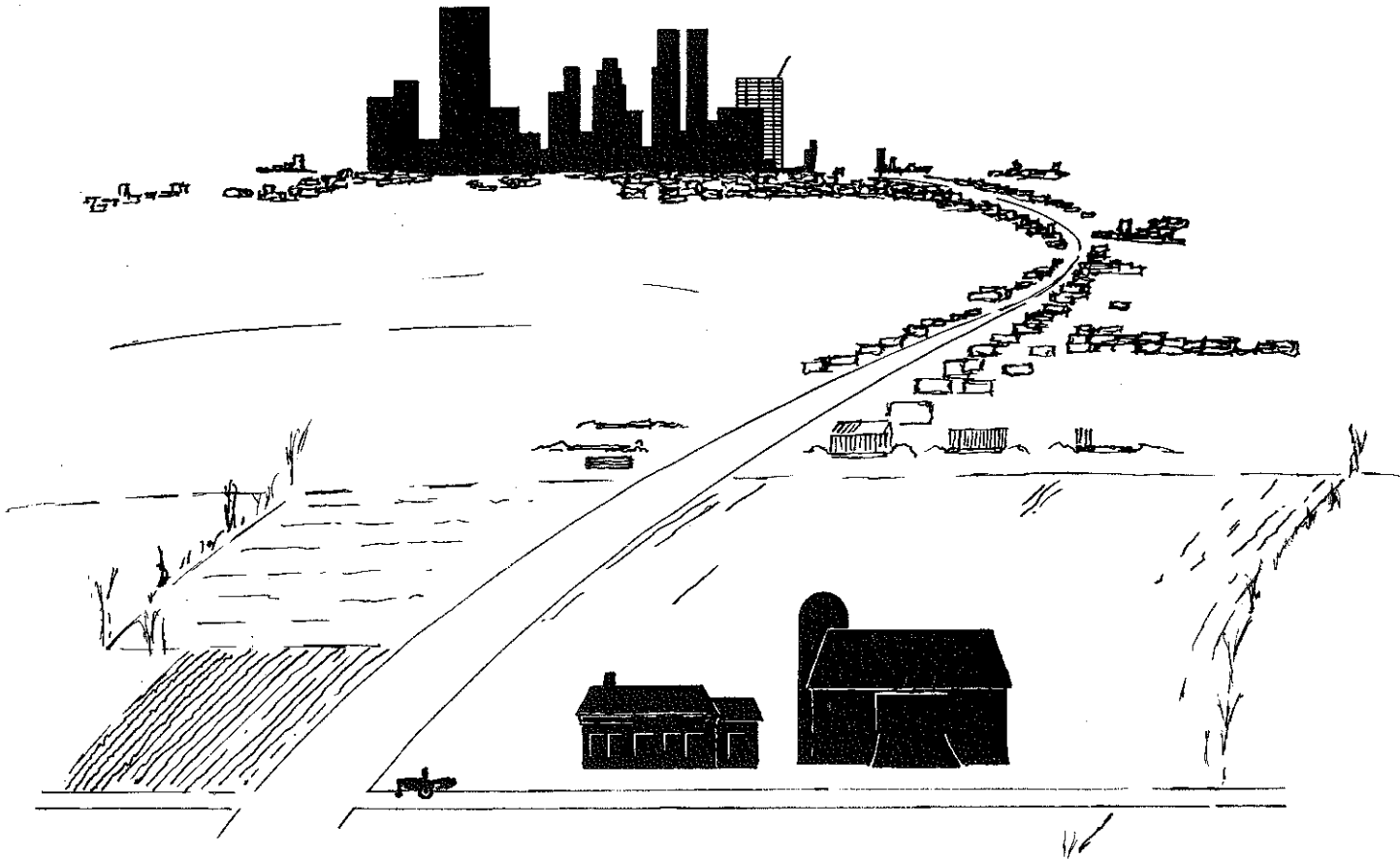


SUMMARIES OF STATE LEGISLATION DEALING WITH THE PRESERVATION OF FARMLAND



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Preface

The material reproduced in this report consists of one part of a report prepared by the Department of Agricultural Economics, New York State College of Agriculture under contract with the New York State Office of Planning Coordination. The Office of Planning Coordination expects to publish the complete report in the near future. Publication of this part of the report in the preliminary and unedited form in which it appears here is intended only to meet an immediate demand for information on what other states are doing legislatively to preserve farm land in the face of urban expansion and scatteration.

H. E. Conklin, Professor
Land Economics

SUMMARIES OF STATE LEGISLATION DEALING WITH THE PRESERVATION
OF FARMLAND

Introduction

This part is generally descriptive in nature. Its major purpose is to describe and summarize various state legislative material outside of New York which is concerned with the problem of preserving farmland from urban and speculative pressures. Such a summary can be of substantial aid to any person concerned with the possible approaches to farmland preservation in New York.

One of the major problems associated with a farmland preservation program in any state is that of deciding what land should be affected by the program. An equally serious companion problem is how to define or specify the desirable land once it has been identified. For this reason, much of this discussion of state legislation will focus on the parts of the various state laws that either attempt to define eligible lands or establish criteria to be used in such decisions.

It is difficult to classify state legislation in this field into a few broad categories, mainly because the different states have approached the problem in a multitude of ways.

It is possible, however, to come up with some type of crude classification. This author prefers to place the various existing legislative approaches to the problem into the following four general categories: General preferential assessment, tax deferral, exclusive agricultural zoning, and restrictive agreements.

General preferential assessment. Judging from the large number of states with this type of legislation, preferential assessment appears to be the

most popular approach to the problem at the present time. This type of law provides that the assessment of land which is actively used for farming shall be based only upon the value of the land for farm use and shall not include any value attributable to possible urban use.

Preferential assessment laws in general are considered the simplest approach to the preservation of farmland. Even so, they do raise difficulties. A major problem arises in attempting to define just what land should qualify for the preferential assessment. Problems arise also in arriving at true farm values when real estate in the area actually is selling for nonfarm values.

Tax deferral. This type of approach is a variation of the general preferential assessment approach. These laws defer part of the property tax instead of writing it off forever. The general intent is to defer that part of the tax which is attributable to the difference between the farm use value and the urban or residential use value of the land. The deferred taxes or a portion of them become due usually when the land actually changes use. In order to carry out a tax deferral program, assessors have to place two separate values on each parcel of farmland -- one for its farm use value and the other for its regular market value. The assessor then also has to make a permanent record of the amount of foregone taxes for each year the property qualified for tax deferral.

No state requires that all of the deferred taxes must be paid when farmland changes use. Some states require that the land owner pay the deferred taxes for only the last three years. Oregon collects the deferred taxes from the past five years. Some states charge interest on the deferred taxes, while others do not.

The problem of defining eligible land under the tax deferred approach is just as difficult, but it is not quite as serious because a portion of the foregone taxes are recaptured eventually when farmland does change use.

Exclusive agricultural zoning. More than 20 years ago, some local governments in California began to use the police power for the purpose of preserving land in farm use. Zoning regulations in these exclusive agricultural districts protect agriculture by excluding nonfarm land uses.

To date, most exclusive agricultural zoning has been established by local government units -- towns or townships and counties. Only the state of Hawaii has set up exclusive agricultural districts on a state-wide basis.

Local governments practice their zoning powers under the authority of a state zoning enabling law. Most of these enabling laws are general in nature. Only a few states specifically authorize exclusive agricultural zoning.

Restrictive agreements. This category includes what can be considered to be two separate approaches to farmland preservation. One approach is commonly referred to as negative easements. The other approach involves agreements which are called by various names, such as contracts, covenants (Pennsylvania) or dedications (Hawaii). The only differences between the two approaches, however, are technical, involving the manner of enforcement and the way in which the land ownership is distributed. Therefore, both approaches are classified as restrictive agreements here.

Where state enabling laws permit, both state and local governments can try to preserve land in farm or open space use by forming some type of restrictive agreement with the landowner. Such agreements restrict the permissible development of the land, usually for a certain number of years

(although easements are sometimes perpetual). The government unit may compensate the landowner directly for the restriction, but instead most offer only some type of preferential tax assessment to the land covered by such restrictions.

There are already several good summaries in existence of state legislation dealing with the preservation of farmland, although most have already become incomplete as more states have enacted new legislation. This author found one of the most complete sources of information on state legislation dealing with all forms of preferential taxation of farmland to be a bulletin prepared by the Economic Research Service of the U.S. Department of Agriculture and issued in 1967.^{1/} That report is a good source for various legislative details and history not found in this discussion, at least for laws which were enacted prior to 1967. The report did not, however, include any detailed discussion of exclusive agricultural zoning. For information on this subject the author found the various writings of Erling D. Solberg, also of the Economic Research Service, to be very helpful.^{2/} An especially valuable source should be available in the near future when a new publication by Mr. Solberg, dealing with state zoning enabling laws, is released by the ERS.

Despite the fact that some states have had laws which were intended to help preserve farmland for more than ten years, there have been very few

^{1/} Thomas F. Hady and Thomas F. Stinson, "Taxation of Farmland on the Rural-Urban Fringe - A Summary of State Preferential Assessment Activity," Agricultural Economic Research Service, U.S. Department of Agriculture, September, 1967.

^{2/} For example, see the following: Erling D. Solberg, "Experience with Rural Zoning," address presented at a conference on "The Future of County Zoning in Oregon," sponsored by Bureau of Municipal Research and Service, University of Oregon, Eugene, Oregon, September 14-15, 1967. Erling D. Solberg, "Greenbelt Zoning -- An Evaluation," address presented to the Northeastern Illinois Metropolitan Area Planning Commission seminar on air resource management, Chicago, Illinois, January 11, 1965.

published studies of the effects of such laws. One exception is a study done by Peter W. House of the effects of the Maryland preferential assessment law.^{1/} In addition, a study of the effects of the first three years of the New Jersey deferred taxation law has recently been completed and should be released in the near future by the Economic Research Service, U.S.D.A.

The remainder of this discussion consists of a state-by-state summary of legislation designed to promote the preservation of farmland. For the most part, only legislation which is currently in force is summarized in the following pages. Laws which have been repealed or replaced or declared unconstitutional are not included. Applicable New York State laws are not included in this section.

The following pages are the result of an extensive inspection and study of numerous state laws by the author. Every attempt has been made to be complete without sacrificing the necessary brevity. Nevertheless, it is probable that more than one appropriate law has been omitted from this discussion. It is even possible that there are additional states that should have been included. At any rate, the author believes the following discussion to be reasonably complete.

^{1/}Peter W. House, Differential Assessment of Farmland Near Cities... Experience in Maryland Through 1965, Economic Research Service, U.S. Department of Agriculture, Bul. 358, October 1967.

Alaska

Even in the relatively sparsely populated 49th state agricultural land does not appear to be free from urban and speculative land pressures. The 1967 Alaska legislature enacted a law of the tax deferral variety which covers all agricultural, or farm use, land in the state.^{1/} A three-year "roll-back" tax is collected when farmland ceases to be used for farming.

The new Alaska law has this to say regarding the assessment of farmlands:

Farm use lands shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain separate assessment records evaluating the farm use land for other than farm use purposes, where applicable. Should the farm use land be sold, leased, or otherwise disposed of, for other than farm use purposes, the owner shall be liable to pay the additional tax for the preceding two years, and the applicable portion of the current tax year,^{2/} as though the land had not been assessed for farm use purposes.

Farm use land must meet the following criteria, however, before it can be considered for tax deferral under the Alaskan law:

Sec. 29.10.398. Farm or agriculture use. (a) In this section "farm use" means the use of land for raising and harvesting crops or for the feeding, breeding and management of livestock or for dairying or another agricultural or horticultural use or any combination thereof and includes the preparation of the products raised on the farm use land and disposal by marketing or otherwise. It includes the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use. To be farm use land, the owner must be actively engaged in farming the land, and derive at least one-fourth of his yearly gross income from the farm use land. The provisions of this section shall not apply to land which the owner has granted, and has outstanding, a lease or option to buy the surface rights.^{3/}

^{1/}Alaska Statutes (1968 Supp.), Section 29.10.398.

^{2/}Ibid., Section 29.10.398 (b).

^{3/}Ibid., Section 29.10.398 (a).

Arizona

The 1967 Arizona legislature enacted a special type of preferential assessment for agricultural land. Under this law, all taxable property in the state is placed into one of four classifications.^{1/} All property used for agricultural purposes is placed in the fourth class, along with all other property not included in the other three classes (mainly privately owned residential property).

Assessors are instructed to first value all taxable property at its market (or full cash) value. Then the law specifies a percentage to be applied to each of the four property classes for the purpose of determining the assessed valuations.^{2/} The assessed valuations range from 18 to 60 percent of the full cash value. The fourth class of property (including agricultural property) is assessed at the lowest ratio, or 18 percent of its full cash value. Interestingly, standing timber is included in the first property class and is assessed at 60 percent of its full cash value.

^{1/} Arizona Revised Statutes (1969 Supp.), Section 42-136.

^{2/} Ibid., Section 42-227.

California

The story of farmland preservation legislation in California is complex and its history is relatively long. The following account is brief and covers only the legislation which is currently in use. The reader who desires to fully understand the development of the present farmland preservation legislation in California should consult other, more detailed, sources. One excellent and up to date example is a report issued by a joint committee of the California legislature.^{1/}

California has had a longer period of practical experience in the use of exclusive agricultural zoning than in any other state. California counties began to establish such zoning districts more than twenty years ago. Today, more than 20 counties in the state have some type of exclusive agricultural zoning districts. In addition, more than a half dozen cities have such districts.^{2/} Yet, in spite of the wide use of exclusive agricultural zoning in California the zoning enabling laws do not specifically provide for such districts. The county zoning enabling law, for example, authorizes counties to "regulate the use of buildings, structures and land as between agriculture, industry, business, residence and other purposes."^{3/}

In 1959, the California legislature adopted a scenic easement act which permitted local governments to acquire temporary or permanent development rights in real property for the purpose of preserving open spaces.^{4/} This act

^{1/} California Legislature Joint Committee on Open Space Land, Preliminary Report, March 1969.

^{2/} Op. cit., Erling D. Solberg, "Greenbelt Zoning...", p.2.

^{3/} California Government Code (1968 Supp.) Section 65850.

^{4/} Ibid., Sections 6950 - 6954.

does not permit the use of eminent domain by local governments.

The passage of the California Land Conservation Act of 1965^{1/} marked a turning point in the California approach to the preservation of farmland. The California constitution did not permit the assessment of farmland based on its farm use value. Therefore, the preferential assessment and tax deferral approaches were blocked. Furthermore, California had not had notable success in reducing farm property taxes by relying on exclusive agricultural zoning to keep market values in check. The Land Conservation Act instead took the restrictive agreement approach. Local governments were allowed to contract with land owners for the purpose of restricting the use of undeveloped land to agriculture or compatible uses. The law set up two such programs -- "contracts" for "prime agricultural land" and more flexible "agreements" for either prime or non-prime land.

Under the Land Conservation Act, cities and counties are allowed to offer contracts under the following conditions:

51242. No city or county may contract with respect to any land pursuant to this chapter unless the land:

- (a) Is devoted to agricultural use.
- (b) Is located within an area designated by a city or county as an agricultural preserve containing not less than 100 acres.
- (c) Is classified as prime agricultural land.

The following quote contains the legal definitions of "prime agricultural land" and "agricultural preserves":

51201.

* * *

^{1/} Ibid., Section 51200 et. seq.

(c) "Prime agricultural land" means (1) all land which qualifies for rating as class I or as class II in the Soil Conservation Service Land Use capability classifications, or (2) land which has returned from the production of unprocessed agricultural plant products an annual gross value of not less than two hundred dollars (\$200) per acre for three of the previous five years.

(d) "Agricultural Preserve" means an area devoted to agricultural and compatible uses as designated by a city or county, and established in the same manner as a general plan referred to in Section 65460 of the Government Code. Such preserves, when established, shall be for the purpose of subsequently placing restrictions upon the use of land within them, or supplementing existing restrictions, pursuant to the purposes of this chapter. Such preserve may contain land other than prime agricultural land, but the use of any land not under contract within the preserve shall subsequently be restricted in such a way as to not be incompatible with the agricultural use of the prime agricultural land the use of which is limited by contract in accordance with this chapter. Such preserve may also be established even if it contains no prime agricultural land, provided that the land within the preserve is subsequently restricted to agricultural and compatible uses by agreement as provided in Section 51255, or by any other suitable means.^{1/}

Contracts are originally drawn up for ten-year periods and are automatically renewed each year for an additional ten-year period unless either the landowner or the local government gives a notice of nonrenewal.

The cancellation of contracts is discouraged by a provision that requires the landowner to pay the local government 50 percent of the new assessed valuation of the property upon the cancellation of the contract.

Local governments are discouraged from increasing the assessed valuation of contracted property under the Land Conservation Act because they would then be required to pay to the landowner five cents for every dollar of the increase in assessed value.

^{1/} Ibid., Section 51201.

There are fewer restrictions on the use of agreements under the Land Conservation Act. Consequently, agreements are more flexible than contracts. To be eligible for an agreement, land need only be located within an agricultural preserve. Agreements involve no payments by the local government. The terms of an agreement are determined by negotiation.

In 1966, the California legislation enacted the following law for the purpose of clarifying the effect of restrictions on the assessed value of land:

402.1 In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. Restrictions¹ shall include but are not necessarily limited to zoning restrictions limiting the use of land and any recorded contractual provisions limiting the use of lands entered into with a governmental agency pursuant to state laws or applicable local ordinances. There shall be a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will substantially equate the value of the land to the value attributable to the legally permissible use or uses..¹

A companion law, also enacted in 1966, attempted to strengthen the rebuttable presumption that restrictions will not be removed in the predictable future by making it possible for the landowner to obtain a written statement from the local government saying that it did not intend to remove the restriction in the predictable future..²

In the November, 1966 general election, California voters agreed to add a new Article XXVIII to the state constitution by approving a constitutional amendment. This amendment permits the California legislature to define open

¹/California Revenue and Taxation Code, (1968 Supp.), Section 402.1.

²/Ibid., Section 1630.

space lands and "enforceable restriction" and to provide that open space lands subject to an enforceable restriction must be assessed at a value that reflects such restrictions.

In response to the constitutional amendment, the 1967 legislature enacted Sections 421-425 of the Revenue and Taxation Code. This law tentatively defined open space land as either land located within an agricultural preserve or subject to a scenic easement deed. The law also equated an enforceable restriction with any of the following: a Land Conservation Act Contract; a Land Conservation Act Agreement which is as restrictive as a contract; or a Scenic Easement Deed which is as restrictive as a contract. Finally, the law instructs assessors to consider only factors relative to the permitted use of the land. Assessors are not permitted to use sales information in assessing these lands.

A joint committee on open space lands has been appointed by the California legislature and is currently considering further proposals for carrying out the provisions of the new Article XXVIII.

Colorado

The 1967 session of the Colorado General Assembly enacted a preferential assessment provision for agricultural land. Chapter 424 of the 1967 Session laws amended the existing tax laws by adding a brief and uncomplicated preferential assessment provision. No attempt was made to define agricultural lands.

The new law directs that when land is appraised for property tax purposes, "the actual value of agricultural lands exclusive of improvements thereon shall be determined by consideration of the earning or productive capacity of such lands during a reasonable period of time, capitalized at commonly accepted rates."^{1/}

^{1/} Colorado Revised Statutes 1963 (1967 Supp.), 137-1-3 (5).

Connecticut

Connecticut has had a general preferential assessment bill since 1963 (Public Act 490). This same law also permits municipalities to acquire easements on open space land.

Public Act 490 grants preferential assessment upon application by the landowner, to farmland, forest land, and open space land.

The sections of Public Act 490 which deal with the definitions of the three types of land and which establish the processes for determining the eligibility of such land are reprinted here as they appear in the Connecticut statute laws:

Sec. 12-107b. Definitions. When used in sections 7-131c and 12-107a to 12-107e, inclusive, (a) the term "farm land" means any tract or tracts of land, including woodland and wasteland, constituting a farm unit; (b) the term "forest land" means any tract or tracts of land aggregating twenty-five acres or more in area bearing tree growth in such quantity and so spaced as to constitute in the opinion of the state forester a forest area and maintained in the opinion of the state forester in a state of proper forest condition; (c) the term "open space land" means any area of land, including forest land and not excluding farm land, the preservation or restriction of the use of which would (1) maintain and enhance the conservation of natural or scenic resources, (2) protect natural streams or water supply, (3) promote conservation of soils, wetlands, beaches or tidal marshes, (4) enhance the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open spaces, (5) enhance public recreation opportunities, (6) preserve historic sites or (7) promote orderly urban or suburban development; (d) the word "municipality" means any town, consolidated town and city, or consolidated town and borough; (e) the term "planning commission" means a planning commission created pursuant to section 8-19; (f) the term "plan of development" means a plan of development, including any amendment thereto, prepared or adopted pursuant to section 8-23.

Sec. 12-107c. Classification of land as farm land. (a) An owner of land may apply for its classification as farm land on any assessment list of a municipality by filing a written application for such classification with the assessor of such municipality not earlier than thirty days

before nor later than thirty days after the date of such assessment list. Such assessor shall determine whether such land is farm land and, if he determines that it is farm land, he shall classify and include it as such on such assessment list. In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous...

Sec. 12-107d. Classification of land as forest land. (a) An owner of land may file a written application with the state forester for its designation by the state forester as forest land. When such application has been made, the state forester shall examine the land and, if he determines that it is forest land, he shall issue a triplicate certificate designating it as such...

Sec. 12-107e. Classification of land as open space land. (a) The planning commission of any municipality in preparing a plan of development for such municipality may designate upon such plan areas which it recommends for preservation as areas of open space land. Land included in any area so designated upon such plan finally adopted may be classified as open space land for purposes of property taxation if there has been no change in the use of such area which has adversely affected its essential character as an area of open space land between the date of the adoption of such plan and the date of such classification. (b) An owner of land included in any area designated as open space land upon any plan as finally adopted may apply for its classification as open space land on any assessment list of a municipality by filing a written application for such classification with the assessor of such municipality not earlier than thirty days before nor later than thirty days after the date of such assessment list. Such assessor shall determine whether there has been any change in the area designated as an area of open space land upon the plan of development which adversely affects its essential character as an area of open space land and, if he determines that there has been no such change, he shall classify such land as open space land and include it as such on such assessment list...^{1/}

Public Act 490 furthermore provides the following instructions dealing with the assessment of duly classified farm, forest, and open space land:

^{1/} Connecticut General Statutes (1963 Revision), Sections 12-107b, 12-107c, 12-107d, and 12-107e.

Sec. 9. Section 12-63 of the general statutes is repealed and the following is substituted in lieu thereof The present true and actual value of (any estate) land classified as farm land pursuant to section 3 hereof, as forest land pursuant to section 4 hereof, or as open space land pursuant to section 5 hereof shall be based upon its current use without regard to neighborhood land use or a more intensive nature, provided in no event shall the present true and actual value of open space land be less than it would be if such open space land comprised a part of a tract or tracts of land classified as farm land pursuant to section 3 hereof. The present true and actual value of all other property shall be deemed by all assessors and boards of tax review to be the fair market value thereof and not its value at forced or auction sale.^{1/}

Finally, Connecticut law contains the following sections which permit any municipality to obtain easements on open space land:

Sec. 7-131c. Acquisition of open space land. Any municipality may, by vote of its legislative body, by purchase, condemnation, gift, devise, lease or otherwise, acquire any land in any area designated as an area of open space land on any plan of development of a municipality adopted by its planning commission or any easements, interest, or rights therein and enter into covenants and agreements with owners of such open space land or interests therein to maintain improve, protect, limit the future use of or otherwise conserve such open space land. (1963, P.A. 490, S. 6.) Effective June 24, 1963.

Sec. 7-131d. Open space land. Definitions. (a) As used in sections 7-131d to 7-131l, inclusive, "recreational and conservation purposes" means use of lands for agriculture, parks, natural areas, forests, camping, fishing, wetland preservation, wild life habitat; reservoirs, hunting, golfing, boating, historic and scenic preservation and other purposes as set forth in section 7-131b^{2/}; (b) "land" or "lands" means real property, including improvements thereof and thereon, and all estates, interests and rights therein of any kind or description, including, but not limited to, easements, rights of way and water and riparian rights; (c) "open space land" refers to any land acquired under the provisions of sections 7-131d to 7-131l, inclusive; (d) "municipality" means any town, city or borough. (1963, P.A. 649, S. 1.) Effective July 1, 1963.^{2/}

^{1/} Public Act 490, 1963, Section 9.

^{2/} Connecticut General Statutes (1963 Revision), Sections 7-131c and 7-131d.

Delaware

Delaware became one of the most recent states to adopt preferential assessment of farmland with the enactment of Chapter 373 of the 1968 laws. This law was largely modeled after the New Jersey Farm Land Assessment Act of 1964, but without the "roll back" provision.

Since much of the language of the Delaware law was taken verbatim from the New Jersey Farm Land Assessment Act of 1964, (although the introductory statement was largely borrowed from the Connecticut preferential assessment law, Act 490), it is not reproduced here. Only the basic features of the Delaware law are summarized here.

Under the 1968 Delaware law, land must meet each of the following basic requirements before it can be assessed on the basis of its use:

1. Land must be actively devoted to agricultural, horticultural or forest use. The Delaware law has expanded on the New Jersey law by including forest use along with the other two uses. The definition of agricultural and horticultural use is exactly the same as in the New Jersey law. The land must be devoted to either the production for sale of specified crops or to a federal soil conservation program. Furthermore, the total of the gross sales plus soil conservation program payments must have averaged at least \$500 per year during the previous 2 years (or there is "clear evidence" of such anticipated sales and payments "within a reasonable period of time"). The problem of defining forest use is left up to the state forester.
2. The parcel of land must include at least 5 acres.
3. The land must have been in active agricultural, horticultural or forest use for at least the 2 preceeding years.
4. The owner of such land must make an application to the local assessor by February 1 of each year for the following tax year.

Like the New Jersey law, the Delaware legislation also created a State Farmland Evaluation Advisory Committee, although the composition of the Delaware Committee is somewhat different. The committee is instructed to annually determine and recommend a range of fair values for the different classes of agricultural land in the various areas of the state.

Florida

Florida has had some type of preferential assessment legislation since the late 1950's. The first law was enacted in 1957, a second one in 1959, and the latest in 1967.

Section 193.11 (3) of the Florida Statutes was created by the 1957 legislature. This general preferential assessment act stated, in part, that "all lands being used for agricultural purposes shall be assessed as agricultural lands upon an acreage basis, regardless of the fact that any or all of said lands are embraced in a plat of a subdivision, or other real estate development."^{1/}

The Florida Greenbelt Law was enacted in 1959 and became Section 193.201 of the Florida Statutes. This law included the following provisions:

SECTION 1 (1) The board of county commissioners of any county in the state is hereby authorized and empowered in its discretion to zone areas in the county exclusively used for agricultural purposes as agricultural lands; provided said lands have been used exclusively for agricultural purposes for five (5) years prior to such zoning.^{2/}

County tax assessors were also instructed by this law when assessing such land to consider no factors other than those relative to its agricultural use.

The 1967 legislature changed the Florida preferential assessment legislation in two ways. First, the portion of Section 193.11 dealing with preferential assessment was repealed. Secondly, Chapter 67-117 amended Section 193.201 of the Florida Statutes so as to require every county to

^{1/}Florida Statutes Annotated, Section 193.11 (3).

^{2/}Laws of Florida, 1959, Chapter 59-226.

zone all land as either agricultural or non-agricultural. Important parts of the new law are reproduced below:

- (1) There shall be in each county an agricultural zoning board, which shall be comprised of the board of county commissioners, as voting members, and the county tax assessor and county agent sitting as non-voting ex officio members. The chairman of the board of county commissioners shall serve as chairman and shall call meetings as necessary to implement the provisions of this act.
- (2) The county agricultural zoning board, in order to promote and assist a more orderly growth and expansion of urban and metropolitan areas, shall on an annual basis zone all lands within the county as either agricultural or non-agricultural.
- (3) No lands shall be zoned as agricultural lands unless a return is made as required by law which shall state that said lands on January 1st of that year were used primarily for agricultural purposes and the board, before so zoning said lands, may require the taxpayer or his representative to furnish the board such information as may reasonably be required to establish that said lands were actually used for a bona fide agricultural purpose. All lands which are used primarily for bona fide agricultural purposes shall be zoned agricultural. The maintenance of a dwelling on part of the lands used for agricultural purposes shall not affect the right to have such lands zoned as agricultural lands.
- (4) When property which is zoned as agricultural is diverted to another use or ceases to be used for agricultural purposes, the board shall reclassify such property as non-agricultural.

* * *

- (5) For the purpose of this section, "agricultural lands" shall include horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bee, pisciculture where the land is used principally for the production of tropical fish and all forms of farm products and farm production.
- (6) The county tax assessor in assessing such lands so zoned and primarily used for agricultural purposes as described and listed shall consider no factors other than those relative to such use...^{1/}

^{1/}Laws of Florida, 1967, Chapter 67-117.

Although the latest Florida law does purport to set up agricultural zoning districts, the author has not classified this legislation as exclusive agricultural zoning. The reasons for doing so are presented in the following quote:

Here it must be pointed out that the type of zoning authorized in Section 193.201 of the Florida Statutes is quite different than the zoning ordinances enacted to achieve long-range city and county-wide land use plans. Land zoned under this law carries no restrictions on land use that are comparable to the restrictions imposed by conventional zoning laws. The only penalty for changing the use of land from agricultural to non-agricultural is that the zoning and hence the level of taxation will change the next year.^{1/}

As Section 193.201 is presently constructed, the lack of legal criteria to use in deciding what land should qualify for preferential assessment represents a problem for the County Agricultural Zoning Boards. This problem has been discussed at some length by Professor W. K. McPherson of the University of Florida:

To zone land as being agricultural or non-agricultural under this law the members of the County Agricultural Zoning Boards must make two quite different types of decisions. First, they must decide whether or not each tract of land returned as being used for bona fide agricultural purposes was actually being used for that purpose. Secondly, they must decide whether or not the bona fide agricultural use of each tract was the principle use the owner was making of it.^{2/}

^{1/}W. K. McPherson, "The Taxation of Agricultural Land in Florida," a mimeographed paper adapted from an address to the Florida County Commissioners Conference.

^{2/}Ibid.

Hawaii

The state of Hawaii became a zoning pioneer in 1961 with the adoption of the first state-wide zoning program in the country, (enacted as Act 187). Most of this original land-use control law still remains intact in Hawaiian law, although Act 205 and 32 of the 1963 session did make significant amendments to the law. All of the provisions of the Hawaiian state-wide zoning law have been incorporated into the revised laws of Hawaii as Chapter 98H.

Chapter 98H first of all creates a permanent state land use commission for the purpose of actually carrying out state-wide zoning in Hawaii. The seven commission members receive no compensation. Administratively, the commission is a part of the State Department of Planning and Economic Development.

The Land Use Commission is directed by Chapter 98H to place all land in the state into one of four types of land use districts according to the standards contained in the following excerpt from the law:

Section 98H-2. Districting and classification of lands. There shall be four major land use districts into which all lands in the State shall be placed: urban, rural, agricultural and conservation. The commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that (a) in the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included; (b) in the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included; (c) in the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with high capacity for intensive cultivation; and (d) in the establishment of the boundaries of conservation districts, the 'forest and water reserve zones' provided in Section 19-70, are hereby re-named 'conservation districts' and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to section 19-70, shall constitute the boundaries of the conservation districts,

provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission. In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre in areas where 'city-like' concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with such low density residential lots. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics.

Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, and game and fish propagation; services and uses accessory to the above activities including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands for the sale of products grown on the premises; and open area recreational facilities.

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic areas: providing park lands, wilderness and beach reserves; conserving endemic plants, fish, and wildlife; preventing floods and soil erosion; forestry; and other related activities; and other permitted uses not detrimental to a multiple use conservation concept.^{1/}

Originally, the law provided for only three land use districts. The rural district was added on 1963 by Act 205.

^{1/} Revised Laws of Hawaii 1955 (1967 Supp.), Section 98H-2.

Chapter 98H also contains a provision for a mandatory review by the commission of the district boundaries and land use regulations every five years.^{1/}

Under the Hawaiian zoning law, counties are authorized to zone land for specific uses and issue special permits in the urban, agricultural and rural districts subject to the following restrictions:

Section 98H-5. Zoning.

(a) Except as herein provided, the powers granted to counties under section 138-42 shall govern the zoning within the districts, other than in conservation districts. Conservation districts shall be governed by the department of land and natural resources pursuant to the provisions of section 19-70.

(b) Within agricultural districts, uses compatible to the activities described in Sec. 98H-2 as determined by the commission shall be permitted. Other uses may be allowed by special permits issued pursuant to the provisions of this chapter. The county standards for agricultural subdivision existing as of May 1, 1963, shall constitute the minimum lot sizes of agricultural districts within the respective counties.

(c) Unless authorized by special permits issued pursuant to the provisions of this chapter, only the following uses shall be permitted within rural districts:

- (1) Low density residential uses;
- (2) Agricultural uses; and
- (3) Public, quasi-public and public utility facilities.

In addition, the minimum lot size for any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre.

Section 98H-6. Special permit. The county planning commission and the zoning board of appeals of the City and County of Honolulu may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified...^{2/}

^{1/} Ibid., Section 98H-11.

^{2/} Ibid., Sections 98H-5 and 98H-6.

Counties are also given the duty of enforcing the zoning districts which have been adopted by the State Land Use Commission within the county and are diverted to report all violations to the Commission. The laws sets \$1,000 as the maximum penalty applicable to any violator of the zoning regulations.^{1/}

Finally, the Hawaiian state zoning law makes the following statement regarding the assessment of zoned land:

Section 98H-14. Adjustments of assessing practices. Upon the adoption of district boundaries, certified copies of the classification maps showing the district boundaries shall be filed with the department of taxation. Thereafter, the department of taxation shall, when making assessments of property within a district, give consideration to the use or uses that may be made thereof as well as the uses to which it is then devoted.^{2/}

In addition to the above provision regarding the assessment of land in Hawaii, the law also makes provision for owners and lessees of land within agricultural, rural and conservation districts who want to dedicate their land to specific permissible uses (for example, ranching, vegetables, etc.). These people may enter into ten year voluntary restrictive agreements (called dedications) with the state of Hawaii in exchange for tax assessments based upon the specified uses. The provisions of this part of the Hawaiian law are reprinted below:

Sec. 128-9.2. Dedicated lands. (a) A special dedicated land reserve is established to enable the owner of any parcel of land within an agricultural district, a rural district and/or a conservation district to dedicate his land for a specific ranching or other agricultural use and to have his land assessed at its value in such use.

(b) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land assessed at its value in this use, he shall so petition the director

^{1/} Ibid., Sections 98H-12 and 98H-13.

^{2/} Ibid., Section 98H-14.

of taxation and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land and that if his petition is approved he will use his land for this purpose...

(c) The approval by the director of taxation of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten years, automatically renewable indefinitely, subject to cancellation by either the owner or the director of taxation upon five years notice at any time after the end of the fifth year. In case of a change in major land use classification by a State agency, such that the owner's land is placed within an urban district, the dedication may be cancelled within sixty days of the change, without the five years notice, by mutual agreement of the owner and the director of taxation.

(d) Failure of the owner to observe the restrictions on the use of his land shall cancel the special tax assessment privilege retroactive to the date of the petition, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a five per cent per annum penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over one calendar year to use the land in that manner requested in the petition or the overt act of changing the use for any period. Nothing in this paragraph shall preclude the State from pursuing any other remedy to enforce the covenant on the use on the land.^{1/}

There is some question concerning the usefulness of such dedications due to the fact that tax assessments in Hawaii are supposed to reflect the zoning restrictions anyway. One author has expressed this reservation about dedications in the following manner:

Many individuals may consider that more loss than gain occurs from land dedication because the statute requires that tax assessments within an agricultural district are to be based entirely upon agricultural value in any event. It would seem that land dedication normally would attract the individual who is content to put his land to a use lower than its capabilities permit without having it valued at its potentially higher agricultural use by the tax assessor.^{2/}

^{1/} Ibid., Section 128-9.2.

^{2/} Frederick K. Nunns, "Hawaii Pioneers with a New Zoning Law," Journal of Soil and Water Conservation, May-June 1962. The author was the Director of the Land Study Bureau, University of Hawaii.

Illinois

This state has no legal provisions for the preferential assessment of farmland,^{1/} but two counties have adopted exclusive agricultural zoning districts.^{2/} The state zoning enabling law under which this was done is a very general one which make no direct mention of either agricultural zoning or exclusive agricultural zoning. Portions of the enabling legislation follow:

...the board of supervisors or board of county commissioners, as the case may be, of each county, shall have the power to regulate and restrict the location and use of buildings, structures and land for trade, industry, residence and other uses which may be specified by such board...to divide the entire county outside the limits of such cities, vilages, and incorporated towns into districts of such number, shape, area, and of such different classes, according to the use of land and buildings, the intensity of such use (including height of buildings and structures and surrounding open space) and other classification as may be deemed best suited to carry out the purposes of this Act...Provided, that permits with respect to the erection, maintenance, repair, alteration, remodeling or extension of buildings or structures used or to be used for agricultural purposes shall be issued free of any charge...^{3/}

^{1/}A type of preferential assessment was passed by the 1959 General Assembly, but vetoed by the governor.

^{2/}The two counties are Kendall and Moultrie.

^{3/}Illinois Statutes Annotated (1969 Supp.), Ch. 34, Section 3151.

Indiana

Indiana law has provided for the preferential assessment of agricultural land since 1963.^{1/} County assessors are instructed to assess all land devoted to agricultural use on the basis of that use only. No application by the landowner is required. The law includes neither a legal definition of lands devoted to agricultural use nor any criteria to be used in determining eligibility.

The Indiana preferential assessment law does contain an interesting provision that sets up county-level advisory committees to aid the county assessor in appraising the value of agricultural land. The relevant portion of the Indiana law is reproduced here:

64-712 Personnel for making reassessment -- ... In making any such reassessment of land used for agriculture, the county assessor shall appoint a committee of five (5) competent persons, at least two (2) of whom are agricultural land owners in said county to help determine land values. This shall be known as the county land advisory committee. The indicators of value determined by this committee will be submitted as guides in determining values.^{2/}

Some county governments in Indiana have also had experience with exclusive agricultural zoning. Indiana zoning enabling legislation is general and permissive. No direct mention is made of exclusive agricultural zoning. The zoning enabling legislation grants to all city councils and boards of county commissioners, among other things, the power to "classify and designate the rural lands amongst agricultural, industrial, commercial, residential, and other uses and purposes."^{3/} To the author's best knowledge, four Indiana

^{1/} Indiana Statutes Annotated (1968 Supp.), Sections 64-711 through 64-712.

^{2/} Ibid., Section 64-712.

^{3/} Ibid., Section 53-756 (5).

counties have actually established exclusive agricultural districts, or variations of them.^{1/}

^{1/} Howard, Lake, St. Joseph and Vanderburge Counties.

Iowa

The 1967 General Assembly amended the Iowa tax laws to include the following preferential assessment provision:

The actual value of all property subject to assessment and taxation shall be fair and reasonable market value of such property...In assessing and placing a value on agricultural property, said value shall be determined on the basis of its current market value as reflected by its current use.^{1/}

No definition of eligible agricultural property was included in this preferential assessment law.

In addition to preferential assessment, there has also been some activity in Iowa in the use of exclusive agricultural zoning. By the latest count, five Iowa counties have established exclusive agricultural districts.^{2/}

The Iowa zoning enabling legislation is very general and does not mention exclusive agricultural zones. Any county may zone. A portion of the state zoning law follows:

358A.3 Powers. Subject to the provisions of sections 358A.1 and 358A.2, the board of supervisors of any county is hereby empowered to regulate and restrict the height, number of structures and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence or other purposes...^{3/}

^{1/} Iowa Code Annotated (1969 Supp.), Section 441.21.

^{2/} These are Cerro Gordo, Clay, Johnson, Muscatine and Pottawattamie Counties.

^{3/} Iowa Code Annotated (1969 Supp.), Section 358A.3.

Kansas

Three counties in Kansas have established exclusive agricultural districts.^{1/} The Kansas county planning and zoning enabling law is of a general nature and does not specifically authorize this type of zoning district.^{2/} The law also exempts agricultural land and buildings from restriction in any zoning district as long as the land and buildings are used for agricultural purposes.^{3/}

^{1/} Jefferson, McPherson and Riley Counties.

^{2/} Kansas Statutes Annotated, Section 19-2906.

^{3/} Ibid., Section 19-2908.

Maryland

The Maryland General Assembly enacted general preferential assessment legislation as early as 1956. This early preferential assessment, however, was declared unconstitutional. In 1960, the Maryland General Assembly proposed two constitutional amendments which authorized the preferential assessment of farmland. These were both approved in the 1960 general election.^{1/} The legislature also reenacted Section 19 (b) of article 81 of the Maryland Code. This section contained the general preferential assessment provisions for farmland. This law was modified by a bill passed in 1969. Chapter 433 of the 1969 laws of Maryland changed Section 19 (b) by adding a roll back feature for agricultural land which has been rezoned or platted.

The most important parts of section 19 (b) are reprinted below as they are presently.

- (1) Lands which are actively devoted to farm or agricultural use shall be assessed on the basis of such use, and shall not be assessed as if subdivided, it being the intent of the general assembly that the assessment of farm land shall be maintained at levels compatible with the continued use of such land for farming and shall not be adversely affected by neighboring land uses of a more intensive nature...

The state department of Assessments and Taxation shall establish criteria for the purpose of determining whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms and qualify for assessment under this subsection. Such criteria shall be promulgated in rules and regulations which shall include, but shall not be limited to, the following:

- (I) Zoning applicable to the land
- (II) Present and past use of the land including land under the soil bank provisions of the Agricultural Stabilization Act of the United States Government.

^{1/} These became incorporated into Article 15 and Article 43 of the Declaration of Rights of the Maryland Constitution.

(III) Productivity of the land including
timberlands and lands used for reforestation.

- (2) From and after July 1, 1969, lands that are actively devoted to agricultural use, (I) which are, or have been, zoned to a more intensive use at the instance of an owner or (II) lands for which a subdivision plat is or has been recorded shall be valued and assessed according to such agricultural use and in addition shall be valued on the basis of the full cash value of such lands, and both values shall be recorded in the assessment records. Both assessment values shall be subject to the same notice and appeal procedures as provided for all real property assessments under the provisions of this article.

These lands shall be taxed upon the basis of the agricultural use value assessment as long as they continue to be actively devoted to farm or agricultural use. Upon (I) sale of a lot or portion of such lands or (II) the conversion of the use of a portion or all of such land to non-agricultural use, a deferred tax shall become due on the lot or portion sold or converted, which shall be equal to the tax which would have been paid if the tax has been computed on the basis of the "full cash value" assessment for the time and dual assessment has been recorded but not to exceed a period of three years, less the tax actually paid on the lands based upon its agricultural use value assessment for this period. In no event shall the deferred tax exceed five per cent (5%) of the full cash value assessment in effect at the time of such sale or conversion.^{1/}

Pursuant to section 19 (b), the Maryland Department of Assessment and Taxation has issued a list of 29 factors which the assessors are instructed to consider in determining what land should qualify for preferential assessment.^{2/}

Chapter 433 also added a new section 19 (f) to the Maryland Code, dealing with the assessment of lands purchased for the creation of new towns and cities. This law provides, in part, that "such eligible land or lands shall be assessed at a rate equal to that applicable to lands actively devoted to agricultural use, whether in fact it would or would not qualify for such agricultural use assessment."^{3/} Section 19 (f) also provides for the recapture of the foregone taxes on this land (up to a maximum of 10 percent of the full cash value of the land) when the land is rezoned.

^{1/}Laws of Maryland, 1969, Chapter 433.

^{2/}Maryland Department of Assessment and Taxation, Regulation 9.

^{3/}Laws of Maryland, 1969, Chapter 433.

Minnesota

There are currently two types of laws in effect in Minnesota which grant some type of preferential taxation to agricultural land in that state. The older measure affects all agricultural land by a process to be explained below. A newer law, which was enacted in 1967, takes a tax deferral approach to the problem.

The first Minnesota law to be discussed here affects the taxation of not only agricultural land, but of all real property in the state. Under this law, all real property is first classified according to a system set up in the law, and real property within each class is then assessed at a different percentage of its full and true, or market, value. Non-homestead agricultural land is included in one class. The law directs that this class is to be assessed at 33 1/3 percent of the full and true value.^{1/} Homestead agricultural land comprises a separate class and is generally assessed at 20 percent of its full and true value.^{2/}

This law also contains the following definition of what is to be considered as agricultural land:

Agricultural land as used herein, and in section 124.03, shall mean contiguous acreage of ten acres or more, primarily used during the preceding year for agricultural purposes. Agricultural use may include pasture, timber, waste, unusable wild land and land included in federal farm programs.

Real estate of less than 10 acres used principally for raising poultry, livestock, fruit, vegetables or other agricultural products, shall be considered as agricultural land, if it is not used primarily for residential purposes.

^{1/} Minnesota Statutes Annotated, 1969, Section 273.13, Subd. 4.

^{2/} Ibid., Subd. 6.

The 1967 Minnesota law is more selective than the older law in terms of the eligible agricultural land. Land must meet two basic criteria before it can be considered for tax deferrment under the 1967 law. First, it must comprise the homestead or be contiguous to the homestead. Secondly, it must be actively and exclusively devoted to agricultural use, as defined in the following sections of the law:

Subd. 6. Real property shall be considered to be in agricultural use if devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, fruit of all kinds, vegetables, forage, grains, bees and apiary products by the owner, but not when devoted to processing of such things or meeting the Requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

Subd. 7. Land shall be considered to be actively devoted to agricultural use only if the gross sales of agricultural products have averaged \$750 per year and \$25 per acre per year or more during the last two years preceeding the year for which application is made for the assessment under this section.^{1/}

For land which meets the above two criteria, the 1967 law provides that "the value..shall...be determinded solely with reference to its appropriate agricultural classification and value..."^{2/} However the assessor is also instructed to record for each year the market value of eligible agricultural land. When such land is either sold or ceases to be eligible as agricultural land, the deferred taxes become payable for up to the past three years. No interest is charged on the deferred taxes.

The Minnesota law which was passed in 1967 applies only to the assessments used to determine taxes payable in 1967 through 1973.

^{1/} Ibid., Section 273.111, Subd.6 and 7.

^{2/} Ibid., Section 273.111, Subd. 4.

New Hampshire

Voters in the November, 1968 election approved a proposed constitutional amendment that will allow the legislature to enact preferential assessment legislation. The new amendment simply reads that "The general court may provide for the assessment of any class of real estate at valuations based upon the current use thereof."^{1/} As such, the amendment does not actually establish preferential assessment in New Hampshire. It only permits such legislation.

^{1/} Concurrent Resolution 18, passed June 29, 1967.

New Jersey

New Jersey was the first state to adopt a tax deferral scheme for agricultural land. Which is still in force (an even earlier tax deferral law in Nevada was declared unconstitutional in 1964). The new Jersey tax deferral law is commonly referred to as the "Farmland Assessment Act of 1964." This law was preceeded by a 1963 constitutional amendment which set up the basic framework for the subsequent tax deferral legislation in New Jersey.^{1/}

Basically, parcels of land which are at least five acres in area and which have been devoted to agricultural or horticultural use for the two previous years are eligible for tax deferral under the 1964 New Jersey law. The following sections of the "Farmland Assessment Act of 1964" supply the definitions of eligible land:

3. Land shall be deemed to be in agricultural use when devoted to the production for sale of plants and animals useful to man, including but not limited to: forages and sod crops; grains and feed crops; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all of such animals; bees and apiary products; fur animals; trees and forest products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.
4. Land shall be deemed to be in horticultural use when devoted to the production for sale of fruits of all kinds, including grapes, nuts and berries; vegetables; nursery, floral, ornamental and greenhouse products; or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

^{1/} New Jersey Constitution, Article VIII, Section 1.

5. Land shall be deemed to be actively devoted to agricultural or horticultural use when the gross sales of agricultural or horticultural products produced thereon together with any payments received under a soil conservation program have averaged at least \$500 per year during the 2-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and such payments amounting to at least \$500 within a reasonable period of time.
6. Land which is actively devoted to agricultural or horticultural use shall be eligible for valuation, assessment and taxation as herein provided when it meets the following qualifications:
 - (a) It has been so devoted for at least the 2 successive years immediately preceding the tax year for which valuation under this act is requested;
 - (d) The area of such land is not less than 5 acres when measured in accordance with the provisions of section 11 hereof; and
 - (c) Application by the owner of such land for valuation hereunder is submitted on or before October 1 of the year immediately preceding the tax year to the assessor of the taxing district in which such land is situated on the form prescribed by the director of the division of taxation.^{1/}

Section 8 provides for the collection of a portion of the foregone taxes when eligible agricultural or horticultural land changes use:

8. When land which is in agricultural or horticultural use and is being valued, assessed and taxed under the provisions of this act, is applied to a use other than agricultural or horticultural, it shall be subject to additional taxes, hereinafter referred to as roll back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized hereunder and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the taxing district, in the current tax year (the year of change in use) and in such of the two tax years immediately preceding, in which the land was valued, assessed and taxed as herein provided...^{2/}

^{1/} Laws of New Jersey, 1964, Chapter 48.

^{2/} Ibid., Section 8.

The "Farmland Assessment Act" also created a state Farmland Evaluation Advisory Committee and described its functions as follows:

The primary objective of the committee shall be the determination of the ranges in fair value of such land based upon its productive capabilities when devoted to agricultural or horticultural uses. In making these annual determinations of value, the committee shall consider available evidence of agricultural or horticultural capability derived from the soil survey at Rutgers, the State University, the National Co-operative Soil Survey and such other evidence of value of land devoted exclusively to agricultural or horticultural uses as it may in its judgment deem pertinent...^{1/}

The Department of Agricultural Economics and Marketing at Rutgers University, in cooperation with Economic Research Service, USDA, has recently completed a study of the first three years of the New Jersey preferential assessment law. To the author's best knowledge, the report from that study has not yet been released, although it should be shortly.

A 1968 New Jersey law has established a Governor's Commission on Open Space which is presently working on the problem of the preservation of open space in New Jersey. The Commission is currently scheduled to issue a report in 1971.

^{1/} Ibid., Section 20.

New Mexico

New Mexico joined the growing list of states having preferential farm-land assessment laws with the enactment of Chapter 85 of the laws of 1967. This act provides that unsubdivided land used primarily and principally for agriculture be assessed on the capacity of the land to produce agricultural products. The act includes no tax recapture provision if land is subsequently taken out of agricultural use.

In order to be eligible in any one year, land must have been in agricultural use for the five previous successive years. Section 2 of the act provides the legal definition of what constitutes agricultural use:

Agricultural use of land defined. -- Land is in agricultural use when devoted to the production for sale of plants, crops, trees or forest products, including orchards and the crops thereof, and animals useful to man, or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government, provided that the gross sales of agricultural products produced from the operating unit, together with any payments received under a soil conservation program, have averaged at least one hundred dollars (\$100) a year during the two-year period immediately preceding the tax year in issue, or there is clear evidence of anticipated yearly gross sales and payments amounting to at least one hundred (\$100) a year within a reasonable period of time.^{1/}

^{1/}

^{1/} 1967 New Mexico Laws, Chapter 85 (Also Revenue and Taxation Laws 72-2-14.2).

North Dakota

The state of North Dakota has not yet enacted any laws with the specific intent of preserving farmland. North Dakota law does, however, include zoning enabling sections which at least two counties have used to set up exclusive agricultural zoning.^{1/}

North Dakota permits both township and county zoning. Both enabling laws are general and make no specific mention of exclusive agricultural zoning. Both counties and townships are permitted, among other things, to "regulate and restrict...the location and use of buildings, structures, and land for trade, industry, residence or other purposes."^{2/} Both enabling laws also forbid any zoning regulation or restriction in any district from preventing the use of land or buildings for farming.

^{1/} Burleigh and Ward Counties.

^{2/} North Dakota Century Code, 1959, Section 11-33-03 and 58-03-11.

Ohio

Since 1961, Ohio law has included a provision for a special type of tax defferral for farmland. Section 6103.051 of the Ohio Code permits a board of county commissioners to defer the collection of certain special assessments levied by the county for water works and sewer system improvements. The most relevant part of the law is reproduced here;

Sect. 6103.051 Deferment of assessment collections.
At any time prior to the expiration of the five-day period provided by section 6103.05 of the Revised Code for the filing of written objections, any owner of property to be assessed for an improvement under sections 6103.02 to 6103.30, inclusive, of the Revised Code may file with the board of county commissioners a request in writing for deferment of the collection of his assessment...The board shall promptly consider such request and, if it finds that it will be inequitable to certify the entire amount of such assessment upon completion of the improvement to the county auditor for collection, the board may order that the collection of a portion of such assessment, not exceeding seventy-five percent thereof, shall be deffered as provided in section 6103.16 of the Revised Code. In determining whether it is inequitable to certify an assessment for immediate collection upon completion of the improvement, the board shall consider as significant the following factors: whether or not the property is presently unimproved; whether or not it is being used for farming or agricultural purposes; the extent to which it is in immediate need of water service; whether the tentative assessment is a disproportionately high percentage of the estimated market value of the property after the improvement will have been completed.^{1/}

Thus far, two rural governments on Ohio have established exclusive agricultural zoning districts.^{2/} The zoning enabling laws under which this was done are general and do not mention agricultural zoning. The county zoning enabling law, for example, authorizes countyboards to regulate "the uses of land for trade, industry, residence, recreation, or other purposes."^{3/}

^{1/} Ohio Revised Code Annotated (1968 Supp.), Section 6103.051.

^{2/} Franklin County and Liberty Township.

^{3/} Ohio Code (1968 Supp.), Section 303.02.

Oregon

The Oregon program for the preservation of agricultural land ties together three approaches to the problem: exclusive agricultural zoning, general use-value assessment of zoned agricultural land, and a deferred taxation policy for eligible unzoned agricultural land.

Oregon is one of the few states to specifically authorize exclusive agricultural zoning in the enabling statutes. All Oregon counties are authorized to establish exclusive agricultural zones as provided in the following section of the Oregon Revised Statutes:

215.203. (1) Zoning ordinances may be adopted under ORS 215.010 to 215.190 to zone designated areas of land within the county as farm use zones. Land within such zones shall be used exclusively for farm use except as otherwise provided in ORS 215.213. Farm use zones shall be established only when such zoning is consistent with the over-all plan of development of the county.^{1/}

Since 1961, Oregon law has granted use-value assessment to land zoned for agriculture. In 1963, the law was modified to also grant a tax deferral to eligible farmland that is not covered by exclusive agricultural zoning. The following section of the Oregon Revised Statutes contains these provisions:

- (1) Any land which is within a farm use zone established under ORS 215.010 to 215.190 or 227.210 to 227.310, and which is used exclusively for farm use as defined in subsection (2) of ORS 215.203, shall be assessed at its true cash value for farm use and not at the true cash value it would have if applied to other than farm use.
- (2) Any land which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use as defined in subsection (2) of ORS 215.203 shall, upon compliance with ORS 308.375, be assessed at its true cash value for farm use and not at

^{1/} Oregon Revised Statutes, Section 215.203 (1).

the true cash value it would have if applied to other than farm use. However, the provisions of this subsection shall not apply to any land with respect to which the owner has granted, and has outstanding, any lease or option to buy the surface rights for other than farm use.^{1/}

As explained in the above excerpt from Oregon law, both zoned and unzoned farmland, to be eligible for preferential assessment, must be "used exclusively for farm use." In the case of farmland which is not zoned as such, the land has to have been in exclusive farm use for at least the two previous years. Owners of unzoned farmland must also file an application in order to receive the preferential assessment. The following excerpt from Oregon law contains the legal definition of "farm use":

(2) (a) As used in this section, "farm use" means the current employment of land for the purpose of obtaining a profit in money by raising, harvesting and selling crops or by the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation and storage or the products raised on such land for man's use and animal use and disposal by marketing or otherwise. It does not include the use of land subject to the provisions of ORS chapter 321. or to the construction and use of dwellings and other buildings customarily provided in conjunction with the farm use.

(b) Except as limited by paragraph (c) of this subsection, farm use land shall not be regarded as being used for the purpose of obtaining a profit in money if the whole parcel has not produced a gross income from farm uses of \$500 per year for three of the five calendar years immediately preceding the assessment day of the tax year for which farm use is claimed by the owner or allowed by the assessor, notwithstanding that such land is included within the boundaries of a farm use zone. In case of question, the burden of proving the gross income of a parcel of land for the years designated in this paragraph is placed upon

^{1/} Ibid., Section 308.370.

the owner of the land.

(c) "Current employment" of land for farm use includes (i) land subject to the soil-bank provisions of the Federal Agricultural Act of 1956, as amended (P.L. 84-540, 70 Stat. 188); (ii) land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; (iii) land planted in orchards or other perennials prior to maturity for bearing crops; and (iv) farm woodlots of less than 20 acres appurtenant to farm use land which fulfills the requirements of paragraph (b) of this subsection. The acres of land within the categories described in this paragraph shall not be subject to the requirements of paragraph (b) of this subsection.^{1/}

Much of the recent modification of the Oregon preferential assessment law has been for the purpose of including in the law a useable method of arriving at valid farm use values. A 1965 modification placed the following restrictions on the use of comparable sales figures:

308.345

* * *

(2) Notwithstanding the provisions of ORS 308.205, agricultural lands, when devoted exclusively to farm use as defined in ORS 215.203, shall be valued upon the basis of such farm use whether zoned as farm lands under existing statutes or whether constituting unzoned farm lands under ORS 308.370, and when comparable sales figures are utilized in arriving at assessed values of agricultural lands, the county assessors and the State Tax Commission shall make sufficient investigation to ascertain that the sales so utilized in fact represent sales for bona fide farm use. The sales so used, when the potential operation of the agricultural land is examined under accepted agricultural accounting procedures and typical agricultural practices and land use in the county, shall be under conditions that justify the purchase of such agricultural land by a prudent investor for farm use.^{2/}

^{1/} Ibid., Section 215.203 (2).

^{2/} Ibid., Section 308.345.

The 1967 legislature further modified the law by instructing assessors to use an income approach when comparable sales data are not available:

- (3) When comparable sales figures cannot be utilized in arriving at assessed values of agricultural lands as provided in subsection (2) of this section by reason of insufficient sales meeting the criteria set forth in subsection (2) of this section, the assessed values of agricultural lands shall be arrived at by utilizing an income approach. In utilizing the income approach, the capitalization rate shall be the typical capitalization rate used for appraising nonagricultural commercial land in the area in which the agricultural land is located. The State Tax Commission annually shall determine and specify such rate,^{1/} and shall certify such rate to the county assessors.^{1/}

The 1967 legislature also created a board of review in each county for the purpose of advising the county assessor whether the comparable sales figures that he used as indicators of farm value are in fact valid farm use values.^{2/}

When unzoned farmland which has been granted an assessment based on its farm use values changes use so that it is not longer qualified for such assessment, Oregon law provides that the foregone taxes for the last five years become payable. Interest of six percent annually is also charged on the deferred taxes.^{3/}

^{1/}Ibid., Section 308.345.

^{2/}Ibid., Section 308.350.

^{3/}Ibid., Section 308.395.

Pennsylvania

Two laws are currently on the books in Pennsylvania which could have an effect on the preservation of farmland in that state. Act 515 (1965) enables certain counties and individual landowners to enter into voluntary restrictive covenants for the preservation of land in farm, forest, water supply or open space uses. Act 442 (1967) authorizes the state and counties to preserve, acquire or hold land for open space uses. As the constitution of the Commonwealth of Pennsylvania is presently constructed, it is apparently unconstitutional to grant general preferential assessment to farmland in Pennsylvania.^{1/}

The Governor's committee for the Preservation of Agricultural Land, which was formed in 1967, is currently studying the problem of the best way to preserve farmland in Pennsylvania.

The following sections of Act 515 contain the eligibility requirements for land to enter the restrictive covenants provided for under that act:

Section 1. Definition.--For the purpose of this act the following definitions shall apply:

- (1) "Farm land." Any tract or tracts of land in common ownership of at least fifty acres in area, used for the raising of livestock or the growing of crops.
- (2) "Forest land." Any tract or tracts of land in common ownership of at least twenty-five acres in area used for the growing of timber crops.
- (3) "Water supply land." Any land used for the protection of watersheds and water supplies, including but not limited to land used for the prevention of floods and soil erosion, for the protection of water quality, and for replenishing surface and ground water supplies.

^{1/}Constitution of the Commonwealth of Pennsylvania, Section 1, Article 9.

(4) "Open space land." Any land, including farm, forest and water supply land, the use of which does not exceed, but may be less than, an intensity of three percent site coverage including structures, roads, and paved areas. Open space land includes land the restriction on the use of which could (i) conserve natural or scenic resources, including but not limited to soils, beaches, streams, wetlands, or tidal marshes; (ii) enhance the value to the public of abutting on neighboring parks, forests, wildlife preserves, nature reservations, or other public open spaces; (iii) augment public recreation opportunities; (iv) preserve sites of historic, geologic, or botanic interest; or (v) promote orderly urban or suburban development.

(5) "Municipality." Any city, borough, town or township.

Section 2. Planning Requirements.--No land shall be subject to the provisions of this act unless designated as farm, forest, water supply, or open space land in a plan adopted following a public hearing by the planning commission of the municipality, county or regions in which the land is located and unless it is within an area of concentrated population defined by the Federal government as an urban area.^{1/}

Act 515 authorizes owners of land which meets the above requirements to enter into voluntary running five-year covenants with any county of the first, second, third or fourth class. The land owner covenants that "the land will remain in open space use as designated on the plan for a period of five years commencing with the date of covenant."^{2/} The county in return covenants that the tax assessments for the five years "will reflect the fair market value of the land as restricted by this covenant."^{3/}

Act 515 also contains a tax "roll back" provision for the land owner who breaks a covenant before it has expired. In such an event, the difference in the property taxes actually paid and the taxes that would have been paid without the covenant, are payable for the elapsed time of the contract up to a maximum of five years. Interest at the rate of five percent per year is also charged on the deferred taxes.

^{1/} Laws of Pennsylvania, 1966, Act 515.

^{2/} Ibid.,

^{3/} Ibid., Section 3.

Finally, it should be noted that since the approval of Act 515 by the Governor in 1966, the provisions of the act have not been used by any Pennsylvania land owner.

Act 442 became part of Pennsylvania law in 1968. This law permits the Commonwealth of Pennsylvania and its counties to acquire any interest in real property by purchase, contract, gift or devise (and under certain conditions, condemnation) for specified open space, conservation and water supply purposes.

The major requirements for land to be eligible for this program are contained in the following sections of the law:

Section 3. Planning Requirements.--The Department of Forests and Water and the Department of Agriculture shall not acquire any interest in real property under the provisions of this act, unless said real property has been designated for open space uses in a resource, recreation, or land use plan submitted to and approved by the State Planning Board. A county shall not acquire any interest in real property under the provisions of this act unless said real property has been designated for open space uses in a resource, recreation or land use plan approved by the County Planning Commission.

Section 4. Applicability.--The Commonwealth of Pennsylvania, through the Department of Forests and Waters or the Department of Agriculture, may exercise the powers granted by this act only with the consent of the county commissioners of the county in which the real property is situated. All counties may exercise the powers granted by this act, without limitation as to area.^{1/}

In the case of land which has met the above planning requirements, Act 442 makes the following provisions for state and county action.

Section 5. Acquisition of Interests in Real Property.--(a) The Commonwealth of Pennsylvania, through the Department of Forests and Waters, may acquire any interest in real property by purchase, contract, condemnation, gift, devise or otherwise, for any of the following purposes:

^{1/}

Laws of Pennsylvania, 1968, Act 442, Sections 3 and 4.

- (1) To protect and conserve water resources and watersheds;
 - (2) To protect and conserve forests and land being used to produce timber crops;
 - (3) To protect an existing or planned park, forest, wildlife preserve, nature reserve or other recreation or conservation site by controlling the use of contiguous or nearby lands in order to protect the scenic, aesthetic or watershed values of the site;
 - (4) To protect and conserve natural or scenic resources, including but not limited to soils, beaches, streams, flood plains or marshes;
 - (5) To protect scenic areas for public visual enjoyment from public rights of way;
 - (6) To preserve sites of historic, geologic or botanic interest;
 - (7) To promote sound, cohesive, and efficient land development by preserving open spaces between communities;
 - (8) To limit the use of the real property so as to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes specified in clauses (1) through (7) hereof.
- (b) The Commonwealth of Pennsylvania, through the Department of Agriculture, may acquire any interest in real property by purchase, contract, gift, or devise for any of the following purposes:
- (1) To protect and conserve farmland;
 - (2) To protect and conserve water resources and watersheds;
 - (3) To limit the use of real property so as to achieve open space benefits by reselling real property acquired in fee simple, subject to restrictive covenants or easements limiting the use thereof for the purposes specified in clauses (1) and (2) hereof.
- (c) Counties may acquire any interest in real property by purchase, contract, condemnation, gift, devise or otherwise, for any of the purposes set forth in clauses (a) (1) through (a) (8) of this section, and may acquire any interest in real property by purchase, contract, gift or devise, for any of the purposes set forth in clause (b) (1) of this section.

Section 7. Property Acquired in Fee Simple.--If the owner of the interests in real property to be acquired pursuant to the provisions of this act prefers to have the Commonwealth or the county acquire the property in fee simple, the Commonwealth or the county shall be required to acquire the fee simple. All real property acquired in fee simple by the Commonwealth, through either the Department of Forests and Waters or the Department of Agriculture, or by a county, under the provisions of this act, shall be offered for resale publicly in the manner provided by law within two years of the date of acquisition, subject to restrictive covenants or easements limiting the land to such open space uses as may be specified by the designating department or agency in accordance with section 6 hereof, and consistent with the resource, recreation, or land use plan established in accordance with section 4 hereof. In the case of the Commonwealth, such resales may be made without specific authority of the General Assembly and shall be through the Department of Property and Supplies at public sale in the manner provided by law.^{1/}

Finally, Act 442 makes this statement regarding the assessment of lands that come under the law:

Section 9. Assessment.--Any open space property interest acquired by the Commonwealth or a county under this act is held for public purposes, and shall be exempt from taxation. The assessment of private interests in land subject to open space property interests under this act shall reflect any change in market value of the property which may result from the acquisition of open space property interests by the Commonwealth or a county.^{2/}

There does seem to be a limited potential for exclusive agricultural zoning in Pennsylvania. The 1968 legislature passed a reorganized and condensed planning and zoning enabling law. Under the previous law one township did adopt exclusive agricultural zoning.^{3/} The new zoning law does not specifically mention agricultural zoning, but it does permit local government units to adopt zoning ordinances that, among other things,

^{1/} Ibid., Sections 5 and 7.

^{2/} Ibid., Section 9.

^{3/} Manheim township.

regulate uses of land, intensity of use and density of population.^{1/}

One major drawback to the establishment of county-wide exclusive agricultural zoning in Pennsylvania is the fact that county zoning is limited to land which has not been previously zoned by any other municipality (townships, for example). Furthermore, the enactment of a local zoning ordinance automatically repeals any county zoning within that municipality.^{2/}

^{1/} Pennsylvania Statutes Annotated, (1968 Supp.), Title 53, Section 10603.

^{2/} Ibid., Title 53, Section 10602.

Rhode Island

Rhode Island became the most recent state (at the time of this writing) to adopt a tax deferral scheme for agricultural land with the amendment of Title 44 of the General Laws in 1968. The Rhode Island law is largely modeled after the 1963 Connecticut preferential assessment law, ^{1/} but with the addition of a tax deferral, or "roll back," provision patterned after the New Jersey Farmland Assessment Act of 1964.^{2/}

As in Connecticut, the Rhode Island law provides for the differential assessment of a wider range of land uses than in other states. The new Rhode Island law applies use-value assessment to all agricultural, forest and open space land.

The Rhode Island act adopted the following definitions for farmland, forest land and open space land:

44-27-2. Definition.--When used in this act (a) the term 'farm land' means any tract or tracts of land, including wood-land and waste-land, constituting a farm unit; (b) the term 'forest land' means any tract or tracts of land bearing a dense growth of trees, including any underbrush thereon, and having either the quality of self-perpetuation, or being dependent upon its development by the planting and replanting of trees in stands of closely growing timber maintained under a forest working plan approved by the chief of the division of conservation, (c) the term 'open space land' means any area of land, including forest land and farm land, the preservation or restriction of the use of which would (1) maintain and enhance the conservation of natural or scenic resources, (2) protect natural streams for water supply, (3) promote conservation of soils, beaches, or wetlands including but not limited to fresh marshes, tidal marshes as defined in section 11-46.1-1 of the general laws in chapter 11-46.1

^{1/} Connecticut Public Act 490, 1963.

^{2/} Chapter 48, New Jersey Laws of 1964.

entitled "Intertidal salt marshes" as amended, swamps, bogs, natural river and stream flood plains and banks, tidal flood plains and banks, areas subject to salt or fresh storm flowage, areas where ground water, flowing or standing surface water, ice, or tidal water provide a significant part of the supporting substrata for a plant community for a significant part of the year, and emergent and submergent plant communities in water bodies, (4) enhance the value to the public of abutting or neighboring parks, forests, wildlife, preserves, nature reservations or sanctuaries or other open spaces, (5) enhance public recreation opportunities, (6) preserve historic sights, or (7) promote orderly urban or suburban development.^{1/}

The Rhode Island law provides the following criteria for the assessor to use in deciding whether a parcel of land qualifies as farmland:

44-27-3. Classification of farm land.--(a) An owner of land may apply for its classification as farm land on any assessment list of a city or town by filing a written application for such classification with the assessor of such city or town not earlier than thirty (30) days before nor later than thirty (30) days after the date of assessment. Such assessor shall determine whether such land is farm land and, if he determines that it is farm land, he shall classify and include it as such on such assessment list. In determining whether such land is farm land, such assessor shall take into account, among other things, the acreage of such land, the portion thereof in actual use for farming or agricultural operations, the productivity of such land, the gross income derived therefrom, the nature and value of the equipment used in connection therewith, and the extent to which the tracts comprising such land are contiguous.^{2/}

The following provision is made for the designation of eligible forest land:

44-27-4. Classification of forest land.--(a) An owner of land may file a written application with the chief of the division of conservation for its designation by said chief as forest land. When such application has been made, the said chief shall examine the land and, if he determines that it is forest land, he shall issue a triplicate certificate designating it as such...^{3/}

^{1/}General Laws of Rhode Island (1969 Supp.), Section 44-27-2.

^{2/}Ibid., Section 44-27-3 (d).

^{3/}Ibid., Section 44-27-4 (a).

The only restriction on the eligibility of open space land is that, after written application of the landowner, the assessor must first classify it as open space land (presumably by using one of the seven definitions of open space land in the earlier section).

Rhode Island law directs that "in assessing real estate which is classified as farm land, forest or open space land in accordance with chapter 44-27 the assessors shall consider no factors in determining the full and fair cash value of said real estate other than those which relate to said use without regard to neighborhood land use of a more intensive nature."^{1/}

The Rhode Island law contains the following section which provides for a recapture of the deferred taxes when land no longer qualifies as farm, forest, or open space land. This section was adapted from the New Jersey Farmland Assessment Act of 1964:

44-5-39. Additional taxes; roll-back.--When land classified as farm, forest or open space land and assessed and taxed as such under the provisions of section 44-5-12 is applied to a use other than as farm, forest or open space land, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the difference, if any, between the taxes paid or payable on the basis of the valuation and the assessment authorized for farm, forest or open space land under section 44-5-12 and the taxes that would have been paid or payable had the land been valued, assessed and taxed as other land in the city or town, in the current tax year (the year of change in use) and in such of the two (2) tax years immediately preceding, in which the land was valued, assessed and taxed as such farm, forest, or open space land as provided in section 44-5-12.^{2/}

Rhode Island does have a zoning enabling law which at least one town has interpreted to permit exclusive agricultural zoning.^{3/} The enabling

^{1/} Ibid., Section 44-5-12.

^{2/} Ibid., Section 44-5-39.

^{3/} Town of West Warwick.

law itself is general and does not mention exclusive agricultural zoning. It does grant to city and town councils the usual zoning powers, including the power to "regulate and restrict the...location and use of buildings, structures and land for trade, industry, residence or other purposes."1/

1/ General Laws of Rhode Island, 1956, Section 45-24-1.

Texas

The Texas preferential assessment measure is somewhat different from others in that the provisions are all incorporated into the state constitution. The preferential assessment measure was passed by the Texas Legislature in 1965 and became Article 8, Section 1-d of the Texas Constitution when it was approved in the November, 1966 election.

The portions of the constitutional amendment which describe the criteria to be used in determining the eligibility of agricultural land for preferential assessment are reproduced here as follows:

(a) All land owned by natural persons which is designated for agricultural use in accordance with the provisions of this Section shall be assessed for all tax purposes on the consideration of only those factors relative to such agricultural use. 'Agricultural Use' means the raising of livestock, or growing of crops, fruit, flowers, and other products of the soil under natural conditions as a business venture for profit which business is the primary occupation and source of income of the owner.

* * *

(e) No land may qualify for the designation provided for in this Act unless for at least three (3) successive years immediately preceding the assessment date the land has been devoted exclusively for agricultural use or unless the land has been continuously developed for agricultural use during such time.

The Texas preferential assessment law does include the following provision for recapturing a part of the foregone taxes if land is diverted to a non-agricultural use or it sold:

(f) Each year during which the land is designated for agricultural use the local tax assessor shall note on his records the valuation which would have been made had the land not qualified for such designation under this section. If designated land is subsequently diverted to a purpose other than that of agricultural use, or is sold, the land shall be subject to an additional tax. The additional tax shall

equal the difference between taxes paid or payable hereunder, and the amount of tax payable for the preceding three years had the land been otherwise assessed. Until paid ther shall be a lien for additional taxes and interest on land assessed under the provisions of this section.^{1/}

^{1/} Annotated Constitution of the State of Texas (1968 Supp.), Article 8, Section 1-d.

Utah

This state now has a new constitutional amendment which permits the legislature to enact preferential assessment laws. The amendment was proposed by the 1967 Utah legislature as Senate Joint Resolution 7 and was approved by the voters in the November, 1968 election.

Washington

To the author's best knowledge, the state of Washington does not yet have any legislation that specifically provides for the preferential assessment of farmland. It did, however, move closer toward that goal with the approval by the voters of a constitutional amendment in the November, 1968 general election. Article VII, Section 11 of the Washington State Constitution paves the way for subsequent legislation dealing with the assessment of farm, forest and open space land based upon its current use. The amendment is worded in this way:

Nothing in this Article VII as amended shall prevent the Legislature from providing, subject to such conditions as it may enact, that the true and fair value in money (a) of farms, agricultural lands, standing timber and timberlands, and (b) of other open space lands which are used for recreation or for enjoyment of their scenic or natural beauty shall be based on the use to which such property is currently applied, and such values shall be used in computing the assessed valuation of such property in the same manner as the assessed valuation is computed for all property.^{1/}

The Washington Planning Enabling Act does appear to permit counties to practice exclusive agricultural zoning, even though it does not specify agricultural zoning in the exclusive sense. The law does authorize any county to establish classifications and to issue specific controls within each classification to "regulate the use of buildings, structures, and land as between agriculture, industry, business, residence, and other purposes."^{2/} One county has used this authority to actually establish exclusive agricultural zoning.^{3/}

^{1/} Washington State Constitution, Article VII, Section 11 (approved November, 5, 1968).

^{2/} Revised Code of Washington, Section 36.70.750.

^{3/} Grant County.

Wisconsin

Exclusive agricultural zoning has been used by two counties in Wisconsin.^{1/} The Wisconsin zoning enabling law under which this was done does make some specific mention of agriculture and agricultural zoning. One of the purposes of zoning as stated in the law is "to recognize the needs of agriculture, forestry, industry and business on future growth."^{2/} In order to fulfill this purpose, Wisconsin counties are authorized to adopt ordinances which "determine, establish, regulate and restrict...the areas within which agriculture, forestry, industry, trades, business and recreation may be conducted."^{3/}

^{1/} Lacrosse and Walworth Counties.

^{2/} Wisconsin Statutes Annotated (1968 Supp.), Section 59.97 (1).

^{3/} Ibid., Section 59.97 (4).