FARMLAND PRESERVATION IN VERMONT AND THE CREATIVE USE OF LAND TRUSTS

INTRODUCTION

The development of agricultural land has caused growing concern during the past two decades. According to a 1981 survey of the nation's privately owned lands, three million acres of prime agricultural soils are converted to non-agricultural uses annually.[1]

Vermont, too, is experiencing a farmland conversion problem. Although the agricultural land base in Vermont has not been critically diminished and although the number of Vermont farms increased 7.9% between 1978 and 1982,[2] farm acreage decreased 3.6% during the same period.[3] This decrease in farmland acreage causes concern because agricultural land serves many purposes for Vermont. Agriculture is an important industry, not only because of the food it produces, but also because of the employment it provides for seasonal workers and for workers in related industries such as equipment and tool dealerships, and grain and feed companies. In addition, agricultural land provides habitat for the state's wildlife and enhances Vermont's scenic landscape.[4] Thus, farmland provides an important asset for Vermont's leading industry—tourism.

Preservation of prime agricultural soils is also important because high quality agricultural soils are a finite natural resource.[5] Although soils converted to non-agricultural use may eventually be reconverted to agricultural uses, those soils converted because of development are essentially irreplaceable.[6] Preservation of these agricultural soils is also important because a critical landmass is required for agriculture to remain economically feasible.[7] This land mass is needed both in terms of providing business for support industries and in terms of individual farms. Without sufficient farms

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1. NATIONAL AGRICULTURAL LANDS STUDY, FINAL REPORT 35 (1981).
2. UNITED STATES CENSUS OF AGRICULTURE, STATE REPORT—VERMONT 3 (1982).
3. *Id.* at viii.
4. AGRICULTURAL LANDS TASK FORCE, THE FARMLAND ISSUE IN VERMONT: FINDINGS AND RECOMMENDATIONS 5 (1983) [hereinafter THE FARMLAND ISSUE].
5. *Id.* at iii.
6. SOIL CONSERVATION SERVICE, USDA, PRIMARY AGRICULTURAL SOILS AND VERMONT AGRICULTURE 25 (1983).
7. *Id.* at 19. Critical landmass is the minimum amount of contiguous land required for farming to be economically practicable.

to supply, farming related industries cannot economically survive.[8] Small scattered fields, even if composed of high quality soils, are not economical to farm because of the smaller machinery required to work them and the costs of time and energy necessary to get to and from the fields.[9] Consequently, in order for agriculture and agricultural lands to continue to contribute to Vermont's economy, preservation of agricultural land must begin before Vermont's high quality lands become critically diminished.[10]

Any effective farmland program must balance the conflicting interests of an individual's property rights and society's need for farmland. This note will examine the causes of Vermont's farmland problems and Vermont's existing farmland programs in terms of why they are ineffective. The note will also evaluate the comprehensive program developed by the Agricultural Lands Task Force, which was presented to the Vermont Legislature in 1983, but was never acted upon. Finally, the note will suggest how, in the absence of any comprehensive legislative program in the state, the private sector through land trusts can preserve agricultural land while respecting farmers' property interests.

I. The Causes of the Vermont Farmland Problem

The conversion of Vermont's agricultural land to non-agricultural uses arises from many individual and economic factors. A major factor is the increased value of rural land. Many farmers and other owners of agricultural land consider their land an investment or a source of retirement income.[11] Viewed this way, land is a commodity to be sold when the price is high enough. As development spreads into rural areas, the value of agricultural land rises to reflect the prices buyers are willing to pay; farmers are tempted to take advantage of these higher prices. Additionally, as the price of land increases, farmers who do not sell are unable to expand their operations and potential farmers are unable to enter the occupation.[12]

Conflicting land use and uncertainty about the continued via-

8. *Id.*
9. *Id.*
10. The Farmland Issue, *supra* note 4, at 4.
11. Healy & Short, *Changing Markets in Rural Land*, in Beyond the Urban Fringe: Land Use Issues of Nonmetropolitan America 130 (1983).
12. *Id.* at 129.

bility of farming are other causes of farmland conversion. As land used for non-agricultural purposes surrounds farms, conflicts may occur.[13] The conflicts may cause residents who feel they cannot fully enjoy their property when bothered by the noises and odors of farming operations to bring nuisance suits.[14] As new developments arise, farmers may be affected by an "impermanence syndrome."[15] Because they are not confident about the continued value of farming, they do not make the investments needed to continue optimal use of their land.[16] Consequently, the quality of the land decreases, farm income declines, and the temptation to sell increases.

In order for farmers to continue productive use of their land, the state must encourage farmland preservation. Although the Vermont Legislature has enacted several programs which indirectly promote farmland preservation, few offer farmers any incentives for continuing agricultural use of their land. Also, the state has yet to attempt to integrate development with farmland preservation. Thus, the legislature has yet to develop any program which balances landowners' property rights with the state's need for farmland.

In 1983, the Agricultural Lands Task Force,[17] appointed by the Department of Agriculture to review the state's farmland programs, presented its findings and recommendations to the General Assembly. The task force's review concluded that existing programs lacked sufficient coherence to provide effective farmland conservation.[18] Consequently, the task force devised a comprehensive program which encouraged farmland protection through restrictions on property rights in exchange for incentives provided by the state: the more rights a farmer relinquished and the greater the extent of preservation, the greater the incentives offered by the state.[19] This scheme provided direct compensation to landowners by the state in exchange for the benefits the state would receive from the land's preservation.

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13. NATIONAL AGRICULTURAL LANDS STUDY, *supra* note 1, at 44.

14. *Id.*

15. W.W. FLETCHER & C.E. LITTLE, THE AMERICAN CROPLAND CRISIS 81 (1982) [hereinafter THE AMERICAN CROPLAND CRISIS].

16. *Id.* at 82.

17. H.R.J. Res. 43, 56th Biennial Session, 1982 Vt. Laws 726.

18. THE FARMLAND ISSUE, *supra* note 4, at 28.

19. *Id.* at 7.

The Agricultural Lands Task Force's program would have encouraged farmers to continue productive use of their land. Although the task force presented its recommendations in 1983, the program was never introduced as a bill.[20] To date, the state government has yet to adopt any comprehensive program. Without such a program, farmland protection remains a concern of local governments and the private sector and is, to a greater degree, subject to the politics of competing interests.[21] In order for Vermont to effectively preserve agricultural land, the state must institute a comprehensive program that utilizes the state's resources, local governments, and the private sector.

II. Existing Vermont Farmland Programs

Existing farmland programs consist primarily of deterrence and control of speculative development,[22] enabling legislation for municipal zoning,[23] acquisition of land by public agencies,[24] protection from private nuisance suits,[25] and property tax relief.[26] Additionally, in 1985, the legislature for the first time allocated funds to the Vermont Industrial Development Corporation for agricultural loans.[27] None of these programs, however, offer direct incentives to continue agricultural land use, but rather provide only piecemeal guidance and incentives. Also, because of the programs' uncommon goals, their cumulative impact does not provide the encouragement from the state level necessary for landowners to continue agricul-

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20. Interview with Harvey Carter, Vermont State Senator for Bennington County, in South Royalton, Vermont (Dec. 3, 1985).

21. Regional Science Research Institute, The Protection of Farmland: A Reference Guidebook for State and Local Governments 250 (1981) [hereinafter The Protection of Farmland]. The authors point out that state government is less parochial than local governments. Also, state government is capable of viewing farmland protection from a broader perspective than local government. *Id.*

22. *See* Vt. Stat. Ann. tit. 32, §§ 10001-10010 (1981); Vt. Stat. Ann. tit. 10, §§ 6001-6092 (1984 & Supp. 1986).

23. *See* Vt. Stat. Ann. tit. 24, §§ 4301-4494 (1975 & Supp. 1986).

24. *See* Vt. Stat. Ann. tit. 10, §§ 6301-6309 (1984).

25. *See* Vt. Stat. Ann. tit. 12, §§ 5751-5753 (Supp. 1986).

26. *See* Vt. Stat. Ann. tit. 24, § 2741 (1975); Vt. Stat. Ann. tit. 32, § 3846 (1981) (dealing with tax stabilization contracts). *See also* Vt. Stat. Ann. tit. 32, §§ 3751-3760 (1981 & Supp. 1986) (dealing with Use Value appraisal).

27. Vt. Stat. Ann. tit. 10, §§ 271-277 (Supp. 1986). (The Vermont Industrial Development Authority was originally designed to provide low interest loans to industry thereby encouraging industries to locate in Vermont). See Vt. Stat. Ann. tit. 10, § 211 (1984) for legislative findings relating to the Vermont Industrial Development Authority. Prior to the Family Farm Assistance Act, farmers were ineligible for these low interest loans.

tural use of their land.

A. Controlling Speculative Development

Legislation that indirectly protects farmland includes a capital gains tax on the sale of property,[28] and Act 250, the Vermont land use and development statute.[29] The capital gains tax provides disincentives for speculative land development through a graduated tax on appreciated property.[30] The amount of tax depends on the percentage of appreciation and the length of time the property has been held; the greater the appreciation and the shorter the time held, the greater the tax.[31] However, this tax has little effect in deterring farmland sales because the tax does not apply to property held for longer than six years.[32] Most farmers have owned their property for longer than six years.[33] Although the tax may discourage speculative development, it does little to encourage farming.

Act 250,[34] Vermont's land use and development statute, is a somewhat more effective device for controlling speculative development. However, the Act, which requires permits from District Environmental Commissions for subdivisions of land and certain developments,[35] also has limitations. The Act aids in the protection of farmland because one criterion which the Environmental Commission must consider before issuing a development permit is the effect of the development on primary farmland.[36] Before the District Commissioner may grant a development permit on land classified as "primary agricultural land," the applicant must show that the development will not significantly impair the agricultural potential of the land or that the development complies with four specific conditions. Those conditions are: (1) that the only way the applicant can realize a reasonable return on investment would significantly reduce agricultural potential; (2) that the applicant does

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28. VT. STAT. ANN. tit. 32, §§ 10001-10010 (1981 & Supp. 1986).
29. VT. STAT. ANN. tit. 10, §§ 6001-6092 (1984 & Supp. 1986).
30. VT. STAT. ANN. tit. 32, § 10001 (1981).
31. *Id.* § 10003.
32. *Id.*
33. *See generally* Note, *Taxing Speculative Land Gains*, 32 URB. L. ANN. 3-69 (This article discusses the effectiveness of the Vermont capital gains tax in deterring land speculation).
34. VT. STAT. ANN. tit. 10, §§ 6001-6092 (1984 & Supp. 1986).
35. *Id.* § 6001(3).
36. *Id.* § 6086(9)(B).

not own or control any non-agricultural land which can be reasonably used for the purpose; (3) that the subdivision or development is designed to minimize reduction of agricultural potential; and (4) that the subdivision or development will not threaten continued agricultural and forestry practices on adjoining land.[37] The applicant must show that all four conditions are met before the District Commission may grant the permit. Finally, the commission must consider the effect of the development or subdivision on adjoining forest or secondary agricultural land.[38]

Although the language of the Act may appear to provide substantial protection from the development or subdivision of agricultural land, the conditions include enough ambiguous terms to allow differing interpretations.[39] Restrictive interpretation limits the scope of the Act's protection. An example of this can be seen in *In re Windsor Improvement Corporation Industrial Park*,[40] a case in which the applicant sought a permit to build an industrial park on primary agricultural soils.[41] Because the applicant could not demonstrate that the agricultural potential of the land would not be impaired, it sought a permit under the four conditions. The applicant requested the District Commission to rule that "adjoining land" under the fourth condition meant physically adjoining land.[42] The District Commission denied the request stating that "due to the nature of Vermont farming operations (a home farm with rented supplemental land usually at some distance from the home farm), it is unreasonable to limit impacts on agricultural potential to lands physically touching the property of any particular project."[43] The District Commission found that not only could the extension of sewer and water lines to the industrial park adversely affect agricultural land immediately around the park, but it could

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37. *Id.* § 6086(9)(B)(i-iv).

38. *Id.* § 6086(9)(C).

39. *See* Note, *The Effect of Act 250 on Prime Farmland in Vermont*, 6 VT. L. REV. 467 (1981) [hereinafter Note, *The Effect of Act 250*]. This note analyzes the problems which have arisen in several Act 250 applications in regard to protecting agricultural land in Vermont. *See also* Carbin, *Act 250 and Agriculture: The Windsor File*, in PROCEEDINGS OF THE ACT 250 CONFERENCE (May 13-14, 1983).

40. No. 2S0455 (Dist. Envtl. Comm'n No. 2, Aug. 11, 1980).

41. *Id.*

42. Motion for Applicant, *In re* Windsor Improvement Corp. Indus. Park, No. 2S0455 (Dist. Envtl. Comm'n No. 2, May 2, 1980).

43. Dist. Envtl. Comm'n No. 2 Orders for Windsor Improvement Corp. Indus. Park at 1, *In re* Windsor Improvement Corp. Indus. Park, No. 2S0455 (Dist. Envtl. Comm'n No. 2, Aug. 11, 1980).

also jeopardize the critical land mass needed for farming.[44] The District Commission also found that the first condition had not been met and denied the permit.[45]

However, on appeal in the Windsor Superior Court, the judge approved the permit.[46] The judge restricted his consideration to the effect of the development on those lands physically "touching and abutting the land of the applicant."[47] Unfortunately, the decision undercuts Act 250's role in preserving farmland because restricting consideration to those lands physically adjoining the proposed development ignores the need for critical land mass.

Even without such restrictive interpretations, however, Act 250 is limited in controlling the loss of farmland. The Act in no way restricts a farmer from selling his or her entire farm. Although the Act may encourage a developer to consider the effect of development or subdivision on primary agricultural lands, it has but indirect effect on the landowner's decision to sell. All the Act can do is restrict the market potential by placing restrictions on the developer. However, these restrictions are weakened because much rural agricultural land in Vermont has a high potential for development, thus increasing the likelihood that the developer will take the risk of getting a Vermont permit.[48] Once the developer buys the land at inflated prices, the developer may then demonstrate that the proposed development is the only way he or she can realize a reasonable return on the investment.[49] In several cases, however, District Commissions have conditioned permit approval on redesign of the development to reduce the impact on prime agricultural soils.[50] Nonetheless, the developer gets the permit and the land is developed.

B. Municipal Zoning and Farmland Protection

Local zoning ordinances may also play a role in protecting

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44. *Id.*

45. *Id.*

46. *In re* Windsor Improvement Corp., No. S23-80-Wrm (Windsor Superior Court, Jan. 18, 1983).

47. *Id.*

48. THE FARMLAND ISSUE, *supra* note 4, at 3-4.

49. Note, *The Effect of Act 250*, *supra* note 39, at 479.

50. *Id.* at 487-89 (citing several applications which were granted because the applicant had revised plans to minimize the effects of subdivisions or developments on primary farmland).

Vermont's farmlands. The Vermont Planning and Development Act[51] enables local governments to take appropriate measures to direct development within municipalities. The Act specifically allows towns to protect agricultural land and other resources.[52] The Act authorizes town and regional commissions to propose plans to achieve the protection deemed necessary.[53] The Act also authorizes town zoning to implement the plans.[54] Town plans may include recognition and identification of existing farmland and natural resources.[55] Zoning may include agricultural districting whereby non-agricultural development is limited to residential lots of not less than twenty-five acres each.[56] Thus towns have the ability to protect farmers from conflicting land uses that threaten their operations.

Although the Planning and Development Act provides a basis for local protection of farmland, such local protection is frequently politically unfeasible. Because the property tax base depends upon local land values, towns may ignore the need for farmland preservation in an effort to raise the property tax base.[57] Agricultural zoning may lower the tax base because the land's potential development is limited and the property tax assessments are based upon the land's development potential.[58] Because municipal planning and zoning is not mandatory, this perceived erosion of the tax base may discourage municipalities from initiating local protection.[59] Another problem is that once a community adopts a town plan, it may become complacent and take no further action because it assumes that town policies are sufficient to protect the resources.[60] Also, traditional zoning may be resisted by farmers who object to regulation.[61] Finally, zoning does not provide incentives for farmers to keep their land in productive use.

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51. VT. STAT. ANN. tit. 24, §§ 4301-4494 (1975 & Supp. 1986).

52. *Id.* § 4302.

53. *Id.* §§ 4345(5), 4381.

54. *Id.* § 4401(b)(1).

55. *Id.* §§ 4382, 4383.

56. *Id.* § 4407(1)(A).

57. Interview with William Bingham, former University of Vermont Extension Agent and former Rutland Regional Planning Commissioner, in Shrewsbury, Vermont (Jan. 12, 1986).

58. *Id.*

59. *Id.*

60. Carbin, *Private Land Conservation and Local Regulation in Vermont*, in PRIVATE OPTIONS: TOOLS AND CONCEPTS FOR LAND CONSERVATION 231 (1982) [hereinafter PRIVATE OPTIONS].

61. *Id.*

The Act does, however, provide the basis for effective farmland protection should a community choose to take the initiative. Town plans may identify productive agricultural lands and articulate town policies to promote development away from such lands.[62] Zoning may also provide protection of farmlands through agricultural districting. However, without encouragement from the state level, municipalities may neglect to take advantage of the Act.

C. Acquisition of Interests in Land by Local and State Government

Another Vermont law, Title 10, Chapter 155,[63] permits local governments and specified state agencies to take an active role in preserving agricultural land by acquiring real property. Under the Act, local governments can acquire a landowner's development rights,[64] thus removing such land from the development market. The Act also provides an incentive for the farmer to convey such rights to the municipality because any interest conveyed is not subject to property tax.[65] Thus, if a landowner conveys development rights to a municipality, the property tax assessment will be limited to the value of the rights retained.

This program is limited in its operation because many municipalities are reluctant to accept even gifts of property interests because the property tax base will decline.[66] Also, many municipalities do not have the financing to purchase land or property interests.[67] Another problem is that even though the Act allows for the purchase of partial interests in land, such as development rights, the value of development rights in communities under pressure for development is almost as high as the value of the land itself.[68] However, when a town obtains development rights to property, the town will not have the burden of providing municipal services to that property because it will not be developed.[69] This may

62. *Id. See* VT. STAT. ANN. tit. 24, §§ 4302, 4382, 4383 (1975 & Supp. 1986).

63. VT. STAT. ANN. tit. 10, §§ 6301-6309 (1984).

64. *Id.* § 6303.

65. *Id.* § 6306.

66. Interview with Richard W. Carbin, Executive Director of Ottauquechee Regional Land Trust, in Woodstock, Vermont (Sept. 22, 1985).

67. *Id.*

68. *Id.* According to Richard Carbin, development rights on agricultural land in Chittenden County, Vermont are valued at between three and four thousand dollars an acre. *See also*, NATIONAL AGRICULTURAL LANDS STUDY, *supra* note 1, at 66-67.

69. NATIONAL AGRICULTURAL LANDS STUDY, *supra* note 1, at 44.

alleviate the burden of the decreasing tax base. Furthermore, because the value of the land surrounding the restricted property may rise, the impact of the reduced tax on the restricted property may not be that great.[70]

D. The Right-to-Farm Act

In 1981, Vermont followed the lead of many other states by enacting a Right-to-Farm Act[71] that protects farmers from private nuisance suits caused by conflicting land uses brought about by the urbanization of rural areas.[72] The Act alleviates a farmer's risk of a nuisance suit, thus reducing the impact of conflicting land uses. The Act creates the presumption that agricultural activities are reasonable and do not constitute nuisances if they are consistent with accepted agricultural practices and are established prior to the surrounding non-agricultural uses.[73] The presumption may be rebutted by showing that the agricultural practice has a substantial adverse effect on public safety and health.[74] Although the Act creates the presumption of reasonable practices, the Act does not limit state and local governments' ability to enact public nuisance laws and ordinances for the protection of public health.[75]

This Act was passed to abate concern about private nuisance suits.[76] However, because of the continued ability of local governments to pass public nuisance ordinances, farmers in communities with large non-agricultural constituencies may continue to find themselves threatened by public nuisance suits because of the greater political power of the non-farm constituency. Although the Right-to-Farm Act may alleviate problems caused by conflicting land uses, the Act provides no incentives for continuing farmland productivity.

E. Property Tax Relief

The only two Vermont farmland protection programs that

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70. Interview with Richard Carbin, *supra* note 66.

71. VT. STAT. ANN. tit. 12, §§ 5751-5753 (Supp. 1986).

72. *Id.* § 5751. *See also* THE PROTECTION OF FARMLAND, *supra* note 21, at 98-103 (describing Right-to-Farm statutes passed by other states).

73. VT. STAT. ANN. tit. 12, § 5753(a) (Supp. 1986).

74. *Id.* § 5753.

75. *Id.* § 5753(b).

76. *Id.* § 5751.

provide direct incentive for farmers to continue farming are the Tax Stabilization Agreement Act,[77] passed in 1968, and the Current Use Appraisal Act,[78] passed in 1978. The Tax Stabilization Agreement program authorizes local communities to enter into tax relief agreements with local landowners.[79] Land eligibility and amount of relief are determined locally.[80] Although several communities have taken advantage of this program,[81] farmers in communities less concerned about farmland protection do not receive the property tax benefits provided by the program.

The Tax Stabilization Agreement Program has been largely superseded by the Current Use Appraisal Program.[82] This program provides property tax relief to farmers, thus reducing a major factor in any farmer's decision to get out of farming. Under the program, individual landowners or farmers who own or use twenty-five acres or more of agricultural land or forest land under active management may apply for a Use Value appraisal.[83] In order to qualify for a Use Value appraisal, the land must be in current agricultural use or under a ten year forest management plan approved by the Department of Forests, Parks, and Recreation.[84] Once the municipality's assessing officials classify the land as eligible for the program, they will appraise the land at its value as it is used, rather than considering its value if developed.[85] However, the town uses the fair market value of the property in determining the tax rate for the town. The town then receives state reimbursement for the difference between the amount of taxes it would have received had no Use Value appraisals been certified and the amount of taxes that the town actually receives from the Use Value appraisals.[86]

The program provides disincentives for withdrawal by subjecting development of land within the program to a land use change tax.[87] The land use change tax is ten percent of the fair market

77. VT. STAT. ANN. tit. 24, § 2741 (1975).
78. VT. STAT. ANN. tit. 32, §§ 3751-3763 (1984 & Supp. 1986).
79. VT. STAT. ANN. tit. 24, § 2741 (1975).
80. *Id. See* VT. STAT. ANN. tit. 32, § 3846 (1981).
81. *See* Note, *The Effect of Act 250, supra* note 39, at 468. As of 1980, only twenty-eight towns had entered into tax stabilization agreements with farmers. *Id.* at 468 n.6.
82. VT. STAT. ANN. tit. 32, §§ 3751-3763 (1984 & Supp. 1986).
83. *Id.* §§ 3752(1), (9), 3755.
84. *Id.* § 3755.
85. *Id.* § 3756(c).
86. *Id.* § 3760.
87. *Id.* § 3757.

value of changed land as determined at the time the land becomes ineligible for Use Value appraisal.[88] The tax is in addition to local property taxes.[89] Land withdrawn from the program becomes subject to property taxation at its full fair market value as of withdrawal, but is not subject to a land use change tax until development.[90] The land use change tax imposed, should the land subsequently be developed, is based upon the fair market determination at the time of withdrawal.[91] Unlike some states, which require repayment of taxes upon development, the Vermont tax is solely based upon the value of the land.[92] Imposition of the land use change tax discourages participants from developing their land.

A 1986 amendment to the Use Value Program permits Use Value taxation for qualified farmers.[93] The amendment allows farmers to withdraw from the program at the end of any tax year after an initial three year enrollment period without being subject to a land use change tax should the farmer or the farmland cease to be eligible for the program.[94] However, should farmland under the program be converted to nonfarm use without withdrawal, that portion of the farmland converted shall subject the landowner to payment of three times the property tax benefits received for the preceding year into the use tax reimbursement fund.[95] The amendment does provide for a portion of the land to be used as a dwelling for a member of the farmer's immediate family or for a tenant employed on the farm without repayment of the property tax benefit.[96]

The purpose of the Use Value Program is to provide landowners with an equitable tax burden. The program provides incentives for proper land management and, by influencing the continued productivity of the land as well as reducing the tax burden, pro-

88. *Id.* § 3757(a).
89. *Id.*
90. *Id.* § 3757(b).
91. *Id.*
92. See THE PROTECTION OF FARMLAND, *supra* note 21, at 56-60 for a description of differential assessment in other states. According to the study, seventeen states have preferential taxation on farmland with no penalties for withdrawal. Twenty-eight states use a system of deferred taxation, with twenty-two states imposing roll-back taxes varying from three to ten years. The remaining six states, including Vermont, charge a land use change tax. *Id.*
93. VT. STAT. ANN. tit. 32, § 3762 (Supp. 1986).
94. *Id.* § 3762(e).
95. *Id.*
96. *Id.*

vides the economic possibility of greater farm profits. However, many farmers are reluctant to take advantage of the Use Value Program because they do not want to foreclose their option to sell or develop should the need arise.[97] Farmers should note, however, that they need not enroll all their land in the Use Value Program to be eligible for the appraisal.[98] Thus, if a farmer has eligible land that he or she contemplates selling or developing, that land need not be enrolled. Also, the land may be sold for continued agricultural use provided all the parcels are at least the twenty-five acre minimum required for eligibility.[99]

Although the program was originally criticized for benefiting large out-of-state forest land owners, more agricultural land has entered the program recently. In 1984, the program covered 73,000 acres of farmland and 533,000 acres of forest land.[100] Aside from the 1986 amendment, one reason that more landowners may have entered the Use Value Program is that municipalities are required to appraise land at one hundred percent of its fair market value for tax purposes.[101] In the past, municipalities had established their own methods of appraisal. Although the reappraisals may mean that tax rates will lessen, the knowledge that land is being taxed at the full fair market value may encourage farmers to enter the Use Value Program.[102] Unfortunately, program funds may or may not remain sufficient to fully reimburse towns because no one knows the extent to which reappraisal and the 1986 amendment will induce landowners and farmers to enter the program. Should funding be insufficient, the funds will be prorated and landowners will have to make up the difference between state funding and taxes owed to towns.[103]

In general, the property tax relief programs provide incentives to farmers to remain in farming by reducing the property tax. The Current Use Program fills the gaps of the Tax Stabilization Act for farmers in towns which have not adopted the Agreement Program by allowing private initiative rather than requiring local action.

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97. Interview with William Bingham, *supra* note 57. Mr. Bingham stated that he had encountered considerable reluctance by farmers to enter the Use Value Program because of their desire to develop without paying a penalty.

98. *Id.*

99. VT. STAT. ANN. tit. 32, § 3752(5) (1981 & Supp. 1986).

100. Cook, *Strategies for Saving Vermont Farmlands*, VERMONT LIFE, Fall 1985, at 19.

101. VT. STAT. ANN. tit. 32, § 3481(2) (1981 & Supp. 1986).

102. Interview with William Bingham, *supra* note 57.

103. VT. STAT. ANN. tit. 32, § 3760 (1984 & Supp. 1986).

The largest drawback of both programs is that they do not adequately address the farmland conversion problem caused by the sale of farms at death or for retirement income. Furthermore, the programs only address one aspect of farmland conversion, rather than the problem as a whole.

F. Family Farm Assistance Act

In 1985, the Vermont Legislature passed the Family Farm Assistance Act.[104] The purpose of the Act is to provide "a limited source of loan funds to family farmers."[105] The funds are offered under terms and conditions which reduce their investment costs to an extent that provides farmers a reasonable chance to succeed.[106] The Act provides funds for those farmers who have limited assets and is administered by the Vermont Rehabilitation Corporation through the Vermont Industrial Development Authority.[107] Funds for 1986 were limited to $380,000 with a maximum per farmer of $50,000.[108] Although this is a sign that the legislature recognizes the economic situation of farmers, the Act may have little effect on continued agricultural use of land because of the limited funding and because the Act requires no commitment by the farmer to continue farming. Furthermore, once the state dispersed the funds for 1986, the Governor announced that no funds would be allocated for 1987.[109]

The Vermont Legislature recognizes the need for farmland preservation; however, existing programs have proved insufficient for effective preservation. The existing programs were passed in response to particular needs at particular times without specific goals to protect farmland. An example of this is the Governor's refusal to allocate funds to the Family Farm Assistance Program for 1987. An effective program must integrate the needs of farmers and society in a comprehensive manner. To alleviate the effects of the "impermanence syndrome," farmers must sense that the state has a firm commitment to agriculture and agricultural land preservation. Without a comprehensive program focused specifically on farmland

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104. VT. STAT. ANN. tit. 10, §§ 271-277 (Supp. 1986).

105. *Id.* § 271.

106. *Id.*

107. *Id.* § 274.

108. *Id.* §§ 274, 275. A total of $400,000 was delegated for this fund, with $20,000 designated for administration of the program.

109. Rutland Herald, Jan. 21, 1986, at 1, col. 1.

preservation, neither farmers nor the public sense a commitment by the state.

III. The Agricultural Lands Task Force Recommended Program

In 1983, the Agricultural Lands Task Force,[110] appointed by the Vermont Department of Agriculture, presented its findings to the legislature.[111] The task force acknowledged that although existing state programs could provide the foundation for an effective farmland preservation program, current programs by themselves were inadequate. By the time the task force presented its recommended program, interest in farmland preservation had waned. The program was never presented as a bill, and the legislature continues to approach the farmland problem from varying directions.

The comprehensive program integrated features from other state programs applicable to the needs of Vermont farmers and to the nature of the state. The program combined mandatory town planning to protect agricultural land with state-supported incentives, guidelines, and technical assistance.[112] Incentives to farmers depended upon the farmers' degree of commitment to protect their farmland.[113]

The program required all towns to develop town plans identifying important local agricultural areas.[114] The program also required town plans to direct future development and town expenditures, including municipal services, away from the identified agricultural areas.[115] By directing growth away from agricultural areas, the critical land mass necessary for productive agriculture could be maintained. Furthermore, conflicts among land uses would decrease; thus the town would be less likely to pass public nuisance ordinances, and farmers would be less likely to suffer from the "impermanence syndrome."

Once the town plan was approved, farmers in agricultural ar-

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110. H.R.J. Res. 43, 56th Biennial Session, 1982 Vt. Laws 726. The legislature, through this resolution, requested the Agricultural Lands Task Force to develop a report on the loss of farmland in Vermont and to suggest further action to be taken by the state.

111. The Farmland Issue, *supra* note 4, at 28.

112. *Id.* at 7.

113. *Id.* at 10.

114. *Id.* at 8.

115. *Id.*

eas could contract with the town to keep the land in agricultural use.[116] Upon contracting with the town, a farmer would become eligible for the incentives offered by the state.[117] The minimum incentive would be property tax relief for the period of years the landowner agreed to keep the land in productive use.[118] If the landowner further restricted the land by contracting to cluster development on non-agricultural land in exchange for all other development rights, to transfer property rights to the town, or to place conservation restrictions on the land, the program provided greater financial and technical incentives.[119] The proposed incentives included eligibility for the farm financing and technical programs devised by the task force: A Guaranteed Low Interest Loan Program and an Agricultural Development Authority.[120] Another incentive provided eligibility for a Farmland Protection Fund.[121] The purpose of the Farmland Protection Fund was to provide financial assistance to farmers and farmland conservation organizations to permanently protect agricultural land.[122] Funding for these programs would come from the state.[123]

By offering these incentives, the state would help farming remain economically viable through lower taxes and lower interest rates and would decrease the temptation to sell for development. Also, if landowners restricted their land to farming, other farmers could afford to purchase the land without the burden of paying inflated prices for developed land. Thus the land would remain productive agriculturally.

The task force also recommended the formation of a State Agricultural Lands Protection Board which would serve four functions: (1) to provide guidance to local communities for preparing their local agricultural plans and farmer/landowner contracts; (2) to review and approve proposed plans and contracts; (3) to oversee the distribution of the incentive programs; and (4) to hear appeals concerning the development, approval, or implementation of local agricultural plans.[124]

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116. *Id.* at 9.
117. *Id.*
118. *Id.* at 10.
119. *Id.*
120. *Id.* at 20-24.
121. *Id.* at 25-27.
122. *Id.*
123. *Id.* at 10.
124. *Id.* at 11.

By adopting a comprehensive plan basing incentives upon voluntary restrictions by landowners, farmers would be compensated for their restrictions and would sense a commitment to agriculture by the state while the state would receive the benefit of the restrictions. The preservation of agricultural lands would be administered at the state level which would provide a more comprehensive view of the situation, as opposed to being subject to the more myopic view of municipalities.

In developing the comprehensive plan, the Agricultural Lands Task Force acknowledged that the basic legal mechanisms needed to implement the program already existed in Vermont. The task force concluded that the primary need was to integrate these mechanisms into a cohesive program. To date, no cohesive program has been proposed as a bill and fragmented proposals continue to be presented. However, as concern about development and farmland conversion grows, a comprehensive program may finally be acted upon.

IV. The Role of Land Trusts

In the absence of a comprehensive farmland preservation program in Vermont, land trusts, working through the private sector, provide farmers and towns the opportunity to preserve agricultural lands. Land trusts are non-profit charitable corporations organized to manage and acquire land in the public interest.[125] They may hold land or rights in land for any public, charitable purpose.[126] They are governed by an elected board of trustees and their status as a charitable non-profit corporation depends upon their sources of funding.[127] Land trusts can serve a variety of purposes. They may own land on which low income persons may build homes, thus specifically aiming toward development.[128] They may own land as conservancies, to protect land from further development.[129]

One of the principal techniques used by land trusts is the division of property rights into partial interests in land. For conser-

125. The Protection of Farmland, *supra* note 21, at 182.

126. Bremer, *Portrait of Land Trusts*, in Land-Saving Action: A Written Symposium by 29 Experts on Private Land Conservation in the 1980's 17 (1984) [hereinafter Land-Saving Action].

127. Fremont-Smith & Koontz, *Becoming and Remaining a Tax-Exempt Organization*, in Land-Saving Action, *supra* note 126, at 29-32.

128. Bremer, *Portrait of Land Trusts*, in Land-Saving Action, *supra* note 126, at 20.

129. *Id.* at 18-19.

vancy or preservation land trusts, the conservation easement is a tool by which landowners may continue to enjoy all their rights to the land except those granted to the land trust.[130] By creative use of these partial interests, Internal Revenue Code provisions for charitable deductions,[131] and planned land use,[132] land trusts can provide a valuable vehicle for farmland preservation which, although within the private sector, benefits the state.

Both the federal government and Vermont have recognized the important role land trusts play in preserving farmland. Congress recognized the existence and importance of land trusts in the Farmland Protection Policy Act of 1981 by requiring federal agencies to consider the impact of all federal programs on prime farmland.[133] The Act directs federal agencies to examine alternatives that lessen the impact on farmlands.[134] Additionally, the Act requires agencies to make federal programs compatible with state, local, and private programs and policies to protect farmlands.[135] The Farmland Protection Policy Act also provides both non-profit organizations designed to protect farmland and state and local governments with technical assistance to develop programs which limit conversion of agricultural lands to non-agricultural uses.[136]

The Vermont Legislature recognized the role of land trusts in 1982. In Joint Resolution 43,[137] the General Assembly encouraged the farmland preservation efforts of public agencies and private organizations. The Resolution also endorsed the voluntary transfer of rights and interests in agricultural land between landowners and private land trusts.[138] These recognitions illustrate the growing role of land trusts and provide the basis for incentives to individuals to utilize land trusts.

A. Land Trusts and the Private Sector

Although the traditional means of protecting agricultural

130. Milne, *The Landowner's Options*, in LAND-SAVING ACTION, *supra* note 126, at 218.
131. 26 U.S.C. § 170 (1982 & Supp. 1985).
132. *See* Lemire, *The Codman Estate Transactions, Lincoln, Massachusetts*, in LAND-SAVING ACTION, *supra* note 126, at 12-14.
133. 7 U.S.C. § 4201-4209 (1982).
134. *Id.* § 4202.
135. *Id.* § 4201(b).
136. *Id.* § 4204.
137. H.R.J. Res. 43, 56th Biennial Session, 1982 Vt. Laws 726.
138. *Id.*

lands by land trusts was through the charitable contributions provisions of the Internal Revenue Code, the creative use of land trusts may provide a greater scope of protection for agricultural lands. The Internal Revenue Code allows deductions for gifts of land to charitable organizations.[139] Unfortunately, because of the deduction limit imposed by the Code, the deductions are more advantageous to wealthy, conservation-minded landowners than to farmers whose only retirement income may be the proceeds of the sale of their farms. However, by recognizing that not every acre of farmland is suited to agriculture, a land trust may provide for limited development. This enables the farmer to receive the income desired while protecting the best agricultural land.

The two primary tools land trusts use to preserve agricultural land directly are obtaining either fee simple ownership of the property or conservation easements restricting the land.[140] Land trusts may acquire interests either by donation, bargain sale, or fair market sale by the landowner.[141] The greater the donation by the landowner, the greater the income tax deduction which may be available to the landowner.[142] However, because the Internal Revenue Code limits the deduction to thirty percent of the tax payer's adjusted gross income,[143] outright donation of property is unrealistic for most farmers. Even with the five year carryover allowed by the Code,[144] farmers with low incomes may never be able to deduct their donation's full value. One way farmers may increase their income is to retain land suitable for development and to sell it in the same year they donate agricultural land. By doing so, their income increases by the gain realized from the sale of the developable property.[145] Consequently, the deductible amount will increase as will the taxpayer's marginal tax bracket. Although the Tax Reform Act of 1986, H.R. 3838 decreases the effect of the increased marginal tax bracket by reducing the maximum tax margin, because of the repeal of the exclusion for capital gains, the tax effect may remain the same.[146]

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139. 26 U.S.C. § 170 (1982 & Supp. 1985).

140. Bremer, *Portrait of Land Trusts*, in LAND-SAVING ACTION, *supra* note 126, at 21.

141. *Id.* at 20.

142. See 26 U.S.C. § 170 (1982 & Supp. 1985) for determining deductions for charitable contributions.

143. 26 U.S.C. § 170(b)(1)(C) (1982 & Supp. 1985).

144. *Id.* § 170 (d).

145. *Id.* § 1001.

146. H.R. 3838, 99th Cong., 2d Sess. §§ 101, 301 (1986).

Bargain sales are more realistic for farmers than outright donation. By selling the land to a land trust at less than fair market value, the farmer's adjusted gross income increases and the farmer may use the difference between the fair market value and the bargain sale price as a charitable deduction.[147] Also, by retaining land suitable for development, the landowner may find that the "bargain" sale of the agricultural land did not deprive him or her of any actual income because the value of unrestricted land surrounded by restricted land tends to increase.[148] Although a landowner's sale at full fair market value may appear to produce the greatest immediate financial gain, because the landowner is taxed on the gain and does not receive any tax benefits, the landowner may end up in the same financial position as a bargain sale would have produced.

Land trusts may recoup some of the purchase price by restricting development on the productive agricultural land and selling the agricultural land at its value as used for agriculture. Furthermore, if the land trust purchased any land suitable for development, it could sell the developable land at a higher price than the purchase price because the surrounding restricted land would remain undeveloped.

Land trusts may acquire conservation easements by the same means as they acquire land.[149] By granting conservation easements to a land trust, farmers may continue to work the land while knowing the land will remain agricultural. The same techniques and considerations for financial return used in the fee simple conveyances may be used in the donation, bargain sale, and fair market sale of conservation easements. As with the conveyance of fee simple interests, preservation of agricultural land does not necessarily require easements restricting all the land. By not restricting land suitable for development or by reserving the right for limited development, the landowner may realize financial gain equivalent to that which would have been realized without conveyance of the conservation easement.

The Internal Revenue Code allows for deductions of conserva-

147. See D. BRADLEY, CHARITABLE GIFTS OF LAND: A LANDOWNER'S GUIDEBOOK TO VERMONT AND FEDERAL TAX INCENTIVES 10 (1982) for a description and the consequences of a bargain sale prior to the 1986 Tax Reform Act.

148. Interview with Richard Carbin, *supra* note 66.

149. Bremer, *Portrait of Land Trusts*, in LAND-SAVING ACTION, *supra* note 126, at 21.

tion easements.[150] The deductible amount is the difference between the fair market value of the land without restrictions and the value of the land once restricted, adjusted by allocation of the basis between the restricted and unrestricted values.[151] Conservation easements on agricultural land are deductible if the easement is granted in perpetuity and is pursuant to a "clearly delineated Federal, State, or local conservation policy, and will yield a significant public benefit."[152] Although the Treasury Department has not issued any final regulations regarding conservation easements or the definition of significant public benefits, deductions for conservation easements to land trusts on productive farmland are usually allowed.[153]

The Farmland Protection Policy Act[154] states that protection for farmland is necessary for the future well-being of the nation. This Act indicates that donations of conservation easements on agricultural land are pursuant to a federal policy for land conservation. An argument can be made that any restriction of development on productive agricultural land will yield a "significant public benefit." Furthermore, the Vermont Legislature, in Joint Resolution 43, stated that farmland preservation is important for the well-being of the state.[155] The Resolution specifically encourages and endorses the transfer of development rights between landowners and private land trusts.[156] This Resolution provides a basis for claiming that Vermont has delineated a policy of agricultural lands conservation.

For the Internal Revenue Service to accept a deduction for a conservation easement, after meeting the conservation purpose requirement, the land must be appraised at both its unrestricted fair market value and its restricted fair market value.[157] For the Internal Revenue Service to accept the appraisal, the appraiser should be an independent party experienced in appraising restricted land.[158] Although many appraisers formerly were unaccustomed to

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150. 26 U.S.C. § 170(h).

151. *Id.* § 170(e)(2).

152. *Id.* § 170(h).

153. Telephone interview with Robert Wagner, American Farmland Trust, in Washington, D.C. (Oct. 13, 1985).

154. 7 U.S.C. §§ 4201-4209 (1982).

155. H.R.J. Res. 43, 56th Biennial Session, 1982 Vt. Laws 726.

156. *Id.*

157. Temp. Treas. Reg. § 1.170A-13T (1985).

158. BRADLEY, *supra* note 147, at 3.

appraising such land, the competence of appraisers in this area has grown because of the increased use of conservation easements and of use value appraisers.[159]

One further requirement for the use of conservation easements in Vermont is that under common law only easements appurtenant run with the land.[160] Although Vermont law enables towns to receive development rights by statute,[161] the legislature has not enacted any statute that specifically enables land trusts to receive development rights; thus, in order to ensure that conservation easements run with the land, land trusts must obtain a small parcel of land in fee simple adjoining the restricted land.[162] Although a small parcel may require a variance from towns with large lot zoning, the variance is usually granted.[163] Once the adjoining land is obtained, the easement benefits the land trust's parcel and will remain enforceable, even through succeeding ownership.

Land trusts provide a basis for farmland preservation through the private sector. However, problems may arise if local communities are not considered in the land trust's acquisition and planning processes. One concern local communities may have is the effect of the land trust's ownership of land or conservation easements on local property taxes. This concern is largely unfounded. Under Vermont law, property is not exempt from local taxation unless it benefits the public as a whole.[164] Unlike municipal or state agency acquisition of property, land owned by land trusts is taxed at its fair market value, although the land may qualify for Use Value appraisal.[165] The conveyance of conservation easements does not necessarily affect property tax treatment, although in one case a property tax appraisal on restricted property was reduced on appeal to reflect the actual fair market value of the land restricted.[166] However, farmers and land trusts may reduce the local effect of decreased valuation by applying for Use Value appraisal. This means that conveyances of property interests to land trusts do not

159. Interview with Richard Carbin, *supra* note 66. Richard Carbin commented that when the Ottauquechee Regional Land Trust first started using conservation easements, the nearest qualified appraiser they could find was on Long Island, New York.

160. 3 R. POWELL ON PROPERTY §§ 418, 419 (1986).

161. VT. STAT. ANN. tit. 10, §§ 6301-6309 (1984).

162. Interview with Richard Carbin, *supra* note 66.

163. *Id.*

164. *See* Vermont Wild Land Foundation v. Pittsford, 137 Vt. 439, 407 A.2d 174 (1979).

165. Interview with Richard Carbin, *supra* note 66.

166. *Id.*

necessarily reduce the property tax base even if appraised at a lower value.

Towns may also experience concern that the use of land trusts by individuals may conflict with local plans for growth and development. Indiscriminate preservation efforts may cause this conflict if community needs and concerns are ignored. This conflict may reduce the effectiveness of land trusts because restricted land may suffer from the problems caused by conflicting land uses if community development is not considered during the land trust's acquisition processes. Although these concerns exist, land trusts may alleviate these problems through close communications with communities.

In general, land trusts provide a means by which the private sector may aid in the preservation of agricultural land. To be effective, however, land trusts and the private sector must work with the municipalities involved to reduce problems arising from the private sector's efforts to preserve agricultural land.

B. Land Trusts and Government

Besides providing a means of farmland preservation through the private sector, thereby reducing the burden on state and local governments, land trusts can provide services directly to towns for preserving farmland. Through creative financial and land use planning, land trusts provide examples whereby farmland preservation may prove economically feasible.[167] Additionally, because land trusts are nongovernmental, they may often accomplish what governmental bodies are unable to do: land trusts can collect more information because landowners express their needs and concerns more openly to third-party private organizations than to governmental bodies;[168] land trusts can provide objective advice to towns in their planning processes because of their third-party status;[169] and land trusts can complete transactions more quickly than governmental bodies because they are private entities.[170] Thus, by utilizing the services land trusts provide, towns may preserve farmland which otherwise would have been developed.

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167. *See infra* text accompanying notes 171-83.
168. *See infra* text accompanying notes 185-87.
169. *See infra* text accompanying notes 188-90.
170. *See infra* text accompanying notes 191-93.

Financial constraints on land trusts cause them to develop creative financing mechanisms. One such mechanism is the use of a revolving fund.[171] The fund may be used to finance the original purchase of land or conservation easements.[172] If the land trust actually purchases the land, it may then sell the land reserving the development rights to itself.[173] Because the land's value decreases when development rights are severed, the transaction may not produce the funds equivalent to those taken from the revolving fund.[174] A more financially feasible transaction occurs when the land trust purchases more land than just the agricultural land. The land trust may then sell the land suitable for development at the fair market value of land surrounded by restricted land.[175] Because this value may be greater than the purchase price of that land, the land sold for development may offset any loss incurred on the sale of restricted land and the transaction may break even.[176] Thus, the land trust replenishes the revolving fund. Towns with funding adequate for establishing a revolving fund may also utilize this technique.

Another mechanism land trusts use to compensate for an initial lack of funding is the option to purchase. By purchasing an option to purchase, land trusts may buy themselves the time needed to find funding and/or buyers to purchase the land.[177] Because options to purchase cost a fraction of the purchase price, funding may be available in a general or revolving fund.[178] Direct solicitations for charitable contributions may also provide the necessary funds.[179] Because many land transactions require immediate action, the use of options to purchase may provide landowners with the funding needed immediately and provide time for creative planning and effective farmland preservation.

If land needing preservation is important enough locally, com-

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171. THE AMERICAN CROPLAND CRISIS, *supra* note 15, at 161-63.
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.*
177. This is frequently how the Ottauquechee Regional Land Trust protects land. Interview with Richard Carbin, *supra* note 66. *See also* Carbin, *Private Purchase and Limited Development as a Means of Achieving Conservation Goals*, in LAND-SAVING ACTION, *supra* note 126, at 131-34.
178. Interview with Richard Carbin, *supra* note 66.
179. *Id.*

munity citizens may contribute or co-sign a loan to the land trust for the land's purchase.[180] If a land trust does not have sufficient collateral available itself to secure a loan for the purchase, and the landowner is unwilling to sell an option to purchase, local citizens may provide the necessary collateral.[181] Thus, with the help of the community's citizens, the land trust may purchase the land. With creative land use planning, the land trust will design a plan to preserve the agricultural or other land needing preservation.[182] Through sales for limited development, the land trust will then repay the loan.[183] An additional benefit of this system is that by utilizing community resources, land trusts involve the local citizens in farmland preservation. As a consequence, those citizens may decide to instigate a concerted effort by the town to preserve its own farmland base.

As nongovernmental organizations, land trusts often accomplish what governmental bodies are unable to do. Because landowners express their needs and concerns more openly to third-party private organizations than to governmental bodies, land trusts may collect information from landowners which governmental bodies might not have access to.[184] Land trusts may use this information to aid towns in planning.[185] Also, this information may indicate which farmers consider selling their land.[186] By having this information, the town and/or land trust may commence action necessary for preserving the farm if preservation is deemed necessary.[187] This provides both the town and the land trust more time to develop a preservation plan than they would have had if the

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180. *Id.* This is how the Ottauquechee Regional Land Trust purchased the Plymouth Boy Scout Camp and the Woodstock Country School.

181. *Id.*

182. *Id.*

183. *Id.*

184. This was the experience of the Ottauquechee Land Trust and the Town of Vernon, Vermont. The town had hired the land trust to help devise a comprehensive farmland program. The land trust spoke with farmers about their needs and concerns for farmland preservation. During this process the land trust discovered that a landowner needed to sell her farm. Through creative financing and the use of the town's land trust funds, the couple which had been renting the farm was able to purchase it, with the town reserving to itself the development rights. For a more complete description of the transaction, see Cook, *supra* note 100.

185. Interview with Richard Carbin, *supra* note 66. The land trust also helped the town devise an agricultural zoning scheme.

186. *Id.*

187. *Id. See also*, Carbin, *Acquisition and Resale: A Case Study*, in PRIVATE OPTIONS, *supra* note 60, at 201-02.

landowner's intention to sell had not been known until he actually put the land up for sale.

Another aspect of a land trust's nongovernmental nature which may aid towns in farmland preservation is the land trust's status as an objective third-party. In this capacity, land trusts may encourage towns to take responsibility for their own farmland preservation.[188] Also, they may provide towns with an objective basis for land use planning. Thus, land trusts may enable towns to design and implement town plans and zoning and other land use techniques which take into account local needs for development, farmland preservation, and the landowners' financial needs in a comprehensive manner.[189] Furthermore, as objective bodies, land trusts may encourage towns to consider the regional implications of the town's land use actions, thereby reducing friction between towns.[190]

The nonpolitical identity of private land trusts allows them to expedite transactions and agreements to ensure timely preservation.[191] Land trusts do not encounter the political hurdles involved in governmental expenditures. They may also provide an objective perspective on the preservation needs of an area. None of this is effective, however, if the land trust is not working closely with the community. Although several states have programs to purchase development rights, land trusts continue to supplement the states' farmland protection programs.[192] The land trusts complete transactions that the state would not have been able to complete in time, help evaluate the preservation needs of particular parcels of farmland, and act as moderators and negotiators between the state and landowners.[193] All of these techniques and attributes are available in Vermont, and state and local governments should take advantage of their availability.

CONCLUSION

Any farmland protection program must address the conflicting interests of individuals' property rights and society's need for

188. Interview with Richard Carbin, *supra* note 66.
189. *Id.*
190. *Id.*
191. THE AMERICAN CROPLAND CRISIS, *supra* note 15, at 155.
192. *Id.*
193. *Id.* at 156.

farmland. For any farmland protection program to protect the land mass needed for economically viable farming, the program must be comprehensive enough to balance these needs. Because no one can force a farmer to keep land productive, incentives should be offered to farmers who conserve their land. In exchange for these incentives, farmers may have to restrict the use of their land. In the absence of a comprehensive state plan in Vermont, land trusts are providing services to farmers and towns to develop plans for farmland preservation. From both a farmer's and a community's perspective, the creative use of an active land trust provides a valuable tool for the preservation of farmland in Vermont.

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