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NOV 6 1974

JOURNAL OF THE

L Northeastern Agricultural Economics Council

(Proceedings issue)



VOLUME III, NUMBER 2
OCTOBER 1974

PROVIDING BENEFITS
OF AGRICULTURAL OPEN SPACE
IN URBANIZING SITUATIONS

by

William L. Park
Professor and Chairman
Department of Agricultural Economics and Marketing
Rutgers University - The State University of New Jersey

As the most densely populated area of the nation, New Jersey and the Northeast stand as a laboratory in which concepts and institutions might be developed and tested to preserve valuable nonrenewable farmland for multiple social uses including an ability to provide open space and life-sustaining food and fiber. In this context, there is a need to carefully consider the idea that actions by government and society generate or destroy economic values in property through the creation or modification of institutions and social organization. It is also true that the lack of action by government may result in the wasteful destruction of amenities which may be held in high regard by many individuals in society.

The purpose of this paper is to explore the specifics of a means by which economic values imputed in land through the social process might be tapped or recycled to preserve the benefits of multiple-use agriculture in an urbanizing environment which, under present conditions, is unnecessarily being destroyed. It is not an anti-development approach -- rather, it is one of redirecting land development away from prime farmland toward land less suited for agriculture but still well suited for development. Reliance will be placed upon the New Jersey experience in evaluating these ideas.

The Impermanence Syndrome

New Jersey agriculture has long been the custodian of much of the state's most valuable nonrenewable land and water resources. Today, New Jersey farmers are facing problems and opportunities which are unique in relation to most of American agriculture. They operate their farms in a densely populated area between the two major population centers of New York and Philadelphia, and as a result are subjected to intensive pressures to develop their land for housing, commerce and industry and phase agriculture out. And yet, being so located they are near the largest market in the Western world for the products of their farms. They also have ready access to other markets, both domestic and foreign.

In recent years, factors largely external to agriculture including the pressures toward urbanization have induced an impermanence syndrome in the minds of farm families and caused radical changes in Garden State agriculture. Land devoted to farming decreased by 200,000 acres in each of the periods 1954-1959 and 1960-1964. The most severe loss occurred during the four-year period from 1964 to 1968 when over 220,000 acres were lost and converted to non-agricultural uses. This represents a 39 percent loss over a period of 20 years. This sense of impermanence and pessimism for the future of agriculture results in a disinclination of farmers to make long-term investments in plant and equipment for the fear that they may be forced out of business before such investments can be fully utilized. Nor are they likely to invest time, money and energy to improve their marketing practices and institutions. The planning horizon is short and in general a "wait and see" attitude prevails.

The reasons for this attitude are quite obvious. First, land values have risen sharply in recent years from \$528 per acre in 1960 to \$1,599 in 1973,^{1/} an increase of 8.9 percent per year. The increase in value of farmland was primarily a reflection of the demand for land for development purposes inasmuch as the value of land for farming rose much less rapidly. As one farmer recently put it: "I plan to farm for another 15 years, plant houses and retire." The idea of selling land at development prices was attractive to many farm families especially if they were having trouble making a go of it at farming or were near retirement age.

Second, higher land values induced higher property taxes. The fact that property taxes were based upon the market value of the land rather than its earning capacity forced many to either (1) sell their farms and go out of business, or (2) sell off frontage lots to generate income to cover living expenses. This problem became very acute during the early 1960's. However, the public awareness of the problem was sufficient that in 1963 a constitutional amendment was approved which allowed local governments to assess farmland at its farm value for property tax purposes. The relief was of course welcomed by the farming community and by 1966-67 the egress of land from agriculture had markedly slowed. Nevertheless, tax rates are still relatively high with the result that farm taxes have amounted to an excess of \$20.00 per acre each year since 1970. The national average is less than \$3.00 per acre.^{2/}

Third, the availability of alternative employment opportunities has made it easier for farmers and farm workers alike to move off the farm or operate on a part-time basis and make a living elsewhere. This reduced reliance upon the farm for family income has reduced the permanence in the use of land for agriculture. Also, farmers are frequently at a disadvantage in attracting competent labor compared to nearby industry.

^{1/} Farm Real Estate Market Developments and Farm Real Estate Taxes, Economic Research Service, USDA.

^{2/} Ibid.

Fourth, landowners are concerned that environmental protection regulations and certain measures of social legislation will make it extremely difficult to farm even if other deterrents to permanence are corrected. Such "nuisance" regulations can and have induced farmers to sell.

Finally, pessimism feeds upon itself. The fact that a farmer sees his neighbor sell for a good price strengthens his resolve to do the same thing when the opportunity to do so presents itself.

It is obvious that a viable agriculture cannot long endure under the extreme pressures outlined above. There is a need to establish a sense of permanence in the agricultural land base if farming is to long endure in the "Garden State." In 1971, Governor William Cahill directed the Secretary of Agriculture, Phillip Alampi, to appoint a Blueprint Commission on the Future of New Jersey Agriculture and charge the Commission to develop recommendations which might promote the viability and permanence of agriculture in the state.^{3/} The Commission concluded that land use and public land use policies were of central importance in the promotion of viable agriculture under urbanizing pressures.^{4/}

Why Agriculture in an Urban State

As discussed above, land is a prime resource in agricultural production, but its use is not limited to that purpose. As urbanization takes place, it is often at the expense of the quality of the environment as perceived by urban as well as rural dwellers. There is a felt need for open space within and between urban centers. There is a need to protect vital air and water recharge areas. There is a need to remove the blight of closed-in cities and generally to enhance the aesthetics and quality of living space. As the Blueprint Commission put it:

"There is. . . a converging interest in the use of land for public purposes in New Jersey. The central issue in improving the quality of the environment is the use of land efficiently and effectively. Similarly, the central issue in improving the economic health of agriculture in the public interest involves permanence in land use."^{5/}

^{3/} Report of the Blueprint Commission on the Future of New Jersey Agriculture, New Jersey Department of Agriculture, April 1973, Phillip Alampi, Secretary. The author served as an advisor to the Blueprint Commission and assisted in the development of the land policies proposed in its report.

^{4/} Ibid. p 9.

^{5/} Ibid. p 9.

As a source of essential food and environmental open space, agriculture is an industry affected with the public interest and exists for the social benefit of the citizens of the state. It is a resource which can be used in many ways at one time. The multiple use of land increases its social value and, consequently, enhances the justification that it be preserved. According to the Blueprint Commission, the reasons for preserving agricultural open space are:

1. "To provide productive, tax-paying, privately maintained agricultural open space with its environmental benefits, including rural aesthetics and enhance air and water quality. . . ,
2. "To provide consumers with a ready access to wholesome locally produced food products and protect the consumer buying power for food. . . ,
3. "To encourage the productive use of land and natural resources which contribute significantly to the income and employment of many citizens of the state and the New Jersey economy in general. . . ,
4. "To allow for the recycling of sewage wastes on land as a partial alternative to existing methods and as technical problems are resolved. . . , and
5. "To establish a land reserve for future generations and prohibit premature development."^{6/}

Criteria for Evaluating Land Policy

Public policy and implementing legislation must possess characteristics which will assure its economic, political and legal success. A policy which recommends the recycling of social capital to promote socially accepted goals must be framed within a practical reference. The criteria described below are intended to assist in the evaluation of alternative policy mechanisms.

In the first instance, the major factor which produces farmer pessimism and lack of faith in the future of agriculture in urbanizing situations is the lack of permanence in the land base. The mechanism should therefore provide for a permanence in land use control which is stronger than that which can be imposed by planning and zoning as presently provided. The areas designated for agricultural use must be protected from development pressure and reserved for agricultural and related open space uses only. A sufficient mass of land must also be preserved to assure sufficient volume of business for supporting supply and processing industries.

^{6/} Ibid. pp. 9-10. See also: William L. Park et al., Issues in Agricultural Land Use Management in New Jersey, New Jersey Agricultural Experiment Station, S.R.-17, February 1973.

The second factor is a legal one arising out of the first. If land is reserved for agricultural open space uses only, it is by definition denied its rights of development. Under the Fifth Amendment of the U. S. Constitution, a landowner is protected from the confiscation of property without just compensation. Therefore, the plan must provide for the compensation of landowners for the property rights of land development taken from them.

Third, an important element in the efficiency of agriculture in the United States is the private ownership and control of land. Any "taking" of property rights to assure the desired permanence in land use should be limited to the development rights to land leaving the land resource itself in private ownership and control.

Fourth, the plan should be built around the locus of authority for planning and zoning. In New Jersey, such authority is vested with the local municipality. A balance of authority between local and state agencies should be agreed upon; preferably with each assuming responsibility for activities to which it is best suited.

Finally, a program which affects economic values of property will incur a cost, both direct and indirect. Such costs are frequently hidden but nevertheless real. As much as possible, the cost of the program should be equitably distributed among those who benefit therefrom. The cost of providing just compensation for rights taken from the land should be paid out of capital gains values of land arising out of the provision of public services and infrastructure.

Elements of Present Agricultural Land Use Policy

The property tax has a profound impact upon land use in rural areas. The heavy reliance upon the local property tax in New Jersey in favor of a broad base tax, such as the income tax, influences individual, municipal and state decision-making. For example, the need to generate ratables as a base for providing community services is an important element in the incentive package for large acre zoning so prevalent in rural areas.

As discussed above, New Jersey has had a use value assessment law since 1964 under which land actively engaged in farming can be assessed for local property tax purposes at its farm value even though the market value for the land is much higher. Today, there are approximately 1,001,000 acres of farmland qualified under the Act. In fact, there is relatively little farmland in the state under active cultivation which is not under the Act. This Act, although it has slowed the egress of land from agricultural use since its adoption, is principally a stop-gap measure by which the state can buy time until a more permanent form of policy can be established.^{8/}

^{8/} For a discussion of the impact of this Act upon the loss of farmland, see: "An Analysis of Misplaced Hopes, Misspent Millions," by the Department of Agricultural Economics and Marketing, Rutgers University, 1974, Monograph.

Use-value assessment modification to the property tax law is therefore a partial solution and cannot be relied upon to save agriculture when development pressures mount.

Under the New Jersey "Green Acres Program," two bond issues for \$60- and \$80-million were approved by the electorate for the purchase of open space areas. Priority has been given to special recreation, wildlife, and historic sites amounting to nearly 230,000 acres. The program has had its beneficial effects but has not been an effective tool for the preservation of prime farmland. It too is a partial solution.

Under New Jersey law, the authority for planning and zoning under the police powers of the Constitution is for the most part in the hands of the local municipality.^{9/} Of the 567 municipalities in the state, 534, or 94.2 percent, have established planning boards and exert some form of planning and land use control.^{10/} County Planning Boards and the State Division of State and Regional Planning in conjunction with local municipal planning bodies have properly attempted to promote efficient and effective land use but have been frustrated in preserving agricultural open space due to lack of authority and resources to meet the just compensation rule in cases of full or partial confiscation of property. In short, planning and zoning legislation as presently enacted has contributed to a wiser use of land resources but cannot be relied upon to preserve a critical mass of agricultural open space.

An innovative concept labeled "Agri-city" under a Planned Unit Development (PUD) ordinance was recently proposed for a 6,500-acre tract of land in South Jersey. It was proposed that about 48 percent of the land area in the planned city be devoted to some form of open space, including about 2,500 acres of farmland. To assure the permanence of the agricultural open space, the developers were willing to deliver a covenant to the municipal fathers that the farmland would not be developed unless it is the will of the community to do so. In the event of such development, the monetary gains would not accrue to the municipality, but to the original developers. Thereby, a check and balance was created to the end that the municipality could enjoy privately owner and controlled open space; but would not have an incentive to release the land to development in order to ease any future short term fiscal problems. This kind of innovativeness is desirable and should be encouraged, but similar to other measures cannot be relied upon to provide a critical mass of agricultural open space from the point of view of the state.

^{9/} For a full discussion of planning legislation and related matters, see: Schneider, Lee D., New Jersey Land-Use Planning Techniques and Legislation, Department of Agricultural Economics and Marketing, Rutgers University, A.E. 338, July 1972.

^{10/} Ibid.

Occasionally, public spirited persons are willing to dedicate land or development easements in land, to governmental bodies. The dedication of such lands or the creation of land trusts after the pattern of the Connecticut law should be encouraged, but as before, cannot be relied upon to provide a critical mass of agricultural open space in the state interest.

Utilizing the police power provisions of the state constitution, critical coastal wetlands and river flood plain areas have been identified and excluded from the development market.^{11/} As expected, there is substantial opposition to the legislation by those who claim ownership to the areas involved. The question as to whether such zoning constitutes a taking of property is yet to be determined by the courts. There seems to be little conflict over whether or not such lands should be preserved. The issue of contention is primarily centered on the mechanism developed to carry out the policy declaration.

Policy Recommendations

In its report, the Blueprint Commission on the Future of New Jersey Agriculture recommended that the state adopt a development easement purchase plan as a means of establishing agricultural open space preserves in the state covering at least 1,000,000 acres.^{12/} This represents an area nearly equal in size to that presently devoted to agricultural uses.^{13/}

The mechanism for preserving agricultural open space as recommended by the Blueprint Commission is illustrated in Figure 1.^{14/} The plan provides that: (1) local municipalities are directed to designate the prime farmland to be preserved; (2) land in the preserved areas is limited to agriculture and related open space uses only; (3) landowners in the preserved areas may sell the development rights of their land to the state for the difference between the market value and the farm value of such land; (4) the program would be financed by a real estate transfer tax on all real estate property in the state; and, (5) the program would be administered by a semi-autonomous agency attached to the Department of Agriculture.

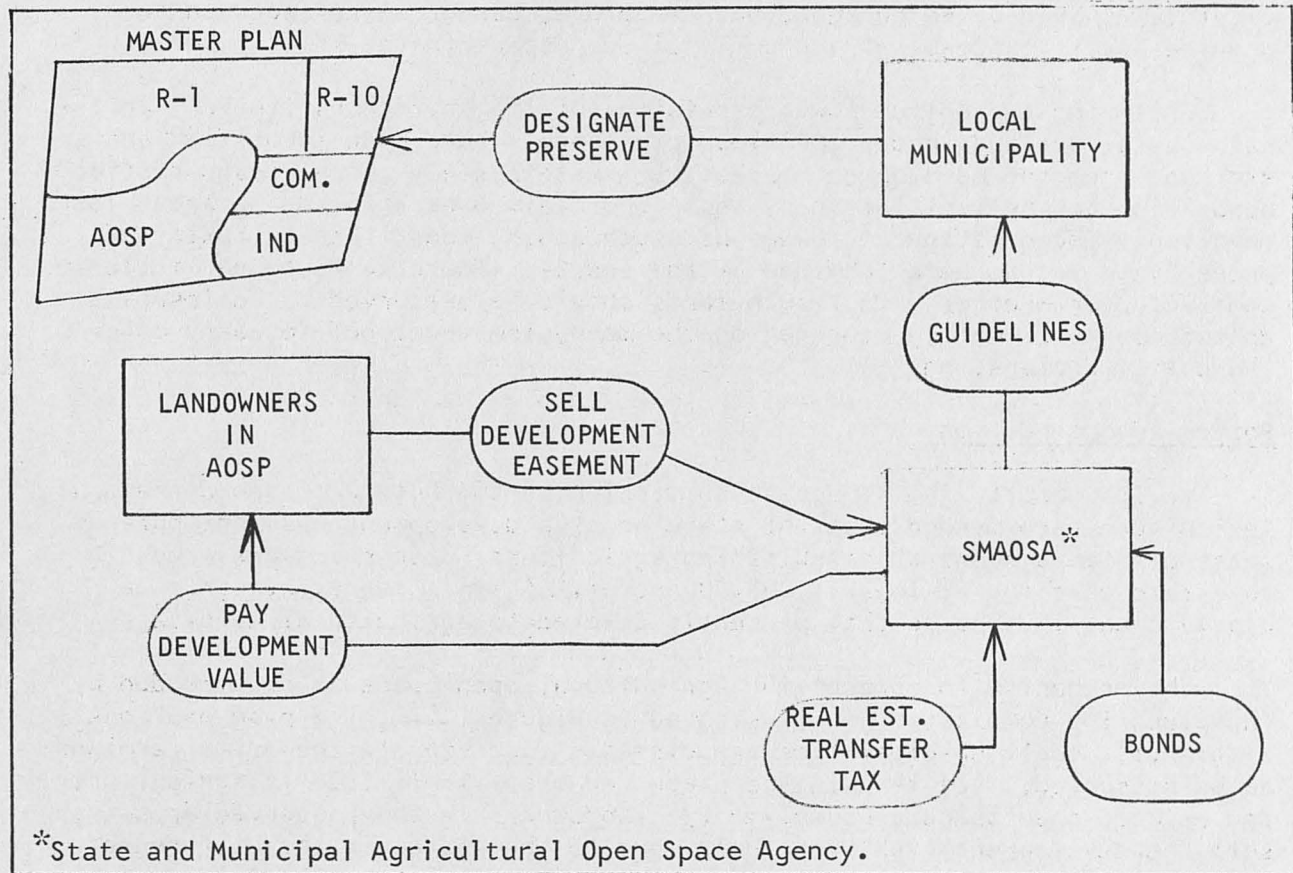
^{11/} Chapter 272, Laws of 1970 and Chapter 185, Laws of 1972, respectively. Laws of New Jersey.

^{12/} Report of the Blueprint Commission on the Future of New Jersey Agriculture, p. 11.

^{13/} According to the New Jersey Division of Taxation, there are about 1,010,000 acres of land in the state actively devoted to agriculture as defined in the Farmland Assessment Act. This is exclusive of lands under farm homes. The total would be about 1.1 million acres. The Department of Agricultural Economics and Marketing at Rutgers University, in its annual Motor Vehicle Survey, estimates 1.1 million acres in farms.

^{14/} The author served as an advisor to the Commission and assisted in the development of its recommendations.

Figure 1
Flow Chart Description of
Development Easement Purchase Plan



Constitutional Amendment

Vreeland and Parker, in a Senate Concurrent Resolution (N.J.) recommended that the state constitution be amended to provide for (1) a public affirmation that agriculture is affected with the public interest, (2) authorization to preserve "agricultural open space" by state acquisition of "owner's rights to develop his agricultural lands. . .," and (3) authorization to dedicate a tax for the purpose of financing the acquisition of such rights.^{15/} Norman, in reviewing the proposed constitutional amendment and the need for established permanence in the preserves, confirmed an earlier recommendation by the author and others that the constitutional amendment might also include a clause that a preserve once established under the law could not be dissolved except by public referendum.^{16/} Such

^{15/} SCR-86, January 21, 1974.

^{16/} Thomas A. Norman, Attorney at Law, New Brunswick, N. J.

a procedure would put the will of the people directly behind a policy issue and thereby insulate it from short-term political expediencies. A greater sense of permanence in land use for agriculture would emerge with the constitutional and referendum backing compared to present general planning and zoning.

Designation of Agricultural Open Space Preserves

Under the Blueprint Commission proposal, it would be the responsibility and the opportunity of each municipality to designate the land to be included in its Agricultural Open Space Preserve (AOSP). It must consist of at least 70 percent of the prime farmland in the municipality. Although not included in the Commission proposal, two or more municipalities might be allowed to pool their resources in establishing an AOSP, thereby recognizing the fact that it might be more reasonable to establish preserves in reference to physical and natural features of the landscape rather than upon municipal boundaries.

In some instances, local officials may find it difficult to determine the location of an AOSP either because of lack of resources or through inability to resolve differences of opinion. To prevent such incapacities from delaying effective implementation of the plan, a limit of two years would be allowed for completion of the AOSP designation. After that date, the state administering agency would be empowered to make the designation.

Upon approval of the designated preserve, land included could be used only for agriculture and related open space uses. The administering agency would be empowered with rule-making authority to assure that the intent of the legislation is not subverted. It was the intent of the Commission that owner-operator farming be encouraged and that undue fragmentation of farming units not be allowed.

There is widespread concern on the part of farmers that so-called nuisance regulations will make it impossible to farm even if the permanence of the land base is assured. It is argued that farming practices, though occasionally unpleasant to nearby suburban residents, must be protected.

Purchase of Development Easements

The state administering agency, under the Commission proposal, would be empowered to purchase development easements on the land included in the preserve and thereby excluded from the development market. The designation of land to a preserve and the subsequent purchase of the development rights constitutes a condemnation of property under the principle and powers of eminent domain as set forth in the Fifth Amendment to the U. S. Constitution. It is therefore essential that the property owner be paid fair and just market value for property taken from him.

The amount of compensation recommended by the Commission would be essentially the difference between the market value of the land and its farm value. This recognizes the matter that farm real estate has essentially

three elements of value, viz., farm value of the land, structures and facilities value (including the farm home), and the development value of the land. Upon sale of the development easement, the deed is modified and future sales of the property are subject to the easement much the same as present practices regarding the sale of selected property rights such as rights of way, access rights for gas pipelines, electric power facilities and the like. Thus, the landowner still owns and controls the land as before except he has given up the right to develop it for so-called higher economic uses. The private property concept is therefore preserved.

In recognition of the fact that many farm owners would not be interested in selling the development easement to their land immediately and to allow increased flexibility in the problem, the Commission recommended that delayed sales of easements be permitted.^{17/} For delayed easement sales, the value of the easement would be determined at the time of the sale and would reflect the difference in the farm value and the "would be" market value would be determined through established appraisal procedures and based upon the principle that the increase in the market value of land in the preserve would be determined to be the same as that for land similarly situated outside the preserve.

Program Cost

The funding of the program is based upon four principles: (1) the source of funds should be broadly based and paid, insofar as is practicable, by those who share in the benefits: (2) the funds should be drawn from capital gains, windfall profits, or the unearned increment on real property; (3) the funds should be collected from the same market that sets the values for development easements thereby establishing a built-in integrity for the easement purchase fund: and (4) the tax should be objectively determined and easy to collect.

The real estate transfer tax meets these criteria well. It is imposed at a time when the disutility of the tax is very small. A 4-mill transfer tax, as recommended by the Commission, would amount to \$160 upon the sale of a \$40,000 home. In most instances, this amount is less than the capital gains on the property generated during the previous year.

At 1973 prices a 4-mill transfer tax would yield about \$26.5 million. The increase in the value of real estate in New Jersey from the preceding

^{17/} The Commission did not limit the time that an easement sale could be delayed. It is the author's opinion that such delayed sales should not be later than 15-20 years beyond the inception of the program. As a matter of practice, the state would be granted the right of first option to buy the development rights when property is transferred.

year was \$8.6 billion.^{18/} The transfer tax as a percent of the increase in the value of New Jersey real estate is 0.3 percent. Our most recent analysis indicates that a 3-mill transfer tax will generate sufficient funds to purchase the development easements on 75 percent of the land now actively devoted to agriculture (750,000 acres); and retire the debt in a period of less than 25 years.^{19/} Supplemental bonding authority will be needed to protect the cash flow position of the fund during the early years of the 25-year period.

Program Acceptability

The public reaction to the Blueprint Commission proposal has been mixed during the year following the release of the report. The leadership of the farm community as represented by the Farm Bureau Delegate Body and the annual Agricultural Convention has endorsed the programs as a means whereby agriculture might be saved. There are many rural landowners who would much prefer to be left alone even if it means the destruction of agriculture over the next few years. Others distrust state government as an agency to determine fair market value for the development value for their land.

Others are concerned about the total cost of the program and fear that the public will not be willing to pay the cost of a direct easement purchase program and are seeking ways whereby the costs would be less visible and less direct. Others would prefer to avoid the "cost" altogether and create exclusive agricultural zones without regard to the "taking" and "just compensation" issues.

There is, however, a rather keen public awareness of the need to preserve farming in the "Garden State" both from the standpoint of food production and environmental open space. Two straw polls were taken in Fall 1973 and Spring 1974 which indicate a high degree of acceptance of the program by urban and suburban voters. For example, a poll of 3,207 visitors to the New Jersey Flower and Garden Show held at Morristown, New Jersey, during March revealed that 97 percent favored an amendment to the state constitution which would permit the establishment of agricultural open space preserves as presented in this paper; and 85 percent indicated a willingness to pay a 4-mill transfer tax to pay for it. Similar results were expressed at the Flemington Fair last fall. A recent survey by Rutgers University indicates that 79.3 percent of a statistically selected cross-section of New Jersey citizens favors preserving farms and private woodlands, and 52 percent would favor a 0.5 percent tax on real estate sales to pay for it.^{20/}

^{18/} Source of data: Annual Report, New Jersey Department of Treasury.

^{19/} A detailed cash flow and cost analysis of the program has been conducted and will be published separately in the near future.

^{20/} Dept. of Agric. Economics and Marketing, May 1974, to be published soon.

Conclusion

Regardless of the outcome of the proposal of the Blueprint Commission on the Future of New Jersey Agriculture, there remains a need to develop concepts and policy mechanisms to meet the serious problems identified. The social cost of lost agricultural productive capacity is enormous in urbanizing areas if nothing is done. The search for solutions deserves well our attention.