dialogue between the forest industry and New York State." This Council may provide a good forum for further discussion and refinement of a better conservation easement program in New York.

C. LAND BANKING

The process of land banking for environmental or conservation purposes involves the public acquisition of undeveloped land (usually by condemnation or voluntary purchase) which is then held, or "banked" for some unknown future use. In theory, land banking is an open space preservation and a growth management tool, in that it can slow down development in a community. This process is widely used in Europe (particularly England), and is slowly gaining popularity in the United States. Land banking may be done by governmental agencies or by not-for-profit organizations such as land trusts. While a common goal of land banking is the acquisition of small amounts of contiguous lands for future public facility needs, it can also be used to accumulate undeveloped land either for permanent public ownership as open space, or for subsequent resale to developers in a manner consistent with a plan for local growth and development. One author has suggested that an advantage to land banking in urban fringes is that it can aid in the promotion of orderly development (if done in accordance with a growth management plan).
The Puerto Rico Land Administration, a public corporation, is authorized to acquire and accumulate in reserve, private property for the benefit of its residents. The law, which permits the Land Administration to acquire land by purchase or condemnation, allows the Administration to hold the land indefinitely. The State of Maryland has the oldest land banking program, Program Open Space, which was started in 1969. Funded by a real estate transfer tax, the land bank is in essence a land trust operated by the state. Using a transfer tax to fund the land bank has been particularly successful since the program is then funded by the very reason it was created... the real estate development boom. Vermont’s Housing and Conservation Fund has also been cited as a land bank for conservation purposes. Three other notable land banking programs are found in Nantucket and Martha’s Vineyard in Massachusetts, and Block Island, Rhode Island.

D. CLUSTER ZONING

Cluster zoning is a tool which allows residential development in rural areas while at the same time protects open space suitable for agricultural or environmental protection. This flexible zoning technique requires a developer to arrange residential development around open space or environmentally sensitive areas by shifting density within the parcel. For example, if a proposed development site is zoned for a minimum one house per acre, and there are 50 acres in the site, with cluster zoning a
municipality can allow the developer to cluster the houses on ten or twenty acres and retain the balance as open space. New York provides specific statutory authority for towns, villages and cities to enact local cluster ordinances. Cluster development can be designated on a plat pursuant to subdivision approval power, or local governments can require clustering through site plan or special permit review. New York’s enabling legislation for cluster development is strong in that it authorizes the local legislative body to give the planning board the power to require developers to submit a proposed cluster plat.

Developers benefit by clustering because fewer streets are needed, shorter utility line extensions are required, and undesirable building lots may be avoided. Other states which provide for cluster zoning include Illinois, Indiana, Ohio, New Hampshire, New Jersey, Pennsylvania, and Vermont.

States and municipalities therein, deal with the issue of whether or not to allow for increased density in a cluster development differently. For example, New York's law specifically prohibits density bonuses for cluster developments for single-family dwellings. Washington County, Oregon provides that the gross density of rural clusters can be 1 unit per 8 acres (while traditional subdivisions are limited to 1 unit per 10 acres). Clark County, Washington is an extreme case which allows clustered subdivisions to be developed at 1 unit per 5 acres plus and additional 2 dwelling for
each 20 acres in the project, while traditional subdivisions are limited to 1 unit per 20 acres. In Orange County, Florida, developers receive a density bonus in return for providing public benefits. King County, Washington allows gross densities to be doubled in exchange for public benefits. In Concord, Massachusetts, developers are given an increase in density for conformance to stringent requirements, and in Rochester-Olmstead County, Minnesota there is a maximum project size of 160 acres built into its cluster ordinance as a further protection. A recent study on rural cluster zoning found that density bonus provisions are common, and that they can often provide an extra incentive for developers to use cluster development.

In general, whether or not to permit cluster development is at the option of the local governing body. There is an increasing trend, however, towards making it mandatory under certain circumstances. When creating a cluster zoning statute and/or local law, attention should be paid to ensure that the cumulative effects of density bonuses will not result in damage to rural areas.

Some local ordinances describe the type of land that should be preserved as open space and how the open space should be sited, or its required dimensions. For example, in Fort Collins, Colorado, the local ordinance provides that, "The design of open space should show consideration for habitats by leaving open large single blocks of land." In Loudon County, Virginia, the local law states that, "Open space should be
appropriately located with respect to permitted uses." Finally, the Rochester-Olmstead County, Minnesota, ordinance states, "The greatest amount of prime agriculture land shall be preserved and in such a way as to ensure continuing feasibility of agriculture and forestry."

E. PLANNED UNIT DEVELOPMENT

Planned Unit Developments (PUD) have many advantages which overcome the shortcomings of traditional Euclidean zoning. For example, it promotes improved construction and development design with more flexibility and variety by allowing buildings to be erected closer together resulting in more open space. PUDs are similar to cluster developments with one main difference: they allow for the planning and development of an entire tract of land as one mixed use development. It presents greater opportunities for affordable housing since the increase in design flexibility provides for a lower purchase cost per unit. There is no specific statutory authority in New York for the use of PUDs, however, most municipalities which use PUDs do so in the form of floating zones (the floating zone procedure has been upheld by the courts).110

A "floating zone" is a district which is described in the local zoning ordinance, but which does not appear on the zoning map until it is actually "sited." It is used
when a municipality envisions a future need for a particular type of development in the community. It is "floating" because the zoning ordinance articulates the use and regulations for the zone, but does not indicate where it will be placed.

It has been suggested that absent specific statutory authority, the special permit process could provide for PUDs, by district regulations listing a planned unit development as one of the enumerated conditional uses within the district.111

Many states, including Colorado, Indiana, Massachusetts, New Jersey, Ohio and Vermont, specifically allow for nonresidential uses within the development (see Appendix D for statutory examples).

The Vermont Planning and Development Act explicitly recommends PUDs.112 The statute also provides for a buffer to separate parcels of land from neighboring properties (e.g., placing a row of trees on the edge of the development or using an entire zone as a buffer). Some states, such as New Jersey, require a minimum acreage for PUDs. In New Jersey the minimum acreage is ten contiguous acres for PUDs and five contiguous acres for planned residential developments. While Pennsylvania does not require a minimum lot size, the statute does allow municipalities to require a minimum number of dwelling units.
F. OPEN SPACE ZONING

Open space zoning differs from cluster development zoning in that it is used to establish greater requirements on the size and quality of the open space protected. Open space zoning is a technique which can be used to preserve farmland as it can limit the amount of agricultural land that can be built upon. Usually no more than half of the farmland is lost to housing lots and streets, and the farmland that is lost is the least productive agricultural land. The adjoining farmland then remains in the farmer's hands, permanently protected through the use of conservation easements.

Currently, no specific statutory language exists in New York to authorize this type of zoning. Its benefits are numerous including: farmers can retain half of their farmland and still benefit from the development rights to the entire tract; developers can benefit by reduced construction costs for roads and water systems since the buildings are closer together; it is an alternative to costly PDR programs, especially for states which cannot afford to fund them; and most importantly, it is a method of increasing the amount of permanently protected farmland and open space at no cost to the public.
G. OVERLAY ZONING DISTRICTS

One effective zoning tool extensively utilized for the protection of natural resources is the overlay zoning district. A municipality may create an overlay zone for a district(s) in order to protect a variety of environmental and community resources. An overlay district is superimposed on the underlying zone and so designated on the local zoning map. It allows municipalities to provide additional regulations (beyond those already required for the "regular" district) for the lands within its boundaries. The following are examples of the different type of overlay zones which have been used: agricultural overlay zones\textsuperscript{114}, scenic corridor overlay zones\textsuperscript{115}, and environmental overlay zones.\textsuperscript{116} In addition, overlay zones have been used to protect the quality of drinking water contained in groundwater aquifer systems.\textsuperscript{117}

H. DEVELOPMENT AGREEMENTS

Development agreements are negotiated agreements between a landowner and a local planning agency which are intended to provide developers with various assurances regarding land use regulations controlling their land. Although New York does not currently authorize development agreements by statute, the following states have adopted enabling statutes: California, Hawaii, Florida, Arizona, Nevada, Minnesota, Colorado, New Jersey, Louisiana and Massachusetts (Cape Cod Commission only).\textsuperscript{118}
While development agreements are discussed in greater detail in the Government Law Center’s study on the Comprehensive Plan and Comprehensive Planning, this discussion is limited to the use of such agreements for purposes of open space acquisition. In 1986, a survey by California-Berkeley found that of the forty development agreements then in effect in California, two agreements required the developer to dedicate open space.119 Both Napa and Solano Counties in California have negotiated development agreements whereby residential developers donated open space easements of hundreds of acres in exchange for a contract.120

Several countries, including Great Britain, Sweden and Canada also permit the use of development agreements.121 In Halifax, Canada, a development agreement concerning a large, primarily residential development, provided for the dedication of open space at a much higher overall percentage than would have normally been permitted under provincial statute.122 The flexibility of development agreements for both developers and municipalities makes this an exciting innovative open space acquisition technique. As one author noted, "The future use of development agreements is limited by a particular state’s statute, a local jurisdiction’s implementing ordinance, and one’s imagination."123
I. CONSERVATION DENSITY ZONING

This mechanism permits developers to provide public or private roads within a subdivision which are less expensive than would otherwise be required by the local ordinance. In return, developers agree to a reduction in the number of units they build. The Town of LaGrange in New York permits conservation density subdivisions. Several municipalities in Connecticut and Massachusetts also employ this technique.

J. OPEN SPACE PRESERVATION AT THE STATE LEVEL IN NEW YORK

In 1990, the New York State Legislature enacted legislation which authorized placement of a Bond Act on the November 1990 ballot. Although the voters defeated financing through bonds, the implementation legislation which was also passed called for, among other things, the creation of two types of land acquisition advisory committees; nine regional committees and one state-wide committee. The law mandates that the regional Committees, composed of at least thirteen and no more than twenty-three members recommend properties in priority order for the state land acquisition program through a variety of techniques (eminent domain being the tool of last resort) and to provide guidelines therefore. The regional committees are to forward their recommendations to the statewide committee consisting of the following
seven members: the Commission of Environmental Conservation and Parks, Recreation and Historic Preservation, and the Governor, Senate Majority Leader, Assembly Speaker, and Senate and Assembly Minority Leaders or their designees.\textsuperscript{128}

In his 1991 Message to the Legislature, Governor Cuomo stated that upon receipt of the draft plan from the State Land Acquisition Advisory Council,\textsuperscript{129} there will be extensive public hearings across the State, culminating in a final plan in early 1992.\textsuperscript{130} The statewide public hearings should provide a significant opportunity for local governments and their residents to inventory and identify their own lands for open space designation.

Although New York State will have to pursue alternative revenue sources for land/open space acquisition, development of a statewide plan with considerable local input will assist in the identification of areas of significant environmental, historical, and aesthetic concern. This plan can then be utilized at the local level for municipal open space and preservation programs.

\textbf{K. STATE APPROACHES TO FUNDING PRESERVATION OF RURAL CHARACTER AND NATURAL RESOURCES}

Many of the programs and techniques described in this study require a pool of financial resources. This is significant in light of the fact that since 1981, the federal
government has greatly reduced funding for natural area acquisition, including an average reduction between 1981 and 1988 of approximately $550 million for the Land and Water Conservation Fund, and 30% reduction in the percentage of the funds allocated to the state matching grants program (funds available for matching grant programs went from 50% to 20%). States have attempted to balance the decrease at the federal level by an increase in funding at the state level. Over one half of the states have made direct appropriations, passed bond issues, approved tax increases, or provided other innovative funding sources for preservation and protection of open space, natural areas and endangered species programs since 1982.

The proposed 1990 Environmental Bond Act for New York was defeated by the voters in November. Therefore, if the State is going to provide financial resources for preservation of rural character and natural resources, alternative potential revenue sources must be carefully studied. What follows is a brief description of a variety of revenue sources utilized in other states for preservation purposes.

FLORIDA and MARYLAND were leaders in dedicating a portion of funds generated from the real estate transfer tax for land acquisition. They set the stage for forty other states which now dedicate a percentage of revenue from this tax for natural area acquisition. NORTH CAROLINA and CALIFORNIA provide a dedicated revenue stream for natural area protection through an increase in vanity license plate
registration. MISSOURI directs 1/8th of one percent of the sales tax to the Department of Conservation and 1/10th of one percent to the Department of Natural Resources. IOWA, MINNESOTA and VIRGINIA all allocate a percentage of revenue generated from the state lottery for a variety of purposes including: open space, land conservation, agricultural lands, wetlands, scientific and natural areas and conservation education. ARIZONA earmarks 20% of revenue collected from entrance fees to parks for natural areas, while voters in Dade County, Florida approved a two year real property tax increase in 1990 to generate funds for natural areas.

During the 1980s, voters in fourteen states approved bond acts for a variety of preservation programs including: endangered species habitat, open space, parkland, wetlands, rivers, wildlife lands, natural areas, stewardship, agricultural lands, beaches and shore protection, scientific and natural areas, forests, and land acquisition for watershed protection. Trust funds were established in seven states, while 12 states made direct appropriations for natural area protection. VERMONT established a land gains tax on the sale or exchange of undeveloped land held for six years or less. The tax rate ranges from 5%-60% depending upon how long the land is held.

Over thirty states, including NEW YORK and NEW JERSEY, provide for a "checkoff" on state income tax forms, whereby a taxpayer can appropriate a small
amount of taxes owed toward revenue for natural lands acquisition.\footnote{143} FLORIDA and MICHIGAN allocate revenues derived from severance taxes on exploitation of nonrenewable resources for open space acquisition.\footnote{144}

1. FUNDING OPEN SPACE IN NEW YORK

With the defeat of the 1990 Environmental Bond Act in New York, Governor Cuomo has proposed the establishment of an Environmental Infrastructure Fund (EIF).\footnote{145} While the Bond Act would have provided a significant amount of funds for acquisition of lands, the Governor has proposed that the EIF provide funds for "... essential sewage treatment, solid waste, recreation and other critical environmental programs."\footnote{146} Environmental interest groups have criticized the proposal to establish an EIF without a set-aside for acquisition of open space. The proposal still may be amended to include funding for open space.

Currently, municipalities in New York are authorized to require developers to set aside lands for parks or recreation on their subdivision plat or site plan.\footnote{147} When suitable land is either not available, or the municipality determines that such a need does not exist for the proposed development, the local planning body is authorized to collect a "fee in lieu thereof." This fee must be deposited into a specially designated fund to be used exclusively for neighborhood parks, playground or recreation purposes,
including the acquisition of land. It was suggested at a working retreat for the Land Use Advisory Committee, sponsored by the Legislative Commission on Rural Resources, that legislation be introduced to broaden the scope of current statutes to allow subdivision and site plan exactions to be used for purposes beyond the "neighborhood" (i.e., anywhere within the municipality, county or perhaps region) and to allow the exactions to be used for the purchase of conservation easements and developments rights. This added flexibility would enable municipalities to administer and fund local open space programs.

Some local governments already employ innovative revenue raising schemes for open space preservation. For example, a quarter percent of the sales tax in Suffolk County, New York, is used to finance open space acquisition.\textsuperscript{148}

L. LIMITING LIABILITY FOR OPEN SPACE

At both the roundtable discussion on open space preservation at the New York Planning Federation's Annual Conference (October 1990, Lake Placid, New York) and the land use retreat sponsored by the Legislative Commission on Rural Resources (January 1991, Albany, New York), concerns were raised about liability for injuries occurring on open space. Homeowner's associations and individuals are reluctant to pay the insurance bill for lands which have been designated as open space.
Currently, a provision in the New York General Obligations Law, known as the "recreational use statute," removes the owner, lessee or occupant's duty to keep the premises safe for entry or use of premises by others when they open their land to the public for specific enumerated recreational uses. It was suggested by participants at the January 1991 retreat that a similar provision be placed in either the General Obligations Law or the General Municipal Law which would limit liability for land designated as open space. This protection would provide an added incentive for those who wish to preserve their land as open space.

III. RURAL ECONOMIC CENTERS

One way to foster preservation of rural character is to avoid the problem of "rural sprawl." Rural sprawl can easily occur because land located away from the local economic center (or "Main Street") is less expensive and thus often more appealing to developers and new residents. When this land on the "outskirts" is developed, two things may result: 1) the aesthetically pleasing visual significance of the rural landscape will diminish; and 2) long established local business centers will be weakened and ultimately destroyed.

Many states have enacted statutes designed to avoid the problems associated with a development sprawl. For example, CALIFORNIA law provides that new
development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. In FLORIDA, one of the State Land Use Goals and Policies provides that growth management plans should "Develop a system of incentives & disincentives which encourage a separation of urban and rural land uses while protecting water supplies, resource development, and fish and wildlife habitats." In HAWAII, the entire state is divided into four zones: agricultural, conservation, rural, and urban. With some exceptions, no urban development may take place outside the urban zone. The MAINE Growth Management Act states that municipalities should designate growth and rural areas, developing specific implementation strategies for guiding and promoting growth in these areas, protecting rural character, and preventing urban sprawl. These plans must contain specific criteria for how the municipality intends to manage and accommodate future development within the growth area and to protect rural resources. VERMONT'S Municipal and Regional Planning and Development Act encourages development around community centers. Two of the Act's enumerated goals are "economic growth shall be encouraged in locally designated growth areas, or employed to revitalize existing village or urban centers, or both" and that "development shall be planned so as to maintain the historic settlement pattern of compact village urban centers separated by rural countryside."

Another way in which some states have attempted to regulate "rural sprawl" is through the creation of a boundary review commission. In OREGON, the Urban
Growth Boundary Legislation requires each city to draw an urban growth boundary in accordance with state standards. No urban development may take place outside the boundary unless it qualifies for an exemption, which is difficult to obtain.\footnote{154}

Furthermore, the Oregon Land Conservation and Development Act of 1973 requires local governments to enact local comprehensive plans which delineate urban growth boundaries and designate prime farmland beyond the boundaries for "exclusive farm use," as well as to provide for low-income housing.\footnote{155}

Nodal commercial development, a policy which requires new businesses to be grouped at major intersections, rather than lining the length of a highway, is another method for reducing sprawl along roadways.\footnote{156} This policy is described in the Connecticut River Valley Study.\footnote{157}

Some local governments have linked promotion of rural economic centers (keeping commercial development in a centralized business district) with historic preservation\footnote{158}. By so doing, developers can receive financial incentives from historic preservation organizations and the state and federal government, and the community can better centralize development at the same time as it revitalizes a once important historic district.\footnote{159}
A. RURAL ENTERPRISE ZONES

On March 27, 1990, Senator Baucus (D-Mont) introduced the Rural Business Revitalization Act of 1990 (S. 2348) to authorize the establishment of federal enterprise zones in rural communities. The bill, which would have provided a ten percent investment tax credit for investment in new construction and new equipment within a designated rural enterprise zone, would have provided opportunities for economic development in rural areas, rather than forcing businesses to move to urban centers. Unfortunately, the bill died in the Senate Finance Committee.

Some state governments have not been waiting for federal legislation. Currently 36 states and the District of Columbia have designated enterprise zones mostly as a means of revitalizing impoverished urban areas. New York State does have an economic development zone program. Nine of the nineteen zones are in rural areas. One option for New York State is to create specific State incentives within rural enterprise zones. These incentives could include tax credits, construction loans, and research and development grants.

IV. GROWTH MANAGEMENT TOOLS

Traditional Euclidean zoning does not provide municipalities with the tools to plan for and manage growth. The local zoning ordinance, including the zoning map,
may indicate areas (districts) where future development can occur, but it does not provide a plan for how that development will take place. This is particularly troublesome for localities experiencing rapid population growth accompanied by development pressure. Municipalities must make certain that adequate infrastructure is in place to meet the demands of the growth. Infrastructure needs are expensive and allocating the cost of growth between the municipality, the developers and the residents has been the subject of debate and legislation across the country.

Several tools and strategies have been effectively utilized for growth management including: incorporation of public facility requirements in comprehensive plans; moratoria; timing or phasing of development; downzoning; and caps on new development (The Government Law Center's study on the Comprehensive Plan and Comprehensive Planning contains a detailed discussion of comprehensive planning and moratoria).

A. STATE GROWTH MANAGEMENT PLANS

Eight states currently have statewide growth management plans (Washington, Florida, New Jersey, Georgia, Oregon, Rhode Island, Vermont and Maine). Legislators in California are currently considering whether or not to adopt a state mandated plan. Further discussion on growth management plans can be found in the material on the
Government Law Center’s study on the Comprehensive Plan and Comprehensive Planning.

B. DEVELOPMENT PHASING

Development phasing allows localities to establish a policy for the timing of new development in accordance with a local growth management plan.\textsuperscript{161} This device does not set absolute limits on the amount of growth, it simply provides an orderly plan for development to ensure that the appropriate infrastructure is in place to meet development needs. A local phasing policy may: determine when the municipality should approve new development; authorize the approval of new development only if adequate public facilities are available; or contain an annual limit on new development in the community.\textsuperscript{162} Development phasing is not specifically authorized by state statute. In order to be upheld as a valid exercise of the police power, the local plan must be carefully drafted to avoid: taking issues (where development is prohibited, either temporarily or permanently); equal protection problems (where development is permitted at different times in different locations in the community); and allegations of exclusionary zoning (if there is not enough development occurring to meet the demand for housing).\textsuperscript{163}
The leading example of phased/timed development in New York is the Town of Ramapo’s growth management plan, adopted in a 1969 amendment to the Town’s zoning ordinance, and upheld by the Court of Appeals in 1972. The Town of Ramapo (Rockland County), located just 30 miles north of New York City, began experiencing the pressure of a rapid increase in population, which produced the ancillary problem of providing municipal facilities and services to meet the escalating development. As a result, the Town developed a master plan, followed by a comprehensive zoning ordinance. Along with these, the Town adopted a capital budget which provided for the development and improvements outlined in the master plan to be in place within the next six years. The Town then adopted a capital program to provide for the location and sequence of additional capital improvements for twelve years to begin after the six year plan contained in the capital budget.

To implement these programs, the Town adopted innovative amendments to its zoning ordinance, including new standards for the issuance of special permits needed for residential subdivision plat approval. The Town created a point system, whereby developers had to accumulate 15 development points in order to obtain a permit. Points were awarded for public sanitary or sewer or approved substitutes, drainage facilities, improved parks or recreation facilities (including public schools), State, county or town roads, and firehouses. All of these improvements were to be provided by the Town during the 18 year capital development program. Developers were given the
option of speeding up their approval process by voluntarily agreeing to provide enough
capital improvements for their proposed site in order to reach the 15 points required
for a permit. The Court of Appeals, finding that the Town’s ordinance advanced
legitimate zoning purposes (to wit, assuring that each new house built would have at
least minimum public services in the categories so regulated), that the restrictions
imposed were necessary to promote the good of the community in accordance with
the community’s considered land use policies and that such restrictions were temporary
to allow for the community’s continuing role in accommodating growth, upheld the
phased development plan.

The fact that the Town’s plan contained remedial measures, including the future
vesting of development rights when public facilities became available, variances from
the special permit requirement, the ability of developers to advance their development
by providing essential capital, improvements, the ability of landowners to apply for a
reduction in real property tax assessment on land temporarily restricted from
development under the growth management plan, and the fact that the Town had
adopted a comprehensive plan and was committed to the development of the Town, all
helped to avoid the legal pitfalls in the takings area and exclusionary zoning.

Taking the Town of Ramapo’s plan one step further, a federal court upheld a
growth management plan adopted by the City of Petaluma (located forty miles north of
San Francisco) which contained an explicit annual quota on residential development (only 500 dwelling units per year, not counting projects with four units or less). The City's plan created a point system modeled after the Town of Ramapo's, but it awarded points for good architectural and environmental design, and for the provision of low and moderate income housing in accordance with the city's housing policy. Unlike the Town of Ramapo case, where the Court considered the linkage between the local growth management program and the availability of public facilities, the Court in Petaluma said it was "unnecessary" to reach this issue since they believed the program would not result in a housing shortfall in the region, and that the number of low-income housing units in the city would actually be increased.

The most recent case where a court upheld a quota system as a valid growth management zoning mechanism was for the City of Boulder, Colorado in 1988. In a 1989 study of rural New York and Vermont towns, it was found that development phasing was employed in several towns experiencing significant growth. By phasing development projects over a period of years (in the case studied, it was ten years), it was determined that planning boards were better able to manage growth. New Hampshire law specifically permits municipalities to use timing incentives and phased development, but only after preparation and adoption of a local master plan and capital improvement program. Amherst, Massachusetts recently enacted a phased growth plan, including a point system, which limits new development to 250 units every
two years.\textsuperscript{170}

A different approach to development phasing has been taken by the Town of Bethlehem (Albany County, New York). In 1990, the Town enacted an ordinance which limits building permit approvals to twenty-five (25) lots at a time. This limitation was imposed as an interim measure, pending completion of a new master plan, to slow development and approvals.\textsuperscript{171}

C. DOWNZONING

Downzoning, sometimes referred to as upzoning, occurs when land in a district is rezoned for a less intensive use. For example, if within a district the minimum lot size is two acres per dwelling, this may be downzoned to provide a minimum lot size of ten acres per dwelling. Downzoning has become more popular in communities undergoing comprehensive planning and zoning revisions and in municipalities adopting growth management plans.\textsuperscript{172} So long as a downzoning is not applicable to a single lot, and provided it is being enacted in accordance with some sort of comprehensive plan, the courts have upheld it.\textsuperscript{173}

Municipalities must make certain that their downzoning efforts do not appear to be a "spot zoning." In order to do this, downzoned areas should be compatible with
uses in the surrounding districts; the effect of downzoning should not drastically reduce the value of the land\textsuperscript{174}; the results should not be exclusionary; and it should be in accordance with a comprehensive plan.\textsuperscript{175}

D. CONTRACT AND CONDITIONAL ZONING

Conditional zoning and contract zoning are flexible zoning devices which allow municipalities to either voluntarily or through negotiation with a developer, rezone property where the developer agrees to conditions otherwise not required.\textsuperscript{176} Zoning experts have attempted to differentiate the two terms by stating that one results in bilateral exchange of promises between a municipality and a developer for a rezoning, whereas in the other, the promise is unilateral in that it does not require the municipality to rezone at all.\textsuperscript{177} Most authors and courts confuse the two terms, and for the most part they are used interchangeably.

Absent clear statutory authorization for contract or conditional zoning, as is the case in New York, the caselaw is mixed as to its legality. The modern trend is for courts to uphold unilateral agreements but not bilateral agreements.\textsuperscript{178} One leading expert cautions that despite growing judicial approval of this flexible zoning tool, municipalities would be unwise to use it for the following reasons: it undercuts the uniformity of land use regulations set forth in the zoning ordinance; and having a large
number of zoning agreements complicates zoning enforcement.\(^{179}\)

The following states have enacted statutes which specifically authorize contract zoning: Arizona\(^{180}\), Rhode Island\(^{181}\), Maryland\(^{182}\), and Virginia\(^{183}\) (see Appendix D for a statutory compilation).

A variation of conditional zoning is the use of development agreements. For a discussion of development agreements, see Section II.H.

E. PERFORMANCE ZONING

Performance zoning is a technique used to protect unique natural and cultural features. The local governing body designates a list of permitted impacts in a particular district, as opposed to permitted uses.\(^{184}\) Using this technique, municipalities can direct development to appropriate areas based upon locally developed comprehensive plans (which would have to include a complete analysis and listing of natural resource data and design guidelines).\(^{185}\) This type of zoning, which can be implemented through clustering, is used in several Dutchess County, New York communities.\(^{186}\) New Hampshire state statutes specifically authorize the use of performance standards.\(^{187}\) Bucks County, Pennsylvania adopted a performance zoning ordinance in 1973, and it is also used in Medford Township, New Jersey.\(^{188}\)
F. IMPACT FEES

Impact fees are charges assessed by municipalities to developers for costs associated with off-site improvements which are necessitated as a result of the proposed development. While municipalities have been charging fees for improvements related to development for some time, such fees were customarily for improvements (roads, sewer, etc.) within the particular subdivision or development. During the last decade, and continuing at the present time, local governments faced with financing a boom in community growth are being forced to become more creative in the generation of new revenue at the local level. Impact fees have been most popular in states where there has been a high amount of growth and development.¹⁸⁹

State legislatures in more than half of the states have actively introduced and debated the issue of state enabling legislation to authorize municipalities to assess impact fees on development. New York statutes do not specifically provide for the enactment of impact fee ordinances, and local governments are particularly interested in the outcome of the impact fee debate in New York in light of the 1989 Guilderland case. In 1987, after a comprehensive study detailing transportation infrastructure needs in the Town, the Town of Guilderland (Albany County) adopted a local Transportation Impact Fee Law (TIFL) pursuant to powers set out in the Municipal Home Rule Law. The local law exacted a fee from developers, based upon a schedule,
under the premise that new development in the Town should contribute a fair share of the cost of providing new roads or improving existing roads necessitated by the new development. The TIFL provided, among other things, that all fees collected were to be deposited in a trust fund maintained by the Town, and that monies from the fund were to be expended only for capital improvements and roadway/transportation expansion within the Town. The TIFL was challenged on several grounds, including: an allegation that the Town lacked constitutional and statutory authority to enact the TIFL; that impact fees are not permissible land use regulations; and that the TIFL was both inconsistent with, and preempted by, state law.190

The Appellate Division struck down the TIFL on two grounds: that no statutory authority existed for the Town to enact such a law; and that the local law was preempted by State general laws regulating the funding of roadway improvements.191 The Court of Appeals affirmed the decision of the Appellate Division, but only on the second ground, preemption. The Court of Appeals never reached the issue of whether the Town could in fact adopt a local impact fee law pursuant to the Municipal Home Rule Law.192 The Court held only that, "...the State has evinced a purpose and design to preempt the subject of roadway funding and occupy the entire field, so as to prohibit additional local regulation."193
Soon after the Guilderland opinion was issued, the Appellate Division, Third Department, invalidated a local law which imposed a $1,000 per dwelling unit "hook-up fee" for all new customers of the Port Ewen Water District as a condition to approval of a planned unit development. The Court held that the generation and expenditure of revenue for the purpose of acquiring or constructing capital improvements or additional facilities in a town water district is preempted by Town Law Articles 12 and 12-A. Additionally, the Court held that the provision of the local law which required the fees collected to be deposited in a "special account" or fund and to be used "solely for capital improvements in the Port Ewen Water District" was a violation of the General Municipal Law § 6-c[3][a] which prohibits a town from establishing a capital reserve fund(s) to finance all or part of the costs of improvements on behalf of an improvement district within the town.

These findings, coupled with the fact that special improvement districts provide services ranging from emergency medical and fire protection to sewers, drainage, water treatment and refuse disposal leaves doubt that local impact fees can be assessed for anything that could be the subject of special districts. As a result, most municipalities in New York are awaiting either clear statutory authorization, or a case in which the Court of Appeals clearly indicates that such local laws are a valid exercise of authority pursuant to the Municipal Home Rule Law.
Early in the 1991 State Legislative Session, Assemblyman Martin Luster of Ithaca introduced a bill which would authorize municipalities to enact local laws imposing development impact fees (A.325-A). The bill, which has been referred to the Local Government Assembly Committee, requires, among other things, that municipalities prepare public improvement plans prior to imposing impact fees pursuant to the provisions of the article. The proposed legislation enumerates certain items to be included in the plan, as well as a requirement that the plan contain a provision for periodic amendment. In addition, it requires that the fees assessed be determined by a formula set forth in the local ordinance. The proposed legislation also requires fees which are collected to be deposited in a separate account for such purposes, and provides for a refund if the municipality fails to commence construction of a public improvement project intended to benefit the property (from which the fee was assessed) within six years of when the fees were paid.

Two additional legislative proposals have been introduced to date in the 1991 Legislative Session. The Governor's proposal, S.2993/A.4493, is part of the Fiscal Mandates Relief Package and is included as one of the Governor's Budget Bills. Assemblyman Paul Harenberg of Bayport introduced A.3966 to authorize the assessment of impact fees for educational facilities within a school district.195
The following states have enacted some type of state enabling legislation for impact fees: Arizona, California, Colorado, Florida, Georgia, Illinois, Maine, Maryland, Massachusetts (Cape Code area only), Nevada, New Jersey (limited), North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Vermont, Virginia, Washington and West Virginia. Legislation has been introduced but not enacted in the following states: Connecticut, Delaware, Hawaii, Indiana, Kentucky, Massachusetts (other than Cape Cod), Michigan, New Hampshire, New Jersey (broad authorization), New Mexico, New York, South Carolina, South Dakota and Utah.

The Government Law Center at Albany Law School (GLC) recently completed a national and state study on impact fees. The draft study was released for comment in early April 1991, and a final study is expected to be released at the end of April. The study contains a discussion of impact fee laws in other states, an analysis of the three bills introduced in the 1991 Legislative Session in New York State, results of a survey of New York municipal officials which was conducted by the GLC, and recommendations for legislative activity in New York.

V. CRITICAL ENVIRONMENTAL ZONES

Critical environmental zones are areas which have been designated by the state or local government where certain environmental concerns and natural resources are to
receive special protection from development. This does not necessarily mean that all development is prohibited. For example, in Wyoming, the Teton County Comprehensive Plan and Implementation Program calls for the protection of certain critical natural resources by requiring developers to meet stated environmental criteria in order to obtain development permits. In Cazenovia, New York, the town developed a Land Use Guide which lists critical environmental areas. The Town conservation commission uses this list for environmental reviews of proposed developments prior to making recommendations to the appropriate local body.

Critical environmental areas which have been designated include wetlands, flood plains, prime farmland and coasts.

Examples of the use of statewide or regional critical area land use controls in New York State include the Adirondack Park Act and the Wild & Scenic Rivers Act. New Jersey has employed special zoning controls in the Pinelands. Prince George's County in Maryland released a Chesapeake Bay Critical Area Plan and Policy Overview in 1987, and Cottage Grove, Minnesota also adopted a local critical area plan.

A number of states have enacted laws based in part on the
"critical areas" process. For example, California law provides for the establishment of sensitive coastal resource areas where it is believed that review and approval by regulatory commissions will be required in addition to review and approval of zoning ordinances in order to protect coastal resources. Plans drawn by these special district commissions must be considered by all affected local governments in the preparation of their Local Coastal Plan. Maryland also provides for the identification of areas of critical state concern.

In Florida, land and water management policies have been adopted to guide and coordinate local decisions relating to growth and development in order to protect the natural resources and environment of the State. The State Environmental Land & Water Management Act of 1972 provides for the appointment of a resource planning and management committee to study an area and to organize a resource planning and management program before, it is labeled an area of critical state concern. The Florida State Land Planning Agency is also given the power to recommend areas to be designated as areas of critical state concern to the Administrative Commission. State critical concern areas designated to date include the Green Swamp Area, the Florida Keys Area, the Apalachicola Bay Area and the Big Cypress Swamp Area. The State of Florida also created an Areas of Critical Concern Restoration Trust Fund, for reimbursement of costs incurred by the Department of Natural Resources in obtaining payment of damages for injury to or destruction of the
state's natural resources.

Maine enacted a Mandatory Shoreland Zoning & Subdivision Control Act in order to, among other things: prevent and control water pollution; protect fish spawning grounds; aquatic life; bird and other wildlife habitats; and to protect buildings and land from flooding and accelerated erosion.\textsuperscript{207} In addition, Maine provides for the development of a management program to protect natural resources, and to establish environmental standards to protect the State's rivers and streams, ponds, fragile mountain areas, freshwater wetlands and coastal sand dunes.\textsuperscript{208}

In Minnesota, the State Environmental Council designates critical areas in which the State will assist and cooperate with local governments in the preparation of plans and regulations for the "wise" use of these areas. Local governments are required to submit plans to the Board. In the event a local government either fails to do so or if the plan submitted is found to be unacceptable, the Board is authorized to prepare and adopt a plan to govern the critical area.\textsuperscript{209}

In Oregon, the legislature is empowered to designate critical areas based on recommendations of the Land Conservation and Development Commission.\textsuperscript{210}
VI. CONCLUSION

There are a variety of land use planning and control tools which can be employed to preserve rural character and protect natural resources. Beyond State enabling statutes, local planners must continue to be creative and innovative in the design and implementation of new techniques. With continued dialogue to facilitate an exchange of ideas between local and state governments, preservation and protection goals can be achieved.
ENDNOTES


3. Id. at 3.


8. Id.

9. Id.


11. States which have agricultural districts include: California, Illinois, Iowa, Kentucky, Maryland, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania and Virginia.


13. Id., §300.


18. Id.


20. Id.


24. Id. at 382.

25. Id.

26. Id.

27. Redfield, supra note 21 (citing "National Agricultural Lands Study: Final Report" (1981)).


29. Id. at 102.


32. Id.

33. Redfield, supra note 21, at 102.

34. A.F.T., supra note 28, at 15.

35. Id.

74
36. Id. at 16 (citing Boundary Drive Ass'n v. Shrewsbury Township, 491 A.2d 86 (1985)).
37. Id. at 15 (citing William Toner, "Zoning to Protect Farming" 14 (1989)).
38. Id.
39. Id. at 16
40. Id. at 17.
41. California State Coastal Conservancy, "Evaluation of Agricultural Land Trusts" 2-3 (December 1, 1989).
42. Id. at 3.
43. Id. at 3.
44. Redfield, supra note 21.
49. Id.
50. Id.
51. Id.
52. Redfield, supra note 21.
54. Redfield, supra note 21.
55. Id. at 105 (citing Wis. Stat. Ann. §91.13(4) (West Supp. 1983-84)).


66. Id. at § 247.

67. Id. at § 247(2).

68. Id. at § 247(3).


73. Id. at § 49-0303(1).

74. Id. at § 49-0305.

75. Stockford, supra note 71.

77. Stockford, supra note 71.


81. Id.

82. Stockford, supra, note 71.

83. Memo from Land Trust Alliance, November 1990.


85. Id. at 7.


87. Governor Mario M. Cuomo, Message to the Legislature, January 1991, p. 87.

88. Id.


90. Id. at 444.


92. Stokes, supra, note 70.

93. Id. at 184.

94. Id.

95. Id. at 185.

96. Id. at 184-5.
97. Pivo, supra note 4.


100. Ind. Code Ann. §36-7-4-601 (West 1989).


103. N.J.S.A. C. 40: 5-D-65c and .39b, allows cluster in a Planned Unit Development.


108. Pivo, supra note 4.

109. For example, New York, Marin County, California, and many New England towns.


120. Id. at 32 (citing Napa County Development Agreement with AMFAC-Silverado, Inc. (May 17, 1981); and Solano County Development Agreement with William and Sally Smith (Rancho Solano Development) (May 1984).

121. Id.


123. Taub, supra note 118 at 8.

124. Regional Plan Assoc., supra, note 107, at 12-13.

125. Id.


127. Id., at § 49-0209.

128. Id., at § 49-0211.

129. The preliminary plan was due on January 31, 1991. In a conversation with Robert Bathrick at the N.Y.S.D.E.C. on January 16, 1991, the author was informed that the report will be delayed since the regional committees were not designated until November 1990.

130. Governor Mario M. Cuomo, Message to the Legislature, January 9, 1991.


132. Id.
133. Id. at 2.
134. Id. at 3.
135. Id.
136. Id. at 9
137. Id.
138. Id. at 5-6; the following states passed bond acts in the 1980s: California, Connecticut, Florida, Illinois, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Vermont and Wisconsin.
139. Id. at 7, the states include: California, Hawaii, Louisiana, Michigan, Minnesota, North Carolina and Vermont.
140. Id. at 7-8, the states include: California, Hawaii, Illinois, Indiana, Iowa, Kentucky, New Hampshire, North Carolina, Pennsylvania, Vermont, Virginia and Washington.
141. Regional Plan Association, supra note 107, at 8-9.
142. Id.
143. Regional Plan Association, supra, note 107 at 10-11; New York's designated fund is used to acquire land for wildlife habitats.
144. Id. at 10-11.
146. Id. at 81.
148. Regional Plan Association, supra, note 107 at 10-11.


155. Stokes, supra note 70.


158. For example, Harrisville, New Hampshire; see Stokes, supra note 70, at 15.

159. Stokes at 15.


162. Id. at 394.

163. Id. at 395.


166. Id.


172. Mandelker, supra note 161.

173. Id.

174. see the New York case of McGowan v. Cohalan, 361 N.E. 2d 1025 (1977) where the court invalidated a downzoning from business to residential use of a parcel which was surrounded by business uses. The court noted that the downzoning reduced the value of the property 92%.

175. Mandelker, supra note 161, at 236-8.


177. see 1 P. Rohan, "Zoning and Land Use Controls"; and D. Madelker, "Land Use Law" at 263.

178. Mandelker, supra note 161, at 263.

179. Id. at 263-4.


185. Id.

186. Id.


191. Id.

82
192. Id.
193. Id.
195. For a detailed comparison of all three legislative proposals, see the Government Law Center's 1991 study, "Impact Fees for New York Municipalities: Time for Legislative Action."
196. Stokes, supra note 70.
197. Id. at 94.
198. Id.
205. Florida Environmental,Land & Water Management Act of 1972, §380.045(1).
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APPENDIX A:
PURCHASE OF DEVELOPMENT RIGHTS ENABLING STATUTES
**Purchase of Development Rights**  
*Sampling of Countywide Programs*  
*(As of 4/20/90)*

<table>
<thead>
<tr>
<th>County</th>
<th>Year of Inception</th>
<th>Number of Farms and Farmland Acres Protected</th>
<th>$ Spent/ $ Available</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boulder, CO</td>
<td>1986</td>
<td>2 farms/ 435 acres</td>
<td>$1,200,000/ TBA</td>
<td>Property Tax</td>
</tr>
<tr>
<td>Forsyth, NC</td>
<td>1987</td>
<td>20 farms/ 1,230 acres</td>
<td>$2,100,000/ TBA</td>
<td>Property Tax</td>
</tr>
<tr>
<td>King, WA</td>
<td>1979-1986</td>
<td>187 farms/ 12,650 acres</td>
<td>$50,000,000/ all spent</td>
<td>General Oblig. Bonds</td>
</tr>
<tr>
<td>Lancaster, PA</td>
<td>1984</td>
<td>33 farms/ 3,346 acres</td>
<td>$2,200,000/ $4,200,000</td>
<td>Cty. Approp./ State Bond *</td>
</tr>
<tr>
<td><strong>Marin, CA</strong></td>
<td>1986</td>
<td>4,926 acres</td>
<td>$2,600,000/ TBA</td>
<td>CA Coastal Conservancy/ Property Tax</td>
</tr>
<tr>
<td>Montgomery, MD</td>
<td>1989</td>
<td>13 farms/ 1,500 acres</td>
<td>$4,500,000/ $6,500,000</td>
<td>5% Transfer Tax on Ag. Conversions/ 0.5% General Transfer Tax</td>
</tr>
<tr>
<td>Suffolk, NY</td>
<td>1976</td>
<td>6,000 acres</td>
<td>$21,000,000/ $10,000,000 Town/ $10,000,000 County</td>
<td>County Bonds</td>
</tr>
</tbody>
</table>

* To date only about $600,000 has come from the State's Bond Act funds.

** The Marin County, CA program is highly leveraged by combining conservation easement donations and bargain sales with purchases.
<table>
<thead>
<tr>
<th>State</th>
<th>Year of Inception</th>
<th>Number of Farms and Farmland Acres Protected</th>
<th>$ Spent/ $ Available</th>
<th>Funding Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>1978</td>
<td>114 farms/ 17,313 acres</td>
<td>$40,816,832/ $7,500,000</td>
<td>Bonds</td>
</tr>
<tr>
<td>ME</td>
<td>1990</td>
<td>1 farm/ 330 acres</td>
<td>+ $380,000/ TBA</td>
<td>Bonds</td>
</tr>
<tr>
<td>MD</td>
<td>1977</td>
<td>534 farms/ 79,482 acres</td>
<td>$67,770,272/ TBA</td>
<td>Gen. Approp./ Transfer Tax/ County/Local Match</td>
</tr>
<tr>
<td>MA</td>
<td>1977</td>
<td>272 farms/ 25,626 acres</td>
<td>$65,000,000/ $15,000,000</td>
<td>Bonds</td>
</tr>
<tr>
<td>NH</td>
<td>1979</td>
<td>26 farms/ 2,090 acres</td>
<td>$3,000,000/ $554,251</td>
<td>General Appropriation</td>
</tr>
<tr>
<td>NJ</td>
<td>1983</td>
<td>*61 farms/ 8,263 acres</td>
<td>*$50,000,000/ $50,000,000</td>
<td>Bonds</td>
</tr>
<tr>
<td>PA</td>
<td>1989</td>
<td>1 farm/ 174 acres</td>
<td>$104,316/ $44,895,684</td>
<td>County/Local Match</td>
</tr>
<tr>
<td>RI</td>
<td>1982</td>
<td>18 farms/ 1,362 acres</td>
<td>$7,487,994/ $3,000,000</td>
<td>Bonds</td>
</tr>
<tr>
<td>VT</td>
<td>1987</td>
<td>30 farms/ 9,128 acres</td>
<td>+$5,100,000/ $1,750,000</td>
<td>General Approp./ Transfer Tax</td>
</tr>
</tbody>
</table>

+ Maine and Vermont are multi-purpose land acquisition funds.
* All funds obligated for specific purchases, totaling an additional 11,000 acres.
§ 22–26cc. State acquisition of development rights to agricultural land. Program established. Joint ownership by the state and a town. Assistance of nonprofit organization. State acquisition of right to construct residence or farm structure

(a) There is established within the department of agriculture a program to solicit, from owners of agricultural land, offers to sell the development rights to such land and to inform the public of the purposes, goals and provisions of this chapter. The commissioner, with the approval of the state properties review board, shall have the power to acquire or accept as a gift, on behalf of the state, the development rights of any agricultural land, if offered by the owner. Notice of the offer shall be filed in the land records wherein the agricultural land is situated. If ownership of any land for which development rights have been offered is transferred, the offer shall be effective until the subsequent owner revokes the offer in writing. The state conservation and development plan established pursuant to section 16a-24 shall be applied as an advisory document to the acquisition of development rights of any agricultural lands. The factors to be considered by the commissioner in deciding whether or not to acquire such rights shall include, but not be limited to, the following: (1) The probability that the land will be sold for nonagricultural purposes; (2) the current productivity of such land and the likelihood of continued productivity; (3) the suitability of the land as to soil classification and other criteria for agricultural use; (4) the degree to which such acquisition would contribute to the preservation of the agricultural potential of the state; (5) any encumbrances on such land, (6) the cost of acquiring such rights and (7) the degree to which such acquisition would mitigate damage due to flood hazards. Ownership by a nonprofit organization authorized to hold land for conservation and preservation purposes of land which prior to such ownership qualified for the program established pursuant to this section shall not be deemed to diminish the probability that the land will be sold for nonagricultural purposes. After a preliminary evaluation of such factors by the commissioner of agriculture, he shall obtain and review one or more fee appraisals of the property selected in order to determine the value of the development rights of such property. The commissioner shall notify the department of transportation, the department of economic development, the department of environmental protection and the office of policy and management that such property is being appraised. Any appraisal of the value of such land obtained by the owner and performed in a manner approved by the commissioner shall be considered by the commissioner in making such determination. The value of development rights for all purposes of this section shall be the difference between the value of the property for its highest and best use and its value for agricultural purposes as determined by the commissioner. The use or presence of pollutants or chemicals in the soil shall not be deemed to diminish the agricultural value of the land or to prohibit the commissioner from acquiring the development rights to such land. The commissioner may purchase development rights for a lesser amount provided he complies with all factors for acquisition specified in this subsection and in any implementing regulations. In determining the value of the property for its highest and best use, consideration shall be given but not limited to sales of comparable properties in the general area, use of which was unrestricted at the time of sale.

(b) Upon the acquisition by the commissioner of the development rights of agricultural land, said commissioner shall cause to be filed in the appropriate land records and in the office of the secretary of the state a notice of such acquisition which shall set forth a description of the agricultural land as will be sufficient to give any prospective purchaser of such agricultural land or creditor of the owner thereof notice of such restriction. Upon the filing as aforesaid of the notice, the owner of such agricultural land shall not be permitted to exercise development rights with respect to such land, and such development rights shall be considered and deemed dedicated to the state in perpetuity except as hereinafter provided. If restricted land is to be sold, the former owner shall notify, in writing, the commissioner of such impending sale not more than ninety days before
transfer of title to the land and shall provide him with the name and address of the new owner.

(c) The commissioner shall have no power to release such land from its agricultural restriction, except as set forth in this subsection. If the commissioner, in consultation with the commissioner of environmental protection and such advisory groups as the commissioner of agriculture may appoint, approves (1) a petition by the owner of the restricted agricultural land approved by resolution of the governing body of the town or (2) a petition by the town in which such land is situated, approved in writing by the owner, the governing body of the town shall submit to the qualified voters of such town the question of removing the agricultural restriction from such land or a part thereof, at a referendum held at a regular election or a special election warned and called for that purpose. In the event a majority of those voting at such referendum are in favor of such removal, the restriction shall be removed from the agricultural land upon filing of the certified results of such referendum in the land records and the office of the secretary of the state, and the then owner of the development rights shall be entitled to exercise all such rights including the sale thereof. Such petition shall set forth the facts and circumstances upon which the commissioner shall consider approval, and said commissioner shall deny such approval unless he determines that the public interest is such that there is an overriding necessity to relinquish control of the development rights. The commissioner shall hold at least one public hearing prior to the initiation of any proceedings hereunder. The expenses, if any, of the hearing and the referendum shall be borne by the petitioner. In the event that the state sells any development rights under the procedure provided in this subsection, it shall receive the reasonable value thereof at the time of such sale.

(d) Whenever the commissioner acquires the development rights of any agricultural land and the purchase price of such development rights is ten thousand dollars or more, said commissioner and the owner of such land may enter into a written agreement which provides for the payment of the purchase price in two or three annual installments, but no interest shall be paid on any unpaid balance of such purchase price.

(e) Whenever the commissioner acquires the development rights to any agricultural land, and any municipality in which all or part of the land is situated pays a part of the purchase price from a fund established pursuant to section 7-131q, such municipality and the state may jointly own the development rights, provided joint ownership by such municipality shall be limited to land within its boundaries. The land may be released from its agricultural restriction in accordance with the provisions of subsection (c) of this section. The commissioner shall adopt regulations in accordance with the provisions of chapter 54 establishing procedures for the joint acquisition of development rights to agricultural land.

(f) The acquisition of the development rights to any agricultural land by the commissioner shall not be deemed to be ownership of such land and the state shall not be liable for pollution or contamination of such land and no person may bring a civil action against the state for damages resulting from pollution or contamination of such agricultural land.

(g) The commissioner may issue a letter of intent requesting the assistance of a nonprofit organization, as defined in subsection (c)(3) of section 501 of the United States Internal Revenue Code, in acquiring the development rights to certain agricultural land. If such organization acquires such rights it may sell them to the commissioner based on a purchase agreement. Such agreement may include reimbursement for reasonable expenses incurred in the acquisition of the rights as well as payment for the rights.

(h) In addition to development rights, the commissioner may acquire or accept as a gift the rights of the owner to construct any residences or any farm structures on agricultural land.
§ 11A. Acquisition of Agricultural Preservation Restriction.

The secretary of environmental affairs shall establish a program to assist the commonwealth in the acquisition of agricultural preservation restrictions as defined in section thirty-one of chapter one hundred and eighty-four, for land actively devoted to agricultural or horticultural uses as defined in sections one to five, inclusive, of chapter sixty-one A. The commissioner of food and agriculture may from funds appropriated to carry out the provisions of this section, or received from other sources, pay any agricultural land owner for a project submitted by a city or town and approved by the agricultural lands preservation committee established by section eleven B such amount as is determined by said agricultural lands preservation committee to be equitable in consideration of anticipated benefits from such project but not to exceed the difference between the fair market value of such land and the fair market value of such land restricted for agricultural purposes pursuant to this section. Title to agricultural preservation restrictions shall be held in the name of the commonwealth; provided, however, that a city or town in which such land is located which provides assistance satisfactory to the agricultural lands preservation committee, including but not limited to providing of funds or portions thereof toward the purchase of such restriction, the providing of legal services and the enforcement of the preservation restriction, shall hold title to such land jointly with the commonwealth. Projects shall be administered by conservation commissions in cities and towns in which such commissions have been established, or in a city, by the city council or its delegated agency subject to the provisions of the city charter, or in a town, by the board of selectmen or its delegated agency. Said commissioner, subject to the approval of the secretary, shall establish procedures for management of such program. (1977, 780, § 1; 1978, 433.)
New Hampshire

Acquisition of Agricultural Land Development Rights

§ 432:18-432:31-a
432:18 Definitions. In this subdivision:

I. "Agricultural land development rights" means the rights of the fee simple owner of agricultural land to construct on, sell, lease or otherwise improve the agricultural land for uses that result in rendering such land no longer suitable for agricultural use. Such development rights may be severed from the fee simple right to constitute a restriction for the preservation of the agricultural land.

II. "Agricultural preservation restriction" means the restraint placed on the development rights of agricultural land, whether stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land which is appropriate to retaining land or water areas predominantly in their agricultural use, to prohibit or limit (1) construction or placement of buildings except those used for agricultural purposes or for dwellings used for family living by the landowner, his immediate family or employees; (2) excavation, dredging or removal of loam, sod, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the land’s future agricultural potential; or (3) other acts or uses detrimental to such retention of the land for agricultural use.

III. "Agricultural use" means use of land for agriculture, farming, dairying, pasturage, horticulture, floriculture, or animal or poultry husbandry.

IV. "Commissioner" means the commissioner of the department of agriculture.

V. "Committee" means the agricultural lands preservation committee.

VI. "Conservation commission" means the conservation commission established by a city or town pursuant to RSA 36-A.

VII. "Governing body" means, in the case of a city, the city council or the board of aldermen or, in the case of a town, the board of selectmen.

VIII. "Municipality" means any city or town.

IX. "Site" means a specific land area for agricultural purposes in which agricultural land development rights are acquired in order to preserve land suitable for agricultural production.
432:19 Agricultural Lands Preservation Committee: Members, Appointment, Term.

I. There is hereby established an agricultural lands preservation committee which shall function within the department of agriculture.

II. The committee shall consist of 7 voting members and 2 nonvoting members, to be appointed as follows:

(a) The commissioner of the department of agriculture who shall be chairman;
(b) The commissioner of the department of resources and economic development, or his designee;
(c) The director of the office of state planning, or his designee;
(d) The secretary of the agricultural advisory board;
(e) 3 members, 2 of whom are owners and operators of farms in the state, who shall be appointed by the governor with the advice and consent of the council for 3 years. Of the initial appointees, one shall hold office for one year, one for 2 years and one for 3 years;
(f) The dean of the college of life sciences and agriculture of the university system of New Hampshire, or his designee, who shall serve as a nonvoting member; and
(g) The New Hampshire state conservationist of the United States Department of Agriculture soil conservation service, or his designee, who shall serve as a nonvoting member.

III Members of the committee who are not state employees shall be paid $25 a day, each, for such time as they are actually engaged in the work of the committee. All members shall be paid their actual expenses incurred as a result of such work and shall be paid mileage at the same rate as state employees.

IV A majority of the voting members of the committee shall constitute a quorum.

132:20 Duties of the Committee.

I The committee shall evaluate and accept or reject sites proposed by a landowner pursuant to RSA 432:22. The committee shall consider in their evaluation, at a minimum, the following:

(a) The degree to which the acquisition would serve to preserve the agricultural potential of the state;
(b) The suitability of land as to soil classification and other criteria for agricultural use; and
(c) The fair market value of such land pursuant to RSA 75:1 as determined by an independent appraisal and the fair market value of such land when used for agricultural purposes which shall be the top of the value range for horticultural crops as established by the current use advisory board. The landowner shall bear the expense of the appraisal of the land to be acquired.

II. The committee shall prepare an annual report. Such report shall include the number and geographic distribution of sites accepted and rejected, the acreage and costs of purchases, and such other information as will enable the program to be evaluated. The report shall be submitted to the governor and council.
432:21 Duties of the Commissioner. The commissioner shall, with the advice and consent of the committee, and in accordance with RSA 541-A.

I. [Repealed.]

II. Adopt rules relative to criteria to define and classify agricultural lands.

III. Adopt rules relative to procedures for the purchasing of agricultural land development rights by the state

IV. Adopt rules relative to procedures for the release of a site from agricultural preservation restrictions.

V. Fulfill any duties delegated by the committee pursuant to this subdivision.

432:22 Procedure for Administration.

I. Acquisition of agricultural land development rights shall be conducted in cooperation with a landowner upon review pursuant to this section. Any proposal for designating a site as an agricultural preservation restriction area shall be submitted by the landowner to the committee for approval.

II. The committee shall determine the amount due to the affected agricultural landowner and authorize the commissioner to pay such amount to the owner. Agricultural land development rights purchased pursuant to this section shall be held in the name of the state of New Hampshire.

III. The determination of such amounts shall be equitable in consideration of anticipated benefits from the proposed site but not to exceed the difference between the fair market value of such land and the fair market value of such land restricted for agricultural purposes pursuant to this subdivision.

IV. The rights acquired pursuant to the purchase agreement shall not be sold or otherwise conveyed to a third party without consent of the landowner, nor does such purchase grant the public any right of access or right of use of the affected property.

V. The committee shall view each parcel subject to agricultural preservation restriction not less than once every 2 years to assure that its use complies with law and the rules of the committee. The committee may delegate responsibility for monitoring of the agricultural preservation restriction to the conservation commission in the municipality, or to the conservation district, in which the parcel is situated. Such commission or district shall submit a report of its inspection to the committee in a timely manner.

432:23 Assessments. Land designated as an agricultural preservation site and utilized for agricultural production shall be assessed for general property tax purposes at values no greater than those determined to be the fair market value for such land as determined by the current use advisory board established by RSA 79-A:3.
432:24 Release.

I. Agricultural preservation restrictions shall be in perpetuity except as released pursuant to this section and RSA 432:25. All customary rights and privileges of ownership shall be retained by the owner including the right to privacy and the right to carry out all regular agricultural practices which are not prohibited by RSA 432:18, II.

II. Agricultural preservation restrictions may be released by the committee if the site is no longer suitable for agricultural purposes. An owner of an agricultural preservation site may request the committee’s approval to release the restriction for the public good. Prior to the release of the agricultural land development rights by the committee, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time and place, and at least 14 days’ notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period. At least 2 committee members shall sit on the hearing panel.

III. Development rights of agricultural land purchased with public funds may be released upon repayment by the landowner of a reasonable value thereof which shall not be less than the difference between fair market value of such land at the time of such release and the fair market value of such land restricted for agricultural purposes at the time that development rights were acquired.

432:25 Development Rights Acquired by Public Bodies.

I. Development rights of agricultural lands may be acquired by any governmental body or charitable corporation or trust which has the authority to acquire interests in land. The restrictions arising from the acquisition of the development rights may be enforced by injunction or other proceeding. Representatives of the holder shall be entitled to enter such land in a reasonable manner and at reasonable times to assure compliance with the restriction.

II. The restrictions may be released, in whole or in part, by the holder for consideration in an amount determined by the governmental body or charitable corporation or trust that purchased the development rights. Prior to release of restriction by a governmental body, a public hearing shall be conducted in the municipality in which the site is located. A notice of said hearing shall specify the grounds for the hearing as well as the date, time and place, and at least 14 days’ notice of the time and place of such hearing shall be published in a paper of general circulation in the municipality. A legal notice of the hearing shall also be posted in at least 3 public places in such city or town. The 14 days shall not include the day of publication nor the day of the meeting, but shall include any Saturdays, Sundays and legal holidays within said period.
432:26 Public Interest. Prior to action by a governmental body to acquire the development rights or release or approve the agricultural preservation restriction, the body shall consider the public interest in such agricultural preservation, any national, state, regional or local program in furtherance thereof, and any state, regional or local comprehensive land use plan.

432:27 Recording.
1. Acquisition of the developmental rights or release of the preservation restrictions on agricultural land shall be evidenced by certificates issued by the commissioner and shall be recorded pursuant to RSA 477:3-a in the appropriate registry of deeds by the commissioner. Recording costs shall be paid by the affected landowner.

II. Municipal planning boards and regional planning commissions established pursuant to RSA 673 or RSA 36 shall be notified in writing by the commissioner of the acquisition or release of an agricultural preservation site which shall be duly noted in the master plan of the municipality or region.

432:28 Covenants Already in Force Relating to the Affected Site. Any prior right, easement, privilege, restriction or condition relative to a designated site which then becomes subject to an agricultural preservation restriction shall remain enforceable. The restriction shall be subject to the prior covenants except upon the express release of the covenants due to the acquisition of the site’s agricultural land development rights. If prior covenants are released upon the acquisition of the agricultural land development rights and the agricultural preservation restriction is then released pursuant to RSA 432:24 or RSA 432:25, the covenants shall be revived to the same status as prior to the acquisition of the development rights.

432:29 Land for Public Use; Eminent Domain, Easements by Public Utilities.
1. Any powers granted by general or special law to acquire land for public uses by purchase, gift or eminent domain shall not be diminished; provided that alternative land areas are considered.

II. Public utility companies may obtain easements by eminent domain on sites designated agricultural preservation restriction areas for the purpose of utility services; provided, however, the utility (1) gives thorough consideration to alternative areas before such land can be taken; (2) guarantees the minimum practicable interference with agricultural operations with respect to width of easement, pole location and other pertinent matters; (3) obtains all necessary licenses, permits, approvals and other authorizations from the appropriate government agencies; and (4) compensates the landowner in the same manner and at the same fair market value as if the land were not designated as an agricultural preservation site.

III. The committee shall be consulted prior to the taking of any property pursuant to this section. If the committee determines there was a taking contrary to the provisions of this section, it shall have the right of appeal to the superior court on behalf of the landowner.
132:30 Special Account: Bonds Authorized.

I. The state treasurer shall establish a separate account to which shall be credited all funds appropriated or acquired to fund the acquisition of development rights in accordance with RSA 432:17-31-a. This shall be a non-lapsing account, and funds in said account are hereby appropriated for the purposes of this subdivision.

II. To provide funds for any appropriation made for the account established in RSA 432:30, I, the state treasurer may borrow upon the credit of the state a sum as approved by the general court and issue bonds and notes in the name of and on behalf of the state in accordance with RSA 6-A. Any bonds issued under this section shall be payable not later than 10 years from their date or dates of issue.

III. The payment of principal and interest on the bonds and notes issued for the purposes of this subdivision shall be made when due from the general fund.

432:31 Contributions. The committee is authorized to apply for and accept federal funds and to use and dispose of money, services and property received from contributions and gifts for the purposes of this subdivision.

432:31-a Governor and Council Approval. The purchase of any agricultural land preservation restrictions or development rights in the name of the state of New Hampshire or their release, in whole or in part, by the state pursuant to the provisions of this subdivision shall be approved by governor and council.
41C-31. Offer to sell developmental easement; price; evaluation of suitability of land; appraisal

a. Any landowner applying to the board to sell a development easement pursuant to section 17 of this act is shall offer to sell the development easement at a price which, in the opinion of the landowner, represents a fair value of the development potential of the land for nonagricultural purposes, as determined in accordance with the provisions of this act.

b. Any offer shall be reviewed and evaluated by the board and the committee in order to determine the suitability of the land for development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula.

\[
\frac{\text{nonagricultural development value} - \text{agricultural development value}}{\text{nonagricultural landowner's asking price}}\]

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington county or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1969, c. 56 (C.40:55D-13 et seq.), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.

Last additions in text indicated by underline; deletions by strikeout
d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein where a municipal average has been established under P.L.1968, c. 38 (C:49:55D-113 et seq.), upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowners offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant the "Farmland Assessment Act of 1964," P.L.1964, c. 48 (C:54:4-23.1 et seq.)
§ 9111 Purchase of agricultural conservation easements

(a) State Agricultural Land Preservation Board—The Department of Agriculture and the State Agricultural Land Preservation Board shall administer pursuant to this section a program for the purchase of agricultural conservation easements by the Commonwealth.

(1) There is established within the Department of Agriculture as a departmental board the State Agricultural Land Preservation Board. The State board shall consist of 17 members.

(i) There shall be eight voting ex officio members of the State board: the Secretary of Agriculture, who shall serve as the board chairman, the Secretary of Community Affairs, or his designee, the Secretary of Environmental Resources, or his designee, the Chairman and the Minority Chairman of the House Agriculture and Rural Affairs Committee, or their designees, the Chairman and the Minority Chairman of the Senate Agriculture and Rural Affairs Committee, or their designees, and the Dean of the College of Agriculture of the Pennsylvania State University.

(ii) Five members shall be appointed by the Governor. One member shall be a current member of the governing body of a county; one member shall be a person who is recognized as having significant knowledge in agricultural fiscal and financial matters; one member shall be an active resident farmer of this Commonwealth; one member shall be a residential, commercial or industrial building contractor; and one member shall be a current member of a governing body. Initially, two members shall be appointed for a term of four years; two members shall be appointed for a term of three years; and one member shall be appointed for a term of two years. Thereafter, the terms of all members appointed hereinafter shall be four years. The term of a person appointed to replace another member whose term has not expired shall be only the unexpired portion of that term. Members may be reappointed to successive terms.

(iii) One member each shall be appointed by the Speaker of the House of Representatives, the Minority Leader of the House of Representatives, the President pro tempore of the Senate and the Minority Leader of the Senate, who shall, at the time of appointment, be resident farm owners and operators of at least one commercial farm in the Commonwealth. The initial term of the appointee of the President pro tempore of the Senate shall be four years, the initial term of the appointee of the Speaker of the House of Representatives shall be three years, and the initial term of the appointee of the Minority Leader of the Senate shall be two years; and the initial term of the appointee of the Minority Leader of the House of Representatives shall be one year. Thereafter, the terms of all appointees shall be four years. An appointment made to fill an unexpired term shall be for only the unexpired term. Members may be reappointed to successive terms.

(2) Nine members shall constitute a quorum for purposes of conducting meetings and official actions pursuant to authority given to the State board under this act.

(3) It shall be the duty and responsibility of the State board to exercise the following powers:

(i) To adopt rules and regulations pursuant to this act: Provided, That the board shall have the power and authority to promulgate, adopt, publish, and use guidelines for the implementation of this act, until September 30, 1990, or the effective date of final rules and regulations, whichever first occurs, pending adoption of final rules and regulations. Guidelines proposed under the authority of this section shall be subject to review by the General Counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L. 950, No. 164), known as the “Commonwealth Attorneys Act,” but shall not be subject to review pursuant to the act of June 25, 1982 (P.L. 638, No. 181), known as the “Regulatory Review Act.”

(ii) To adopt rules of procedure and bylaws governing the operations of the State board and the conduct of its meetings.
(m) To review, and accept or reject, the recommendation made by a county board for the purchase of an agricultural conservation easement by the Commonwealth.

(n) To execute agreements to purchase agricultural conservation easements in the name of the Commonwealth if recommended by a county and approved by the State board as provided in subparagraph (m).

(o) To purchase in the name of the Commonwealth agricultural conservation easements if recommended by a county and approved by the State board as provided in subparagraph (m).

(p) To purchase agricultural conservation easements jointly with a county if recommended by a county and approved by the State board as provided in subparagraph (m).

(q) To allocate State moneys among counties for the purchase of agricultural conservation easements, in accordance with provisions of subsection (g).

(r) To establish and maintain a central repository of records which shall contain records of county programs for purchasing agricultural conservation easements, records of agricultural conservation easements purchased by counties, and records of agricultural conservation easements purchased by the Commonwealth. All records indicating the purchase of agricultural conservation easements shall refer to and describe the farm land subject to the agricultural conservation easement.

(s) To record agricultural conservation easements purchased by the Commonwealth or jointly owned in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located.

(t) To establish and publish the standards, criteria, and requirements necessary for State board approval of county programs for purchasing agricultural conservation easements.

(u) To review and certify and approve or disapprove county programs for purchasing agricultural conservation easements.

(v) To exercise other discretionary powers as may be necessary and appropriate for the exercise and performance of its duties, powers, and responsibilities under this act.

(w) To determine an annual easement purchase threshold.

(b) County programs—After the establishment of an agricultural security area by the governing body, the county governing body may authorize a program to be administered by the county board for purchasing agricultural conservation easements from landowners whose land is within an agricultural security area.

(1) The county board shall be composed of five, seven or nine members appointed by the county governing body. The chairman of the county governing body shall designate annually one member of the county board to serve as chairman of the county board. County board members shall be appointed from the following groups: the number of farmers shall constitute less than a majority, township or borough located within the county; one member shall be a commercial, industrial or residential building contractor; and the other members shall be selected at the pleasure of the county governing body. The number of the member of the governing body of a township or borough shall be the number of the township or borough at the time of the term of the member elected or appointed to the board. The term of the initial member of the governing body of a township or borough shall be three years, and the term of all other members shall be one year. Thereafter, the term of all members shall be three years.

(2) It shall be the duty and responsibility of the county board to exercise the following powers:

(i) To adopt rules and regulations for the administration of a county program for the purchase of agricultural conservation easements in accordance with the provisions of this act, but not limited to, rules and regulations governing the submission of applications by landowners, establishing standards and procedures for the appraisal of property eligible for purchase as an agricultural conservation easement, and agricultural conservation easements.

(ii) To adopt rules of procedure and bylaws governing the operation of the county board and the conduct of its meetings.

(iii) To execute agreements to purchase agricultural conservation easements in the name of the county.

(iv) To purchase in the name of the county agricultural conservation easements with agricultural security areas.

(v) To use moneys appropriated by the county governing body from the county general fund to hire staff and administer the countywide program.
(v) To use monies appropriated by the county governing body from the county general fund or the proceeds of indebtedness incurred by the county and approved by the county governing body for the purchase of agricultural conservation easements within agricultural security areas.

(vi) To establish and maintain a repository of records of farmlands which are subject to agricultural conservation easements purchased by the county and which are located within the county.

(vii) To record agricultural conservation easements purchased by the county in the office of the recorder of deeds of the county wherein the agricultural conservation easements are located and to submit to the State board a certified copy of agricultural conservation easements within 45 days after recording. The county board shall attach to all certified copies of the agricultural conservation easements submitted to the State board a description of the farm land subject to the agricultural conservation easements.

(viii) To submit to the State board for review the initial county program and any proposed revisions to approved county programs for purchasing agricultural conservation easements.

(ix) To recommend to the State board for purchase by the Commonwealth agricultural conservation easements within agricultural security areas located within the county.

(x) To recommend to the State board the purchase of agricultural conservation easements by the Commonwealth and the county jointly.

(xi) To purchase agricultural conservation easements jointly with the Commonwealth.

(xii) To exercise other powers which are necessary and appropriate for the exercise and performance of its duties, powers and responsibilities under this act.

(c) The county may incur debt pursuant to the act of July 12, 1972 (P.L. 781, No. 189), known as the “Local Government Unit Debt Act” for the purchase of agricultural conservation easements.

(c) Restrictions and limitations.—An agricultural conservation easement shall be subject to the following terms, conditions, restrictions and limitations:

(1) The term of an agricultural conservation easement shall be perpetual or for a term of 25 years.

(2) An agricultural conservation easement shall not be sold, conveyed, extinguished, leased, encumbered or restricted in whole or in part for a period of 25 years beginning on the date of purchase of the easement.

(3) If the land subject to the agricultural conservation easement is no longer viable agricultural land, the Commonwealth, subject to the approval of the State board, and the county, subject to the approval of the county board, may sell, convey, extinguish, lease, encumber or restrict an agricultural conservation easement to the current owner of record of the farmland subject to the easement after the expiration of 25 years from the date of purchase of the easement for a purchase price equal to the value at the time of resale determined pursuant to subsection (f) at the time of conveyance. A conveyance by the Commonwealth pursuant to this subsection shall not be subject to the requirements of Article XXIV-A of the act of April 9, 1929 (P.L. 177, No. 175), known as “The Administrative Code of 1929.” The purchase price shall be payable to the Commonwealth and the county as their respective legal interests in the agricultural conservation easement appear, and a separate payment shall be made to the Commonwealth and the county accordingly at the time of settlement. Any payment received by the Commonwealth pursuant to this provision shall be paid into the fund.

(4) Instruments and documents for the purchase, sale and conveyance of agricultural conservation easements shall be approved by the State board or the county board, as the case may be, prior to execution and delivery. Proper releases from mortgage holders and lienholders must be obtained and executed to insure that all agricultural conservation easements are purchased free and clear of all encumbrances.
(5) Whenever any public entity, authority or political subdivision exercises the power of eminent domain and condemns land subject to an agricultural conservation easement, the condemnor shall provide just compensation to the owner of the land in issue and to the owner of the easement as follows:

(a) The owner of the land in issue shall be paid the full value which would have been payable to the owner but for the existence of an agricultural conservation easement less the value of the agricultural conservation easement at the time of condemnation.

(b) The owner of the easement shall be paid the value of the easement at the time of condemnation.

(6) An agricultural conservation easement shall not prevent

(a) The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals.

(b) The granting of rights-of-way by the owner of the subject land in and through the land for the installation of, transportation of, or use of water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products lines.

(c) Construction and use of structures on the subject land necessary for agricultural production.

(i) Construction and use of structures on the subject land for the purpose of providing necessary housing for seasonal or full-time employees. Provided, that only one such structure may be constructed on no more than two acres of the subject land during the term of the agricultural conservation easement.

(ii) Customary part-time or off-season minor or rural enterprises and activities which are provided for in the county Agricultural Conservation Easement Purchase Program approved by the State board under subsection (d).

(7) Nothing in this act shall prohibit a member of the State board or county board or his or her family from selling a conservation easement under this program, provided that all decisions made regarding easement purchases be subject to the provisions of section 3(j) of the act of October 4, 1978 (P.L. 883, No. 170), referred to as the Public Official and Employee Ethics Law.

(d) Program approval—

(1) The standards, criteria and requirements established by the State board for State board approval of county programs for purchasing agricultural conservation easements shall include, but not be limited to, the extent to which the county programs consider and address the following:

(a) The quality of the farmlands subject to the proposed easements, including soil classifications and productivity.

(b) The likelihood that the farmlands would be converted to nonagricultural use unless subject to an agricultural conservation easement. Priority for the purchase of an agricultural conservation easement shall be given to farmlands most likely to be converted to nonagricultural use. For purposes of considering the likelihood of conversion, the existence of a zoning classification of the land shall not be relevant, but the market for nonfarm use or development of farmlands shall be relevant.

(c) The stewardship of the land and use of conservation practices and best land management practices, including, but not limited to, soil erosion and sedimentation control and nutrient management.

(i) Fair equitable objective and nondiscriminatory procedures for determining purchase priorities.

(2) The State board shall act on a county’s program for purchasing agricultural conservation easements within 60 days of its receipt, and shall notify immediately the county in writing of approval or disapproval of its program in accordance with the criteria set forth in this subsection. Failure of the State board to act on the submission of a county program under this provision within 60 days of its receipt shall be deemed to constitute approval of the county program by the State board.
(e) Easement purchase —

(1) The State board may reject the recommendation made by a county for purchase of an agricultural conservation easement whenever

(ii) The recommendation does not comply with a county program certified and approved by the State board for purchasing agricultural conservation easements.

(iii) Clear title cannot be conveyed.

(iv) The farmland which would be subject to the agricultural conservation easement is not located within a duly established agricultural security area established or recognized under this act.

(v) The allocation of a county-established pursuant to subsection (b) is exhausted or is insufficient to pay the purchase price.

(vi) Compensation is not provided to owners of surface-measurable coal disturbed or affected by the creation of such easement.

(2) The State board shall act to approve or disapprove the recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt.

(3) If the State board disapproves the recommendation by a county for purchase of an agricultural conservation easement, the county shall be given written notice of the disapproval within ten days of the decision of the State board. The written notice shall state the reason for the State board’s disapproval of the recommendation.

(4) A decision of the State board issued under the authority of this subsection shall be an adjudication subject to the provisions of 2 Pa. C.S. (relating to administrative law and procedure).

(5) Failure of the State board to act on a recommendation by a county for purchase of an agricultural conservation easement within 60 days of its receipt shall be deemed to constitute approval by the State board.

(f) Valuation — The State board or the county board, as the case may be, shall select and retain an independent licensed real estate appraiser to determine market value and farmland value. If the seller disagrees with the appraisal made by the State or county board’s appraiser, the seller shall have the right to select and retain a separate independent licensed real estate appraiser within 30 days of receipt of the appraisal of the State or county board’s appraiser to determine market value and farmland value. The State board or the county board shall establish the agricultural value and the nonagricultural value of the property subject to the agricultural conservation easement.

(i) The agricultural value shall equal the sum of

(i) the farmland value determined by the seller’s appraiser; and

(ii) one-half of the difference between the farmland value determined by the State or county board’s appraiser and the farmland value determined by the seller’s appraiser if the farmland value determined by the State or county board’s appraiser exceeds the farmland value determined by the seller’s appraiser.

(ii) The nonagricultural value shall equal the sum of

(i) the market value determined by the State or county board’s appraiser, and

(ii) one-half of the difference between the market value determined by the seller’s appraiser and the market value determined by the State or county board’s appraiser, if the market value determined by the seller’s appraiser exceeds the market value determined by the State or county board’s appraiser.

(g) Purchase price — The price paid for purchase of an agricultural conservation easement in perpetuity shall not exceed the difference between the nonagricultural value and the agricultural value determined pursuant to subsection (f) at the time of purchase. The price paid for purchase of an easement for a term of 25 years shall not exceed one-tenth of the difference between the nonagricultural value and the agricultural value determined pursuant to subsection (f) at the time of purchase. The purchase price may be paid in a lump sum, in installments over a period of years, or in any other lawful manner of payment. If payment is to be made in installments or another deferred method, the person selling the easement may receive, in addition to the selling price, interest in an amount or at a rate set forth in the agreement of purchase, and final payment shall be made within, and no later than five years from the date the agricultural conservation easement purchase agreement was executed.
Allocation of State moneys—The State board shall make an annual allocation among counties, except counties of the first class, for the purchase of agricultural conservation easements.

1. As used in this subsection, the following words and phrases shall have the meanings given to them in this paragraph or, if the context clearly indicates otherwise:

(a) "Adjusted weighted transfer tax revenue." An amount equal to the weighted transfer tax revenues of a county divided by the sum of the weighted transfer tax revenues of all counties except counties of the first class.

(b) "Annual agricultural production." The total dollar volume of sales of livestock, crops, and agricultural products according to the most recent Annual Crop and Livestock Summary published by the Pennsylvania Agricultural Statistics Service.

(c) "Annual easement purchase threshold." An amount annually determined by the State board which equals at least $10,000,000.

(d) "Average realty transfer tax revenue." The total annual realty transfer tax revenues collected in all counties, except counties of the first class, divided by 66.

(e) "Realty transfer tax revenues." The tax imposed and collected under section 1102-C of the act of March 1, 1971 (P.L. 6, No. 21), known as the "Tax Reform Code of 1971".

(f) "Weighted transfer tax revenue." An amount equal to the total annual realty transfer tax revenues collected in a county divided by the sum of the total annual realty transfer tax revenues collected in all counties except counties of the first class which does not exceed three times the average realty transfer tax revenue.

2. An annual allocation shall be made to each county, except counties of the first class, for the purchase of agricultural conservation easements by the Commonwealth at the beginning of the county fiscal year which equals 50% of the annual easement purchase threshold multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.

3. If the aggregate annual allocation under this paragraph to all eligible counties does not exceed 1/2 of the annual easement purchase threshold, an additional annual allocation from 50% of the annual easement purchase threshold shall be made to a county, except a county of the first class, at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county. The additional annual allocation under this paragraph shall equal the sum of:

(a) The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (a) multiplied by four.

(b) The annual appropriation of local moneys by a county for the purchase of agricultural conservation easements which does not exceed the average annual allocation under paragraph (a) multiplied by four, if the county has an annual agricultural production which equals at least 2% of the total annual agricultural production of the Commonwealth for the same year.

4. If the aggregate annual allocation under paragraph (a) to all eligible counties would exceed 1/2 of the annual easement purchase threshold, paragraph (a) shall not apply, and an additional annual allocation shall be made under this paragraph at the beginning of the county fiscal year for the joint purchase of agricultural conservation easements by the Commonwealth and a county, except a county of the first class. The additional annual allocation to a county under this paragraph shall equal 50% of the annual easement purchase threshold multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the purchase of agricultural conservation easements and in all cases shall not exceed the average annual allocation under paragraph (a) multiplied by four.

5. An additional annual allocation shall be made to a county, except a county of the first class, from the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (a) or (b), as the case may be, as follows:
An additional annual allocation shall be made for the joint purchase of agricultural conservation easements by the Commonwealth and a county which equals six-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the purchase of agricultural conservation easements.

An additional annual allocation shall be made for the purchase of agricultural conservation easements by the Commonwealth which equals four-tenths of the amount by which 50% of the annual easement purchase threshold exceeds the total allocations made under paragraph (3) or (4), as the case may be, multiplied by the adjusted weighted transfer tax revenues of the county for the preceding calendar year.

The allocation of a county shall be adjusted for purchases of agricultural conservation easements made with moneys from the county’s allocation, for all costs except administrative costs, incurred by the Commonwealth or a county incidental to the purchase of agricultural conservation easements and for the costs of reimbursing nonprofit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or county. No purchase of an agricultural conservation easement shall be made with State moneys allocated to a county unless the amount of the purchase price is equal to or less than the adjusted allocation or the county pays the portion of the purchase price which represents the difference between the purchase price and the adjusted allocation.

The first annual allocation to a county under paragraphs (3), (4) and (5)(i) shall continue for three county fiscal years, and the second and third such annual allocations shall each continue for two county fiscal years. Thereafter each such annual allocation shall be for one county fiscal year. Such annual allocations which have not been expended or encumbered at the end of the period for which they were made shall be reallocated in the subsequent county fiscal year to a county which used at least 90% of such total annual allocation. The reallocation to a county under this paragraph shall be the total amount available for reallocation under this paragraph multiplied by a percentage equal to the annual appropriation of local moneys appropriated by the county for the previous county fiscal year for the purchase of agricultural conservation easements divided by the aggregate of local moneys appropriated by all eligible counties for the previous county fiscal year for the purchase of agricultural conservation easements.

Initial allocations to counties under paragraphs (2) and (5)(ii) shall continue until the end of the fourth county fiscal year occurring after the effective date of this act. The sum of the total annual allocations of all counties under paragraphs (2) and (5)(i) which have not been expended or encumbered by the end of the third county fiscal year, and every county fiscal year thereafter, occurring after the effective date of this act shall be reallocated in the subsequent county fiscal year to a county which used at least 90% of such total allocation. Fifty percent of the amount available for allocation under this paragraph shall be reallocated in the manner set forth in paragraph (2), and 50% of the amount available for allocation under this paragraph shall be reallocated in the manner set forth in paragraphs (2), (4) and (5).

The allocation made to a county under this subsection shall be used for the purchase of agricultural conservation easements in perpetuity. Provided that no more than 30% of such allocation may be used at the option of a county for the purchase of agricultural conservation easements for a term of 25 years in the manner provided for in this act.

§ 914.2. Agricultural conservation easement purchase fund

(a) Purpose of fund—The Agricultural Conservation Easement Purchase Fund shall be the source from which all moneys are authorized with the approval of the Governor to carry out the purpose of this act. The moneys appropriated to the fund shall be utilized in accordance with the expenditures and distribution authorized, required or otherwise provided in the program for purchase of agricultural conservation easements contained in section 141.1 for the purpose of paying all costs, except administrative costs, incurred by the Commonwealth or a county incidental to the
purchase of agricultural conservation easements, and for the purpose of reimbursing nonprofit land conservation organizations for expenses incurred in acquiring and transferring agricultural conservation easements to the Commonwealth or a county

(b) Interfund transfers authorized.—

(1) Whenever the cash balance and the current estimated receipts of the Agricultural Conservation Easement Purchase Fund shall be insufficient at any time during any State fiscal year to meet promptly the obligations of the Commonwealth from such fund, the State Treasurer is hereby authorized and directed, from time to time during such fiscal year, to transfer from the General Fund to the Agricultural Conservation Easement Purchase Fund such sums as the Governor directs, but in no case less than the amount necessary to meet promptly the obligations to be paid from such fund nor more than an amount which is the smallest of

(i) the difference between the amount of debt authorized to be issued under the authority of this act and the aggregate principal amount of bonds and notes (not including refunding bonds and replacement notes) issued, and

(ii) the difference between the aggregate principal amount of bonds and notes permitted under section 14.3 of the Agricultural Conservation Easement Purchase Fund and the aggregate principal amount of bonds and notes (not including refunding bonds and replacement notes) issued during such State fiscal year.

Any sums so transferred shall be available only for the purposes for which funds are appropriated from the Agricultural Conservation Easement Purchase Fund. Such transfers shall be made hereunder upon warrant of the State Treasurer upon requisition of the Governor.

(2) In order to reimburse the General Fund for moneys transferred from such fund under section 14.2 of this act, there shall be transferred moneys to the General Fund from the Agricultural Conservation Easement Purchase Fund from proceeds obtained from bonds and notes issued under the authority of this act or from other available funds in such amounts and at such times as the Governor shall direct. Such retransfers shall be made upon warrant of the State Treasurer upon requisition of the Governor.
42-82-5. Duties of the commission. — (a) The commission shall: (1) develop the criteria necessary for defining agricultural land under this chapter, (2) make a reasonably accurate inventory of all land in the state which meets the definition of agricultural land, (3) prepare and adopt rules for administration of the purchase of development rights and criteria for the selection of parcels for which the development rights may be purchased, and the conditions under which they will be purchased; (4) draw up and publish the covenant and enumerate the specific development rights to be purchased by the state, and (5) inform the owners, public officials and other citizens and interested persons of the provisions of this chapter.

(b) At any time after fulfilling the requirements of subsection (a) of this section, the commission, on behalf of the state, may acquire such development rights as may from time to time be offered by the owners of agricultural land. The commission may accept or negotiate at a price not in excess of the average of two (2) independent appraisals for the respective property. Value of the development rights
for all purposes of this section shall be the difference between the value of the property for its highest and best use and its value for agricultural purposes as defined in this chapter. In determining the value of the property for its highest and best use, consideration shall be given to sales of comparable properties in the general area, use of which is unrestricted at the time of sale. The seller of the development rights shall have the option of accepting payment therefor in full at time of transfer or accepting payment on an installment basis in cash or with the principal paid by tax exempt financial instruments of the state of Rhode Island with interest on the unpaid balance equal to the interest paid by the state on bonds sold during the preceding twelve (12) month period. Any matter pending in the superior court may be settled by the parties subject to approval by a referee. At any time after a matter has been referred to a referee, even after an award is made by the referee, but before payment thereof, the petitioner may withdraw his or her petition upon payment of appraisal fees incurred by the state together with all court costs, and the award shall thereupon become null and void.

(c) Any land received as a gift may be resold by the commission with the development rights retained by the state and so noted by covenant in the deed. The proceeds from that sale shall be returned to the agricultural land preservation fund.

(d) Any land received as a gift and not resold by the commission may be leased for agricultural uses or other uses the commission determines are not detrimental to its agricultural productivity. Any funds thus obtained shall be returned to the agricultural land preservation fund.

(e) The commission may consider petitions by the owner of land from which the state has purchased the development rights to repurchase said development rights from the state. The petition must be accompanied by a certificate from the municipalities in which the land lies stating that two-thirds (2/3) of the city or town council has approved the proposed development. The petition shall set forth the facts and circumstances upon which the commission shall consider approval, and the commission shall deny approval unless at least seven (7) of its members determine by vote that there is an overriding necessity to relinquish control of the development rights. The commission shall hold at least one public hearing in a city or town from which a certificate has been received, prior to its consideration of the petition, which shall be announced in one newspaper of local circulation. The expenses, if any, of the hearing shall be borne by the petitioner. If the commission approves the sale of the development rights, it shall receive the value of the development rights at the time of this sale, to be determined in the same manner as provided for by subsection (d) of this section. Proceeds of the sale shall be returned to the agricultural land preservation fund.
§ 302. Policy, findings and purpose

(a) The dual goals of creating affordable housing for Vermonters, and conserving and protecting Vermont's agricultural land, historic properties, important natural areas and recreational lands are of primary importance to the economic vitality and quality of life of the state.

(b) In the best interests of all of its citizens and in order to improve the quality of life for Vermonters and to maintain for the benefit of future generations the essential characteristics of the Vermont countryside, Vermont should encourage and assist in creating affordable housing and in preserving the state's agricultural land, historic properties, important natural areas and recreational lands.

(c) It is the purpose of this chapter to create the Vermont housing and conservation trust fund to be administered by the Vermont housing and conservation board to further the policies established by subsections (a) and (b) of this section.—Added 1987, No. 88, § 1, eff. June 11, 1987.

§ 312. Creation of Vermont housing and conservation trust fund

There is created a special account in the state general fund to be known as the "Vermont housing and conservation trust fund." The fund shall be administered by the board and expenditures therefrom shall only be made to implement and effectuate the policies and purposes of this chapter. Deposits shall be made to the fund from moneys from time to time appropriated thereto by the general assembly and from any other source, private or public, approved by the board. Unexpended balances and any earnings shall not revert to the general fund but shall remain in the fund for use in accord with the purposes of this chapter.—Added 1987, No. 88, § 1, eff. June 11, 1987.
§ 321. General powers and duties

The board shall have all the powers necessary and convenient to carry out and effectuate the purposes and provisions of this chapter, including without limitation those general powers provided to a business corporation by section 1852 of Title 11 and including, without limiting the generality of the foregoing, the power to:

(1) upon application from an eligible applicant in a form prescribed by the board, provide funding in the form of grants or loans for eligible activities;

(2) enter into cooperative agreements with private organizations or individuals or with any agency or instrumentality of the United States or of this state to carry out the purposes of this chapter;

(3) issue rules in accordance with 3 V.S.A. chapter 25 for the purpose of administering the provisions of this chapter.—Added 1987, No. 88, § 1, eff. June 11, 1987.

§ 322. Allocation system

(a) In determining the allocation of funds available for the purposes of this chapter, the board shall give priority to projects which combine the dual goals of creating affordable housing and conserving and protecting Vermont's agricultural land, historic properties, important natural areas or recreation lands and also shall consider, but not be limited to, the following factors:

(1) the need to maintain balance between the dual goals in allocating resources;

(2) the need for a timely response to unpredictable circumstances or special opportunities to serve the purposes of this chapter;

(3) the level of funding or other participation by private or public sources in the activity being considered for funding by the board;

(4) what resources will be required in the future to sustain the project;

(5) the need to pursue the goals of this chapter without displacing lower income Vermonters;

(6) the long-term effect of a proposed activity and, with respect to affordable housing, the likelihood that the activity will prevent the loss of subsidized housing units and will be of perpetual duration.

(b) The board's allocation system shall include a method, defined by rule, that evaluates the need for, impact and quality of activities proposed by applicants.—Added 1987, No. 88, § 1, eff. June 11, 1987.

§ 321. Stewardship

If an activity funded by the board involves acquisition by the state of an interest in real property for the purpose of conserving and protecting agricultural land, important natural areas or recreation lands, the board, in its discretion, may make a one-time grant to the appropriate state agency or municipality. The grant shall not exceed ten percent of the current appraised value of that property interest and shall be used to support its proper management or maintenance or both.—Added 1987, No. 88, § 1, eff. June 11, 1987.
APPENDIX B:
TRANSFER OF DEVELOPMENT RIGHTS ENABLING STATUTES
§ 8–2e. Municipal agreements regarding development rights

Any two or more municipalities which have adopted the provisions of this chapter or chapter 125a or which are exercising zoning power pursuant to any special act may, with the approval of the legislative body of each municipality, execute an agreement providing for a system of development rights and the transfer of development rights across the boundaries of the municipalities which are parties to the agreement. Such system shall be implemented in a manner approved by the legislative body of each municipality by the commission or other body which adopts zoning regulations of each municipality.
67-4619. Transfer of development rights. — Any county or city governing body may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine. For the purposes of this section, "development rights" are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon [1 C, § 67-4619, as added by 1975, ch 142 § 2, p 324]
100.208. Transferable development rights. — (1) Any city, county, or urban-county government which is part of a planning unit may provide by ordinance for:

(a) The voluntary transfer of the development rights permitted on one (1) parcel of land to another parcel of land,

(b) Restricting or prohibiting further development of the parcel from which development rights are transferred and

(c) Increasing the density or intensity of development of the parcel to which such rights are transferred.

(2) The ordinance shall designate and show on the zoning map areas from which development rights may be transferred and areas to which such rights may be transferred and used for development. These zones may be designated as separate use districts or as overlaying other zoning districts.

(3) Any city within a county that adopts an ordinance providing for the transfer of development rights may also adopt a transfer of development rights ordinance and the county and city by adoption of mutual provisions may provide for the transfer of development rights on land located in one to land located in another.

(4) "Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon the transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of these rights and may provide for the granting of easements and reasonable regulations to effect and control transfers and assure compliance with the provisions of the ordinance. (Enact Acts 1990, ch 286, § 1, effective July 13, 1990)
§ 4722. Creation of districts; powers of municipal authorities; transfers of development rights; and uniform regulations within district

A. For any and all of the purposes set forth in R.S. 33:4721 the governing authority of any municipality may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes; and within the districts so created, the governing authority may regulate and restrict the erection, construction, alteration, or use of buildings, structures or land.

B. The governing authority of all municipalities having over five hundred thousand population shall have the power to provide for official landmark or other appropriate designation by ordinance of areas, places, buildings, and structures having a special historical, community, or aesthetic interest or value; and in connection with those areas, places, buildings and structures, so designated by ordinance to impose regulations governing their construction, alteration, demolition, and use and to adopt additional measures appropriate to their preservation, enhancement, or use, which additional measures may include, but are not limited to: (1) establishment of procedures authorizing owners of designated property to transfer development rights in such amount and subject to such conditions and controls as are appropriate to secure the purposes of this Part; (2) the acquisition of the complete ownership of properties so designated or a lesser interest therein, including a preservation restriction, and the reconstruction, operation or transfer by the municipality of any such property so acquired or the transfer of any development rights so acquired, all in accordance with such procedures and regulations and subject to such conditions as the governing authority deems reasonable and appropriate.

C. All such regulations shall be uniform for each class or kind of land and structure throughout each district, but the regulations of one district may differ from those in other districts. However, no regulation shall change the status of premises which have been continuously used for commercial purposes since January 1, 1929, without interruption for more than six consecutive months at any one time. The governing authority may, however, provide for the removal of nonconforming signs and billboards, less and except billboards erected in compliance with parish or municipal regulations at the time of erection, provided that it first establish a reasonable amortization time for removal according to a reasonable set of standards and schedules.

In the city of New Orleans the provisions of Subsection B of this Section shall apply only to the area bounded by the Mississippi River, Howard Avenue, the river side of I-10—Claiborne Avenue and the uptown side of Iberville Street.
§ 11.01. Establishment of programs for transfer of development rights.

In order to encourage the preservation of natural resources and to facilitate orderly growth and development in the State, the legislative body of a county or municipal corporation, including Baltimore City, that exercises authority granted by this article may establish a program for the transfer of development rights (1986, ch 605)
CHAPTER 86, LAWS OF 1989

CHAPTER 86

AN ACT concerning the establishment of a demonstration program for the transfer of development potential, amending P.L.1983, c.32, and supplementing Title 4 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:


1. Sections 1 through 14 and 17 through 19 of this act shall be known and may be cited as the “Burlington County Transfer of Development Rights Demonstration Act.”

C.40:55D-114 Findings, declarations.

2. The Legislature finds and declares that as the most densely populated state in the nation, the State of New Jersey is faced with the challenge of accommodating vital growth while maintaining the environmental integrity and preserving the natural resources and cultural heritage of the Garden State; that the responsibility for meeting this challenge falls most heavily upon local government to appropriately shape the land use patterns so that growth and preservation become compatible goals; that until now municipalities have lacked effective and equitable means by which potential development may be transferred from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized; and that the tools necessary to meet the challenge of balanced growth in an equitable manner in New Jersey must be made available to local government as the architects of New Jersey’s future.

The Legislature further finds and declares that prior to the implementation of development potential transfer programs on a State-wide basis, it is necessary to demonstrate its feasibility in a pilot program; that such a pilot program should take place in an area where there is experience with development easement purchase and transfer; that Burlington County served as the program area for the “Agricultural Preserve Demonstration Program Act,” P.L.1976, c.50 (C.4:1B-1 et seq.), and has participated to a greater extent than any other county in both the pinelands development credit program instituted under the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.) and the development easement purchase program instituted under the “Agriculture Retention and Development Act,” P.L.1983, c.32 (C.4:1C-11 et al.); that because of this participation and the familiarity of local government units and the residents of the county with this land use planning technique, it is especially
suited and provides the most conducive laboratory to demonstrate the feasibility of such a program.


3. As used in this act:

"Agricultural land" means land identified as prime, unique, or of State importance according to criteria adopted by the State Soil Conservation Committee with emphasis on lands included in an agricultural development area duly identified by a county agriculture development board and certified by the State Agriculture Development Committee according to the provisions of section 11 of P.L.1983, c.32 (C.4:1C-18);

"County agriculture development board" or "CADB" means the county agriculture development board established by Burlington county pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-14);

"Development potential" means the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the master plan and land use regulations in effect on the date of the adoption of the development transfer ordinance, and in accordance with recognized environmental constraints;

"Development transfer" means the conveyance of development potential, or the permission for development, from one or more lots to one or more other lots by deed, easement, or other means as authorized by ordinance;

"Municipality" means any municipality in Burlington County;

"Infrastructure plan" means the water, sewer, and highway development plan for the receiving zone established by a development transfer ordinance;

"Development transfer bank" means a bank created pursuant to section 13 of this act;

"Instruments" means the easement, credit, or other deed restriction used to record a development transfer;

"Receiving zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.), within which development is to be increased, and which is otherwise consistent with the provisions of section 6 of this act;
"Sending zone" means an area designated in the master plan and zoning ordinance, adopted pursuant to the provisions of P.L.1975, c.291 (C.40:55D-1 et seq.), within which development is to be prohibited or restricted and which is otherwise consistent with the provisions of section 6 of this act.


4. a. The governing body of any municipality in Burlington County may, by ordinance approved by the county planning board, provide for the transfer of development within its jurisdiction. The governing bodies of two or more municipalities may, by substantially similar ordinances, provide for a joint program for the transfer of development, including transfers from sending zones in one municipality to receiving zones in the other.

b. The Office of State Planning, established pursuant to section 6 of P.L.1985, c.398 (C.52:18A-201), shall provide such technical assistance as may be requested by municipalities or the county planning board, and as may be reasonably within the capacity of the office to provide, for the purpose of providing for development transfers pursuant to the provisions of this act. The office shall also carry out its responsibilities as provided in sections 9 and 11 of this act.

C.40:55D-117 Report; infrastructure plan; amendment of master plan, land use regulations.

5. Prior to the adoption of any development transfer ordinance, a municipality interested in adopting the ordinance shall:

a. Prepare a report that includes the following:

(1) an estimate of the anticipated population and economic growth in the municipality for the succeeding 10 years;

(2) the identification and description of all prospective sending and receiving zones;

(3) an estimate of the development potential of the prospective sending and receiving zones;

(4) an estimate of the typical land values of the proposed sending zone;

(5) an estimate of existing and proposed infrastructure of the proposed receiving zone; and

(6) a presentation of the procedure and method for issuing the instruments necessary to convey the development potential from the sending zone to the receiving zone.
b. Cause to be prepared an infrastructure plan for the receiving zone, which includes the location and cost of all infrastructure and a method of cost sharing if any portion of the cost is to be assessed against developers. The plan shall be enacted by ordinance prior to or concurrent with enactment of any development transfer ordinance.

c. Incorporate in its master plan and land use regulations explicit planning objectives and design standards for the receiving zone so that applications for development that maximize the use of development transfer and that are consistent with the planning objectives and design standards can be expedited. The municipality may, through application fees for development in the receiving zone, be reimbursed on a pro rata basis for the cost of amending its master plan and land use regulations.

The development transfer ordinance shall not take effect until the report and plans required under this section have been prepared and the conclusions therefrom have been included in the master plan adopted pursuant to section 19 of P.L.1975, c.291 (C.40:55D-28).

C.40:55D-118 Designation of sending, receiving zones.

6. The municipality shall, in view of the information gathered from the report and plans prepared pursuant to section 5 of this act, prepare a development transfer ordinance that designates sending and receiving zones.

a. In creating and establishing sending and receiving zones, the governing body of the municipality shall designate tracts of land of such size and number as may be necessary to carry out the purposes of this act.

b. All land in a sending zone shall have one or more of the following characteristics:

(1) substantially undeveloped or unimproved farmland, woodland, floodplain, wetlands, endangered species habitat, aquifer recharge area, recreation or park land, waterfront, or steeply sloped land;

(2) land substantially improved or developed in a manner so as to present a unique and distinctive aesthetic, architectural, or historical point of interest in the municipality;

(3) other improved or unimproved areas that should remain at low densities for reasons of inadequate transportation, sewerage or other infrastructure, or for such other reasons as may be necessary to implement local or regional plans.
c. Lands permanently restricted through development or conservation easements existing prior to the adoption of a development transfer ordinance may be included in a sending zone upon a finding by the municipal governing body that this inclusion is in the public interest.

d. The receiving zone shall be appropriate and suitable for development and shall be at least sufficient to accommodate at all times all of the development potential of the sending zone.

e. The development potential of the receiving zone shall be determined by the governing body of the municipality utilizing the report and plans prepared pursuant to section 5 of this act; be realistically achievable in a functioning market as of the date of the adoption of the development transfer ordinance; provide for a minimum of twice the development permitted in the receiving zone as of the date of the adoption of the development transfer ordinance; and be consistent with the criteria established pursuant to subsection b. of section 8 of this act. No density increases may be achieved in a receiving zone without the use of appropriate instruments of transfer.

f. The municipal governing body shall, pursuant to the ordinance, direct the municipal planning board to carry out the development transfer program.


7. a. The development transfer ordinance shall provide for the issuance of such instruments as may be necessary and the adoption of procedures for recording the permitted use of the land at the time of the recording, the separation of the development potential from the land, and the recording of the allowable residual use of the land upon separation of the development potential.

b. The development transfer ordinance shall specifically provide that upon the transfer of the development potential from a sending zone, the owner of the property from which the development potential has been transferred shall cause a statement containing the conditions of the transfer and the terms of the restrictions of the use and development of the land to be attached to and recorded with the deed of the land in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development inconsistent therewith is expressly prohibited, shall run with the land, and shall be binding upon the landowner and every successor in interest thereto.
c. The development transfer ordinance shall provide that, on granting a use variance under the provisions of section 57 of P.L.1975, c.291 (C.40:55D-70) that increases the development potential of a parcel of property not in the designated receiving zone for which the variance has been granted by more than 5%, that parcel of property shall constitute a receiving zone and the provisions of the ordinance for receiving zones shall apply with respect to the amount of development potential required to implement that variance.


8. a. Prior to adoption of the development transfer ordinance, the municipality shall submit a copy of the proposed ordinance, copies of all reports and plans prepared pursuant to section 5 of this act, and proposed municipal master plan changes necessary for the enactment of the development transfer ordinance to the county planning board. If the ordinance and master plan changes involve agricultural land, then the Burlington County Agriculture Development Board shall also be provided information identical to that provided to the county planning board.

b. The county planning board, upon receiving the development transfer ordinance and accompanying documentation, shall conduct a review of the ordinance with regard to the following criteria:

(1) consistency with the adopted master plan of the county;

(2) support of regional objectives for agricultural land preservation, natural resource management and protection, historic or architectural conservation, or the preservation of other public values as enumerated in subsection b. of section 6 of this act;

(3) consistency with reasonable population and economic forecasts for the county;

(4) adequacy of present or proposed infrastructure for concentrated growth; and

(5) sufficiency of the receiving zone to accommodate the development potential that may be transferred from sending zones and a reasonable assurance of marketability of any instruments of transfer that may be created.

c. Any municipality located in whole or in part in the pinelands area, as defined in P.L.1979, c.111 (C.13:18A-1 et seq.), shall also submit the proposed development transfer ordinance, reports and plans, and master plan changes to the Pinelands Commission for review. The Pinelands Commission shall determine whether the ordi-
nance is compatible with the pinelands development credit program implemented pursuant to P.L.1985, c.310 (C.13:18A-30 et seq.) and is otherwise consistent with the comprehensive management plan adopted by the Pinelands Commission pursuant to P.L.1979, c.111 (C.13:18A-1 et seq.). If the commission determines that the development transfer ordinance is not compatible or consistent, the commission shall make such recommendations as may be necessary to conform the ordinance with the comprehensive management plan. The municipality shall not adopt the ordinance unless the changes recommended by the Pinelands Commission have been included in the ordinance.

C.49:5D-121 Review, recommendations by county planning board, CADB, Office of State Planning.

9. a. Within 60 days of receiving the development transfer ordinance and accompanying documentation, the county planning board shall submit to the municipality formal comments detailing its review and shall either recommend or not recommend enactment of the development transfer ordinance. If enactment of the ordinance is recommended, the municipality may proceed with adoption of the ordinance. Failure to recommend or not recommend enactment of the ordinance within the 60-day period shall constitute recommendation of the ordinance.

b. The CADB shall review the development transfer ordinances and accompanying documentation within 30 days of receipt thereof, and shall submit such written recommendations as it deems appropriate, to the county planning board.

c. If the county planning board does not recommend enactment, the reasons therefor shall be clearly stated in their formal comments. If the objections of the county planning board cannot be resolved to the satisfaction of both the municipality and the county planning board within an additional 30 days, the municipality shall petition the Office of State Planning to render a final determination. In the event that a development transfer ordinance involves agricultural land, the municipality shall petition the Office of State Planning for a final determination.

d. The Office of State Planning shall review the record of comment of the county planning board, and the development transfer ordinance and supporting documentation, and within 60 days approve, approve with conditions, or disapprove the transfer ordinance stating in writing the reasons therefor. Failure of the Office of State Planning to approve, approve with conditions, or disapprove the
development transfer ordinance within the 60-day period constitutes approval of the ordinance. The basis for review by the Office of State Planning shall be:

(1) compliance of the development transfer ordinance with the provisions of this act,

(2) accuracy of the information developed in the report and plans prepared pursuant to subsections a., b., and c. of section 5 of this act; and

(3) an assessment of the potential of successful implementation of the development transfer ordinance.

C.40:55D-122 Recording of transfer; record to assessor; taxation.

10. a. All development transfers shall be recorded in the manner of a deed in the book of deeds in the office of the Burlington county clerk. This recording shall specify the lot and block number of the parcel in the sending zone from which the development potential was transferred and the lot and block number of the parcel in the receiving zone to which the development potential was transferred.

b. The county clerk shall transmit to the assessor of the municipality in which a development transfer has occurred a record of the transfer and all pertinent information required to value, assess, and tax the properties subject to the transfer in a manner consistent with subsection c. of this section.

c. Property from which and to which development potential has been transferred shall be assessed at its fair market value reflecting this development transfer. Development potential that has been removed from a sending zone but has not yet been employed in a receiving zone shall not be assessed for real property taxation. Nothing in this act shall be construed to affect, or in any other way alter, the valuation assessment, or taxation of land that is valued, assessed, and taxed pursuant to the “Farmland Assessment Act of 1964,” P.L.1964, c.48 (C.54:4-23.1 et seq.).

d. Property in a sending or receiving zone that has been subject to a development transfer shall be newly valued, assessed, and taxed as of October 1 next following the development transfer.

e. Development potential that has been conveyed from a property pursuant to this act is not subject to the fee imposed pursuant to P.L.1968, c.49 (C.46:15-5 et seq.).

C.40:55D-123 3-year, six-year reviews; prevention of repeal.

11. a. The development transfer ordinance shall be reviewed by
the planning board and governing body of the municipality at the end of three years subsequent to enactment. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the original report prepared pursuant to section 5 of this act, and an assessment of the performance goals of the development transfer program including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the county planning board and, where the sending zone includes agricultural land, the CADB for review and recommendations. Based on this review the municipality shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the infrastructure plan and comprehensive development plan and design standards prepared pursuant to section 5 of this act.

b. The development transfer ordinance shall be reviewed by the planning board and governing body of the municipality at the end of six years subsequent to enactment. This review shall provide for the examination of the development transfer ordinance to determine whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and shall require an update of the report and plans prepared pursuant to section 5 of this act. If at least 30% of the development potential available on the market at market value has not been transferred at the end of this six-year period, the municipal governing body shall repeal the development transfer ordinance within 90 days of the end of the six-year period unless one of the following is met:

1. the municipality immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 50% of the total development transfer potential created in the sending zone under the development transfer ordinance;

2. a majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the development transfer ordinance should remain in effect; or

3. the municipality can demonstrate either future success or can demonstrate that low levels of development transfer activity is due not to ordinance failure but to low levels of development demand in general. This demonstration shall require the concurrence of the county planning board and the Office of State Planning, and shall
be the subject of a municipal public hearing conducted prior to a
final determination regarding the future viability of the development
transfer program.

c. Thereafter the development transfer ordinance shall provide
for review thereof by the planning board and the governing body of
the municipality at least once every six years in conjunction with
the review and update of the master plan of the municipality
pursuant to the provisions of section 76 of P.L.1975, c.291
(C.40:55D-89). This review shall provide for the examination of the
ordinance to determine whether the program and uses permitted in
the sending zone continue to be economically viable and shall require
an update of the report and plans prepared pursuant to section 5 of
this act.

d. If 60% of the development potential has not been transferred
at the end of a 12-year period, the municipal governing body shall
repeal the development transfer ordinance within 90 days at the end
of the 12-year period unless the municipality meets the standards
established pursuant to subsection b. of this section.
C.40:55D-124 Repeal of development transfer ordinance.

12. a. If the development transfer ordinance is repealed, the mu-
nicipality shall, by ordinance, amend its master plan to reflect the
repeal and shall provide for continued use of development transfers
that have been separated from a sending zone but which have not
yet been redeemed by transfer to a receiving zone by establishing
density bonuses for development transfers to designated areas of the
municipality for a period of not less than 10 years.

b. The repeal of a development transfer ordinance shall in no way
rescind or otherwise affect the restrictions imposed and recorded
pursuant to section 7 of this act on the use of the land from which
the development potential has been transferred, unless all of the
municipal, county, or State agencies to whom the deed restrictions
run and whose funds were used to purchase the easement agree that
it is in the public interest to release the restrictions.
C.40:55D-125 Development transfer bank.

13. a. The governing body of Burlington county or a municipality
therein may provide for the purchase, sale, or exchange of the de-
velopment potential that is available for transfer from a sending zone
by the establishment of a development transfer bank. Any develop-
ment transfer bank established therefor shall be governed by a board
of directors comprising five members appointed by the governing
body of the municipality or Burlington county, as the case may be. The members shall have expertise in either banking, law, land use planning, natural resource protection, historic site preservation or agriculture. The bank shall be funded at a level equal to at least 10% of the market value of the sending zone prior to the implementation of the development transfer ordinance for the purchase, sale, or exchange and shall be renewed to this funding level on an annual basis. For the purposes of this act and the "Local Bond Law," P.L.1960, c.169 (C.40A:2-1 et seq.), a purchase by the bank shall be considered an acquisition of lands for public purposes.

b. The development transfer bank is authorized to purchase property in a sending zone if:

1. Adequate funds have been provided for these purposes; and,

2. The person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with this act, and certifies that the property is not otherwise encumbered or transferred.

c. The development transfer bank may, for the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone of a municipality within its jurisdiction, which value shall generally reflect market value prior to the effective date of the development transfer ordinance. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer but shall be used only when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

d. The development transfer bank may sell, exchange, or otherwise convey the development potential of property that it has purchased or otherwise acquired pursuant to the provisions of this act, but only in a manner that does not substantially impair the private sale or transfer of development potential.

e. When the sending zone includes agricultural land a development transfer bank shall, when considering the purchase of development potential based upon values derived by municipal averaging, submit the municipal average arrived at pursuant to subsection c. of this section for review and comment to the CADB. The develop-
ment transfer bank shall coordinate the development transfer pro-
gram with the farmland preservation program established pursuant
to P.L.1983, c.32 (C.4:1C-11 et al.) to the maximum extent prac-
ticable and feasible.

f. A development transfer bank may apply for funds for the
purchase of development potential under the provisions of P.L.1978,
c.118, P.L.1983, c.354, or any other act providing funds for the
purpose of acquiring and developing land for recreation and conserva-
tion purposes consistent with the provisions and conditions of those
acts.

g. A development transfer bank may apply for matching funds
for the purchase of development potential under the provisions of
P.L.1981, c.276 for the purpose of farmland preservation and agricul-
tural development consistent with the provisions and conditions of
that act and P.L.1983, c.32 (C.4:1C-11 et al.).

C.40:55D-126 Development easement sales.
14. If the governing body of Burlington County provides for the
acquisition of a development easement under the provisions of
P.L.1983, c.32 (C.4:1C-11 et al.), it may sell the development poten-
tial associated with the development easement subject to the terms
and conditions of the development transfer ordinance adopted
pursuant to this act; provided that if the development easement was
purchased using moneys provided under the “Farmland Preservation
Bond Act of 1981,” P.L.1981, c.276, a percentage of all revenues
generated through the resale of the development potential shall be
refunded to the State in an amount equal to the State’s percentage
contribution to the original development easement purchase. This
repayment shall be made within 90 days after the end of the calendar
year in which the sale occurs.

15. Section 24 of P.L.1983, c.32 (C.4:1C-31) is amended to read
as follows:

C.4:1C-31 Development easement purchases.
24. a. Any landowner applying to the board to sell a development
easement pursuant to section 17 of this act shall offer to sell the
development easement at a price which, in the opinion of the land-
owner, represents a fair value of the development potential of the
land for nonagricultural purposes, as determined in accordance with
the provisions of this act.

b. Any offer shall be reviewed and evaluated by the board and
the committee in order to determine the suitability of the land for
development easement purchase. Decisions regarding suitability shall be based on the following criteria:

(1) Priority consideration shall be given, in any one county, to offers with higher numerical values obtained by applying the following formula:

\[
\text{nonagricultural developmental value} - \frac{\text{agricultural value}}{} - \frac{\text{landowner's asking price}}{} = \text{nonagricultural development value} - \frac{\text{agricultural value}}{}
\]

(2) The degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture; and

(3) The degree of imminence of change of the land from productive agriculture to nonagricultural use.

The board and the committee shall reject any offer for the sale of development easements which is unsuitable according to the above criteria and which has not been approved by the board and the municipality.

c. Two independent appraisals paid for by the board shall be conducted for each parcel of land so offered and deemed suitable. The appraisals shall be conducted by independent, professional appraisers selected by the board and the committee from among members of recognized organizations of real estate appraisers. The appraisals shall determine the current overall value of the parcel for nonagricultural purposes, as well as the current market value of the parcel for agricultural purposes. The difference between the two values shall represent an appraisal of the value of the development easement. If Burlington county or a municipality therein has established a development transfer bank pursuant to the provisions of P.L.1989, c.86 (C.40:55D-113 et seq.), the municipal average of the value of the development potential of property in a sending zone established by the bank may be the value used by the board in determining the value of the development easement. If a development easement is purchased using moneys appropriated from the fund, the State shall provide no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the cost of the appraisals conducted pursuant to this section.
d. Upon receiving the results of the appraisals, or in Burlington county or a municipality therein where a municipal average has been established under P.L.1989, c.86 (C.40:55D-113 et seq.), upon receiving an application from the landowners, the board and the committee shall compare the appraised value, or the municipal average, as the case may be, and the landowner's offer and, pursuant to the suitability criteria established in subsection b. of this section:

(1) Approve the application to sell the development easement and rank the application in accordance with the criteria established in subsection b. of this section; or

(2) Disapprove the application, stating the reasons therefor.

e. Upon approval by the committee and the board, the secretary is authorized to provide the board, within the limits of funds appropriated therefor, an amount equal to no more than 80%, except 100% under emergency conditions specified by the committee pursuant to rules or regulations, of the purchase price of the development easement, as determined pursuant to the provisions of this section. The board shall provide its required share and accept the landowner's offer to sell the development easement. The acceptance shall cite the specific terms, contingencies and conditions of the purchase.

f. The landowner shall accept or reject the offer within 30 days of receipt thereof. Any offer not accepted within that time shall be deemed rejected.

g. Any landowner whose application to sell a development easement has been rejected for any reason other than insufficient funds may not reapply to sell a development easement on the same land within two years of the original application.

h. No development easement shall be purchased at a price greater than the appraised value determined pursuant to subsection c. of this section or the municipal average, as the case may be.

i. The appraisals conducted pursuant to this section or the fair market value of land restricted to agricultural use shall not be used to increase the assessment and taxation of agricultural land pursuant to the "Farmland Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).

16. Section 25 of P.L.1983, c.32 (C.4:1C-32) is amended to read as follows:
C.4:1C-32 Conveyance of easement following purchase; conditions, restrictions; payment.

25. a. No development easement purchased pursuant to the provisions of this act shall be sold, given, transferred or otherwise conveyed in any manner except in those cases when development easements have been purchased on land included in a farmland preservation program included in a sending zone established by a municipal development transfer ordinance adopted pursuant to P.L.1989, c.86 (C.40:55D-113 et seq.).

b. Upon the purchase of the development easement by the board, the landowner shall cause a statement containing the conditions of the conveyance and the terms of the restrictions on the use and development of the land to be attached to and recorded with the deed of the land, in the same manner as the deed was originally recorded. These restrictions and conditions shall state that any development for nonagricultural purposes is expressly prohibited, shall run with the land and shall be binding upon the landowner and every successor in interest thereto.

c. At the time of settlement of the purchase of a development easement, the landowner and the board may agree upon and establish a schedule of payment which provides that the landowner may receive consideration for the easement in a lump sum, or in installments over a period of up to 10 years from the date of settlement, provided that:

1. If a schedule of installments is agreed upon, the State Comptroller shall retain in the fund an amount of money sufficient to pay the landowner pursuant to the schedule;

2. The landowner shall receive annually interest on any unpaid balance remaining after the date of settlement. The interest shall accrue at a rate established in the installment contract.

C.40:55D-137 Right to bargain for equitable interest.

17. Notwithstanding any other provision of this act or of any other applicable law, nothing in this act shall be construed to limit or foreclose the right of a sending zone transferor or a receiving zone transferee of a development transfer pursuant to this act to bargain, wholly or partially in lieu of a cash sale price, for an equitable interest in any development in which the transfer may be used.

Any contract or conveyance of development potential in which the consideration for the transaction is, in whole or in part, an equitable interest remaining in the grantor, shall be a recordable instrument
to be recorded consistent with the applicable provisions of Title 46 of the Revised Statutes.

D-126 Farm benefits rights.

18. Agricultural land involved in an approved development transfer ordinance shall be provided the right to farm benefits under P.L.1983, c.32 (C.4:1C-11 et al.) and other benefits that may be provided pursuant to P.L.1983, c.31 (C.4:1C-1 et al.).

C.49:65D-129 Reports; analysis.

19. a. The governing body of a municipality which adopts a development transfer ordinance shall annually prepare and submit a report on the operation of the development transfer ordinance to the county planning board.

b. The county planning board shall submit copies of these reports along with an analysis of the effectiveness of the ordinances in achieving the purposes of this act to the State Planning Commission on July 1 of the third year next following enactment of this act.

c. The State Planning Commission shall submit, to the Governor, the President of the Senate, and to the Speaker of the General Assembly 90 days subsequent to receiving the report from the Burlington county planning board, copies of its analysis along with its recommendations as to the advisability of enacting transfer of development rights enabling legislation on a Statewide basis.

20. This act shall take effect immediately.

Approved June 5, 1989.
New Jersey

Conservation & Development Law
Chapter 184
Pinelands Protection
13:18A–31. Legislative findings

The Legislature finds and declares that, pursuant to the provisions of P.L.1979, c. 111 (C. 13:18A–1 et seq.), the comprehensive management plan for the pinelands area has been adopted and is now being implemented, that this plan includes a program for the allocation and transfer of pinelands development credits; and that the intent of the pinelands development credit program is to provide a mechanism to facilitate both the preservation of the resources of this area and the accommodation of regional growth influences in an orderly fashion.

The Legislature further finds and declares that the concept of transferable development credits is innovative and, as yet, unprecedented on a regional scale; that in order to realize the full measure of the benefits of such a program, steps must be taken to assure the marketability of these credits; and that the best means of providing this assurance is through the establishment of a Pinelands Development Credit Bank empowered to purchase and sell pinelands development credits and to guarantee loans secured thereby, all as hereinafter provided.


13:18A–32. Definitions

As used in this act:

a. "Applicant" means a person applying for, or in receipt of, a loan secured pursuant to the provisions of this act;

b. "Bank" means the Pinelands Development Credit Bank established pursuant to section 4 of this act;¹

c. "Board" means the Board of Directors of the Pinelands Development Credit Bank;

d. "County bank" means a public body established pursuant to section 14 of this act;²

e. "County board" means the board of directors of the county development credit bank;

f. "Lender" means any bank or trust company, savings bank, national banking association, savings and loan association, or building and loan association maintaining an office in the State, or any insurance company authorized to transact business in the State;

g. "Pinelands development credit guarantee" means a guarantee extended pursuant to section 9 of this act;³

h. "Pinelands development credit" means a transferable development right created pursuant to the comprehensive management plan.
13:18A-33. Pinelands development credit bank; establishment; board of directors

a. There is established in the Executive Branch of the State Government a public body corporate and politic, with corporate succession, to be known as the Pinelands Development Credit Bank. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the bank is allocated within the Department of Banking, but notwithstanding that allocation, the bank shall be independent of any supervision or control by the department or by an officer or employee thereof, except as otherwise expressly provided in this act. The bank is constituted as an instrumentality of the State exercising public and essential governmental functions, and the exercise by the bank of the powers conferred by this act shall be deemed and held to be an essential governmental function of the State.

b. The bank shall be governed by a board of directors consisting of five ex officio members, or the designees thereof, as follows: the Commissioner of Banking, who shall serve as chairman; the Secretary of Agriculture; the Attorney General, the Commissioner of Environmental Protection; and the Chairman of the Pinelands Commission; and four members, each of whom shall be a resident of counties in the pinelands area, two to be appointed by the Governor upon the recommendation of the President of the Senate, and two to be appointed by the Governor upon the recommendation of the Speaker of the General Assembly. Designees of the five ex officio members shall have the power to vote in the absence of members.

13:18A-34. Powers of board

The board shall have the following powers:

a. To adopt and, from time to time, amend and repeal suitable bylaws for the management of its affairs;

b. To adopt and use an official seal and alter the same at its pleasure;

c. To apply for, receive, and accept, from any federal, State, or other public or private source, grants or loans for, or in aid of, the board's authorized purposes;

d. To enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable for the purposes of the board or to carry out any power expressly given in this act;

e. To adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), rules and regulations necessary to implement the provisions of this act;

f. To call to its assistance and avail itself of the services of the employees of any State, county or municipal department, board, commission or agency as may be required and made available for these purposes;

g. To purchase pinelands development credits to further the objectives of P.L.1979, c. 111 (C. 13:18A-1 et seq.) or when necessary to alleviate hardship, as determined pursuant to rules and regulations adopted by the board. The purchase price in these
cases shall be not less than $10,000.00 per credit, or a fraction of that amount which reflects that portion of a pinelands development credit allocated to the applicant pursuant to the provisions of the comprehensive management plan. The board may periodically increase the purchase price, provided that its action does not substantially impair the private sale of pinelands development credits. In no case shall the purchase price be greater than 80% of the market value of pinelands development credits, as determined by the board.

13:18A-35. Pinelands development credit certificates

The board shall, upon application of the appropriate landowner, and certification by the commission, issue Pinelands Development Credit Certificates for all pinelands development credits allocated pursuant to the comprehensive management plan. These certificates shall be issued to the current owner of record of the land with marketable title, verified by a 60 year search, who is legally empowered to restrict the use of the property in conformance with the comprehensive management plan, as indicated in the index of deeds recorded in the office of the recording officer of the appropriate county, subsequent to the recording of deed restrictions imposed on the use of that land pursuant to the comprehensive management plan.

13:18A-36. Registry of Pinelands Development Credits

a. The board shall establish and maintain a Registry of Pinelands Development Credits, which shall include:

(1) The name and address of every owner to whom a pinelands development credit certificate is issued pursuant to section 6 of this act, the date of its issuance, the municipal tax lot and block identification of the parcels of land to which the pinelands development credit has been assigned, the number of pinelands development credits or fraction thereof assigned to each parcel, the total number of pinelands development credits assigned, and the total acreage to which pinelands development credits have been assigned;

(2) The name and address of every person to whom a pinelands development credit is sold or otherwise conveyed, the date of the conveyance, and the consideration, if any, received therefor;
(3) The name and address of any person who has pledged a pinelands development credit as security on any loan or other obligation, the name and address of the lender, and the date, amount and term of the loan or obligation;

(4) The name and address of any person who has redeemed a pinelands development credit, the location of the land to which the credit was transferred, and the date this redemption was made; and

(5) An annual enumeration of the total number of pinelands development credits purchased and transferred, listing the municipality in which the land for which each pinelands development credit was issued is located, and the municipality to which the pinelands development credit was transferred.

b. No person shall purchase or otherwise acquire, encumber, or redeem any pinelands development credit without recording that fact, within 10 business days thereof, with the bank.

c. The board shall make available in the form of an annual report the information included in the registry to each county and municipality located in whole or in part in the pinelands area, and, upon request, pertinent information to any other person. The first annual report shall be submitted to the Governor and Legislature and shall be made available to the public on the first anniversary of the effective date of this act.

13:18A-37. Pinelands development credit as collateral

Any person desiring to secure a loan using a pinelands development credit as collateral may apply to the board for determination of eligibility for a pinelands development credit guarantee. The board shall notify the applicant of its decision within 30 days of its receipt of the application.

13:18A-38. Pinelands development credit guarantee: conditions for securing loans

a. The board may extend a pinelands development credit guarantee with respect to any loan secured pursuant to the provisions of this act if:

(1) Adequate funds are available in reserve to fulfill the guarantee in the event of a default; and

(2) The applicant can demonstrate that he holds marketable title to the property and that the property has been certified by the commission as eligible for issuance of pinelands development credit certificates pursuant to the provisions of this act, that the owner is legally empowered to restrict the use of the property in conformance with the comprehensive management plan, that this credit has not been otherwise encumbered, transferred or redeemed, and that the credit shall be pledged as security for the guarantee.

b. If the application is denied, the board shall return it to the applicant with a written statement of the reasons for denial.
c. If the application is approved, the board shall retain the original and transmit copies of the application to the applicant and the lender. The applicant and the lender may then complete the transaction for the loan. Nothing herein contained shall be construed to require a lender to approve or deny any loan applied for pursuant to this act, regardless of the approval or disapproval by the board of any application for a pinelands development credit guarantee.


The bank is authorized to guarantee the value of a pinelands development credit in an amount not less than $10,000.00, or a fraction of that amount which reflects that portion of a pinelands development credit allocated to the applicant pursuant to the provisions of the comprehensive management plan, provided that the value upon which the guarantee is made may be adjusted in accordance with the provisions of section 5 of this act. Nothing herein contained shall be construed to establish or limit fair market value of any pinelands development credit or to preclude the extension of a pinelands development credit guarantee for any loan of less than $10,000.00.
§ 136-66.11. Transfer of severable development rights.

(a) When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

(b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.

(c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicant a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicant is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.

(d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.

(e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.

(f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicant and recorded, the severable development rights shall vest and become freely alienable. (1987, c. 747, s. 7)
§ 10619.1. Transferable development rights

(a) To and only to the extent a local ordinance enacted in accordance with this article and Article VII so provides, there is hereby created, as a separate estate in land, the development rights therein, and the same are declared to be severable and separately conveyable from the estate in fee simple to which they are applicable.

(b) The development rights shall be conveyed by a deed duly recorded in the office of the recorder of deeds in and for the county in which the municipality whose ordinance authorizes such conveyance is located.

(c) The recorder of deeds shall not accept for recording any such instrument of conveyance unless there is endorsed thereon the approval of the municipal governing body having zoning or planned residential development jurisdiction over the land within which the development rights are to be conveyed, dated not more than 60 days prior to the recording.

(d) No development rights shall be transferable beyond the boundaries of the municipality wherein the lands from which the development rights arise are situated.

1968, July 31, P L. 805 No 247 art VI, § 619.1, added 1988 Dec 21, P L 1329, No 170. § 65 effective in 60 days.
1-19B-26. Transfer by owners of development rights in historic properties. Any county or municipal governing body may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine. For the purposes of this section, "development rights" are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon.
13-7-201. Grant of power. — (a)(1) For the purpose of promoting the public health, safety, morals, convenience, order, prosperity and general welfare, the board of aldermen, board of commissioners or other chief legislative body of any municipality by whatever title designated (and hereinafter designated as "chief legislative body") is empowered, in accordance with the conditions and the procedure specified in this part and part 3 of this chapter, to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the sizes of yards, courts and other open spaces, the density of population, and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and other purposes. Special districts or zones may be established in those areas deemed subject to seasonal or periodic flooding, and such regulations may be applied therein as will minimize danger to life and property, and as will secure to the citizens of Tennessee the eligibility for flood insurance under Public Law 1016, 84th Congress or subsequent related laws or regulations promulgated thereunder. Protection and encouragement of access to sunlight for solar energy systems may be considered in promulgating zoning regulations pursuant to this section.

(2)(A) The transfer of development rights may be provided for in the promulgation of zoning regulations pursuant to this section. In establishing property to donate and receive transferred development rights, the area of the property designated to receive such rights shall be equal to or greater than the area of the property designated to donate such rights. The creation, amendment or repeal of any regulations, districts or maps providing for the transfer of development rights shall be in compliance with §§ 13-7-203 and 13-7-204. The transfer of development rights shall not be subject to taxation pursuant to title 67, chapters 4 or 6. provided, however, any instruments recorded in the county register's office as the result of the transfer of development rights shall be subject to the fees set out in § 8-21-1001. Any regulations authorizing the transfer of development rights shall provide that conveyances of development rights shall be in writing and shall be recorded in the office of the register of deeds and that whenever transferred development rights are allocated to any property, such allocation shall not become effective until the transferred development rights are noted on an instrument or on a plat and recorded in the office of the register of deeds.

(B) This subdivision (a)(2) shall be strictly construed with the specific intent to allow a local government to establish its own plan whereby the owners of property in a restrictive area (historical, agricultural, or environmental) can sell the development rights to a developer or another individual and only with the consent of the property owner and through negotiations of development rights in the free marketplace.

(C) It is the legislative intent that the provisions of this section relative to the transfer of development rights are permissive and not mandatory. Such rights shall only be transferred by contract and not by operation of law.

(D) The provisions of this subdivision (a)(2) shall only apply in counties having a metropolitan form of government.

(b) In any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor greater than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census, the chief legislative body of any municipality is further authorized and empowered to rezone properties conditionally or based upon contract, where the agreed conditions are designed to ameliorate injuries created by the rezoning to surrounding property interests or to municipal interests [Acts 1935, ch 44, § 1; C Supp 1950, § 3407.1; Acts 1957, ch. 306, § 1; 1979, ch. 259, § 9, T C A (orig ed), § 13-701; Acts 1984, ch. 952, § 1, 1987, ch. 361, §§ 2, 4]
(16) Transfer of development rights.

(A) In order to accomplish the purposes of 10 V.S.A. § 6301, the zoning regulations may contain provisions for the transfer of development rights. The regulations shall:

(i) specify one or more sending areas from which development rights may be acquired;

(ii) specify one or more receiving areas in which those development rights may be used;

(iii) define the amount of the density increase allowable in receiving areas, and the quantity of development rights necessary to obtain those increases;

(iv) define "density increase" in terms of an allowable percentage decrease in lot size or increase in building bulk, lot coverage or ratio of floor area to lot size, or any combination;

(v) define "development rights," which at minimum shall include a conservation easement, created by deed for a specified period of not less than 30 years, granted to the municipality under 10 V.S.A. chapter 155, limiting the land uses in the sending area solely to specified purposes, but including at a minimum agriculture and forestry.

(B) Upon approval by the planning commission, a zoning permit may be granted for land development based in part upon a density increase, provided:

(i) the area subject to the application is a receiving area, and the density increase is allowed by the provisions relating to transfer of development rights;

(ii) the applicant has obtained development rights from a sending area which are sufficient under the regulations for the density increase sought; and

(iii) the development rights are evidenced by a deed which recites that it is a conveyance under this subdivision and recites the number of acres affected in the sending area; and

(iv) the sending area from which development rights have been severed has been surveyed and suitably monumented.

(C) The municipality shall maintain a map of areas from which development rights have been severed. Following issuance of a zoning permit under this section, the municipality shall:

(i) ensure that the instruments transferring the conservation easements and the development rights are recorded; and

(ii) mark the development rights map showing the area from which development rights have been severed, and indicating the book and page in the land records where the easement is recorded.

Failure to record an instrument or mark a map does not invalidate a transfer of development rights.

1990 SESSION

SENATE BILL NO. 359
Offered January 23, 1990

A BILL to amend the Code of Virginia by adding a section numbered 15.1-491.03, relating to transferable development rights.

Patrons—Waddell, Gartlan, DuVal, Colgan, Michie, Miller, E.F. and Calhoun; Delegates: Marshall, Thomas, Van Landingham, Van Yahres, Plum, Almand, Byrne and Quillen

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:
1. That the Code of Virginia is amended by adding a section numbered 15.1-491.03 as follows:

§ 15.1-491.03. Transfer of development rights.—The governing body of every county, city, or town may, as part of its zoning ordinance, provide for (i) the voluntary transfer of the development rights permitted on one parcel of land to another parcel of land, (ii) restricting or prohibiting further development of the parcel from which such rights are transferred, and (iii) increasing the density or intensity of development of the parcel to which such rights are transferred. The ordinance shall designate and cause to be shown on the zoning map areas from which development rights may be transferred and areas to which such rights may be transferred and used for development. These zones may be designated as separate use districts or as overlaying other zoning districts.

Any town, within a county that adopts an ordinance providing for the transfer of development rights, may also adopt a transfer of development rights ordinance and such county and town by adoption of mutual provisions may provide for the transfer of development rights on land located in one to land located in the other.

"Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon such transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of such rights and may provide for the granting of easements and reasonable regulations to effect and control such transfers and assure compliance with the provisions of such ordinance.
1990 SESSION

HOUSE BILL NO. 164
Offered January 12, 1990

A BILL to amend the Code of Virginia by adding a section numbered 15.1-491.03, relating to transferable development rights.

Patrons—Marshall and Cranwell

Referred to the Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.1-491.03 as follows:

§ 15.1-491.03. Transfer of development rights.—The governing body of every county, city, or town may, as part of its zoning ordinance, provide for (i) the voluntary transfer of the development rights permitted on one parcel of land to another parcel of land, (ii) restricting or prohibiting further development of the parcel from which such rights are transferred, and (iii) increasing the density or intensity of development of the parcel to which such rights are transferred. The ordinance shall designate and cause to be shown on the zoning map areas from which development rights may be transferred and areas to which such rights may be transferred and used for development. These zones may be designated as separate use districts or as overlaying other zoning districts.

Any town, within a county that adopts an ordinance providing for the transfer of development rights, may also adopt a transfer of development rights ordinance and such county and town by adoption of mutual provisions may provide for the transfer of development rights on land located in one to land located in the other.

"Transferable development rights" means an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance. Transferable development rights may be transferred by deed from the owner of the parcel from which the development rights are derived and upon such transfer shall vest in the grantee and be freely alienable. The zoning ordinance may provide for the method of transfer of such rights and may provide for the granting of easements and reasonable regulations to effect and control such transfers and assure compliance with the provisions of such ordinance.
SENATE BILL NO. 228
Offered January 23, 1990

A BILL to amend the Code of Virginia by adding a section numbered 15.1-491.03, relating to transferable development rights

Patrons—Calhoun, Waddell, Gartlan and DuVal

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 15.1-491.03 as follows:

§ 15.1-491.03. Transfer of development rights.—A. Authority to adopt ordinances. The governing body of any county, city, or town may, as part of its zoning ordinance, provide for (i) the voluntary transfer of development rights permitted on one parcel of land to another parcel of land, (ii) restricting or prohibiting further development of the parcel from which such rights are transferred, and (iii) increasing the density or intensity of development on the parcel to which such rights are transferred.

B Definitions. For the purposes of this section:

"Receiving zone" or "receiving parcel" shall mean that property or properties designated by the zoning ordinance as an area in which transferable development rights may be used in order to achieve additional development.

"Sending zone" or "sending parcel" shall mean that property or properties designated by the zoning ordinance as an area to which transferable development rights shall be allocated and from which such rights may be transferred.

"Transferable development right" shall mean an interest in real property that constitutes the right to develop and use property under the zoning ordinance which is made severable from the parcel to which the interest is appurtenant and transferable to another parcel of land for development and use in accordance with the zoning ordinance.

C. Designation of sending and receiving parcels. The ordinance shall designate and cause to be shown on the zoning map the sending zones from which development rights may be transferred and the receiving zones to which such rights may be transferred and used for additional development. Sending zones may be designated as separate use districts or as overlaying other zoning districts.

D. Allocation of transferable development rights to sending parcels. Transferable development rights attached to parcels located in the sending zones may be calculated and allocated in accordance with such factors as area, soil characteristics, assessed valuation, current zoning, or any other criteria that will effectively reflect the relative reasonable development expectations of the owners of such parcels in a manner consistent with the objectives of this section.

E. Use of transferable development rights. The zoning ordinance may provide for the method of transfer of such rights and may provide for the granting of easements and reasonable regulations to effect and control such transfers and assure compliance with the provisions of such ordinance. No plat for a subdivision in conjunction with which transferable development rights are exercised shall be recorded, until documents have been recorded with the clerk of the circuit court of the county or city, or county within which the town is located, transferring title to the transferable development rights from the owner of the sending parcel, providing for their subsequent extinguishment, and restricting future use or development of the sending parcel for purposes set forth in the zoning ordinance.

A transferable development right shall be treated as an interest in real property. Once a deed for transferable development rights has been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights are derived, the transferable development rights shall vest in the grantee and become freely alienable.
F. Towns within county. Any town, located within a county that adopts an ordinance providing for the transfer of development rights, may also adopt a transfer of development rights ordinance, and such county and town by adoption of mutual provisions may provide for the transfer of development rights on land located in one to land located in the other.

G. Relation to taxation. For the purpose of ad valorem real property taxation under Chapter 32 of Title 58.1, the value of a transferable development right shall be treated as appurtenant to the sending parcel until the transferable development right is actually used at a receiving parcel. A transferable development right shall not be defined or treated as intangible personal property subject to taxation under Chapter 11 of Title 58.1 and shall not be defined or treated as tangible personal property subject to taxation under Chapter 35 of Title 58.1.

H. Relation to securities laws. A transferable development right shall not be defined or treated as a security for the purposes of Chapter 5 of Title 13.1.

I. Promoting use; buying and selling of rights The governing body of any county, city, or town adopting an ordinance pursuant to this section may establish such mechanisms as necessary to promote the use of transferable development rights, including but not limited to the city engaging in the buying and selling of transferable development rights.
APPENDIX C:
LAND TRUSTS IN NEW YORK STATE
Albuquerque Conservation Trust  
P.O. Box 2147  
Albuquerque, NM 87103  
(505) 344-4991  
Contact: Ellie Mitchell, Secretary  
Purpose: Acquisition of locally significant property.  
Year founded: 1987  
Number of members: 300  
Full-time staff: 0  
Part-time staff: 0  
Annual operating budget: $6,000  
Geographical area of operation: Albuquerque  
Total acres protected: 0  
Owned: 0  
Under easement: 0  
Other direct methods: 0  
Main land protection methods: Land donation, Easement transfer, Land transfer  
Main land types: Open space, Geologic formations

Adirondack Land Trust  
Box 188  
Elizabethtown, NY 12932  
(518) 873-9239  
Contact: Thomas R. Duffus, Director of Land Protection  
Purpose: Preserving and enhancing the agricultural, forest and open space resources of northern New York State through private sector initiative.  
Year founded: 1984  
Number of members: 100  
Full-time staff: 3  
Part-time staff: 1  
Annual operating budget: $74,900  
Geographical area of operation: Northern New York  
Total acres protected: 21,171  
Owned: 8  
Under easement: 3,306  
Other direct methods: 17,865  
Main land protection methods: Easement donation, Land transfer, Negotiation  
Main land types: Farmland, Forests, Open space

Forest Trust  
P.O. Box 9238  
Santa Fe, NM 87504  
(505) 983-8992  
Contact: Kathryn Brewer, Executive Assistant to the Director  
Purpose: To improve the condition of forest resources and to achieve needed technical, cultural and institutional changes in forest management by working closely with private landowners, communities and land management agencies.  
Year founded: 1984  
Number of members: 0  
Full-time staff: 5  
Part-time staff: 15  
Annual operating budget: $250,000  
Geographical area of operation: Southwest  
Total acres protected: 13,291  
Owned: 291  
Under easement: 1  
Other direct methods: 13,000  
Main land protection methods: Land donation, Easement donation, Easement transfer  
Main land types: Recreation, Open space, Forests

Adirondack Mountain Club  
174 Glen Street  
Glens Falls, NY 12801  
(518) 793-7737  
Contact: Robert O. Linck, Conservation Director  
Purpose: Promoting the protection and enlightened use of the state park and forest preserve lands in the Adirondack and Catskill Mountain regions.  
Year founded: 1922  
Number of members: 14,000  
Full-time staff: 24  
Part-time staff: 6  
Annual operating budget: $1,500,000  
Publications: Adirondac, 10 issues per year  
Newsletters from each of the 27 chapters  
Geographical area of operation: Adirondack Mountains, Catskill Mountains  
Total acres protected: 0  
Owned: 0  
Under easement: 0  
Other direct methods: 0  
Main land protection methods: Easement transfer  
Main land types: Recreation, Forest, River corridors

Tenantsin Land Institute  
1446 Bridge Boulevard, Southwest  
Albuquerque, NM 87105  
(505) 843-7451  
Contact: David Lujan  

Beaver Dam Sanctuary  
87 Bedford Road  
Katona, NY 10536  
(914) 232-3191  
Contact: Edward W. Kelly, President  
Purpose: Purchasing, owning, managing, improving, conserving, and maintaining real property—a variety of hab-
Itals—for use as a nature sanctuary by the residents of Bedford, New York.

**Beaverkill Conservancy**

122 East 42nd Street, Room 1901
New York, NY 10168
(212) 949-1966
Contact: Thomas Whyatt, Director
Year founded: 1980 Number of members: 0
Full-time staff: 0 Part-time staff: 1
Geographical area of operation: Western Catskills
Total acres protected: 3,000
Owned: 0
Under easement: 3,000
Other direct methods: 0
Main land protection methods: Easement donation, Easement purchase
Main land types: Ecological, Open space, River corridors

**Bedford Open Space Society**

Route 2, Wood Road
Mount Kisco, NY 10549
(914) 241-3300
Contact: James Wood

**Bergen Swamp Preservation Society**

6646 Hessenthaler Road
Byron, NY 14422
(716) 548-7304
Contact: Kent Lechner
Year founded: 1936

**Catskill Center for Conservation and Development**

The Erpf House
Route 28
Arkwile, NY 12406
(914) 586-2611
Contact: Tom Miner, Executive Director
Purpose: To advocate the environmental and economic well-being of the Catskill Region.
Year founded: 1969 Number of members: 3,200
Full-time staff: 3 Part-time staff: 3

Annual operating budget: $285,503
Publications: Catskill Center Newsletter, quarterly
Catskill Planning, quarterly
Geographical area of operation: Catskill region
Total acres protected: 480
Owned: 205
Under easement: 220
Other direct methods: 55
Main land protection methods: Land donation, Land purchase, Easement donation
Main land types: Watersheds, Open space, Ecological

**Cazenovia Preservation Foundation**

P.O. Box 265
Cazenovia, NY 13035
(315) 655-9009
Contact: Mary Lou Schwinn, President
Purpose: Environmental and architectural awareness through publications, lectures, tours, and special events; architectural and site assistance through consultation and revolving fund, protection of historic and environmentally sensitive sites through easement or purchase.
Year founded: 1962 Number of members: 450
Full-time staff: 0 Part-time staff: 0
Annual operating budget: $34,000
Publications: Newsletter, semiannually
5 Walks in Cazenovia
5 Drives in Cazenovia
Before You Remodel
Cazenovia: Story of an Upland Community
Geographical area of operation: Cazenovia
Total acres protected: 152
Owned: 56
Under easement: 92
Other direct methods: 4
Main land protection methods: Land purchase, Easement purchase, Land donation
Main land types: Historic buildings, Recreation, Open space

**Columbia Land Conservancy**

Box 299
Chatham, NY 12037
(518) 392-5252
Contact Ruth Piwonka, Executive Director
Purpose: To protect natural, open space, agricultural, and cultural values in rural Columbia County through work with private landowners and by encouraging local town governments to update their land use ordinances.
Year founded: 1966 Number of members: 70
Full-time staff: 0 Part-time staff: 1
Annual operating budget: $20,000
Geographical area of operation: Columbia County
Total acres protected: 20
Owned: 0
Under easement: 20
Other direct methods: 0
Main land protection methods: Easement donation
Main land types: Open space, Farmland, Historic land
Cornell Plantations
One Plantations Road
Cornell University
Ithaca, NY 14850
(607) 255-3020
Contact: Heather Robertson, Natural Areas Coordinator
Purpose: To protect and maintain the botanical collections and
and natural areas of Cornell University for the university
community and the public; to provide resources for re-
search and education for Cornell and the people of New
York State, and to represent Cornell among major botanical
gardens and arboreta.
Year founded: 1935  Number of members: 7,000
Full-time staff: 35  Part-time staff: 17
Annual operating budget: $1,500,000
Publications: Plantations Quarterly, quarterly
Plantations Notes, 6-8 issues per year
Geographical area of operation: Central New York
Total acres protected: 2,900
Owned: 2,900
Under easement: 0
Other direct methods: 0
Main land protection methods: Land donation, Land pur-
chase, Land exchange
Main land types: Ecological, Geologic formations, Forests

Dutchess Land Conservancy
P.O. Box 578
Bangall, NY 12506
(914) 868-7066
Contact: Glenn Hoagland, Executive Director
Purpose: Sound management of growth and economically
practical preservation of farmland and open space in
Dutchess County, New York.
Year founded: 1985  Number of members: 250
Full-time staff: 4  Part-time staff: 0
Annual operating budget: $151,700
Publications: Dutchess Land Conservancy News, semian-
nually
Geographical area of operation: Dutchess County
Total acres protected: 2,126
Owned: 0
Under easement: 2,126
Other direct methods: 0
Main land protection methods: Easement donation, Land pur-
chase, Limited development
Main land types: Farmland, Open space, Forests

Greenburgh Nature Center
Dromore Road
Scarsdale, NY 10583
(914) 723-3470
Contact: William Lawyer, Executive Director
Purpose: Conservation of our property and our local wildlife,
nature education for all ages, research into environmental
issues, and cultural enrichment activities featuring the beauty
of nature.
Year founded: 1975  Number of members: 1,300
Full-time staff: 6  Part-time staff: 6
Annual operating budget: $325,000
Publications: Membership Bulletin, quarterly
Geographical area of operation: Westchester County
Total acres protected: 33
Owned: 33
Under easement: 0
Other direct methods: 0
Main land protection methods: Land donation, Easement do-
nation
Main land types: Recreation, Ecological, Open space

Henry L. Ferguson Museum
Fishers Island, NY 06390
(516) 788-7239
Contact: Charles B. Ferguson, President
Purpose: Collection, exhibition and conservation of the flora
and fauna of Fishers Island.
Year founded: 1960  Number of members: 200
Full-time staff: 0  Part-time staff: 2
Annual operating budget: $20,000
Publications: Newsletter, annually
The Indians of Fishers Island
Victoria and Albert's History of Fishers Island
Preservation Options for the Landowner
Geographical area of operation: Fishers Island
Total acres protected: 54
Owned: 36
Under easement: 18
Other direct methods: 0
Main land protection methods: Land donation, Easement do-
nation
Main land types: Ecological, Coastal areas, Archaeological
sites

Edmund Niles Huyck Preserve and Biological Research
Station
Box 188
Rensselaerville, NY 12147
(518) 797-3440
Contact: Richard L. Wyman, Director
Purpose: Nature preservation, education and research
Year founded: 1931  Number of members: 200
Full-time staff: 2  Part-time staff: 8
Annual operating budget: $100,000
Publications: The Newsletter of the Edmund Huyck Preserve,
semianually
Geographical area of operation: Albany County
Total acres protected: 1,875
Owned: 1,875
Under easement: 0
Other direct methods: 0
Main land protection methods: Land donation, Land pur-
chase, Easement donation
Main land types: Research, Recreation, Ecological
Lake George Basin Land Conservancy
Box 386
Lake George, NY 12845
(518) 745-5253
Contact: Mike Carr, Director
Purpose: To promote the preservation and protection of scenic, natural, recreational, historical, and open space lands in the Lake George Basin.
Year founded: 1988
Number of members: 3,006
Full-time staff: 1
Part-time staff: 0
Annual operating budget: $50,000
Geographical area of operation: Lake George Basin
Total acres protected: 100
Owned: 0
Under easement: 100
Other direct methods: 0
Main land protection methods: Easement donation, Negotiation, Land donation
Main land types: Watersheds, Ecological, Open space

Manitoga
Route 9D
Garrison, NY 10524
(914) 424-3812
Contact: M. Whittington-Cousa
Year founded: 1984

Mohonk Preserve
Mohonk Lake
New Paltz, NY 12561
(914) 255-0919
Contact: Seward Weber, Executive Director
Purpose: To protect an important part of the Shawangunk Mountains and to advance the cause of world peace and global environmental health based on an appreciation of the interdependence of mankind, nations and the natural environment
Year founded: 1963
Number of members: 3,000
Full-time staff: 4
Part-time staff: 6
Annual operating budget: $442,835
Publications: Newsletter, quarterly
Geographical area of operation: Shawangunk Mountains
Total acres protected: 5,634
Owned: 5,600
Under easement: 34
Other direct methods: 0
Main land protection methods: Land donation, Land purchase, Easement donation
Main land types: Recreation, Ecological, Open space

Last Chance Pond Wildlife Foundation
27 Hasson Street
Staten Island, NY 10300
Contact: Nikki Mounier

North Salem Open Land Foundation
P.O. Box 176
North Salem, NY 10560
(914) 669-9665
Contact: John Chaffee, President
Year founded: 1974

Lower Mohawk Land Conservancy
Rural Route Box 207
Duanesburg, NY 12056
(518) 355-2103
Contact: Dale Jennings, Acting Secretary
Purpose: To serve the lower Mohawk River region of the State of New York by fostering preservation of land for parks, playgrounds and trails for future public use; also preserving views, greenspace and sites of special scenic, natural or historic interest; and aiding in implementing such uses when deemed advisable.
Year founded: 1988
Number of members: 8
Full-time staff: 0
Part-time staff: 0
Geographical area of operation: Schenectady County
Total acres protected: 0
Owned: 0
Under easement: 0
Other direct methods: 0
Main land protection methods: Land donation, Land purchase, Easement donation
Main land types: Recreation, Open space, Suburbs

Open Space Institute
122 East 42nd Street
Room 1901
New York, NY 10168
(212) 940-1966
Contact: Thomas Whyatt, Executive Director
Purpose: Land preservation, chiefly in the Catskills and Hudson Highlands.
Year founded: 1974
Number of members: 0
Full-time staff: 3
Part-time staff: 1
Annual operating budget: $2,500,000
Geographical area of operation: New York
Total acres protected: 6,000
Owned: 4,000
Under easement: 2,000
Other direct methods: 0
Main land protection methods: Land purchase, Easement purchase, Easement donation
Main land types: Recreation, Open space, Suburbs
Orange County Citizens Foundation
252 Main Street
P.O. Box 55
Goshen, NY 10924
(914) 294-8226
Contact: Ruth C. Ingalls, Executive Director
Purpose: Maintain high quality of life in Orange County.
Year founded: 1971  Number of members: 342
Full-time staff: 0  Part-time staff: 2
Annual operating budget: $46,350
Publications: The Newsletter, semiannually
Geographical area of operation: Orange County
Total acres protected: 72
   Owned: 72
   Under easement: 0
   Other direct methods: 0
Main land protection methods: Land donation, Easement donation, Easement purchase
Main land types: Open space, Ecological

Peconic Land Trust
50 Main Street
P.O. Box 2088
Southampton, NY 11968
(516) 283-3195
Contact: John Halsey, President
Purpose: The preservation of farmland and open space on Long Island, New York.
Year founded: 1983  Number of members: 1,000
Full-time staff: 2  Part-time staff: 1
Annual operating budget: $160,000
Publications: Newsletter, semiannually
Geographical area of operation: Suffolk County
Total acres protected: 350
   Owned: 30
   Under easement: 30
   Other direct methods: 290
Main land protection methods: Land donation, Land purchase, Easement donation
Main land types: Open space, Wetlands, Farmland

Rensselaer-Taconic Land Conservancy
P.O. Box 40
Lansingburgh Station
Troy, NY 12182
(518) 272-0454
Contact: Margaret Olsen, President
Purpose: To obtain, possess or exercise control over real property in Rensselaer County, which possesses significant natural features, scenic vistas, open spaces, natural habitats, agricultural value; to preserve these areas, make them available for public purposes, promote their preservation and appropriate use.
Year founded: 1988  Number of members: 13
Full-time staff: 0  Part-time staff: 0
Geographical area of operation: Rensselaer County
Total acres protected: 0
   Owned: 0
   Under easement: 0
   Other direct methods: 0
Main land protection methods: Easement donation, Land purchase, Land donation
Main land types: Ecological, Forests, Wetlands

Rondout Valley Land Conservancy
P.O. Box 307
Main Street
Accord, NY 12404
(914) 626-4849
Contact: Ira Stern, Executive Director
Purpose: Land preservation and the promotion of environmentally sound development to enhance regional scenic, agricultural and natural resources.
Year founded: 1997  Number of members 100
Full-time staff: 0  Part-time staff 0
Annual operating budget: $10,000
Geographical area of operation: Rondout Valley
Total acres protected: 800
   Owned: 0
   Under easement: 800
   Other direct methods: 0
Main land protection methods: Easement donation, Limited development, Negotiation
Main land types: Ecological, River corridors, Wetlands
Saratoga County Land Conservancy
P.O. Box 4459
Halfmoon, NY 12065
(518) 877-8878
Contact: Raymond Seymou, President
Purpose: To promote the preservation and protection of scenic, natural, agricultural, recreation, and open space; to increase community appreciation of the natural environment; to use innovative land conservation methods; and to cooperate with governmental bodies and agencies.
Year founded: 1968  Number of members: 11
Full-time staff: 0  Part-time staff: 0
Geographical area of operation: Southern Saratoga County
Total acres protected: 0
  Owned: 0
  Under easement: 0
  Other direct methods: 0
Main land protection methods: Land donation, Easement donation
Main land types: Recreation, Ecological

Save Open Spaces
Starr Ridge Road
Brewster, NY 10509
(914) 279-6576
Contact: Paul Fitchen, Chairman
Purpose: Preserving for posterity unique or environmentally significant parcels of land for purposes of conservation, education and passive recreation.
Year founded: 1969  Number of members: 140
Full-time staff: 0  Part-time staff: 0
Annual operating budget: $1,200
Publications: Newsletter, occasionally
Geographical area of operation: Putnam County
Total acres protected: 176
  Owned: 128
  Under easement: 48
  Other direct methods: 0
Main land protection methods: Land donation, Easement donation
Main land types: Recreation, Open space, Wetlands

Save Oswego County
Box 828
Oswego, NY 13126
(315) 342-0015
Contact: Brian Kocher, President
Purpose: To acquire unique natural areas in Oswego County to be preserved in or returned to their natural state.
Year founded: 1973  Number of members: 90
Full-time staff: 0  Part-time staff: 0
Annual operating budget: $500
Geographical area of operation: Oswego County
Total acres protected: 41
  Owned: 41
  Under easement: 0
Main land protection methods: Easement donation, Land donation, Land purchase
Main land types: Greenways, River corridors, Open space

Save the County
5437 Springview Drive
Fayetteville, NY 13066
(315) 637-3875
Contact: Karen Slotnick, Executive Director
Purpose: To protect and preserve unique natural areas in Onondaga County, New York.
Year founded: 1972  Number of members: 52
Full-time staff: 0  Part-time staff: 1
Publications: Membership Newsletter, semiannually
  The Walk Newsletter, annually
Geographical area of operation: Onondaga County
Total acres protected: 650
  Owned: 643
  Under easement: 0
  Other direct methods: 7
Main land protection methods: Land purchase, Land donation, Negotiation
Main land types: Wetlands, Ecological, Geologic formations

Scenic Hudson
9 Vassar Street
Poughkeepsie, NY 12601
(914) 473-4440
Contact: Phil Pearl, Director of Land Preservation
Purpose: The preservation and enhancement of the Hudson Valley’s natural, scenic, historic, and recreational resources.
Year founded: 1963  Number of members: 5,500
Full-time staff: 10  Part-time staff: 2
Annual operating budget: $130,000
Publications: Scenic Hudson News, quarterly
  News Update, quarterly
Geographical area of operation: Hudson River corridor
Total acres protected: 1,961
  Owned: 35
  Under easement: 799
  Other direct methods: 1,117
Main land protection methods: Easement donation, Land donation, Land purchase
Main land types: Greenways, River corridors, Open space

Serpentine Art and Nature Commons
P.O. Box 404 252
Stapleton Station
Staten Island, NY 10304
(212) 602-7389
Contact: George Y. Bramwell, President
Purpose: To preserve open space on Grymes Hill, Staten Island, New York, through the means of a land trust for use by the community.
Year founded: 1978  Number of members: 100
Full-time staff: 0  Part-time staff: 1
Annual operating budget: $4,500
Publications: Serpentine Commons, quarterly
Geographical area of operation: East slope of Grymes Hill, Staten Island
Total acres protected: 12
  Owned: 4
  Under easement: 0
  Other direct methods: 8
Main land protection methods: Land donation
Main land types: Open space, Ecological, Recreation

Shawangunk Conservancy
40 Wall Street
New York, NY 10005
(212) 943-0700
Contact: Bob Anderberg, President

Shawangunk Valley Conservancy
P.O. Box 410
Wallkill, NY 12589
(914) 895-2987
Contact: Peter Bienstock, Chairman
Purpose: Land conservation, historic preservation and projects supporting strong community life, primarily in southeastern Ulster County, New York, and in New York’s mid-Hudson region
Year founded: 1976  Number of members: 0
Full-time staff: 0  Part-time staff: 0
Annual operating budget: $43,000
Geographical area of operation: Southeastern Ulster County
Total acres protected: 1,402
  Owned: 2
  Under easement: 0
  Other direct methods: 1,400
Main land protection methods: Land purchase, Land transfer, Limited development
Main land types: Historic buildings, River corridors, Farmland

South Shore Planning Council
1742 Old Mill Road
Wantagh, NY 11793
(516) 781-7405
Contact: Joan Kern, Executive Director
Purpose: To preserve open space and historic buildings.
Year founded: 1971  Number of members: 1,500
Full-time staff: 1  Part-time staff: 0
Annual operating budget: $125,000
Publications: Newsletter, 3-4 issues per year
Geographical area of operation: Nassau County
Total acres protected: 38
  Owned: 0
  Under easement: 0
  Other direct methods: 38
Main land protection methods: Land donation
Main land types: Recreation, Ecological, Suburbs

Main land protection methods: Urge and work with governmental bodies to purchase and preserve open space, Limited development, Negotiation
Main land types: Suburbs, Historic buildings

Sunny Side Foundation
45-16 Skillman Avenue
Sunny Side, NY 11104
(718) 392-9139
Contact: Nina Rappaport, Executive Director
Purpose: To conserve and preserve the Sunny Side Gardens Historic District and the greater area of Sunny Side. To conduct programs in building, landscape and economic stabilization, and conservation. To assist with community planning and preservation issues.
Year founded: 1981  Number of members: 0
Full-time staff: 3  Part-time staff: 2
Annual operating budget: $200,000
Publications: The Sunny Side Gardener, quarterly
The Sunny Side Journal, quarterly
Geographical area of operation, Sunny Side, Queens
Total acres protected: 4
  Owned: 0
  Under easement: 1
  Other direct methods: 3
Main land protection methods: Easement donation
Main land types: Historic land, Open space, Inner city

Taconic Community Land Trust
R.O. 2
Hillsdale, NY 12529
(518) 392-5718
Contact: Bruce Walker, Co-organizer

Teatown Lake Reservation
Spring Valley Road
Ossining, NY 10562
(914) 262-2912
Contact: Steve Coleman, Executive Director
Purpose: To maintain forever the unspoiled natural beauty and wildlife of a varied landscape, and to promote, through a community education center, a greater awareness, understanding and appreciation of our natural environment.
Year founded: 1963  Number of members: 850
Full-time staff: 6  Part-time staff: 6
Annual operating budget: $240,000
Publications: Teatown Trails, quarterly
Geographical area of operation, Lower Hudson Valley
Total acres protected: 390
  Owned: 82
  Under easement: 0
  Other direct methods: 308
Main land protection methods: Land donation, Revocable agreement, Easement donation
Main land types: Recreation, Ecological, Suburbs
**Thousand Islands Land Trust**  
P.O. Box 238  
Clayton, NY 13624  
(315) 686-5345  
Contact: Kenneth Deedy, President  
Purpose: Preserve environmentally sensitive areas and scenic vistas along the St. Lawrence River and eastern Lake Ontario.  
Year founded: 1985  
Number of members: 150  
Full-time staff: 0  
Part-time staff: 1  
Annual operating budget: $8,000  
Publications: Newsletter, quarterly  
Geographical area of operation: Eastern Lake Ontario, St. Lawrence River  
Total acres protected: 5,005  
Owned: 5  
Under easement: 5,000  
Other direct methods: 0  
Main land protection methods: Easement donation, Land donation  
Main land types: Coastal areas, Wetlands, Ecological

**Walikill Valley Land Trust**  
P.O. Box 208  
New Paltz, NY 12561  
(914) 255-0314  
Contact: Kitty Vermilye, Vice President  
Purpose: To protect and preserve the natural, historic and agricultural heritage of the Walikill River Valley  
Year founded: 1987  
Number of members: 10  
Full-time staff: 0  
Part-time staff: 0  
Geographical area of operation: Walikill River Valley  
Total acres protected: 0  
Owned: 0  
Under easement: 0  
Other direct methods: 0  
Main land protection methods: Easement donation  
Main land types: Ecological, Historic land, Farmland

**Washington Agricultural Trust**  
Box 4  
Middle Falls, NY 12848  
(518) 692-7475  
Contact: George Houser, Chairman

**West Branch Conservation Association**  
100 South Mountain Road  
New City, NY 10956  
(914) 634-9700  
Contact: Martus Granirer, President  
Purpose: Environmental preservation of the western watershed and origins of the Hackensack River in Rockland County, New York, through land-saving, education and advocacy.  
Year founded: 1941  
Number of members: 120  
Full-time staff: 0  
Part-time staff: 0  
Annual operating budget: $4,500  
Geographical area of operation: Rockland County  
Total acres protected: 647  
Owned: 17  
Under easement: 10  
Other direct methods: 620  
Main land protection methods: Land donation, Land purchase, Limited development  
Main land types: Open space, Watersheds

**Westchester Land Trust**  
31 Main Street  
Bedford Hills, NY 10507  
(914) 241-6346  
Contact: Louis McCagg, Coordinator  
Purpose: To preserve open space and support affordable housing in Westchester County, New York.  
Year founded: 1988  
Number of members: 0  
Full-time staff: 0  
Part-time staff: 0  
Geographical area of operation: Westchester County  
Total acres protected: 0  
Owned: 0  
Under easement: 0  
Other direct methods: 0  
Main land types: Open space

**Willowmoc Land Conservancy**  
P.O. Box 592  
Livingston Manor, NY 12758  
(914) 439-4757  
Contact: Herbert Heaton, President  
Purpose: To encourage the conservation, preservation and enhancement of open and scenic space and a greenbelt in the Willowmoc Valley (and potentially elsewhere), particularly by receiving gifts of conservation easements  
Year founded: 1988  
Number of members: 5  
Full-time staff: 0  
Part-time staff: 0  
Geographical area of operation: Willowmoc Valley  
Total acres protected: 0  
Owned: 0  
Under easement: 0  
Other direct methods: 0  
Main land protection methods: Easement donation  
Main land types: Open space, Greenways, River corridors

**Woodstock Land Conservancy**  
Jessup Road  
Box 77  
Willow, NY 12495  
(914) 679-9355  
Contact: Gay Leonhardt, Director  
Purpose: To preserve land in the area of Woodstock, New York, particularly land we all see and enjoy; to allow landowners to have a say in the future of their land, and to
promote the public interest in the environment
Year founded: 1988 Number of members 20
Full-time staff 0 Part-time staff 0
Annual operating budget: $2,000
Geographical area of operation: Woodstock
Total acres protected: 5
  Owned: 0
  Under easement: 5
  Other direct methods: 0
Main land protection methods: Easement donation
Main land types: Open space, Historic land, Sites that have been painted by generations of Woodstock artists

Yorktown Land Trust
507 Elizabeth Road
Yorktown Heights, NY 10598
(914) 962-7225
Contact: Beryl S. Harper, President
Purpose: To promote the preservation and protection of the scenic beauty of Turkey Mountain and other open spaces in the Town of Yorktown
Year founded: 1986 Number of members 50
Full-time staff 0 Part-time staff 0
Annual operating budget: $2,000
Geographical area of operation: Yorktown
Total acres protected: 0
  Owned: 0
  Under easement: 0
  Other direct methods: 0
Main land types: Open space, Ecological, Recreation

Hickorynut Gorge Wilderness Society
P.O. Box 100
Lake Lure, NC 28746
(704) 625-9315
Contact: Robert Washburn
Year founded: 1984

North Carolina Botanical Garden
Totten Center 3375
UNC - Chapel Hill
Chapel Hill, NC 27599
(919) 967-2246
Contact: Peter S. White, Director
Type: Quasi-governmental
Purpose: To support and participate in the research and instructional goals of the University of North Carolina at Chapel Hill; to study, protect and interpret the diversity of plant life, particularly the flora of the southeastern United States; and to provide related services to the public.
Year founded: 1966 Number of members: 1,800
Full-time staff: 12 Part-time staff: 16
Annual operating budget: $500,000
Publications: Newsletter, bimonthly
Geographical area of operation: Southeast
Total acres protected: 709
  Owned: 707
  Under easement: 2
  Other direct methods: 0
Main land protection methods: Land donation, Easement donation
Main land types: Ecological, Natural habitats for rare plants

North Carolina Coastal Federation
1832 J Bell Lane (Ocean)
Newport, NC 28570
(919) 393-8185
Contact: Todd Miller, Executive Director
Purpose: Clearinghouse for citizens' interest in proper management of coastal resources.
Year founded: 1982 Number of members: 1,150
Full-time staff: 4 Part-time staff: 1
Annual operating budget: $150,000
Publications: Coastal Review, quarterly
Geographical area of operation: North Carolina coast
Total acres protected: 20
  Owned: 20
  Under easement: 0
  Other direct methods: 0
Main land protection methods: Negotiation, Land donation
Main land types: Coastal areas, Wetlands, Ecological

Association for the Preservation of the Eno River Valley
4015 Cole Mill Road
Durham, NC 27712
(919) 383-6837
Contact: Donald N. Cox
Year founded: 1975

Conservation Foundation of North Carolina
P.O. Box 130
Caryboro, NC 27519
(919) 967-6914
Contact: John Curry

Northeast New Hanover Conservancy
128 Beach Road South
Wilmington, NC 28405
(919) 686-8362
APPENDIX D:
PLANNED UNIT DEVELOPMENT
STATUTES
24-67-101. Short title. This article shall be known and may be cited as the “Planned Unit Development Act of 1972”

24-67-102. Legislative declaration. (1) In order that the public health, safety, integrity and general welfare may be furthered in an era of increasing urbanization and of growing demand for housing of all types and design, the powers set forth in this article are granted to all counties and municipalities for the following purposes:

(a) To provide for necessary commercial, recreational and educational facilities conveniently located to such housing,

(b) To provide for well-located, clean, safe, and pleasant industrial sites involving a minimum of strain on transportation facilities,

(c) To ensure that the provisions of the zoning laws which direct the uniform treatment of dwelling type, bulk density, and open space within each zoning district will not be applied to the improvement of land by other than lot-by-lot development in a manner which would distort the objectives of the zoning laws,

(d) To encourage innovations in residential, commercial, and industrial development and renewal so that the growing demands of the population may be met by greater variety in type design, and layout of buildings and by the conservation and more efficient use of open space ancillary to said buildings,

(e) To encourage a more efficient use of land and of public services, or private services in lieu thereof, and to reflect changes in the technology of land development so that resulting economies may enure to the benefit of those who need homes

(f) To lessen the burden of traffic on streets and highways,

(g) To encourage the building of new towns incorporating the best features of modern design,

(h) To conserve the value of the land,

(i) To provide a procedure which can relate the type, design, and layout of residential, commercial, and industrial development to the particular site, thereby encouraging preservation of the site’s natural characteristics, and

(j) To encourage integrated planning in order to achieve the above purposes.

24-67-103. Definitions. As used in this article, unless the context otherwise requires

(1) “Common open space” means a parcel of land, an area of water, or a combination of land and water within the site designated for a planned unit development designed and intended primarily for the use or enjoyment of residents, occupants, and owners of the planned unit development.

(2) “Plan” means the provisions for development of a planned unit development, which may include, and need not be limited to, easements, covenants, and restrictions relating to use, location, and bulk of buildings and other structures, intensity of use or density of development, utilities, private and public streets, ways, roads, pedestrian areas, and parking facilities, common open space, and other public facilities. “Provisions of the plan” means the written and graphic materials referred to in this definition.

(3) “Planned unit development” means an area of land, controlled by one or more landowners, to be developed under unified control or unified plan of development for a number of dwelling units, commercial, educational, recreational, or industrial uses, or any combination of the foregoing, the plan for which does not correspond in lot size, bulk, or type of use, density, lot coverage, open space, or other restriction to the existing land use regulations.
24-67-104. Implementation of article. (1) Any county with respect to territory within the unincorporated portion of the county or any municipality with respect to territory within its corporate limits may authorize planned unit developments by enacting a resolution or ordinance which
(a) Refers to this article
(b) Includes a statement of objectives of development.
(c) Designates the board, which may be a commission, board, or the governing body of the county or municipality authorized to review planned unit development applications as set forth in this article
(d) Sets forth standards of development consistent with the provisions of section 24-67-105
(e) Sets forth the procedures pertaining to the application for, hearing on, and tentative and final approval of a planned unit development which shall afford procedural due process to interested parties. The resolution or ordinance shall establish maximum time periods within which any application shall be reviewed and approved, disapproved, or conditionally approved. At least one public hearing shall be held by the board designated pursuant to paragraph (c) of this subsection (1) prior to approval, disapproval or conditional approval of a planned unit development. Public notice of the public hearing shall be given in the manner prescribed by section 30-28-116 or 31-23-304, C.R.S., whichever is applicable, for the amendment of zoning resolutions and ordinances. Written notice of the public hearing shall be delivered or mailed, first-class postage prepaid, at least fifteen days prior to the public hearing to adjoining landowners.
(f) Requires a finding by the county or municipality that such plan is in general conformity with any master plan or comprehensive plan for the county or municipality

(2) The enactment of the resolution or ordinance provided for in this section and the enactment of any amendment thereto shall be in accordance with the procedures required for the adoption of an amendment to a zoning resolution or ordinance as prescribed by section 30-28-116 or 31-23-305, C R S., whichever is applicable

24-67-105. Standards and conditions for planned unit development. (1) Every resolution or ordinance adopted pursuant to the provisions of this article shall set forth the standards and conditions by which a proposed planned unit development shall be evaluated, which shall be consistent with the provisions of this section. No planned unit development may be approved by a county or municipality without the written consent of the landowner whose properties are included within the planned unit development. 

(2) Such resolution or ordinance shall set forth the uses permitted in a planned unit development and the minimum number of units or acres which may constitute a planned unit development.

(3) Such resolution or ordinance may establish the sequence of development among the various types of uses.

(4) Such resolution or ordinance shall establish standards governing the density or intensity of land use or methods for determining such density or intensity in a planned unit development.

(5) Such resolution or ordinance shall specify information which shall be submitted with the planned unit development application to ensure full evaluation of the application and the board designated pursuant to section 24-67-104 (1) (c) may require such additional relevant information as it may deem necessary.

(6) (a) Such resolution or ordinance may provide standards for inclusion of common open space.

(b) The ordinance or resolution may require that the landowner provide for and establish an organization for the ownership and maintenance of any common open space or that other adequate arrangements for the ownership and maintenance thereof be made.

(c) In the event that the organization established to own and maintain common open space or any successor organization, fails at any time after establishment of the planned unit development to maintain the common open space in reasonable order and condition in accordance with the plan, the county or municipality may serve written notice upon such organization or upon the residents of the planned unit development setting forth the manner in which the organization has failed to maintain the common open space.
in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty days thereof and shall state the date and place of a hearing thereon which shall be held within fourteen days of the notice. At such hearing the county or municipality may modify the terms of the original notice as to deficiencies and may give an extension of time within which they shall be cured. If the deficiencies set forth in the original notice or in the modifications thereof are not cured within said thirty days or any extension thereof, the county or municipality, in order to preserve the taxable values of the properties within the planned unit development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said entry and maintenance shall not vest in the public any right to use the common open space except when the same is voluntarily dedicated to the public by the owners. Before the expiration of said year, the county or municipality shall, upon its initiative or upon the written request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization or to the residents of the planned unit development to be held by the board designated by the county or municipality, at which hearing such organization or the residents of the planned unit development shall show cause why such maintenance by the county or municipality shall not, at the election of the county or municipality, continue for a succeeding year. If the board designated by the county or municipality determines that such organization is ready and able to maintain said common open space in reasonable condition the county or municipality shall cease to maintain said common open space at the end of said year. If the board designated by the county or municipality determines that such organization is not ready and able to maintain said common open space in a reasonable condition, the county or municipality may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter.

(d) The cost of such maintenance by the county or municipality shall be paid by the owners of properties within the planned unit development that have a right of enjoyment of the common open space, and any unpaid assessments shall become a tax lien on said properties. The county or municipality shall file a notice of such lien in the office of the county clerk and recorder upon the properties affected by such lien. Within the planned unit development and shall certify such unpaid assessments to the board of county commissioners and county treasurer for collection, enforcement, and remittance in the manner provided by law for the collection, enforcement, and remittance of general property taxes.

(7) Design, construction and other requirements applicable to a planned unit development may be different from or modifications of the requirements otherwise applicable by reason of any zoning or subdivision regulation, resolution, or ordinance of the county or municipality as long as such requirements substantially comply with the subdivision provisions of part 1 of article 28 of title 30 or part 2 of article 23 of title 31, C.R.S., whichever is applicable, and appropriate regulations promulgated thereunder. Subdivision regulations applicable to planned unit developments may differ from those otherwise applicable.
24-67-106. Enforcement and modification of provisions of the plan. (1) To further the mutual interest of the residents, occupants, and owners of a planned unit development and of the public in the preservation of the integrity of the plan, the provisions of the plan relating to the use of land and the location of common open space shall run in favor of the county or municipality and shall be enforceable at law or in equity by the county or municipality without limitation on any power or regulation otherwise granted by law.

(2) All provisions of the plan shall run in favor of the residents, occupants, and owners of the planned unit development, but only to the extent expressly provided in the plan and in accordance with the terms of the plan, and, to that extent, said provisions whether recorded by plat, covenant, easement or otherwise, may be enforced at law or in equity by residents, occupants, or owners acting individually, jointly, or through an organization designated in the plan to act on their behalf. However, no provisions of the plan shall be implied to exist in favor of residents, occupants, and owners except as to those portions of the plan which have been finally approved.

(3) All those provisions of the plan authorized to be enforced by the county or municipality may be modified, removed, or released by the county or municipality, subject to the following:

(a) No modification, removal, or release of the provisions of the plan by the county or municipality shall affect the rights of the residents, occupants, and owners of the planned unit development to maintain and enforce those provisions at law or in equity as provided in subsection (1) of this section.

(b) No substantial modification, removal, or release of the provisions of the plan by the county or municipality shall be permitted except upon a finding by the county or municipality following a public hearing called and held in accordance with the provisions of section 24-67-104 (1) (e) that the modification, removal, or release is consistent with the efficient development and preservation of the entire planned unit development, does not affect in a substantially adverse manner either the enjoyment of land abutting upon or across a street from the planned unit development or the public interest, and is not granted solely to confer a special benefit upon any person.

(c) Residents and owners of the planned unit development may, to the extent and in the manner expressly authorized by the provisions of the plan, modify, remove, or release their rights to enforce the provisions of the plan, but no such action shall affect the right of the county or municipality to enforce the provisions of the plan.

24-67-107. Application and construction of article. (1) The provisions of this article shall apply to home rule municipalities unless superseded by charter or ordinance enactment.

(2) Any county or municipality which has enacted, prior to May 21, 1972, a resolution or ordinance providing for planned unit developments may continue to follow the provisions established therein, and any amendments thereto in lieu of electing to follow the provisions of this article.

(3) Nothing in this article shall be construed to impair, affect, or invalidate any rights vested in connection with planned unit developments for which applications were filed prior to May 21, 1972.

(4) Nothing in this article shall be construed to waive the requirements for substantial compliance by counties and municipalities with the subdivision requirements of part 1 of article 28 of title 30 and part 2 of article 23 of title 31, C.R.S., respectively, and appropriate regulations promulgated thereunder. Subdivision regulations applicable to planned unit developments may differ from those otherwise applicable. In order to facilitate processing of applications, however, a county or municipality, pursuant to resolution or ordinance, may provide for concurrent or simultaneous processing of planned unit development and subdivision applications.

(5) No county or municipality shall adopt pursuant to this article any resolution or ordinance which limits development exclusively to planned unit development districts.
(6) This article shall be liberally construed in furtherance of the purposes of this article and to the end that counties and municipalities shall be encouraged to utilize planned unit developments. Enactment of this article by the general assembly is declared to be for the purpose of supplementing the provisions of part 1 of article 28 of title 30 and article 23 of title 31, C.R.S., as the same relate to and authorize planned unit developments.

24-67-108. Model resolutions - subdivisions - improvement notices. The department of local affairs shall develop model resolutions and ordinances to serve as guidelines for counties and municipalities in enacting enabling resolutions and ordinances pursuant to this article.
36-7-4-601. Purpose — Classification and regulation. — (a) The legislative body having jurisdiction over the geographic area described in the zoning ordinance has exclusive authority to adopt a zoning ordinance under the 600 series. However, no zoning ordinance may be adopted until a comprehensive plan has been approved for the jurisdiction under the 500 series of this chapter.

(b) When it adopts a zoning ordinance, the legislative body shall:

(1) Designate the geographic area over which the plan commission shall exercise jurisdiction; and

(2) Incorporate by reference into the ordinance zone maps, as prepared by the plan commission under subsection (e).

(c) When it adopts a zoning ordinance, the legislative body shall act for the purpose of:

(1) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger.

(2) Lessening or avoiding congestion in public ways.

(3) Promoting the public health, safety, comfort, morals, convenience, and general welfare.

(4) Otherwise accomplishing the purposes of this chapter.

(d) For the purposes described in subsection (c), the legislative body may do the following in the zoning ordinance:

(1) Establish one or more districts, which may be for agricultural, commercial, industrial, residential, special, or unrestricted uses and any subdivision or combination of these uses. A district may include geographic areas that are not contiguous. A geographic area may be subject to more than one district.

(2) In each district, regulate how real property is developed, maintained, and used. This regulation may include:

(A) Requirements for the area of front, rear, and side yards, courts, other open spaces, and total lot area;

(B) Requirements for site conditions, signs, and nonstructural improvements, such as parking lots, ponds, fills, landscaping, and utilities:
(C) Provisions for the treatment of uses, structures, or conditions that are in existence when the zoning ordinance takes effect;
(D) Restrictions on development in areas prone to flooding;
(E) Requirements to protect the historic and architectural heritage of the community;
(F) Requirements for structures, such as location, height, area, bulk, and floor space;
(G) Restrictions on the kind and intensity of uses;
(H) Performance standards for the emission of noises, gases, heat, vibration, or particulate matter into the air or ground or across lot lines;
(I) Standards for population density and traffic circulation; and
(J) Any other provisions that are necessary to implement the purposes of the zoning ordinance.

(3) In districts containing areas with special or unusual development problems or needs for compatibility, require that the plan commission approve development plans for consistency with general development standards.

(4) Provide for planned unit development

(5) Establish in which districts the subdivision of land may occur.

(e) When it prepares a proposal to initially adopt a zoning ordinance for a jurisdiction, the plan commission shall also prepare zone maps. The purpose of the zone maps is to indicate the districts into which the incorporated areas and unincorporated areas (if any) are divided [IC 36-7-4-601, as added by Acts 1981, P.L. 309, § 23; 1982, P.L. 212, § 2; P.L.355-1983, § 1, P.L.335-1985. § 15, P.L.220-1986. § 15]

Zoning ordinances or by-laws shall provide for specific types of uses which shall only be permitted in specified districts upon the issuance of a special permit. Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.

Zoning ordinances or by-laws may also provide for special permits authorizing increases in the permissible density of population or intensity of a particular use in a proposed development; provided that the petitioner or applicant shall, as a condition for the grant of said permit, provide certain open space, housing for persons of low or moderate income, traffic or pedestrian improvements, or other amenities. Such zoning ordinances or by-laws shall state the specific improvements or amenities or locations of proposed uses for which the special permits shall be granted, and the maximum increases in density of population or intensity of use which may be authorized by such special permits.

Zoning ordinances or by-laws may provide that special permits may be granted for multi-family residential use in nonresidentially zoned areas where the public good would be served and after a finding by the special permit granting authority, that such nonresidentially zoned area would not be adversely affected by such a residential use, and that permitted uses in such a zone are not noxious to a multi-family use.

Zoning ordinances or by-laws may also provide that cluster developments or planned unit developments shall be permitted upon the issuance of a special permit.

"Cluster development" means a residential development in which the buildings and accessory uses are clustered together into one or more groups separated from adjacent property and other groups within the development by intervening open land. A cluster development shall be permitted only on a plot of land of such minimum size as a zoning ordinance or by-law may specify which is divided into building lots with dimensional control, density and use restrictions of such building lots varying from those otherwise permitted by the ordinance or by-law and open land. Such open land when added to the building lots shall be at least equal in area to the land area required by the ordinance or by-law for the total number of units or buildings contemplated in the development. Such open land shall either be conveyed to the city or town and accepted by it for park or open space use, or be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, or to be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plot. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the lots or residential units in any case where such land is not conveyed to the city or town. A restriction enforceable by the city or town shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.
"Planned unit development" means a mixed use development on a plot of land containing a minimum of the lesser of sixty thousand square feet or five times the minimum lot size of the zoning district, but of such larger size as an ordinance or by-law may specify, in which a mixture or residential, open space, commercial, industrial or other uses and a variety of building types are determined to be sufficiently advantageous to render it appropriate to grant special permission to depart from the normal requirements of the district to the extent authorized by the ordinance or by-law. Such open space, if any, may be situated to promote and protect maximum solar access within the development.

Zoning ordinances or by-laws may also provide for the use of structures as shared elderly housing upon the issuance of a special permit. Such zoning ordinances or by-laws shall specify the maximum number of elderly occupants allowed, not to exceed a total number of six, any age requirements and any other conditions deemed necessary for the special permits to be granted.

Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.

Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.

Each application for a special permit shall be filed by the petitioner with the city or town clerk and a copy of said application, including the date and time of filing certified by the city or town clerk, shall be filed forthwith by the petitioner with the special permit granting authority. The special permit granting authority shall hold a public hearing, for which notice has been given as provided in section eleven, on any application for a special permit within sixty-five days from the date of filing of such application; provided, however, that a city council having more than five members designated to act upon such application may appoint a committee of such council to hold the public hearing. The decision of the special permit granting authority shall be made within ninety days following the date of such public hearing. The required time limits for a public hearing and said action, may be extended by written agreement between the petitioner and the special permit granting authority. A copy of such agreement shall be filed in the office of the city or town clerk. A special permit issued by a special permit granting authority shall require a two-thirds vote of boards with more than five members, a vote of at least four members of a five member board, and a unanimous vote of a three member board.
Failure by the special permit granting authority to take final action within said ninety days or extended time, if applicable, shall be deemed to be a grant of the special permit. The petitionor who seeks such approval by reason of the failure of the special permit granting authority to act within such time prescribed, shall notify the city or town clerk, in writing within fourteen days from the expiration of said ninety days or extended time, if applicable, of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest by mail and each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date the city or town clerk received such written notice from the petitioner that the special permit granting authority failed to act within the time prescribed. After the expiration of twenty days without notice of appeal pursuant to section seventeen, or, if appeal has been taken, after receipt of certified records of the court in which such appeal is adjudicated, indicating that such appeal has become final, the city or town clerk shall issue a certificate stating the date of approval, the fact that the special permit granting authority failed to take final action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner. The special permit granting authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all of which shall be filed within fourteen days in the office of the city or town clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest designated in section eleven, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to section seventeen and shall be filed within twenty days after the date of filing of such notice in the office of the city or town clerk.

Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, and including such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.

Zoning ordinances or by-laws shall also provide that uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, may be permitted upon the issuance of a special permit provided the granting authority finds that the proposed accessory use does not substantially derogate from the public good.

A hazardous waste facility as defined in section two of chapter twenty-one D shall be permitted to be constructed as of right on any locus presently zoned for industrial use pursuant to the ordinances and by-laws of any city or town provided that all permits and licenses required by law have been issued to the developer and a siting agreement has been established pursuant to sections twelve and
thirteen of chapter twenty-one D, provided however, that following
the submission of a notice of intent, pursuant to section seven of
chapter twenty-one D, a city or town may not adopt any zoning
change which would exclude the facility from the locus specified in
said notice of intent. This section shall not prevent any city or town
from adopting a zoning change relative to the proposed locus for the
facility following the final disapproval and exhaustion of appeals for
permits and licenses required by law and by chapter twenty-one D
(Added by 1975, 808, § 3, 1977, 829, §§ 3E, 3F, 4A, 1980, 508, § 5,
approved, with emergency preamble, July 15, 1980, 1982, 344, ap-
proved July 15, 1982, effective 90 days thereafter.)

A facility, as defined in section one hundred and fifty A of chapter one
hundred and eleven, which has received a site assignment pursuant to said
section one hundred and fifty A, shall be permitted to be constructed or
expanded on any locus zoned for industrial use unless specifically prohib-
ited by the ordinances and by-laws of the city or town in which such
facility is proposed to be constructed or expanded, in effect as of July first,
nineteen hundred and eighty-seven; provided, however, that all permits and
licenses required by law have been issued to the proposed operator. A city
or town shall not adopt an ordinance or by-law prohibiting the siting of
such a facility or the expansion of an existing facility on any locus zoned
for industrial use, or require a license or permit granted by said city or
town, except a special permit imposing reasonable conditions on the
construction or operation of the facility, unless such prohibition, license or
permit was in effect on or before July first, nineteen hundred and eighty-
seven; provided, however, that a city or town may adopt and enforce a
zoning or non-zoning ordinance or by-law of general application that has
the effect of prohibiting the siting or expansion of a facility in the
following areas. recharge areas of surface drinking water supplies as shall
be reasonably defined by rules and regulations of the department of
environmental protection, areas subject to section forty of chapter one
hundred and thirty-one, and the regulations promulgated thereunder; and
areas within the zone of contribution of existing or potential public supply
wells as defined by said department. No special permit authorized by this
section may be denied for any such facility by any city or town; provided,
however, that a special permit granting authority may impose reasonable
conditions on the construction or operation of the facility, which shall be
enforceable pursuant to the provisions of section seven.
40:55D-6. Definitions; P to R

"Party immediately concerned" means for purposes of notice any applicant for development, the owners of the subject property and all owners of property and government agencies entitled to notice under section 71.¹

"Performance guarantee" means any security, which may be accepted by a municipality, including cash; provided that a municipality shall not require more than 10% of the total performance guarantee in cash.

"Planned commercial development" means an area of a minimum contiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate commercial or office uses or both and any residential and other uses incidental to the predominant use as may be permitted by ordinance.

"Planned development" means planned unit development, planned unit residential development, residential cluster, planned commercial development or planned industrial development.

"Planned industrial development" means an area of a minimum contiguous size as specified by ordinance to be developed according to a plan as a single entity containing one or more structures with appurtenant common areas to accommodate industrial uses and any other uses incidental to the predominant use as may be permitted by ordinance.

"Planned unit development" means an area with a specified minimum contiguous acreage of 10 acres or more to be developed as a single entity according to a plan, containing one or more residential clusters or planned unit residential developments and one or more public, quasi-public, commercial or industrial areas in such ranges of ratios of nonresidential uses to residential uses as shall be specified in the zoning ordinance.

"Planned unit residential development" means an area with a specified minimum contiguous acreage of 5 acres or more to be developed as a single entity according to a plan containing one or more residential clusters, which may include appropriate commercial, or public or quasi-public uses all primarily for the benefit of the residential development.

"Planning board" means the municipal planning board established pursuant to section 14 of this act.²

"Plat" means a map or maps of a subdivision or site plan.
"Preliminary approval" means the conferral of certain rights pursuant to sections 34, 36 and 37 of this act prior to final approval after specific elements of a development plan have been agreed upon by the planning board and the applicant.

"Preliminary floor plans and elevations" means architectural drawings prepared during early and introductory stages of the design of a project illustrating in a schematic form, its scope, scale and relationship to its site and immediate environs.

"Public areas" means (1) public parks, playgrounds, trails, paths and other recreational areas; (2) other public open spaces; (3) scenic and historic sites; and (4) sites for schools and other public buildings and structures.

"Public development proposal" means a master plan, capital improvement program or other proposal for land development adopted by the appropriate public body, or any amendment thereto.

"Public Drainage Way" means the land reserved or dedicated for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the biological as well as drainage function of the channel and providing for the flow of water to safeguard the public against flood damage, sedimentation and erosion and to assure the adequacy of existing and proposed culverts and bridges, to induce water recharge into the ground where practical, and to lessen nonpoint pollution.

"Public open space" means an open space area conveyed or otherwise dedicated to a municipality, municipal agency, board of education, State or county agency, or other public body for recreational or conservational uses.

"Quorum" means the majority of the full authorized membership of a municipal agency.

"Residential cluster" means an area to be developed as a single entity according to a plan containing residential housing units which have a common or public open space area as an appurtenance.

"Residential density" means the number of dwelling units per gross acre of residential land area including streets, easements and open space portions of a development.

"Resubdivision" means (1) the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law or (2) the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, but does not include conveyances so as to combine existing lots by deed or other instrument.
§ 519.02.1 Township may adopt planned-unit development regulations.

A township zoning resolution or amendment adopted in accordance with Chapter 519 of the Revised Code may establish or modify planned-unit development regulations, for the purpose of conserving land through more efficient allocation of private lots, multi-family dwelling units, common grounds, and nonresidential uses, promoting greater efficiency in providing public and utility services, and receiving the benefits of new techniques of community development and renewal. Within a planned-unit residential development district or zone, the township zoning regulations need not be uniform, but may vary in order to promote the public health, safety, morals, and the other purposes of this section.

As used in this section, "planned-unit development" means a development which is planned to integrate residential use with collateral uses, and in which lot size, setback lines, yard areas, and dwelling types may be varied and modified to achieve particular design objectives and make provision for open spaces, common areas, utilities, public improvements, and collateral nonresidential uses.
§ 10705. Standards and conditions for planned residential development

Every ordinance adopted pursuant to the provisions of this article shall set forth all the standards, conditions and regulations by which a proposed planned residential development shall be evaluated and said standards, conditions and regulations shall be consistent with the following provisions:

(a) The ordinance adopted pursuant to this article shall set forth the uses permitted in a planned residential development, which uses may include and shall be limited to:

(1) Dwelling units in detached, semi-detached, attached or multi-storied structures or any combination thereof, and (2) those nonresidential uses deemed to be appropriate for incorporation in the design of the planned residential development. The ordinance may establish regulations setting forth the timing of development among the various types of dwellings and may specify whether some or all nonresidential uses are to be built before, after or at the same time as the residential uses.

(b) The ordinance adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a planned residential development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the planned residential development in consideration of:

(1) The amount, location and proposed use of common open space.

(2) The location and physical characteristics of the site of the proposed planned residential development; and

(3) The location, design, type and use of structures proposed.

(c) In the case of a planned residential development proposed to be developed over a period of years, standards established in an ordinance adopted pursuant to this article may, to encourage the flexibility of housing density, design and type intended by this article, permit a variation in each section to be developed from the density, or intensity of use, established for the entire planned residential development. The ordinance may include provisions to allow for a greater concentration of density, or intensity of land use, within some section or sections of development, whether it be earlier or later in the development than upon others. The ordinance may require that the approval of such greater concentration of density of land use for any section to be developed be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the municipality, provided that such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed, so that flexibility of development which is a prime objective of this article, can be maintained.

(d) The standards for a planned residential development established by an ordinance adopted pursuant to this article may require that the common open space resulting from the application of standards for density, or intensity of land use, shall be set aside for the use and benefit of the residents in such development and may include provisions which shall determine the amount and location of said common open space and secure its improvement and maintenance for common open space use, subject, however, to the following:

(1) The municipality may, at any time and from time to time accept the dedication of land or any interest therein for public use...
and maintenance, but the municipality need not require, as a condition of the approval of a planned residential development, that land proposed to be set aside for common open space be dedicated or made available to public use. The ordinance may require that the landowner provide and establish an organization for the ownership and maintenance of the common open space, and that such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space) without first offering to dedicate the same to the public.

(2) In the event that the organization established to own and maintain common open space, or any successor organization, shall, at any time after establishment of the planned residential development fail to maintain the common open space in reasonable order and condition in accordance with the development plan, the municipality may serve written notice upon such organization or upon the residents of the planned residential development setting forth the manner in which the organization has failed to maintain the common open space in reasonable condition and said notice shall include a demand that such deficiencies of maintenance be corrected within thirty days thereof, and shall state the date and place of a hearing thereon which shall be held within fourteen days of the notice. At such hearing the municipality may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be corrected. If the deficiencies set forth in the original notice or in the modifications thereof shall not be corrected within said thirty days or any extension thereof, the municipality, in order to preserve the taxable value of the properties within the planned residential development and to prevent the common open space from becoming a public nuisance, may enter upon said common open space and maintain the same for a period of one year. Said maintenance by the municipality shall not constitute a taking of said common open space nor vest in the public any rights to use the same. Before the expiration of said year, the municipality shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of the common open space, call a public hearing upon notice to such organization, or to the residents of the planned residential development, to be held by the governing body or its designated agency, at which hearing such organization or the residents of the planned residential development shall show cause why such maintenance by the municipality shall not at the option of the municipality, continue for a succeeding year. If the governing body, or its designated agency, shall determine that such organization is ready and able to maintain said common open space in reasonable condition, the municipality shall cease to maintain said common open space at the end of said year. If the governing body or its designated agency shall determine that such organization is not ready and able to maintain said common open space in a reasonable condition, the municipality may, in its discretion, continue to maintain said common open space during the next succeeding year and, subject to a similar hearing and determination, in each year thereafter. The decision of the governing body or its designated agency shall be subject to appeal to court in the same manner, and within the same time limitation, as is provided for zoning appeals by this act.
(3) The cost of such maintenance by the municipality shall be assessed ratably against the properties within the planned residential development that have a right of enjoyment of the common open space, and shall become a lien on said properties. The municipality at the time of entering upon said common open space for the purpose of maintenance shall file a notice of lien in the office of the prothonotary of the county, upon the properties affected by the lien within the planned residential development.

(g) An ordinance adopted pursuant to the provisions of this article may require that a planned residential development contain a minimum number of dwelling units.

(f) The authority granted a municipality by Article V to establish standards for the location, width, course and surfacing of streets, walkways, curbs, gutters, street lights, shade trees, water, sewage and drainage facilities, easements or rights-of-way for drainage and utilities reservations of public grounds and other improvements, shall be vested in the governing body or its designated agency for the purposes of this article. The standards applicable to a particular planned residential development may be different than or modifications of, the standards and requirements otherwise required of subdivisions authorized under an ordinance adopted pursuant to Article V, provided, however, that an ordinance adopted pursuant to this article shall set forth the limits and extent of any modifications or changes in such standards and requirements in order that a landowner shall know the limits and extent of permissible modifications from the standards otherwise applicable to subdivisions.

(g) An ordinance adopted pursuant to this article shall set forth the standards and criteria by which the design, bulk and location of buildings shall be evaluated, and all such standards and criteria for any feature of a planned residential development shall be set forth in such ordinance with sufficient certainty to provide reasonable criteria by which specific proposals for a planned residential development can be evaluated. All standards in such ordinance shall not unreasonably restrict the ability of the landowner to regulate his development plan to the particular site and to the particular demand for housing existing at the time of development.
(12) **Planned unit development.** Any municipality may adopt zoning regulations providing for planned unit developments to encourage new communities, innovation in design and layout, and more efficient use of land. The modification of zoning regulations by the planning commission may be permitted simultaneously with the approval of a subdivision plat subject to the conditions set forth in this subsection. Any local zoning regulations containing provisions for planned unit development shall describe the standards and conditions by which a proposed planned unit development shall be evaluated. The planning commission may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in the zoning regulations, provided the rules and regulations are not inconsistent with the zoning regulations. The planning commission shall hold a public hearing after public notice as required by section 4447 of this chapter, prior to the establishment of any supplementary rules and regulations. Permitted uses may include and shall be limited to:

(A) dwelling units in detached, semi-detached, or multi-storied structures, or any combination thereof;

(B) any nonresidential use;

(C) public and private educational facilities; and

(D) industrial uses and buildings.

The zoning regulations may authorize the planning commission to allow for a greater concentration of density, of intensity of residential land use, within some section or sections of the development than upon others. The zoning regulations may require that the approval by the planning commission of a greater concentration of density or intensity of residential land use for any section to be developed by an offset by a lesser concentration in any other section or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant to the municipality.—Added 1967, No. 334 (Adj. Sess.), § 1, eff. March 23, 1968; amended 1969, No. 116, § 7; 1971, No. 257 (Adj. Sess.), §§ 21, 22, eff. April 11, 1972.
APPENDIX E:
CONTRACT ZONING STATUTES
45-24-4.1. Specific ordinances. — (a) No ordinance making a specific change in the zoning map shall be enacted, amended, or repealed until after a public hearing, at which opportunity shall be given all persons interested to be heard, has been held upon the question of the enactment, amendment, or repeal of the ordinance, before the city or town council, or a committee or commission authorized by the city or town council to investigate and make recommendations concerning the proposed ordinance, as the case may be, who shall first give written notice of the time and place of a public hearing, and the nature and purpose thereof, to all owners of any real property within two hundred feet (200') of the perimeter of the real property which is the subject matter of the proposed amendment, enactment, or repeal, by registered or certified mail at least seven (7) days before the date of the hearing and by publication of the notice in a newspaper of general circulation within the city or town at least once each week for three (3) successive weeks prior to the date of the hearing. Provided, however, notwithstanding the provisions of § 45-24-2 the town or city council may in approving a zone change limit the change to one of the permitted uses in the zone to which the subject land is rezoned, and impose such limitations and conditions and restrictions, including without limitation, conditions or restrictions requiring the petitioner to obtain a permit or approval from any and all state or local governmental agencies or instrumentalities having jurisdiction over the land and use which are the subject of the zoning change upon the effectiveness or continued effectiveness of the zoning change and/or upon the use of the land as it deems necessary. The responsible town or city official shall cause the limitations and conditions so imposed to be clearly noted on the zoning map; provided, however, in the case of a conditional zone change, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective. If the permitted use for which the land has been rezoned is abandoned or if the land is not used for that purpose for a period of two (2) years or more after the zone change becomes effective, the town or city council may, after a public hearing as herebefore set forth, change the land to its original zoning use before such petition was filed. If any limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action, that holding shall not cause the remainder of the ordinance to be invalid.

(b) A newspaper notice containing a statement of the proposed amendments to the ordinance shall be inserted once in its entirety and thereafter a weekly formal legal notice shall be inserted stating that a public hearing will be held specifying the time and place of the hearing. Subsequent formal notices shall include reference to the original advertisement which gave full description.
§ 4.01. Grant of powers; certain manufacturing and processing in St. Mary's County; statement of policy; construction of powers.

(b) The local legislative body of a county or municipal corporation, upon the zoning or rezoning of any land or lands pursuant to the provisions of this article, may impose such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, improve, or protect the general character and design of the lands and improvements being zoned or rezoned, or of the surrounding or adjacent lands and improvements. And may, upon the zoning or rezoning of any land or lands, retain or reserve the power and authority to approve or disapprove the design of buildings, construction, landscaping, or other improvements, alterations, and changes made or to be made on the subject land or lands to assure conformity with the intent and purpose of this article and of the jurisdiction's zoning ordinance. The powers provided in this subsection shall be applicable only if the local legislative body adopts an ordinance which shall include enforcement procedures and requirements for adequate notice of public hearings and conditions sought to be imposed. (1989, ch 5, § 1)
§ 15.1-491.1. Conditional zoning; declaration of legislative policy and findings; purpose. — It is the general policy of the Commonwealth in accordance with the provisions of § 15.1-489 to provide for the orderly development of land, for all purposes, through zoning and other land development legislation. Frequently, where competing and incompatible uses conflict, traditional zoning methods and procedures are inadequate. In these cases, more flexible and adaptable zoning methods are needed to permit differing land uses and the same time to recognize effects of change. It is the purpose of §§ 15.1-491.1 through 15.1-491.4 to provide more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. The provisions of this section and the following five sections shall not be used for the purpose of discrimination in housing (1978, c. 320.)

§ 15.1-491.2. Same; conditions as part of a rezoning or amendment to zoning map. — A zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map; provided that (i) the rezoning itself must give rise for the need for the conditions; (ii) such conditions shall have a reasonable relation to the rezoning; (iii) such conditions shall not include a cash contribution to the county or municipality; (iv) such conditions shall not include mandatory dedication of real or personal property for open space, parks, schools, fire departments or other public facilities not otherwise provided for in subdivision A (f) of § 15.1-466; (v) such conditions shall not include payment for or construction of off-site improvements except those provided for in subdivision A (j) of § 15.1-466; (vi) no condition shall be proffered that is not related to the physical development or physical operation of the property; and (vii) all such conditions shall be in conformity with the comprehensive plan as defined in § 15.1-4461. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in full force and effect until a subsequent amendment changes the zoning on the property covered by such conditions, provided, however, that such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance. (1978, c. 320; 1982, c. 293.)

§ 15.1-491.2:1. Same; conditions as a part of rezoning or zoning map amendment in certain localities. — Except for those localities to which § 15.1-491(a) is applicable, this section shall apply to (i) any county or city which has had population growth of ten percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census, provided that until the 1990 census is reported, any county or city instead may qualify only if it has had an
estimated population growth of ten percent or more from 1980 to the most recent year for which population estimates are available from the Center for Public Service of the University of Virginia; (ii) any city adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county.

In any such county, city, or town, notwithstanding any contrary provisions of § 15.1-491.2, a zoning ordinance may include and provide for the voluntary proffering in writing, by the owner, of reasonable conditions, prior to a public hearing before the governing body, in addition to the regulations provided for the zoning district or zone by the ordinance, as a part of a rezoning or amendment to a zoning map, provided that (i) the rezoning itself gives rise to the need for the conditions, (ii) such conditions have a reasonable relation to the rezoning; and (iii) all such conditions are in conformity with the comprehensive plan as defined in § 15.1-446.1. Once proffered and accepted as part of an amendment to the zoning ordinance, such conditions shall continue in effect until a subsequent amendment changes the zoning on the property covered by such conditions; however, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

No proffer shall be accepted by a county, city, or town unless it has adopted a capital improvement program pursuant to § 15.1-464 or local charter. In the event proffered conditions include the dedication of real property or payment of cash, such property shall not transfer and such payment of cash shall not be made until the facilities for which such property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a county, city, or town from accepting proffered conditions which are not normally included in such capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of such property or cash payment in the event the property or cash payment is not used for the purpose for which proffered (1989, c. 697.)

§ 15.1-491.3. Same; enforcement and guarantees. — The zoning administrator shall be vested with all necessary authority on behalf of the governing body of the county or municipality to administer and enforce conditions attached to a rezoning or amendment to a zoning map, including (i) the ordering in writing of the remedy of any noncompliance with such conditions; (ii) the bringing of legal action to insure compliance with such conditions, including injunction, abatement, or other appropriate action or proceeding; and (iii) requiring a guarantee, satisfactory to the governing body, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the governing body, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part. Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate. (1978, c 320, 1983, c 221.)

§ 15.1-491.4. Same; records. — The zoning map shall show by an appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The zoning administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone. (1978, c 320.)
§ 15.1-491.5. Same; petition for review of decision. — Any zoning applicant or any other person who is aggrieved by a decision of the zoning administrator made pursuant to the provisions of § 15.1-491.3 may petition the governing body for the review of the decision of the zoning administrator. All such petitions for review shall be filed with the zoning administrator and with the clerk of the governing body within thirty days from the date of the decision for which review is sought, and such petitions shall specify the grounds upon which the petitioner is aggrieved. (1978, c. 320; 1988, c. 856.)

§ 15.1-491.6. Same; amendments and variations of conditions. — There shall be no amendment or variation of conditions created pursuant to the provisions of § 15.1-491.2 until after a public hearing before the governing body advertised pursuant to the provisions of § 15.1-431. (1978, c. 320.)
§ 11–832. Conditional zoning change; board approval; reversion

The board may approve a change of zone conditioned on a schedule for development of the specific use or uses for which rezoning is requested. If at the expiration of this period the property has not been improved for the use for which it was conditionally approved, the board after notification by registered mail to the owner and applicant who requested the rezoning shall schedule a public hearing to grant an extension, determine compliance with the schedule for development or cause the property to revert to its former zoning classification.

Added as § 11–831 by Laws 1986, Ch 116, § 1. Renumbered as § 11–832.