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# **THE PRIME FARMLANDS TRANSFER FEE:**

## **A TECHNIQUE TO UTILIZE NON-TAX MONEY FOR CHOICE FARMLAND RETENTION**

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by

Wallace E. Washbon

Department of Agricultural Economics  
New York State College of Agriculture and Life Sciences  
A Statutory College of the State University  
Cornell University, Ithaca, New York 14853

## Preface

The idea of farmland preservation has been widely discussed in New York and in many other parts of the Nation. The discussions have stemmed from the growing recognition that our farmland resources are assets of major importance and that the public at large can reap substantial benefits from their wise use.

The study of land resources and their prospects for use in the production of food and fiber commodities constitute a continuing research and educational commitment for the College of Agriculture and Life Sciences at Cornell University. Accordingly, the College encourages the dissemination of information which contributes to the evolution of public policy in the area of farmland preservation.

This report deals directly with the farmland preservation issue but was not solicited or contracted for by the College. The author, Wallace Washbon, is a retired member of the University staff. He is intimately familiar with the Agriculture of New York State. His background includes 30 years with the Cooperative Extension Service, Cornell University and 10 years with the New York State Agricultural Resources Commission as a special land-use consultant. The report presents his own views on techniques to encourage the retention of farmland in a farm use.

Mr. Washbon's views on farmland preservation merit inclusion in the educational materials made available by the Department of Agricultural Economics. It is important that citizens be informed on land use policy and have the benefit of differing points of view on the options available to encourage wise use of farmland resources.

The ideas provided by Mr. Washbon have not yet been widely and exhaustively studied, and his report raises several economic, political and legal issues which require further consideration. The lack of exhaustive study means that the faculty of the Department of Agricultural Economics is not in a position to argue the advantages and disadvantages of the Washbon proposal. Publication by this department at this time is done to enrich and broaden discussions of land use policy in the state.

Howard Conklin, Professor  
Department of Agricultural Economics

Nelson L. Bills, Agricultural  
Economist, USDA-ERS and Assistant  
Professor, Department of Agricultural  
Economics

THE PRIME FARMLANDS TRANSFER FEE:  
A Technique to Utilize Non-Tax Money  
For Choice Farmland Retention

by

Wallace E. Washbon\*

The continuing and significant conversion of prime farmlands to other use is a major problem which has led to a variety of approaches designed to reduce the loss of an essential natural resource--the best lands that feed us. This paper discusses a method for containing development on prime lands called the Transfer Fee Plan (TFP) that promises appeal to those who own the land as well as to those who wish to protect it.

The Transfer Fee Plan (TFP) is founded on a state policy to establish county prime farmland reserves under the jurisdiction of a county prime land preservation board. A transfer fee would be assessed on the purchaser of protected land when any portion of the reserve has been approved for transfer to non-farm use by the county prime land preservation board. Such a fee should be sufficiently high (i.e. \$2,000 per acre upward) to discourage the transition of prime land to other use. Moneys accrued through approved transfers would be placed in a pooled account and distributed periodically to the current landowners in the reserve as gradual compensation for their lost development right (the right to sell to the highest bidder for any use). A significantly higher penalty would be assessed in unapproved conversions.

Informed judgment on the need and potential for the Transfer Fee Plan requires: (1) understanding the severity of the problem including obstacles to farmland preservation, (2) operational specifics of TFP in practice and (3) comparison with other plans. This paper is devoted to discussion of these topics.

#### THE PROBLEM

A commonly held view is that prime farmlands are disappearing at a serious annual rate. However the author finds no clear estimates to quantify the loss. Thus, an attempt is made here to develop such estimates by drawing together data from various sources and from personal experience.

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\*Washbon is a consultant on Prime Farmland Retention.

Prime or choice farmlands, as used in this paper, refers to farms that would commonly be recognized as highly productive. This would include farms on well drained soils, drained mucklands, climate influenced fruit and vegetable areas, irrigated lands and farms with special water management techniques (as in rice culture). There are several other definitions of prime soils in use (i.e.: SCS-LIM project) but regardless of definition, it will require local knowledge and historical experience to effectively identify farms that should be protected against conversion to other use.

The national rate of prime land loss to urbanization can be arrived at by extrapolation from the loss of rural lands to urban expansion--750,000 acres per year.<sup>1</sup> Krause concludes that 14% is an acceptable figure for prime lands surrounding cities or 105,000 acres of choice farmlands converted annually to residential and commercial use.<sup>2</sup>

In addition, annual losses to highways, airports, dams, power plant sites, waste disposal and strip mining expansion are estimated by the author at 108,000 acres of choice farmland each year.<sup>3</sup> This analysis leads to a total estimate of 213,000 acres of prime farmland that is irreversibly lost each year.

There are several ways to look at the significance of this loss. In twenty-five years, we would be destroying the equivalent of 27,000 highly productive commercial farms capable of feeding 3.7 million people annually. As another view, it is sobering to note that we will have a 23% loss of prime land per person in 25 years if the loss continues at the present rate and population expands as projected. Now (1976) we have 1.04 acres of prime land per person; current population<sup>4</sup> projections of 271 million will reduce this figure to .81 by year 2000.

Loss of some of this prime land is inevitable. Seventeen percent of all U.S. farms are within currently designated metropolitan areas and thus are directly in the path of urban expansion.<sup>5</sup> A large share of this cropland is held by speculators and farm operators with expectation of high profit. Loss of most of this acreage is inevitable because of vested interests, current high land values and political considerations.

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<sup>1</sup> Perspectives on Prime Lands, USDA, p. 7, 1975. A series of background papers for the USDA Seminar on Prime Lands held July 1975.

<sup>2</sup> Perspectives on Prime Lands, p. 11, 1975.

<sup>3</sup> Our Land And Water Resources, Misc. Pub. 1290, ERS, USDA, pp. 10-18 with adjustments for differences in % cropland and prime farmlands by the author.

<sup>4</sup> 223 million acres of L.C. I and II cropland--USDA National Inventory, Stat. Bull. 461, 1967 and Population Estimates and Projections, Bureau of Census, No. 470, 1971.

<sup>5</sup> The Loss of Agricultural Land, Roger Blobaum, 1974. A study report to the Citizen's Advisory Committee on Environmental Quality.

Protagonists for prime land retention would be wise to concentrate their energies on the 83% of currently unthreatened farmland. Most of the current land preservation efforts have been designed to deal with farms within the shadows of the cities where protection is not only difficult but costly. An effective plan for the hinterlands must be fashioned to meet an entirely different situation. To grasp the basic obstacles to be addressed, one must recognize two prevailing attitudes:

- (1) The mistaken and persistent myth that the United States has abundant farmlands to meet the needs of today and future generations. There is no sense of urgency about a plentiful resource. As a society, we cannot afford to ignore the inevitability of prime land destruction.
- (2) The belief that the landowner has the right to do with his property as he chooses. This concept is ingrained in American rural thought and means that land use controls are not popular. Occasionally, this right gives way to the public good in zoning and eminent domain decisions but it is clear that a workable plan for prime land retention must have a maximum chance for landowner acceptance.

Vitally needed is greater awareness by the government and the public about what is happening to our choice farmlands. Even more vital is the need for an effective and acceptable preservation plan that can be adapted to the varied communities in which prime lands exist. The Transfer Fee Plan has been devised to provide this adaptability by protecting the land simultaneously with respecting the rights of landowners.

#### THE TRANSFER FEE PLAN IN PRACTICE

The Transfer Fee Plan is based on four elements:

1. The creation of county prime farmland reserves in counties with commercial food and/or fiber production.
2. Provision for jurisdiction over the reserve by a county prime land preservation board.
3. Discouraging conversion of reserve land to non-farm use by assessment of a substantial transfer fee on the purchaser of land approved for release from the reserve, and a significantly higher penalty if conversion occurs without approval.
4. Distribution of the accrued fees to the current landowners in the reserve as gradual compensation for lost development rights.

The following section discusses operational details of each element.

1. Creation of county prime farmland reserves in counties with commercial food and/or fiber production. An effective prime land retention effort would require decades to develop without State policy to this effect and an enabling act. A county effort without a State enabling act might be confronted with litigation. The State enabling act should provide for:

- (a) the eventual establishment of prime farmland reserves in every county with commercial agricultural production. This responsibility would be appropriately delegated to the State Commissioner of Agriculture. Non-contiguous units of farmland should be permitted. Legislation should also provide for a maximum of three reserves per county and the possibility for a multi-county reserve. Each reserve should encompass farms with similar prospects for eventual conversion to non-farm use if not protected. Thus all farms under high speculative pressure would be in one reserve, those with medium pressures in a second, and those with the least prospects in a third;
- (b) the appointment by county government of a prime land preservation board. Representation on the board should include farmers likely to be in the reserve, Cooperative Extension, Agricultural Conservation and Stabilization Service (ASCS), Soil Conservation Service (SCS), county planning office and concerned citizens. Those with agricultural affiliation should not exceed 60% of the board's membership;
- (c) a specified figure as a minimum prime land transfer fee for approved release of farmland out of the reserve for use other than agriculture. This fee should be high enough to encourage development on nearby non-prime lands. The recommended minimum should be no less than \$2,000 per acre to be paid by the person seeking permission to convert the land to non-farm use. The legislation should include provision for the State Commissioner of Agriculture, following a public hearing, to increase the minimum transfer fee whenever evidence indicates that the current minimum is not serving as a sufficient deterrent. The legislation should also designate that the collected transfer fees be deposited in a pooled account in the custody of the county treasurer for periodic distribution to the current landowners in the reserve in a manner mutually agreed upon with the prime land preservation board. The legislation should clearly indicate that the collected fee is not a tax to be used by county government; using the fee to provide landowner acceptance of the reserve is essential;
- (d) the minimum penalty for unauthorized conversion of reserve land to other use. This needs to be established by state legislation to withstand potential litigation. A minimum penalty of three times the state minimum transfer fee is suggested. Provision for assessment of a still larger penalty should be incorporated in the state enabling act in order to assure enough flexibility to protect prime lands at the rural-urban interface. One-third of the penalty should be placed in the pooled account as if the transfer fee had been paid. The other two-thirds should go to county government to pay for the costs of the preservation program and to encourage promptness in guarding against destruction of choice farmlands;
- (e) no exception for eminent domain. Government is one of the largest destroyers of prime land. The right to take such lands cannot be denied but the transfer fee should be assessed nevertheless to encourage government land-takers to look elsewhere. The federal government should not be exempted. In order to make this principle operative, the state enabling act and Congressional legislation

must specify that the state minimum transfer fee shall be paid by the state or federal agency intending to take reserve land. Furthermore, such agencies should be required to justify the intended takings at a special public hearing;

- (f) stipulation that removal of the topsoil and/or subsoil from reserve lands constitutes conversion to non-farm use. Many acres of good farmland are destroyed by excavating the land for fill in highway and other construction. Even if topsoil is replaced, the productive capacity of the soil has been destroyed. This provision would apply to strip mining operations as well;
- (g) the mechanism for final decision on the boundaries of a proposed reserve. The author suggests that final decision should rest with the State Commissioner of Agriculture after the county boundary proposal has been presented at a public hearing conducted by the State Department of Agriculture;
- (h) requirement for special hearings before enforcement of regional and state administrative regulations that could restrict normal agricultural practices in established reserves. The special hearing would deal with the justification for the ruling, examine its potential effect upon farm production and provide opportunity for possible compromise. Specifically, this provision refers to spreading manure on livestock and poultry farms, crossing streams with equipment to gain access to severed farmland, applying approved fertilizers and pesticides and similar customary practices necessary for use of protected farmlands;
- (i) protection from local ordinances which restrict or regulate farm structures or farm practices beyond the requirements of health and safety. Farm odors and noises sometimes disturb nearby suburbanites sufficiently to force such regulations. There is little use in protecting the land if restrictions mean it cannot be productive. (This feature is included in the NYS Agricultural Districts Law.);
- (j) assessment of farmland in the reserve on agricultural value, not on the "fair market value" it would bring if sold for another use. Agricultural value should be designated as the best, highest and only use of the farmlands as long as they remain in the prime farmland reserve. Taxation on the basis of non-agricultural use is often so exorbitant that profitable farming is impossible. Such taxation procedures may also impede the passing of a farm from one generation to the next because of inheritance taxes that force the sale of the farm. This stipulation in the enabling act would clearly establish the value of reserve land for real estate and inheritance tax decisions.

2. Provision for jurisdiction of the reserve by a county prime land preservation board. This delegation includes:

- (a) determining the minimal quality of soil, state of economic well-being and critical agricultural mass sufficient to justify the placing of land in the reserve. This determination could be done



at the state level but local agriculturalists and local farmers will do it adequately and much easier. Agricultural Extension and Soil Conservation personnel have expertise that should be sought here.

- (b) developing the suggested boundary lines of the reserve, not necessarily in contiguous units (possibly a single farm as a unit) on USGS or aerial photo maps or equivalent, for use at a public hearing. Only properties with prime cropland should be included in the reserve. The boundaries of the reserve should coincide with farm property lines as much as possible for easy identification. Large areas of wasteland or hilly woodland should be avoided in the interest of keeping the reserve identifiable as prime croplands. Farmlands suggested for inclusion in a reserve should have the approval of the appropriate planning board.

3. Discourage the transfer of reserve land to non-farm use by assessment of a substantial transfer fee on the purchaser if the land is approved for release from the reserve and a significantly higher penalty if conversion occurs without approval. The final administrative decision to release farmland from a reserve would rest with the county prime land preservation board as well as the amount of fee to be levied in excess of the state minimum if local land value warrants. No release of reserve land could be approved without prior approval of the appropriate planning board.

When the release has been approved by the preservation board and the transfer fee paid by the applicant into the pooled account in custody of the county treasurer, the land is then approved for non-farm use.

The responsibility for unapproved conversion rests with the landowner at the time of conversion. Landowners in the reserve are free to sell farmland to anyone at any price and at any time.

4. Distribution of the accrued transfer fees to the current landowners in the reserve as gradual compensation for lost development rights. The responsibility for deciding how and when the accrued fees should be distributed is shared by the county prime land preservation board and the county treasurer. Since farmland reserves will vary in percentage and quality of cropland, it would seem appropriate to designate that each reserve share its own pool.

While enabling legislation might permit as many as three reserves in one county, administrative costs would be lessened where a smaller number would be sufficient.

Since remuneration will be based on a per acre basis, it is essential to have available and acceptable acreage data. Field and farm acreages on more than 98 percent of U.S. farms likely to be in a reserve are recorded on aerial photographs in County ASCS offices. Additional acreage can easily be determined with use of a planimeter.

Compensation from TFP can be substantial. Assuming a \$2,000 per acre transfer for 10% of a reserve, the remuneration would be \$222 per acre for the remaining ninety percent of the land originally in the reserve. The following table indicates the compensation to landowners at varying levels of transfer fee.

Transfer fee per A	Compensation Per A of Land Remaining in Reserve			
	10% release	20% release	30% release	40% release
\$2,000	\$222	\$ 500	\$ 857	\$1333
\$3,000	\$333	\$ 750	\$1285	\$2000
\$4,000	\$444	\$1000	\$1714	\$2666
\$5,000	\$555	\$1250	\$2142	\$3333
\$6,000	\$666	\$1500	\$2571	\$4000

To assure equitability in the distribution of accrued transfer fees to landowners in a reserve, four sources of inequity should be prevented:

- (a) Avoid the inequity arising from differing dates of release of land from the reserve. Each remaining landowner has an increasing equity in the accrued pool with each successive addition to the pool.

Suggestion: Whenever the pooled account represents a release of two percent or less of the acreage in the reserve, it would be simpler to distribute the pooled fund based on the total acreage in the reserve when the pool was initiated. The effect upon the current landowners would range from twenty cents to one dollar per acre. If the percentage was greater than two percent, equity to former owners of released land would best be achieved by computing the accumulated equity at each successive release from the reserve. Remuneration could then be based on the order of succession from the reserve.

- (b) Recognize the difference in value between cropland and non-cropland in the reserve. Any compensation should relate directly to the value of the object to be preserved.

Suggestion: A payment on non-cropland based on twenty percent of the pool acre average would recognize the difference in land value and would emphasize the preservation of cropland. It would also provide protection for maple groves, farm woodlots, and grazing lands, essential both to keep cropland in contiguous units and provide open space for the community.

- (c) Recognize the difference in desirability of cropland in the reserve. Compensation for lost development rights should include a premium for the kinds of lands most eagerly sought by developers. Few reserves will contain land so uniform in value that their differences can be ignored.

Suggestion: Allocate the remaining eighty percent of the non-cropland equity to the excellent soil areas--the deep, well drained, level and highly fertile croplands, irrigated croplands and climate-influenced fruit lands.

- (d) Recognize the need for a built-in safeguard to avoid unreasonable payment to any landowner. Varying percentages of non-cropland relative to croplands in different reserves could result in exorbitant compensation.

Suggestion: Limit the additional compensation for the most desirable croplands to sixty percent of the reserve acre average in the pooled fund. The remainder should be added to the remuneration scheduled for good croplands.

The following section will illustrate the above suggestions in practice:

SITUATION: 10,000 acre reserve; 2,000 acres non-cropland  
 2,000 acres most desirable cropland  
 6,000 acres good cropland

\$400,000 in the pool resulting from the release of 200 acres  
 @ \$2,000.

The reserve pool acre average is \$40 (\$400,000 divided by  
 10,000).

- PROCEDURE: (1) determine compensation for non-cropland  
 $\$40 \text{ base} \times 20\% = \$8 \text{ per acre.}$
- (2) determine compensation for most desirable lands  
 $\$40 \text{ base} \times 60\% = \$24 \text{ the limit on additional compensation}$   
 $\$40 \text{ base plus } \$24 = \$64 \text{ per A compensation.}$
- (3) determine amount committed for distribution
- |                               |             |                  |
|-------------------------------|-------------|------------------|
| 2,000 acres non-cropland      | @ \$ 8 =    | \$ 16,000        |
| 2,000 acres of most desirable | @ \$64 =    | \$128,000        |
| 6,000 acres of good cropland  | @ \$40 =    | <u>\$240,000</u> |
|                               | committed   | \$384,000        |
|                               | available   | \$400,000        |
|                               | uncommitted | \$ 16,000        |
- (4) determine compensation for good croplands  
 $\$16,000 \text{ divided by } 6,000 \text{ acres} = \$ 2.66 \text{ per A}$   
 $\$40 \text{ base plus } \$2.66 = \$42.66 \text{ compensation}$   
 per A

#### Special Merits of TFP

The Transfer Fee Plan (TFP) is in concert with the needs and values of our society. People want less government, less spending, few government employees and more local control. TFP is so devised that it meets those needs; it could protect the choice farmlands in this country inexpensively and without additional bureaucracy by utilizing the public agencies we already have. There would be little need for a special office. The county planning board, Cooperative Extension, ASCS or Soil Conservation headquarters could well provide the necessary services. The county prime land preservation board is the only new organization at state or county level.

TFP has the special advantage of local control within the cloak of state sanction. Local control is possible because no state funding is involved except for some costs in getting the reserve areas designated and established.

The key to effective protection and simplicity of operation of TFP is to keep the economic sanctions (fees and penalties) in the plan at a level to discourage conversion of prime lands to other use.

#### A COMPARISON OF EFFECTIVE METHODS OF PRIME LAND PROTECTION

There are only three proposed techniques with land saving qualities that can endure under the pressure of urbanization--namely outright purchase of development rights, transferable development rights and the transfer fee plan as proposed in this paper.

The outright purchase of development rights, as on Long Island, N.Y., is highly effective but the cost to the taxpayer is so high (\$3,000 per acre or more) that it will be employed in only a few situations.

Thus, among the contenders only two concepts are financially feasible and emerge with substantial prospect for prime land protection during the decades ahead--the transfer fee and transferable development rights (TDR) because both respect the rights of landowners, yet provide defense against destructive forces.

#### TFP versus TDR

There are several similarities:

BOTH call for establishing agricultural preserves.

BOTH protect farmland by removing the right to sell prime land for any purpose; one directly, the other indirectly.

BOTH should result in farmland being taxed only on its value for farming.

Beyond this point they differ:

TFP uses economic sanctions to gradually reward the landowner for lost development rights. It assumes that there will be need to release farmland for other use. TFP rewards the landowner equitably in cash.

TDR requires total community planning in order to provide protection. It assumes that farmland will be locked into agriculture or open space forever. It seeks to force the developer to purchase the farmer's development rights before obtaining permission to build high density housing nearby. <sup>6</sup> Thus, the landowner is rewarded with a certificate of uncertain value.

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<sup>6</sup> Farmland Preservation Alternatives in Semi-suburban Areas, William R. Bryant, Cornell A.E. Ext. 75-5, 1975.

TDR has limited adaptability. It can survive only in semi-suburbia where community planning can force a market for transferable development rights. TFP is adaptable to many situations--from the fringe of urban expansion to deep within rural areas.

The development right in TFP is held in abeyance by government and thus provides a good legal case for not being assessed or taxed. In contrast, the courts have ruled that the certificates of development rights granted under TDR are subject to taxation until sold.

#### IMPLEMENTATION

Drafters of state enabling acts or federal legislation relative to the Transfer Fee Plan should be aware of the specific definitions employed by the author in relation to the terms "transfer fee" and "penalty".

Transfer fee means a sum of money paid for a privilege--the privilege of authorized release of prime land out of the reserve for non-farm use--and thus not a tax. A privilege is a right enjoyed by a person beyond the advantages of others. In this plan, the privilege is purchased. A penalty is financial punishment for violation of a rule--the unauthorized destruction of a protected natural resource and thus imposition of a penalty does not imply a criminal offense.

Successful adoption of a land protecting mechanism such as TFP rests on a combination of preparatory education and introduction through field demonstration.

Preparatory education is a must. The best of preservation plans will be rejected unless people realize why something must be done. The advantages and disadvantages of various options should lead toward support of the most logical and feasible alternative.

A demonstration county is advisable, followed by involvement of counties with the most prospect for significant prime land loss and subsequently by counties with prospect for lesser damage. This stepwise adoption of TFP will result in greater support and fewer misjudgments. Eventually, most of the lands that feed us must come under the umbrella of protection or we will gradually fritter away too much of an irreplaceable natural resource.

#### SUMMARY

Saving choice farmlands for future generations requires a system that has advantages for both those who own the land and those who seek to preserve it. The conceptual plan outlined here utilizes non-tax money to protect these finite resources rather than placing dependence entirely upon law. The Prime Farmland Transfer Fee Plan offers an opportunity to contain development on prime lands without undue landowner sacrifice, without massive spending, without costly bureaucracy and without impenetrable barriers to future space needs.