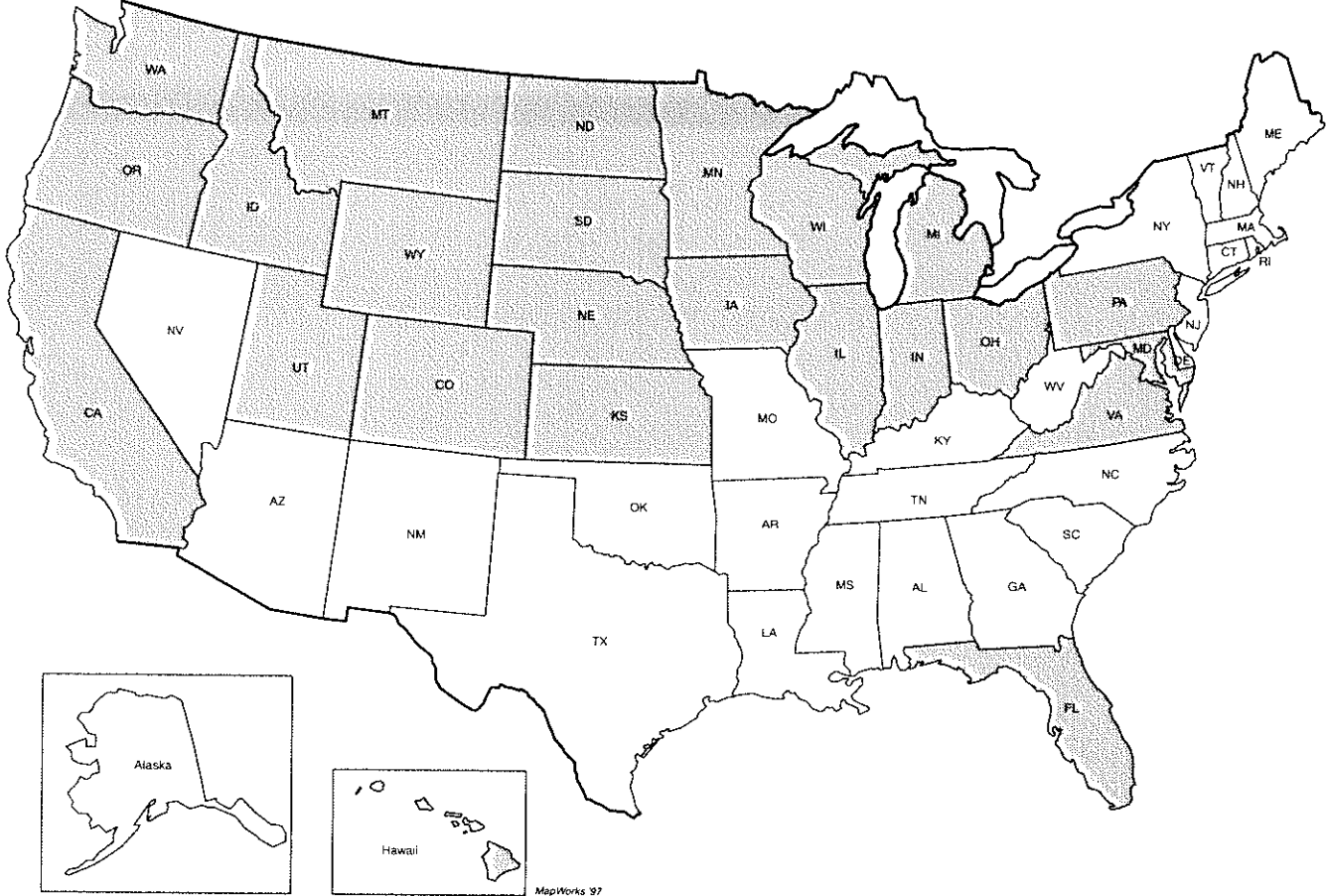


# SECTION ONE: FARMLAND PROTECTION TOOLBOX

## CHAPTER 2: AGRICULTURAL PROTECTION ZONING

MAP 2.1: STATES WITH LOCAL APZ ORDINANCES, 1997





Agricultural Protection Zoning refers to county and municipal zoning ordinances that support and protect farming by stabilizing the agricultural land base. APZ designates areas where farming is the desired land use, generally on the basis of soil quality as well as a variety of locational factors. Other land uses are discouraged. APZ ordinances vary in what activities are permitted in agricultural zones. Non-farm related businesses are not usually allowed. The most restrictive regulations prohibit any uses that might be incompatible with commercial farming. The density of residential development is restricted in agricultural zones.\* Maximum densities range from one dwelling per 20 acres in the eastern United States to one residence per 640 acres in the West.

BRIEF DESCRIPTION  
OF APZ

APZ ordinances contain provisions that establish procedures for delineating agricultural zones and defining the land unit to which regulations apply. They specify allowable residential densities and permitted uses, and sometimes include site design and review guidelines. Some local ordinances also contain right-to-farm provisions and authorize commercial agricultural activities, such as farm stands, that enhance farm profitability. Occasionally, farmers in an agricultural protection zone are required to prepare farm management plans.

The definition of APZ varies with jurisdiction and by region of the country. A minimum lot size of 20 acres, combined with other restrictions, may be sufficient to reduce development pressures in areas where land is very expensive and farming operations are relatively intensive. Several county APZ ordinances in Maryland permit a maximum density of one unit per 20 acres. In areas where land is less expensive and extensive farming operations such as ranches predominate, much lower densities may be required to prevent fragmentation of the land base. In Wyoming and Colorado, counties are not permitted to control subdivision of lots that are larger than 35 acres. The 35-acre provision has led to the creation of hundreds of 35-acre "ranchettes" in both states, fragmenting ranches into parcels that are too small for successful commercial ranching.

Many towns and counties have agricultural/residential zoning that allows construction of houses on lots of one to five acres. Although farming is permitted by these zoning ordinances, their function is more to limit the pace and density of development than to protect commercial agriculture. In fact, such ordinances often hasten the decline of agriculture by allowing residences to consume far more land than necessary. For the purpose of this chapter, APZ refers to ordinances that allow no more than one house for every 20 acres, support agricultural land uses and significantly restrict non-farm land uses.

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\*In practice, the specific areas designated by APZ are generally called agricultural districts. In the context of farmland protection, however, these zoning districts, which are imposed by local ordinance, are easily confused with voluntary agricultural districts created by farmers under statutes in 16 states. In states that have agricultural district laws, agricultural land may be protected by a town or county zoning ordinance, an agricultural district, both or neither. To avoid confusion, we refer to the mandatory agricultural areas as agricultural protection zones, and the voluntary areas as agricultural districts.

FUNCTIONS AND  
PURPOSES OF APZ

APZ helps towns and counties reserve their most productive soils for agriculture. It stabilizes the agricultural land base by keeping large tracts of land relatively free of non-farm development, thus reducing conflicts between farmers and their non-farming neighbors. Communities also use APZ to conserve a “critical mass” of agricultural land, enough to keep individual farms from becoming isolated islands in a sea of residential neighborhoods. Maintaining a critical mass of agricultural land and farms allows the retention of an agricultural infrastructure and support services, such as equipment dealers and repair facilities, feed mills, fertilizer and pesticide suppliers, veterinarians, spraying and seeding contractors, food processors and specialized financial services, all of which need their farm customers to stay in business.

APZ can also limit land speculation, which drives up the fair market value of farm and ranch land. By restricting the development potential of large properties, APZ is intended to keep land affordable to farmers. A strong ordinance can demonstrate to farmers that the town or county sees agriculture as a long-term, economically viable activity, instead of an interim land use that will disappear when the land is ripe for development.

Finally, APZ helps promote orderly growth by preventing sprawl into rural areas, and benefits farmers and non-farmers alike by protecting scenic landscapes and maintaining open space.

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BENEFITS

BENEFITS AND  
DRAWBACKS OF APZ

- APZ is an inexpensive way to protect large areas of agricultural land.
- By separating farms from non-agricultural land uses, APZ reduces the likelihood of conflicts between farmers and non-farming neighbors.
- APZ helps prevent suburban sprawl and reduces infrastructure costs.
- Compared to PACE and TDR programs, APZ can be implemented relatively quickly.
- APZ is easy to explain to the public because most landowners are familiar with zoning.
- APZ is flexible. If economic conditions change, the zoning can be modified as necessary.

DRAWBACKS

- APZ is not permanent. Rezoning or comprehensive upzoning can open up large areas of agricultural land for development.
- APZ generally reduces land values, which decreases farmers’ equity in land. For this reason, farmers sometimes oppose APZ, making it difficult to enact.
- APZ may be difficult to monitor and enforce on a day-to-day basis.
- County APZ ordinances do not protect agricultural land against annexation by municipalities.

BRIEF HISTORY

TRENDS IN APZ

The courts first validated zoning as a legitimate exercise of police power in the 1920s<sup>1</sup>, giving local governments broad authority to regulate local land use. Rural counties in California, Pennsylvania and Washington began using zoning to protect agricultural land from development during the mid-1970s<sup>2</sup>. In 1981, the National Agricultural Lands Study reported 270 counties with agricultural zoning.

As part of the research for this publication, American Farmland Trust and Coughlin/Keene Associates did an informal survey of county APZ ordinances in several states. Our research found nearly 700 jurisdictions in 24 states with some form of APZ. Wisconsin counties and towns account for approximately 62 percent of the total number of APZ ordinances found; Pennsylvania jurisdictions account for an additional 13 percent. Given the limited response to our survey, the results are probably a significant underestimation of the total number of county APZ ordinances nationwide. Some cities and towns also have agricultural zoning, but we did not make a systematic attempt to obtain information on municipal zoning ordinances.

During the past decade, advocates of private property rights have been challenging government authority to regulate land use. The property rights movement charges that local government attempts to limit development through zoning constitute an unconstitutional “taking” of private property without just compensation. Recent Supreme Court decisions have placed limits on local government’s power to control land use through zoning, but APZ ordinances have been consistently upheld against takings claims. In general, zoning is not considered to be a taking as long as it permits some economic use of the land, such as agriculture. This rule underscores the need for farmland protection programs that enhance the economic viability of farming.

Between 1991 and 1995, 20 state legislatures enacted laws designed to limit government takings of private property.\* \* Eleven states have laws that require the state and/or local governments to assess the impact of a proposed statute or ordinance on private property values before enactment. Four statutes allow landowners to seek compensation from state and local governments when their property values are reduced by regulations. The compensation provisions are triggered when property values are reduced by a specified percentage, ranging from 20 percent in Louisiana, to 25 percent in Texas, to 40 percent in Mississippi. Florida’s takings compensation bill does not specify a percentage<sup>3</sup>.

The impact of state takings laws on APZ and other farmland protection strategies used by state and local governments is unclear, but it is significant that few states with APZ have passed such laws. The Washington legislature enacted a state takings assessment law in 1991, but Washington voters rejected a takings compensation bill by a 60 percent to 40 percent margin in a 1995 ballot referendum. Arizona voters repealed a 1992 takings assessment law by ballot referendum in 1994<sup>4</sup>.

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\* \* States with takings laws include Arizona, Delaware, Florida, Idaho, Indiana, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, North Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wyoming.

## ACCOMPLISHMENTS

Attitudes toward agricultural protection zoning vary significantly across the country. In some communities, APZ is seen as the centerpiece of a program for maintaining agriculture and protecting valuable farmland. In others, it is opposed on the basis that it infringes on property rights. APZ is most widespread in Pennsylvania, Maryland, parts of the Midwest and along the Pacific Coast.

In Oregon, all 36 counties have enacted exclusive agricultural zoning ordinances as part of the state's comprehensive growth management program. More than 16 million acres lie within Oregon's APZ zones, accounting for about half of the state's privately owned land. Between 1987 and 1994, approximately 22,000 acres were removed from agricultural zones, representing a conversion rate of just 3,100 acres per year<sup>5</sup>.

One of the four zones created by Hawaii's statewide zoning law is specifically devoted to agriculture. The zone includes more than 2 million acres, but only half a million acres are actually farmed. Recreational uses, such as golf courses, are common in the agricultural zone<sup>6</sup>.

In Wisconsin, farms must be located within an agricultural zone to be eligible for the state's "circuit-breaker" income tax credit program. This provision is at least partly responsible for the adoption of APZ in more than 425 Wisconsin jurisdictions.

Ninety-two Pennsylvania municipalities have adopted APZ ordinances, protecting a total of 725,000 acres. Lancaster County alone accounts for more than one-third of the townships and land area protected by APZ in the state. A study of changes in Lancaster County's APZ zones between 1981 and 1991 found that townships added nearly four times more land to APZ zones than was removed through rezoning during the period<sup>7</sup>.

Counties in California, Colorado, Florida, Iowa, Minnesota, Maryland, Virginia, Washington and Wyoming have also enacted APZ to protect some of their most important agricultural land.

## CHALLENGES

Many states have no agricultural protection zoning. In Texas, counties lack the power to enact zoning ordinances. No New England states have APZ. Zoning and other land use regulation is extremely unpopular in many parts of the West and South, and few jurisdictions in these regions have enacted APZ ordinances.

APZ is only as good as the political will to maintain and enforce it. When demand for new homes is high and the price of open land in residentially zoned areas increases, the pressure to allow more development in agricultural zones may also grow. Some of this pressure takes the form of requests for rezoning land from agricultural to residential. Alternatively, residents may advocate for comprehensive upzoning—a decrease in the minimum lot size—across the entire agricultural protection zone.

McHenry County, Ill., located north and west of Chicago, is a stark reminder of the impermanence of zoning. Concerned about development pressure, the county enacted a highly acclaimed APZ ordinance imposing a 160-acre minimum lot size in 1979. The pace of development intensified during the late 1980s, and, in 1994, Motorola, Inc. announced plans to build a new manufacturing plant on farmland just outside the town of Harvard. The same year, the county planning department recommended that the minimum lot size be decreased from 160 acres to 40 acres. Principal Planner James Hogue justified the change on the basis of a survey that found the average rural parcel size in the county was already approximately 40 acres. The McHenry County Board approved the upzoning in spite of opposition from the county farm bureau.

Municipal annexation can be an even more serious challenge to APZ. County governments can target agricultural land for protection and apply APZ to prevent development, but in most states, counties have little recourse if municipalities annex this land for urban use.

To address the impermanence of zoning, citizens in Napa County, Calif., devised a unique strategy to prevent agricultural land conversion. In 1990, county residents approved a ballot initiative that took authority over land use issues away from the county's Board of Supervisors. Measure J provided that all elements of the county's General Plan designed to protect agricultural, watershed and open space lands would remain permanent until 2020. Changes can be made only by popular vote. Developers and farmers challenged the initiative, but Measure J was upheld by the California Supreme Court<sup>8</sup>. Since the decision, the city of Ventura has passed a similar measure, but efforts to do so have failed in Stanislaus and Monterey Counties.

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#### ISSUES TO ADDRESS IN DEVELOPING AN APZ ORDINANCE

The success of APZ ordinances depends on their design and enforcement as well as the degree of local support for maintaining the zoning over time. Key issues include:

#### ISSUES AND OPTIONS

- Is APZ supported by a comprehensive plan and local policies?
- Is the purpose of the ordinance clearly stated, and do the regulations correspond to the stated goal?
- What land is included in the APZ zone? Is it the best farmland?
- Does the ordinance adequately restrict non-farm development and encourage commercial farming?
  - Which non-farm uses are prohibited? Are agriculturally related businesses, such as processing, marketing and sales of farm equipment and services, permitted?
  - How much non-farm development is allowed in agricultural zones?
- Does the ordinance prevent or minimize conflicts between farmers and non-farmers?

- Does the ordinance provide clear criteria for rezoning that protect productive agricultural land?
- How will the ordinance be enforced?

## DESCRIPTIVE ANALYSIS OF APZ ORDINANCES

### APZ and the comprehensive plan

APZ is likely to be most effective, and defensible against legal challenges, when it is an integrated element of a comprehensive plan. A comprehensive plan is the community's vision of the future. It typically sets aside areas of the jurisdiction for a variety of different land uses, including agriculture and forestry, as well as residential, commercial, industrial and recreational uses. Comprehensive plans often state local government policies, objectives and decision guidelines, and make provisions for the orderly development of public services. A plan provides a rationale for zoning and lets landowners know what types of development are likely to be acceptable on their property.

The comprehensive plan developed by Story County, Iowa, refers to local data and assumptions that support the county's APZ ordinance:

Certain findings and assumptions have been made from which this Plan has been developed. First, growth trends and projections indicate that the county will continue to face a limited amount of pressure for new development... Second, it is recognized that a certain amount of growth has previously occurred in areas that would be identified today as unsuitable for development... While existing development patterns cannot be altered, expansion of certain developed areas can be discouraged... Third, it has been assumed that agriculture will continue to be a major factor in the land use and economy of the county, and that federal, state and local policies for the preservation of high quality agricultural land will remain<sup>9</sup>.

The comprehensive plan may also outline local government policies designed to protect agricultural land, encourage commercial farming and promote efficient and orderly urban growth. The Comprehensive Plan for Lancaster County, Pa., has a policy goal of preserving agricultural areas for agricultural use. The plan lists a set of objectives that are designed to guide local government decisions:

1. Identify and permanently preserve agricultural land for agricultural use.
2. Protect agricultural uses from non-farm activities that interfere with or prevent normal farm practices.
3. Protect agricultural regions that transcend individual municipal boundaries.
4. Permit a wide range of farm-based businesses.
5. Protect agricultural areas from incompatible capital projects.
6. Protect forested land and other open space resources within agricultural areas.
7. Support agricultural education programs<sup>10</sup>.



Several of the objectives call for APZ to prohibit residential subdivisions, limit non-farm land uses and permit farm-based businesses. Another section of the county's comprehensive plan calls for the establishment of urban growth boundaries to separate agricultural areas from areas targeted for urban development.

**Comprehensive Planning and APZ in Solano County, California:**

In Solano County, Calif., a 1980 comprehensive plan defined two new categories of farmland. Essential agricultural land was defined as productive farmland that has been identified by the local community as necessary to ensure a healthy agricultural economy. Criteria used to make this determination included soil capability, productivity level, parcel size and the overall size of the farming area relative to the ability of agricultural activities to support one another and to form a buffer against urban encroachment. Non-essential agricultural land was defined as property to be kept in farming until it is needed for other purposes.

The county's zoning ordinance, as amended in 1980, applied these two categories to the two existing types of farmland in the county: extensive farmland is non-irrigated land, used primarily for grazing, while intensive farmland is irrigated land with very fertile soils. For extensive, non-essential agricultural land, the ordinance imposed a minimum lot size of 20 acres. The minimum lot size is 160 acres on extensive, essential agricultural land, and lot sizes on intensive, essential land range from 40 to 80 acres, depending on the land's productivity.

**Purpose of an APZ ordinance**

Including a clear statement of purpose in the text of the APZ ordinance reinforces the vision and policy statements contained in the comprehensive plan. A statement of purpose puts landowners on notice that agriculture is the primary activity in the zone, and that other uses will be permitted only to the extent that they do not interfere with farming. It can also help guide official decisions on permit requests and petitions for changes in zoning. The APZ ordinance for Northern Iowa's Black Hawk County is a good example. It states:

It shall be noted that it is the policy of Black Hawk County, Iowa, rich in fertile productive soils, to maintain this non-renewable resource for future generations to employ in the production of food and fiber; therefore, such lands shall be preserved as "A" Agricultural District, unless there are extenuating circumstances.

Farmland protection is stated as a goal of the ordinance and is reinforced by a reference to relevant sections of state law:

The "A" Agricultural District is intended and designed to serve the agricultural community and protect agricultural land from encroachment of urban land use. Furthermore, in accordance with Chapters 335 and 352, Code of Iowa...it is the intent to preserve the availability of agricultural land and to encourage efficient urban development patterns. This district is not intended to be used for non-farm residential subdivisions...

If the purpose of an agricultural zone is to protect farming, local governments should ensure that the regulations imposed by the ordinance are well-tailored to the specific type of agriculture practiced in the community. In metropolitan areas where market gardens, orchards, specialized livestock and nursery operations are the dominant form of agriculture, a maximum density of one house per 20 acres may be adequate to protect commercial farms from development pressures. In ranching areas of the West, a maximum density of several hundred acres may be needed to prevent subdivision of the large blocks of land needed for rangeland.

#### Determining what farmland to include in the agricultural zone

One of the first steps in developing an APZ ordinance is deciding what land to include in the agricultural protection zone. The most common factors used in delineating agricultural zones are soil productivity and existing land uses. San Mateo County, Calif., includes two primary categories of farmland in its agricultural zone.

**Prime Agricultural Land** is defined as:

1. All land that qualifies for rating as Class I or Class II in the U.S.D.A. Natural Resources Conservation Service Land Use Compatibility Classification, as well as all Class III lands capable of growing artichokes or Brussels sprouts.
2. All land that qualifies for a rating between 80 and 100 in the Storie Index Rating.<sup>11</sup>
3. Land that supports livestock use for the production of food and fiber, and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the U.S. Department of Agriculture.
4. Land planted with fruit- or nut-bearing trees, vines or bushes, or crops that have a non-bearing period on an annual basis from the production of unprocessed agricultural plant production not less than \$200 per acre (as adjusted for inflation).
5. Land that has returned from the production of an unprocessed agricultural plant product on an annual value that is not less than \$200 per acre within three of the five previous years (as adjusted for inflation).

**Lands Suitable for Agriculture** are defined as “[l]and other than Prime Agricultural Land on which existing or potential agricultural use is feasible, including dry farming, animal grazing and timber harvesting<sup>11</sup>.”

In Iowa, Corn Suitability Ratings are frequently used to designate farmland for protection. CSR is a numerical system for measuring the productivity of farmland. Soils are rated according to their crop production capacity, and each soil mapping unit is assigned a CSR between 5 and 100. The ratings make it possible to compare the productivity of different parcels of land<sup>12</sup>. The Scott County, Iowa, Board of Supervisors established a policy that quarter-sections of land with a CSR of 68 or greater should be protected from development<sup>13</sup>.

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<sup>11</sup>The Storie Index Rating is a numerical evaluation system to rate the sustainability of soils for agricultural production.

CSR measures the productivity of farmland, but not its suitability for commercial agriculture. Land Evaluation and Site Assessment is another tool that communities can use to delineate agricultural protection zones. LESA systems measure soil quality as well as individual site characteristics such as farm size, agricultural improvements, proximity to development and ecological value. A 1991 survey found that approximately 50 jurisdictions around the country use LESA to help determine what land to include in agricultural zones<sup>14</sup>.

Clinton County, in central Indiana, uses a two-step process to determine which agricultural land may be developed for non-agricultural uses. Virtually all the unincorporated land in the county is designated as an agricultural zone. The county uses a performance-based approach to determine where residential development will be permitted. In areas that are located within one mile of incorporated communities, the ordinance allows for rural non-farm residences on lots of one acre or more if:

A) The lots are located in a wooded area where, in the judgment of the zoning administrator, there is evidence that the parcel has always existed as a non-tillable area, is not classified as wetland on the national wetlands inventory maps and can meet private septic requirements, or

B) Twenty-five percent of the soils in a 1/8-mile radius of the site are rated as poor for agriculture (on a special county scale), and there are existing residences or approved lots within 2 miles of the proposed lot.

In areas that are located more than one mile from corporate limits, the county zoning board of appeals considers all requests for rural non-farm residences. The board will not approve lots in rural areas unless it finds that:

A) The location of the lot, the proximity to other rural non-farm housing, the configuration of the parent tract or the location of creeks, ditches, and other natural features make use of farm equipment, or use of the property as part of a farm, difficult;

B) Locating a non-farm dwelling on the proposed lot will not require changes in roads or bridges; and

C) Locating a non-farm dwelling on the proposed lot will not interfere with current agricultural practices in the area and will not substantially restrict the expansion of confined feeding operations and other agricultural practices.

According to Wayne Williams, Clinton County extension agent, the zoning board of appeals will not, as a rule, approve the creation of non-farm lots on productive soils unless the area is already residential in character. For poor soils near developed areas, the county uses a sliding scale to determine the maximum allowable residential density (see Table 2.1, p. 60). Farm dwellings may be built on parcels that are at least 20 acres.

## Deciding which non-farm development to exclude

### *Which uses should be permitted?*

*Exclusive agricultural zoning* prohibits all non-farm uses, which are encouraged or accommodated in other zones. Residential development is generally limited to the construction of housing for farm owners and their employees and relatives who are directly involved in the farming operation. Exclusive agricultural zones are common in Oregon and Wisconsin. Whitman and Spokane Counties in eastern Washington also have exclusive agricultural zoning. *Non-exclusive agricultural zoning* permits non-farm uses that can coexist with commercial agriculture.

Some communities have more than one agricultural zone, allowing different mixes of uses in different areas of the county. Spokane County has a general agricultural zone and a rural settlement zone as well as an exclusive agricultural zone. The exclusive agricultural zone prohibits virtually all uses and activities that are not necessary for commercial farming, including agriculturally related recreation such as horse boarding and training facilities and riding stables. Residential, industrial and non-farm commercial uses are prohibited, as are most public facilities, such as hospitals, day care centers, libraries and landfills. The general agricultural zone, in contrast, allows commercial farming activities and hobby farms as well as limited residential development and some public services such as churches, day care centers and parks. The rural settlement zone is designed to accommodate most of the demand for non-farm rural residences; commercial farming activities are prohibited. For a comparison of the uses permitted in Spokane County's exclusive and general agriculture zones and the rural settlement zone, see Appendix B, p. 72.

In deciding which agricultural activities to permit, communities must strike a balance between supporting agricultural operations and preventing the conversion of agricultural land to commercial use. In Spokane County, farm stands, feed mills, grain elevators and commercial greenhouses are permitted by right in the exclusive agricultural zone; agricultural processing plants and warehouses, farm machinery sales and repair shops, and wineries require a special permit.

Scott County, Iowa, allows seed and feed dealerships in its APZ zone, provided that "there is no evidence of a showroom or other commercial activity." Seasonal roadside stands that sell products grown on the property are also permitted. Commercial feedlots and public stables are allowed by special permit. San Mateo County, Calif., allows agricultural processing, storage and shipping facilities on prime agricultural land, but individual facilities must use as little prime land as possible, and in no instance more than three acres.

### *What density of development should be permitted?*

The most distinguishing mark of non-exclusive APZ ordinances are the strong limitations they place on the number of dwellings that can be built in the agricultural zone. APZ ordinances use several different approaches to limiting density.

Large Minimum Lot Size APZ. This form of APZ ordinance sets a large minimum lot size for each residence. DeKalb County, Ill., has a 40-acre minimum lot size; several Iowa counties allow one unit per 35 acres in agricultural zones. In the Agricultural Watershed Zone of Napa County, Calif., minimum lot size is 160 acres. Large-lot zoning, even at this scale, may still fail to prevent subdivision of farms into parcels that are too small to be operated economically. Large-lot zoning is also often criticized for being exclusive and limiting affordable housing, because very large lots are expensive.

Area-Based Allowance APZ. Other ordinances use a formula to establish the permitted number of dwelling units per parcel. The goal of this strategy is to direct development to smaller parcels of land, leaving large tracts intact for agricultural use. The number of dwellings permitted by these ordinances depends on the size of the property in question. Instead of requiring a certain number of acres per dwelling, area-based allowance APZ ordinances specify the number of dwellings per acre, regardless of lot size. Some jurisdictions encourage or require a maximum lot size, to minimize conversion of agricultural land. The ordinance may also require that dwellings be sited on less fertile soils or in locations where they would cause the least interference with farming operations.

There are two forms of area-based allowance, fixed area-based allowance and sliding scale area-based allowance.

Fixed area-based allowance APZ ordinances allow one dwelling for a specified number of acres. The model APZ ordinance for Lancaster County, Pa., for example, provides for one non-farm lot for every 50 acres. A non-farm lot subdivided from a parent tract must be at least one acre, but no more than two.

Quarter-quarter zoning is a form of fixed area-based allowance APZ found predominantly in the Midwest and Plains states. Typically, one residence is allowed per each quarter of a 160-acre quarter section. A quarter-quarter section may be less than 40 acres due to roads and other improvements. Quarter-quarter zoning is common in Minnesota.

Sliding scale area-based allowance APZ ordinances also base the number of dwellings on acreage owned, but they require more acreage per dwelling for larger tracts than for smaller ones. This concentrates lots on smaller, less commercially viable parcels of land. Clinton County, Ind., uses a sliding scale to determine how many residences should be permitted on poor soils; residential development is generally prohibited on fertile soils (see Table 2.1, p. 60).

Both types of area-based allowance APZ ordinances generally require that properties be restricted with a conservation easement to prevent further development once the maximum density has been achieved. This provision is very important, because in effect it makes the zoning permanent.

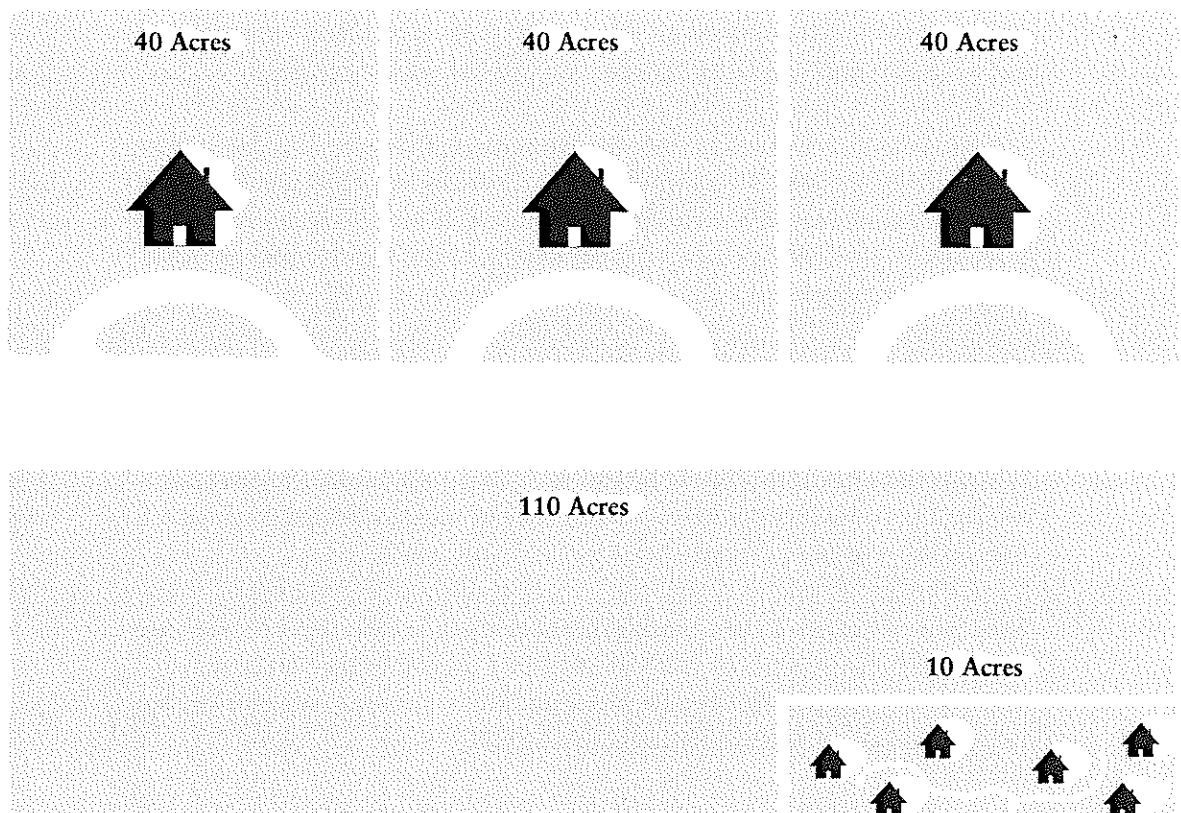
TABLE 2.1: MAXIMUM DENSITY, RURAL NON-FARM RESIDENCES, CLINTON COUNTY, INDIANA

Size of parent tract of land in acres	Maximum number of non-farm lots Including existing dwellings
0 - 1.99	2
2 - 10.99	3
11 - 40.99	4
41 - 80.99	5
81 - 120.99	6
121 or more	1 additional lot per each 40 acres

The rationale behind the sliding scale is that higher densities should be allowed on smaller tracts, because they are difficult to farm and may have effectively passed out of agriculture into the residential land market. Higher densities help satisfy the legal requirement that municipalities permit some economically beneficial use of land where farming is not profitable.

Figure 2.1 shows how a 120-acre tract might be developed, using (a) a large minimum lot size APZ ordinance or (b) the sliding scale allowance APZ ordinance described in Table 2.1, with a one-acre maximum lot size.

FIGURE 2.1: SLIDING SCALE APZ ORDINANCES PROTECT FARMLAND



Exclusive Agricultural Use APZ. Some exclusive APZ zones do not specify a minimum lot size. Since non-farm residential development is prohibited, the construction of farm housing is governed by the needs of farming families. The exclusive APZ ordinance in Spokane, Wash., specifies that the minimum lot size for residential use is 17,000 square feet (approximately half an acre), but that lot sizes should be governed by county health standards designed to ensure adequate water supplies and safe sewage disposal. Jackson County, Colo., has one of the country's most restrictive APZ ordinances: A landowner must own 640 acres to build a ranch house, and he or she must prove that they will be operating a commercial ranch before the county will issue a building permit.

Percent of Land APZ. One other form of APZ was found in East Hopewell Township, Pa. Instead of specifying the number of dwellings that can be built on a tract, it specifies the percent of tract area that can be devoted to development. East Hopewell's ordinance limits development to 10 percent of the total tract area, and sets a minimum lot size of one acre, but ordinances using other allocation schemes could be developed<sup>15</sup>.

*Other APZ Provisions that Restrict Non-Farm Development*

Restrict subdivision. This provision is intended to prevent the creation of parcels that are too small to be farmed by themselves. Creation of such small tracts often moves land out of farming into the exurban, estate or vacation home market. In some Pennsylvania jurisdictions, the minimum parcel size that can be created by subdivision is designated as a "farm core," and includes contiguous tracts that encompass the farmstead, barns, equipment sheds and other agricultural facilities in addition to farm fields. The farm core is the part of the farm that is most efficient to operate and has the most permanence. Therefore, it provides a good criterion for defining the size below which it is undesirable to divide land.

Black Hawk County, Iowa, allows subdivisions of small lots in its agricultural zone under very limited circumstances. Single family dwellings are permitted in the agricultural zone, provided that the owner/occupant is actively engaged in the farming operation and is a member of the farm owner's immediate family. Only one lot that is a minimum of 1.5 acres but less than three acres may be separated from a farm, and at least 35 acres must be left after the subdivision.

San Mateo County, Calif., prohibits the subdivision of prime agricultural land that covers an entire parcel. Prime agricultural land within a parcel may not be divided unless it can be shown that the agricultural productivity of all resulting parcels will not be diminished, and building sites may not be located on prime parcels.

Maximum size of building lot. Most zoning ordinances specify a minimum lot size for construction of a residence. Minimum lot sizes are based on the area needed for an on-site sewage system and more generally on the community's desire to avoid high-density development. With APZ, however, the goal is to avoid taking fertile land out of production. Therefore, most area-based APZ ordinances specify a *maximum* permissible building lot size as well as a minimum.

Site design review guidelines and criteria. Site design guidelines are intended to ensure that non-farm construction is directed to locations that are least disruptive to the continuation of agriculture. They may also contain provisions to preserve the integrity of the rural landscape. Such guidelines should direct development to the least fertile soils on the property. They might also prevent construction on ridges or in the middle of fields, and encourage the location of new houses in clusters or immediately adjacent to existing development.

#### **Land Preservation Subdivision, Routt County, Colorado**

Colorado state law allows property owners to subdivide their land into tracts of 35 acres or more by right. Developers and landowners who wish to build homes on smaller tracts often have to go through a lengthy local subdivision review process. The state provision has thus spawned hundreds of 35-acre residential “ranchette” communities across Colorado, resulting in fragmentation of ranchland and loss of open space.

To give developers and ranchland owners a better alternative, Routt County, in northwestern Colorado, created a “Land Preservation Subdivision” option in 1995. The LPS is a flexible, voluntary process driven by county objectives and a set of design standards and guidelines, rather than set minimum or maximum lot sizes. The objectives of the process are to protect agricultural lands, wildlife habitat, open space, scenic views and water resources, as well as to ensure the development of appropriate infrastructure and minimize natural hazards. Design guidelines to protect agricultural land include provisions that locate homes away from commercial ranching operations and keep irrigated lands intact, and that make residential landowners responsible for fencing and weed control on their properties. Two projects using the LPS have been approved; a third LPS project is expected to protect between 150 and 200 acres of prime hay meadow<sup>16</sup>.

#### **Minimizing conflict between farmers and other rural residents**

Few zoning ordinances are completely successful in preventing non-farmers from buying land in areas designated for agriculture. Many people think of farms as serene and bucolic, the perfect place to build a country home. New rural residents are often distressed to discover that farming is an industry, and that farmers use chemicals and heavy equipment. Farms generate noise and dust, and pesticides and herbicides may drift beyond farm borders. Livestock generate smells and flies. Tractors and other equipment slow down traffic on roads. Complaints from new neighbors can be a serious problem for farmers, especially if they result in lawsuits. APZ ordinances often contain provisions to limit such conflicts.

#### *Agricultural Nuisance Notice*

APZ ordinances may require that buyers of land in an agricultural zone be notified that commercial agriculture is the primary economic activity in the area, and that they may experience inconvenience or discomfort arising from accepted agricultural practices. In some



cases, the notice may be recorded on the deeds to new homes. Clinton County, Ind., includes the following notice with the deeds to non-farm residential lots in its agricultural zone:

In accepting this deed, grantees do hereby acknowledge that the surrounding land is agriculture (sic) in usage and subject to intense agricultural practices; and grantees, and their heirs, assigns, and successors in interest, are precluded from complaining, seeking damages and/or attempting to enjoin the use of the property (land) for confined feeding, grain handling operations, or use of manure, fertilizers or other agricultural chemicals because of nuisances which may result from such practices as long as generally accepted farming practices are followed. It is further recognized that farming operations may include disruptive noises and light for 24 hours per day during the crop planting and harvesting seasons. This condition and agreement shall run with the land.

Such disclaimers may help ensure that people who purchase houses in the zone will put up with the inconveniences caused by production agriculture. They also help farmers build a legal defense if they are sued for creating a nuisance.

Fremont County, Idaho, goes one step further. Its Comprehensive Plan and Development Code require that people who purchase land in an agricultural area sign a “natural resource easement” which explicitly acknowledges their neighbors’ right to farm. This provision is designed to prevent residents from bringing nuisance suits against farmers. A sample natural resource easement is included in Appendix C, p. 76.

*Setbacks on Adjacent Residentially Zoned Land*

A required setback prevents new houses from being built very close to farming operations, thus protecting new residents from spray drift and reducing the probability of complaints. Wide setbacks of 500 feet or more may be required from intensive livestock operations such as feedlots and poultry barns. The zoning ordinance in Clinton County, Ind., sets very specific setback requirements between homes and confined animal feeding operations or grain handling facilities (see Table 2.2, p. 64).

New confined feeding and grain handling operations must comply with setbacks in column II from existing residences (except those of the owner and farm workers), businesses, public buildings and recreation areas, churches and residential zone boundary lines. Setbacks in column III are required from the boundaries of incorporated cities and towns and public school facilities. New dwellings, businesses and public facilities must comply with the setbacks in column II from existing feedlots and grain operations. There are additional standards governing the expansion of confined feeding and grain processing operations.

TABLE 2.2: REQUIRED SETBACKS BETWEEN INTENSIVE AGRICULTURAL OPERATIONS AND NON-FARM USES, CLINTON COUNTY, INDIANA

Type/number of livestock	Required setback (feet)	Required setback (feet)
<b>Cattle (confined):</b>		
1 - 3	0	0
3 - 49	660	2,640
50 or more	1,320	5,280
<b>Hogs, sheep, goats, other confined livestock:</b>		
1 - 10	0	0
10 - 100	660	2,640
100 or more	1,320	5,280
<b>Poultry (confined):</b>		
Fewer than 200	0	0
200 - 1,000	660	2,640
1,000 or more	1,320	5,280
<b>More than 3 cattle, 10 hogs, sheep or goats, 20 poultry per acre, open grazing operations:</b>	660	660
<b>Grain handling facilities:</b>		
Fewer than 20,000 bushels	0	0
20,000 bushels or more	660	1,320

Criteria for rezoning

One of the most important measures of the effectiveness of an APZ ordinance is how difficult it is to rezone land from agriculture to other uses. In many jurisdictions, rezoning may require amendments to the comprehensive plan.

In Scott County, Iowa, an application for rezoning from the agricultural protection zone results in an in-depth study of the soils on the relevant tract and the surrounding quarter-section. The planning and zoning commission and the board of supervisors consider soil fertility as measured by the corn suitability rating, county land use policies and public comments when deciding whether to rezone agricultural land. Rezoning applications require a petition signed by the owners of at least 50 percent of the land within the tract to be rezoned.

Black Hawk County, Iowa, policies state that “only agricultural uses or those uses incidental to agriculture shall be allowed on prime land. Prime land...is defined as soil with a Corn Suitability Rating of 50 or above.” The County generally denies requests for rezoning of land with a CSR of 50 or higher. DeKalb County, Ill., uses its LESA system to evaluate rezoning requests. All rezoning applications require a report from the local office of the Natural Resources Conservation Service.

Owners of agricultural land in the Spokane County, Wash., exclusive agricultural zone must meet three criteria for rezoning. First, the applicant must present “clear and convincing evidence that the property sought to be rezoned is better suited for a use other than agricultural use.” Second, the parcel must meet a productivity test. The ordinance states that “no parcel of land shall be rezoned if 25 percent or more of its soils are USDA-SCS Class I or II, or if 50 percent of its soils are USDA Class I, II or III, unless the tract is steep, heavily wooded, or has physical barriers which would interfere with farming.” Third, applicants must show that rezoning would not establish a use that would conflict with existing agricultural uses. Finally, if the application for rezoning is approved, an agricultural nuisance disclaimer must be attached to the deed of the property.

Marathon County, Wis., bases rezoning decisions on a series of findings. Factors considered include the productivity of the land and its suitability for development, availability and cost of public facilities to serve the new development, the potential for conflict with agricultural uses, the availability of alternative locations, and whether the proposed development will be sited to minimize the amount of farmland taken out of production.

Municipal annexation may be a more serious threat to agriculturally zoned land in county unincorporated areas than rezoning. Unfortunately, under most state laws, counties and landowners have little recourse if a municipality chooses to annex important agricultural land. California law provides an exception. A 1963 law created the Local Agency Formation Commission (LAFCO). LAFCO is a state agency located in every California county with the exception of San Francisco. Each county LAFCO is composed of local representatives, including county supervisors and city staff, as well as one member representing the general public. The commissions are designed to contain urban growth to areas in and around cities, and have the authority to review annexation petitions. According to state regulations, LAFCO decisions on petitions for annexation of agricultural land should be guided by two policies:

*Wilbur Moeller, a Scott County, Iowa, crop farmer and planning commission member, states the county's policy succinctly. "If you want to rezone an area out in the middle of nowhere, you can forget it," he maintains, explaining that the planning commission expects development to take place near a city or town<sup>17</sup>.*

1. Development shall be guided away from existing prime agricultural lands towards areas containing non-prime agricultural lands, unless such an action would not promote the planned, orderly, efficient development of an area.

2. Development within an agency's existing jurisdiction or sphere of influence should be encouraged before approval of any annexation to that agency which would lead to conversion of existing open space lands to other than open spaces<sup>18</sup>.

In practice, some county LAFCOs have very strong policies designed to prevent municipal annexation of agricultural land, while others have typically granted annexation petitions. The Marin County LAFCO is widely acknowledged to have the state's strongest policies to protect farmland. It has adopted a policy which gives it the authority to deny annexation of productive agricultural land that is subject to APZ.

#### **Monitoring and enforcement**

Monitoring and enforcement are critical to the success of APZ. Monitoring can detect violations of the zoning ordinance early, when they are easy to correct. If non-conforming uses become established, it may be expensive and time-consuming to enforce the zoning.

Planner Phil Rovang of Carroll County, Md., reflects that enforcement of APZ ordinances depends on the philosophy of local elected officials. Often, county commissioners prefer a hands-off approach to enforcement, which he describes as "don't go looking for trouble, but respond to complaints." Rovang warns that this method can lead to problems. He tells about a complaint he received in his previous position as a planner in Iowa. A citizen called and timidly reported, "I think my neighbor has a few too many trucks." Further investigation revealed that a farmer had set up a business to haul grain. Starting with one truck designed to haul grain from his own fields, the farmer soon began hauling grain for neighbors, and the business eventually evolved into a large, multi-purpose trucking operation. When the violation was revealed, the farmer requested that the land be rezoned from agriculture to industrial. The request was denied, and the operation was forced to move. "It was a real pain," remembers Rovang. "Little things can really grow on you<sup>19</sup>."

Rovang recommends that planners stay in close contact with farm organizations and civic groups to explain the zoning ordinance and avoid surprises. He believes that having farmers on the planning commission can make enforcement easier. Farmers on the planning commission can be the "first line of inquiry" for other farmers and rural residents who have questions about what uses are permitted in the agricultural protection zone.

APZ AND AGRICULTURAL TAX PROGRAMS

In most states, farmers receive significant tax benefits from differential assessment programs. Non-farm residents incur higher local property tax bills to compensate for the lower valuations of agricultural lands under differential assessment. Even though studies have proven that differential assessment simply corrects inequities in the tax system, the programs have been criticized on the grounds that they give farmers tax breaks without any assurance that the farm and rangeland under differential assessment will remain in agriculture. APZ can increase the likelihood that this farmland will not be developed.

RELATIONSHIP BETWEEN  
APZ AND OTHER  
FARMLAND PROTECTION  
STRATEGIES

Wisconsin has a circuit-breaker tax relief program that allows farmers to take state income tax credits based on their local property tax. Eligibility for tax relief is tied to local planning and APZ. Farmers may not apply for income tax credits under the state's farmland preservation credit program unless their county has adopted a farmland preservation plan. Farmers with land in jurisdictions that have both a farmland preservation plan and an exclusive APZ ordinance are eligible for larger credits than those in communities that do not have APZ. This requirement created a very strong incentive for local governments to adopt APZ. While farmers in many communities around the country have opposed agricultural protection zoning, Wisconsin farmers have lobbied local governments to approve APZ ordinances<sup>20</sup>.

APZ AND AGRICULTURAL DISTRICTS

Only two of the 16 states with agricultural district programs require agricultural zoning on land enrolled in an agricultural district. In Delaware, land proposed for inclusion in a district must be zoned for agriculture, and must not be subject to any major subdivision plan. Rezoning land in an agricultural district is prohibited, and land uses are limited to "agricultural and related uses." Although Delaware does not have APZ, residential development in agricultural districts is limited to housing for the landowners, relatives and farm employees. The maximum residential density is one dwelling for every 20 acres owned in the district; but no more than 10 acres total may be used for housing<sup>21</sup>.

Minnesota has two agricultural district programs. In the Twin Cities Metropolitan Area, only "long-term agricultural land" is eligible for enrollment in an "agricultural preserve." Long-term agricultural land is defined as "land in the metropolitan area designated for agricultural use in local or county comprehensive plans...and which has been zoned specifically for agricultural use permitting a maximum residential density of not more than one unit per quarter-quarter<sup>22</sup>."

Under Minnesota's statewide Agricultural Land Preservation law, a county must develop an agricultural land preservation plan and a set of regulations implementing the plan in order to become eligible to create agricultural preserves<sup>23</sup>. The plan must:

- be integrated with comprehensive county and municipal plans;
- identify land currently in agricultural use;
- identify areas in which development is occurring or likely to occur in the next 20 years;

- identify existing and proposed public sanitary sewer and water systems;
- classify land suitable for long-term agricultural use and take note of its current and future development; and
- determine present and future housing needs representing a variety of price and rental levels, and identify areas adequate to meet the demonstrated or projected needs.

Regulations must address at least the following elements:

- designation of land suitable for long-term agricultural use and the creation of exclusive agricultural use zones, allowing for conditional, compatible uses that do not conflict with long-term agricultural use;
- designation of urban expansion zones where limited growth and development may be allowed;
- residential density requirements and minimum lot sizes in exclusive agricultural use zones and urban expansion zones; and
- standards and procedures for county decisions on rezoning, subdivision and parcel divisions<sup>24</sup>.

Only owners of land that has been designated for exclusive long-term agricultural use under an approved agricultural preservation plan may apply for the creation of an agricultural preserve<sup>25</sup>.

Both Delaware and Minnesota provide tax benefits to landowners who enroll their land in an agricultural district. In Delaware, landowners who enroll in a district are eligible for the state PACE program; in Minnesota, landowners are protected from municipal annexation and unreasonable local regulations. These benefits partially compensate farmers for any loss in equity due to restrictions on land use. Kentucky's law also limits municipal governments' ability to annex land enrolled in agricultural districts.

The Delaware and Minnesota agricultural district programs also address the impermanence of APZ. In Delaware, landowners who enroll in an agricultural district must sign a 10-year covenant. In Minnesota, agricultural district agreements are terminated eight years after the landowner or county files an expiration notice.

#### APZ AND PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS

State and local governments have invested more than \$880 million in programs to purchase agricultural conservation easements on agricultural land. Yet PACE programs can protect only a fraction of the land necessary to sustain local farm economies. If the land surrounding protected properties is developed, land use conflicts and the loss of agricultural services may make it difficult or impossible to continue operating the restricted farms. APZ can

ensure that the land surrounding conserved farms remains in agriculture. It can also protect large areas from development until funds are available for purchase of permanent easements.

Carroll County, Md., enacted APZ in 1978 after a county study found that non-farm development was threatening agricultural viability. The new 184,000-acre agricultural protection zone covered 64 percent of the county. Density was reduced from one residence per acre to one unit per 20 acres. The county began participating in the state PACE program at the same time. It also agreed to provide increased funding for public services in designated growth zones. The PACE program helped “sell” APZ to the farm community.

King County, Wash., approved a PACE program in 1979, and began acquiring easements in 1985. As part of its farmland protection program, the county created “agricultural production” zones in 1985, with minimum lot sizes of up to 35 acres. Most easement purchases were in these zones.

**APZ AND TRANSFER OF DEVELOPMENT RIGHTS**

By combining APZ with PACE, communities can address the concern that APZ decreases farmers’ equity. A transfer of development rights (TDR) program can accomplish the same purpose. When Thurston County, Wash., changed the zoning in its agricultural areas from one unit per five acres to one unit per 20 or 40 acres, county planners promised that they would develop PACE and TDR programs to allow landowners to sell the development potential they were losing under the new ordinance. Under the new ordinance, maximum densities in the agricultural protection zones are either one unit per 20 acres or one unit per 40 acres. The PACE and TDR programs, however, give landowners the option of selling one development right for every five acres, which was the density permitted prior to the adoption of APZ.

Many farmers oppose APZ because it limits potential uses of their land. Opposition is likely to be strongest in communities where significant non-farm development has already taken place, threatening the long-term viability of commercial agriculture. If the jurisdiction does not have additional policies to support agriculture, such as agricultural districts, PACE, TDR or programs to promote farm products, agricultural land owners may feel that enactment of APZ is an attempt to preserve open space at the farmers’ expense.

**OBSERVATIONS**

APZ is more likely to be acceptable to farmers in areas where the agricultural economy is strong, and when it is one element in an integrated program of land use and economic strategies to promote and support farming. Farmers are also more likely to support APZ if they are closely involved in the process of revising the zoning code. In some communities, farmers have actively campaigned for more restrictive zoning to protect their land from development.

In Napa County, Calif., enactment of APZ during the early 1970s divided the agricultural community. Some farmers supported the establishment of large minimum lot sizes to contain urban growth, while others opposed new restrictions that could limit property values<sup>26</sup>.

One group of landowners unsuccessfully sued the county when it approved an APZ ordinance with 20-acre minimum lot sizes. As the county's wine industry became more profitable, however, opposition to agricultural zoning decreased. Minimum lot sizes increased from 20 to 40 acres. In 1994, the Napa County Farm Bureau supported amendments to the ordinance which increased lot sizes to 160 acres in some grape-growing areas. The lesson to be learned from Napa is that farmers are more likely to support agricultural zoning when farming is profitable.

Black Hawk County, Iowa, has one of the nation's oldest and most-studied APZ ordinances. The ordinance is strongly supported by the county's farmers, despite the fact that it restricts their ability to sell land for development. Lyle Waters, a retired farmer and action chairman for the farm bureau in Black Hawk County, speaks for many of his neighbors. "Zoning has been a godsend for us," he states emphatically. "We've kept urban sprawl pretty much contained to the cities. On the whole, [the Farm Bureau] has backed county zoning pretty much 100 percent<sup>27</sup>."

#### **Farmers Lobby for APZ in Walla Walla County, Washington**

Some farmers have actively lobbied local governments for APZ to protect their land from development. In 1991, a small group of farmers in Walla Walla County, Wash., led a successful campaign to enact exclusive APZ in one of the most fertile areas of the county. "We have some of the best agricultural land in the world here," boasts farmer and activist Jeanne Brewer<sup>28</sup>.

Farmers in the Russell Creek area of Walla Walla County grow wheat, beans, peas and oilseed crops on unirrigated land. To be commercially viable, farms must be large; most operations encompass thousands of acres. Parts of the Russell Creek area are just five miles from the growing city of Walla Walla, however, and development of non-farm residences on 20-acre lots increased during the 1980s. To protect the area from conversion, 56 landowners signed a petition asking that the zoning be changed from one residence per 20 acres to one per 120 acres. A survey conducted by the group of farmers found that a majority of the area's landowners supported, did not object to, or would not be affected by the proposed zoning change. One farmer expressed the feelings of many of his neighbors when he wrote on his survey, "This is a farming area not intended for housing development in any form. Someone must help feed the country; Russell Creek farmers are trying to do that<sup>29</sup>."

The zoning change was approved in 1992. Jeanne Brewer believes that maintaining the zoning at 120 acres will be enough to protect the land in Russell Creek. The challenges will be to prevent changes in the zoning, and to limit development in other important farming areas in the county<sup>30</sup>.



APZ is the only farmland protection technique that can prevent development of large tracts at low public cost. It seems to be successful under two different sets of circumstances. In many predominantly rural counties in the Midwest and West, planners and farmers rely on comprehensive plans and APZ ordinances to maintain the agricultural land base. In these jurisdictions, places such as Black Hawk County, Iowa, Whitman County, Wash., Clinton County, Ind., and dozens of Wisconsin counties, APZ was enacted when agriculture was the dominant land use, development pressure was minimal to moderate, and the price of land in rural areas was close to its value for farming. Farmers in these areas had no strong motivation to oppose APZ when it was implemented because they planned to keep their land in farming. APZ has been successful in these areas because it has helped keep farms extensive and profitable. Farmers support APZ because they do not feel that it has limited their options. Most have no desire to sell land for development, and they see zoning as a means of preventing any of their neighbors from doing so.

In the mid-Atlantic states, western Washington and California, APZ is being used as one component of comprehensive agricultural land protection programs. In areas such as Carroll and Montgomery Counties in Maryland, Lancaster County, Pa., Sonoma County, Calif., and Thurston County, Wash., farming is still profitable, but development pressure is strong and the price of land is generally far higher than its value for agriculture. APZ alone cannot address the economic challenges that farmers face in rapidly growing communities. These jurisdictions have combined APZ with PACE and TDR programs that allow farmers to retain their equity in the land, and provide a source of cash that can be used to adapt their operations to changing conditions. The combination of APZ and PACE has been particularly successful in protecting farmland in urban-influenced counties in Maryland and Pennsylvania. Some of these communities also have publicly funded programs to promote and market local farm products.

The experience with APZ over the past 25 years suggests an important lesson for rural communities that are just starting to address the challenges of protecting agricultural land from development. APZ is most effective when it is implemented before the threat to farmland becomes severe. The effectiveness, and political acceptability, of APZ in areas that are experiencing strong urban growth often depends on the local government's commitment to other programs that support farming.



For more information on farmland protection, contact the Farmland Information Center at <http://www.farmlandinfo.org> or call (413) 586-4593.

APPENDIX B: USES PERMITTED IN EXCLUSIVE AGRICULTURAL, GENERAL AGRICULTURAL AND RURAL SETTLEMENT ZONES IN SPOKANE COUNTY, WASH.

APPENDICES Chapter 14.637

EXCLUSIVE AGRICULTURAL, GENERAL AGRICULTURAL AND RURAL SETTLEMENT ZONES MATRIX

Section:

- 14.637.020 Use - Residential/Business/Service/Industrial
- 14.637.040 Use - Public and Semi-Public
- 14.637.060 Use - Agricultural, Silvicultural, and Agriculture Related
- 14.637.080 Index of Letters and Symbols

14.637.020 Use - Residential/Business/Service/Industrial

	<u>EA</u>	<u>GA</u>	<u>RS</u>
Aboveground tank storage of liquefied petroleum gas (LPG)	P-Acc.(1)	P-Acc.(1)	P-Acc.(1)
Adult Bookstore	N	N	N
Adult Entertainment Establishment	N	N	N
Auto wrecking, junk and salvage yards	N	C.U.	N
Automobile/truck/painting/repair	N	N	C.U.
Business and professional office	N	N	P(1)
Caretaker's residence	N	N	N
Community residential facility (8 or fewer residents)	N	N	N
Community residential facility (greater than 8 residents, no more than 25 residents)	N	N	N
Community treatment facility (8 or fewer residents)	N	N	C.U.
Community treatment facility (greater than 8 residents, no more than 20 residents)	N	N	N
Conditional Accessory Unit	N	C.U.(1)	C.U.(1)
Contractor's Yard	N	C.U.	N
Dependent Relative Manufactured (Mobile) Home	C.U.	C.U.	C.U.
Dormitory	N	P	P
Duplex	C.U.	P-Acc.(1)	P(1)
Fraternity, sorority	N	P	P
Home industry	C.U.	C.U.	C.U.
Home profession	P-Acc.(4)	P-Acc.(4)	P-Acc.(4)
Household pets	P	P	P
Machine shop	N	N	C.U.
Manufactured home	P(1 & 2)	P(1 & 2)	P(1 & 2)
Manufactured home park	N	N	P(2)
Multifamily dwelling	N	N	N
Neighborhood retail or service business	N	N	P(1)
Nursing home, convalescent home	N	N	N

Prison, jail, or institution	N	C.U.	N
1. Maximum security			
2. Minimum security			
3. Work release			
4. Correctional facility			
Retirement apartment	N	N	N
Self-service storage facility	N	N	C.U.
Single-family dwelling	P(1)	P(1)	P
Solar collector and associated systems	P-Acc.	P-Acc.	P-Acc.
Storage Structure, detached, private	P	P	P
Tank Storage of critical material			
Aboveground	P-Acc.(1)	P-Acc.(1)	N
Belowground	P-Acc.	P-Acc.	P-Acc.
Tire Salvage Yard	N	C.U.	N
Transitional community facility	N	N	N
<i>(8 or fewer residents)</i>			
Transitional community facility	N	N	N
<i>(greater than 8 residents, no more than 20 residents)</i>			

Other uses as determined by the Hearing Body in public hearing as an amendment to the Zoning Code.

**14.637.040 Use - Public and Semipublic**

	<u>EA</u>	<u>GA</u>	<u>RS</u>
Archery, rifle, gun, pistol ranges/clubs	N	C.U.	N
Cemetery	N	C.U.	N
Church	N	P	P
Commercial composting storage/processing	N	C.U.	N
Community hall, club or lodge	C.U.	P(1)	P
Community recreational facility	N	N	C.U.
Community swimming pool	N	N	P
Community transit center	N	N	P
Day care center	N	N	C.U.
Day care center	N	P(1)	P(1)
<i>(in a church or a public or private school)</i>			
Family day care home	P	P	P
Fire station	P(1)	P(1)	P
Golf course	N	P(1)	N
Hospital	N	N	N
Incinerator	N	C.U.	N
Landfill	N	C.U.	N
Library	N	N	P
Medical office or emergency clinic	N	N	P
Mini day care center (in a dwelling)	N	P	P
Mini day care center (not in a dwelling)	N	N	P
Nonmotorized trail system	C.U.	C.U.	N
Nursery school	C.U.	P	P

Park and ride facility	N	C.U.	P
Park, public <i>(including caretaker's residence)</i>	N	P	P
Post office	P(1)	P	P
Private repeater facility	P	P	P
Public utility local distribution facility	P	P	P
Public utility transmission facility	P(1)	P(1)	P(1)
Racetracks <i>(horses, dogs, autos, go-carts, snowmobiles, off-road vehicles, motorcycles)</i>	N	C.U.	N
Recreational area, commercial	N	C.U.	C.U.
Recreational vehicle park	N	C.U.	C.U.
Sanitarium	N	N	N
Schools - public and private			
1. Kindergarten	C.U.	P	P
2. Elementary	C.U.	P	P
3. Middle	C.U.	C.U.	C.U.
4. Junior High	C.U.	C.U.	C.U.
5. High	C.U.	C.U.	C.U.
6. Junior college	C.U.	C.U.	C.U.
7. College or university	C.U.	C.U.	C.U.
8. Expansion of existing public or private schools or addition of accessory structure on adjacent property	P	P	P
Sewage sludge land application	P	P	N
Solid waste hauler	N	N	C.U.
Solid waste recycling/transfer site	P(1)	P(1)	C.U.
Solid waste recycling/transfer site, private	P(1)	P(1)	C.U.
Tower	P(1)	P(1)	P(1)
Tower, private	P-Acc.(1)	P-Acc.(1)	P-Acc.(1)
Other uses as determined by the Hearing Body in public hearing as an amendment to the Zoning Code.			

**14.637.060 Agricultural, Silvicultural and Agriculture-related**

	<u>EA</u>	<u>GA</u>	<u>S</u>
Agricultural processing plant, warehouse	C.U.	P	N
Agricultural product stand	P(1)	P(1)	N
Airstrip for crop dusting and spraying	C.U.	C.U.	N
Airstrip, personal	P(1)	P(1)	N
Airstrip, private	N	C.U.	N
Animal clinic - veterinary - large and small animals	N	P	C.U.
Animal raising and/or keeping	P	P(1)	N
Beekeeping, commercial	P	P	N
Beekeeping, hobby	P	P	P-Acc.(1)
Cultivation of land (commercial)	P	P	N
Dairy	P	P	N
Farm machinery sales and repair	P(1)	P	P
Feed lot	C.U.	C.U.	N

Feed mill	P	P	N
Fertilizer application facility	C.U.	P	N
Fish hatchery	N	P	N
Floriculture (flower growing)	P	P	N
Gardening	P	P	P
Gasohol plant, commercial use	N	C.U.	N
Gasohol plant, personal use	P(1)	P(1)	N
Grain elevator	P	P	P
Grazing	P	P	N
Greenhouse-commercial	P	P	N
Hazardous waste treatment and storage facilities, off-site	N	N	N
Hazardous waste treatment and storage facilities, on-site	P-Acc.(1)	P-Acc.(1)	P-Acc.(1)
Horse boarding and training	N	P	N
Horticulture (vegetable growing)	P	P	N
Kennel	N	C.U.	N
Kennel, private	N	C.U.	C.U.
Nursery-wholesale	P	P	N
Orchard	P	P	N
Pigeon, performing/show	P-Acc.	P-Acc.	P-Acc.
Riding stable	N	P	N
Sawmill and lumber mill	N	P(1)	N
Transient-agricultural labor residence	C.U.	C.U.	N
Tree farming	P	P	N
Truck gardening	P	P	N
Vineyard	P	P	N
Winery	C.U.	P	N

Other uses as determined by the Hearing Body in public hearing as an amendment to the Zoning Code.

**14.637.080 Index of Letters and Symbols**

- P Permitted use.
- P(1) See Chapters 14.638 (EA), 14.640 (GA) and 14.642 (RS) for specific standards for locating and approving these uses.
- P(2) See Chapter 14.808 for required Manufactured Home development standards.
- P(3) See Chapter 14.812 for required Solar development standards.
- P(4) See home profession definition.
- P-Acc. Permitted accessory use.
- C.U. Conditional use.
- C.U.(1) See Chapter 14.816.
- N Not permitted use.

APPENDIX C: SAMPLE NATURAL RESOURCE EASEMENT FROM FREMONT COUNTY, IDAHO.

RESOURCE MANAGEMENT EASEMENT

\_\_\_\_\_ are the owners of real property described as follows:

In accordance with the conditions set forth in the decision of Fremont County dated \_\_\_\_\_, approving a permit for residential development on the above described property, and in consideration of such approval, Grantors grant to the owners of all property adjacent to the above described property, a perpetual nonexclusive easement as follows:

1. The Grantors, their heirs, successors, and assigns acknowledge by the granting of this easement that the above described property is situated in an agricultural area and may be subjected to conditions resulting from commercial agricultural operations on adjacent lands. Such operations include the cultivation, harvesting, and storage of crops and livestock raising and the application of chemicals, operation of machinery, application of irrigation water, and other accepted and customary agricultural activities conducted in accordance with federal and state laws. These activities ordinarily and necessarily produce noise, dust, smoke, and other conditions that may conflict with Grantors' use of Grantors' property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary agricultural management activities legally conducted on adjacent lands which may conflict with Grantors' use of Grantors' property for residential purposes and grantors hereby grant an easement to adjacent property owners for such activities.

2. Nothing in this easement shall grant a right to adjacent property owners for ingress or egress upon or across the described property. Nothing in this easement shall prohibit or otherwise restrict the Grantors from enforcing or seeking enforcement of statutes or regulations of governmental agencies for activities conducted on adjacent properties.

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors, and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors, and assigns. The adjacent landowners, their heirs, successors, and assigns are hereby expressly granted the right of third party enforcement of the easement.

IN WITNESS WHEREOF, the grantors have executed this easement dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

Grantor \_\_\_\_\_

STATE OF )

COUNTY OF )

On this \_\_\_\_\_ Day of \_\_\_\_\_, 19\_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_ known/proved to me to be the person/s whose name/s subscribed to the within instrument and acknowledged to me that \_\_\_\_\_ executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in the certificate first above written.

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Notary Public for the State of  
Residing at:  
Commission Expires:

## ENDNOTES

1. *Village of Euclid v. Ambler Realty Company*, 272 US 365 (1926).
2. Robert E. Coughlin, *The Adoption and Stability of Agricultural Protection Zoning in York County, Pennsylvania* (Philadelphia, Pa.: University of Pennsylvania Department of City and Regional Planning, 1993), pp. 15-16.
3. American Resources Information Network, *Summary of State Takings Legislation* (Washington, D.C., January 1, 1997).
4. *Ibid.*
5. Robert P. Benner, "Saving Oregon's Farmland" (unpublished address to the Oregon Board of Agriculture, February 15, 1996).
6. John DeGrove, communication with John Keene, 1995.
7. Robert E. Coughlin, *The Adoption and Stability of Agricultural Protection Zoning in Lancaster County, Pennsylvania* (Philadelphia, Pa.: University of Pennsylvania Department of City and Regional Planning, 1992).
8. *DeVita v. County of Napa*, 9 Cal. 4th 763 (March 1995). The Court held that the county's General Plan could be amended by citizen initiative.
9. Story County Planning and Zoning, *County Development Plan* (Nevada, Iowa, 1993), p. 3.
10. Lancaster County Planning Commission, *Lancaster County Comprehensive Plan* (Lancaster, Pa., 1991), pp. 9-11.
11. San Mateo County Planning and Building Division, *Section 6350, San Mateo County Zoning Regulations: Planned Agricultural District*.
12. Sonia A. Johannsen and Larry C. Larsen, "Corn Suitability Ratings: A Method of Rating Soils for Identifying and Preserving Primate Agricultural Lands in Black Hawk County, Iowa," in Frederick R. Steiner and John E. Theilacker, *Protecting Farmlands* (Westport, Conn.: The AVI Publishing Company, 1984), pp. 112-115.
13. Scott County, Iowa, Zoning Ordinance (Davenport, Iowa amended 1993), p. 25.
14. James R. Pease, Robert E. Coughlin, Frederick R. Steiner, et al., "State and Local LESA Systems: Status and Evaluation," in Steiner, Pease and Coughlin, *A Decade with LESA: The Evolution of Land Evaluation and Site Assessment* (Ankeny, Iowa: Soil and Water Conservation Society, 1994), p. 64.
15. Coughlin, *op. cit.*, pp. 18-19.
16. Chuck Donley, Assistant Planning Director, Routt County, Calif., telephone conversation with Robin Sherman, April 4, 1997.
17. Wilbur Moeller, telephone conversation with Robin Sherman, September 1996.
18. Government Code, Section 54790.2.
19. Phil Rovang, telephone conversation with Robin Sherman, February 1997.
20. Roger Cliff, director of government relations, Wisconsin Farm Bureau, Telephone conversation with Robin Sherman, March 18, 1997.
21. Delaware Code Annotated Title 3, Section 909 (a).
22. Minnesota Statute Chapter 473H.02.
23. Minnesota Statute 40A.04.
24. Minnesota Statute 40A.05.
25. Minnesota Statute 40A.09.



- 26. Mary E. Handel and Alvin D. Sokolow, *Farmland and Open Space Preservation in the Four North Bay Counties* (Davis, Calif., University of California, 1994).
- 27. Lyle Waters, telephone conversation with Robin Sherman, September 1996.
- 28. Jeanne Brewer, interview with Robin Sherman, June 1996.
- 29. *Ibid.*
- 30. *Ibid.*

Benner, Robert P. "Saving Oregon's Farmland." Unpublished address to the Oregon Board of Agriculture. February 15, 1996.

Coughlin, Robert E. *The Adoption and Stability of Agricultural Protection Zoning in York County, Pennsylvania*. Philadelphia, Pa.: University of Pennsylvania Department of City and Regional Planning. 1993.

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Daniels, Thomas L. and David E. Reed. "Agricultural Zoning in a Metropolitan County: An Evaluation of the Black Hawk County, Iowa Program." *Landscape and Urban Planning*, 16 (4). 1988. pp. 303-310.

RECOMMENDED

Thompson, Edward, Jr. "Zoned for Agriculture." *County Journal*, November 1983, pp. 84-95.

READING

