A photograph of a rural landscape. In the foreground, there is a large field of golden-brown harvested grain, possibly corn, with visible tire tracks curving through it. To the right, a smaller, vibrant green field is visible. In the background, a dense line of green trees stretches across the horizon under a grey, overcast sky.

# **PROTECTING YORK COUNTY'S RURAL ENVIRONMENT**

**CURRENT ZONING AND PRESERVATION PRACTICES**

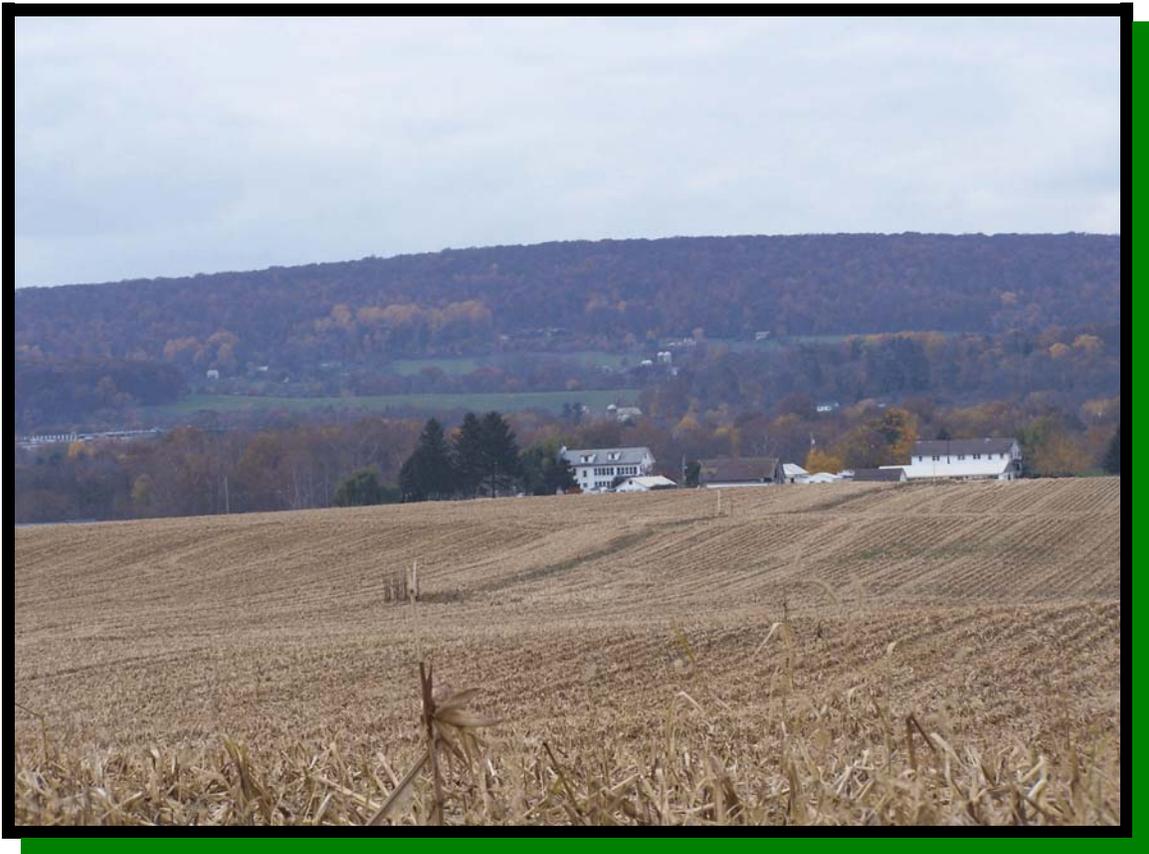
**JUNE 2009**

**YORK COUNTY PLANNING COMMISSION**



# PROTECTING YORK COUNTY'S RURAL ENVIRONMENT

CURRENT ZONING AND PRESERVATION PRACTICES



YORK COUNTY PLANNING COMMISSION  
28 EAST MARKET STREET  
YORK PENNSYLVANIA  
(717)771-9870

JUNE 2009

*“The purpose of conservation: The greatest good to the greatest number of people for the longest time.”*

-Aldo Leopold



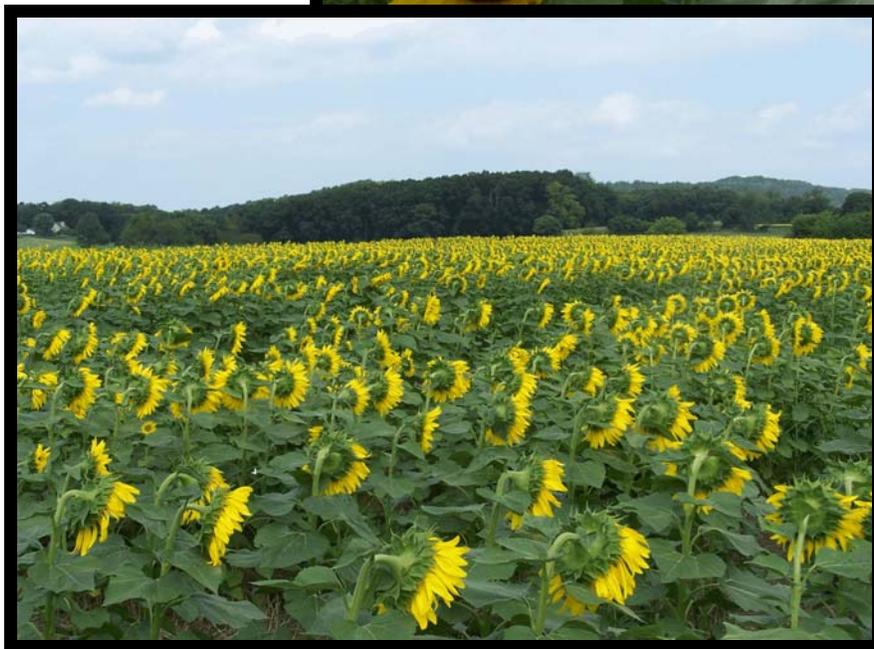
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*"We can never have  
enough of nature."*

-Henry David Thoreau



## I. INTRODUCTION

The York County Planning Commission became involved with the problem of declining agricultural land in 1975 following a particularly heavy growth spurt in the County during the early 1970's. The staff researched the problem as the basis for a publication entitled Agricultural Land Preservation, A Topical Study for York County, which was published in June of 1975. Findings indicated that the main threat to farmland in the County was, and still is, not weather related or soil quality depletion, but rather the subdivision of working farms into smaller tracts for the purpose of creating residential developments. The County's best farmland lies, for the most part, along its southern border in the area between York City and the Maryland State Line. Coincidentally, because of the excellent north-south access afforded by Interstate 83, and other improved roadways, a demand for residential land in this area continues to be generated by workers who live in southern York County and commute to the large industrial complexes developing in Baltimore County.

Municipal officials, in sections of the County where this phenomenon is centered, asked the Commission staff for assistance and guidance in this matter. A wide variety of potential techniques were reviewed prior to selecting a preservation method which the Commission felt would work in this area. What was needed was a technique that was simple, easily understood, and could be put into operation by any municipality. Ultimately, it was decided that incorporating agricultural protection into zoning regulations would be the best approach to meet these criteria. Twenty-nine municipalities (25 Townships and 4 Boroughs) currently have, or are in the process of developing, zoning provisions that limit residential development in agricultural areas. Hopewell Township was the first to adopt such regulations in June of 1974. The bulk of the other municipalities enacted such ordinances between that time and 1977, a few more in the 1980's and 1990's, then another large group since 2002.

## II. AGRICULTURAL PROTECTION ZONING (APZ)

### AGRICULTURAL PROTECTION ZONING TECHNIQUES

After numerous and lengthy conversations and meetings involving the farming community, local municipal officials, and the staffs of the Soil Conservation Service and the Cooperative Extension Service, the following essential elements of agricultural preservation became evident: 1) the need to control the number of new dwelling units being built in rural agricultural areas; 2) the need to limit the amount of land being subdivided for speculative purposes; and, 3) assurances that any new construction that did take place would be relegated to non-prime agricultural land.

After thorough consideration and evaluation of the advantages and disadvantages of each, a combination of density control, subdivision restrictions, and prime land preservation has been determined to be the most beneficial in protecting agricultural land in York County. Below are six (6) possible techniques for agricultural protection zoning (APZ). Map 1 indicates which municipalities are using some form of APZ.

- **Sliding Scale Formula:** The basic concept of the sliding scale approach is to limit the number of dwelling units permitted based on the size of the farm parcel. The sliding scale approach typically allows a somewhat higher density on smaller parcels than on large parcels. This is the type of APZ most commonly used in York County.
- **Percentage-System Formula:** With this formula, a municipality limits the percentage of a parent parcel of land which can be developed or subdivided. For example, if a municipality allows ten percent (10%) of a parent parcel to be developed, ten (10) acres of a 100 acre parent parcel would be allowed to be subdivided.

- **Fixed-System Formula:** When a municipality uses the fixed-system formula, a property owner is allowed one (1) dwelling for a specified number of acres. For example, if a municipality allows one (1) dwelling per 25 acres, a 100 acre parent parcel would be allowed to be subdivided to permit four (4) dwellings.
- **Maximum Lot Size:** Limiting the size of residential lots within an agricultural zone is intended to reduce the fragmentation of agricultural land. However, if additional land is needed to accommodate a well, septic, driveway, etc., then the maximum lot size can be increased. In addition, some municipalities permit a larger lot if the developer uses additional dwelling rights. Enforcing a maximum residential lot size can be used alone or in combination with other agricultural protection techniques.
- **Prime Agricultural Land Restrictions:** Placing restrictions on the development of prime agricultural land is another way a municipality can protect its important farmland. Typically, development is restricted to soils deemed as low quality, non-prime, or the least agriculturally productive. Soils that are *not* designated as class 1, 2, or 3 soils as classified by the Soil Survey of York County are considered non-prime. In addition, soils which contain large amounts of swampy areas, rock outcroppings, or steep slopes are generally considered low quality soils or the least agriculturally productive.
- **Transfer of Development Rights (TDR):** The transfer of development rights allows the owner of a parcel of land to transfer his right to develop all or a portion of a parcel of land to another parcel of land where development is more desirable. Specific regulations governing TDR's can vary. The municipalities which currently practice Transfer of Development Rights (TDRs) are shown on Map 2.

### **Sliding Scale/Percentage System/Fixed System**

These techniques are designed to control the number of new dwelling units being built in agricultural areas. The success of these techniques is largely dependent upon how long the limitations remain in effect. Securing rural lands for agricultural use requires a long range perspective. One reason for the success of the sliding scale can be traced to its acceptance by farmers and other large landowners. The support of the agricultural community stems from the flexibility of the scale and the farmer's direct participation in setting the dimensions of it.

Real estate interests failed to show the same enthusiasm as did the farmers. However, in most cases, communities went out of their way to demonstrate that there was more than sufficient land in the "growth" and "rural village" areas to accommodate a variety of land use needs. In several York County townships, the land set aside in residential zones to accommodate expected population growth would be able to account for three (3) or four (4) times the projected population figures. Furthermore, each of the townships were careful to provide for a variety of housing types and a variety of densities, thus settling any questions of exclusionary zoning.

As noted earlier, agricultural protection/preservation requires a long term commitment to secure farmland and protect agricultural use. The greatest threat to agricultural preservation, when implemented through zoning ordinances, stems from a traditional problem with zoning regulations, that is, they can be changed. Any ordinance enthusiastically adopted by one set of municipal officials can be just as enthusiastically rescinded by the next board of elected officials. Another long-term threat to the zoning techniques may surface when landowners have used all of their development allotments. Will landowners then begin to pressure municipal officials for more and more development rights? This question cannot be completely answered without continuing study of long-term trends in agricultural markets and cost differentials between land reserved for

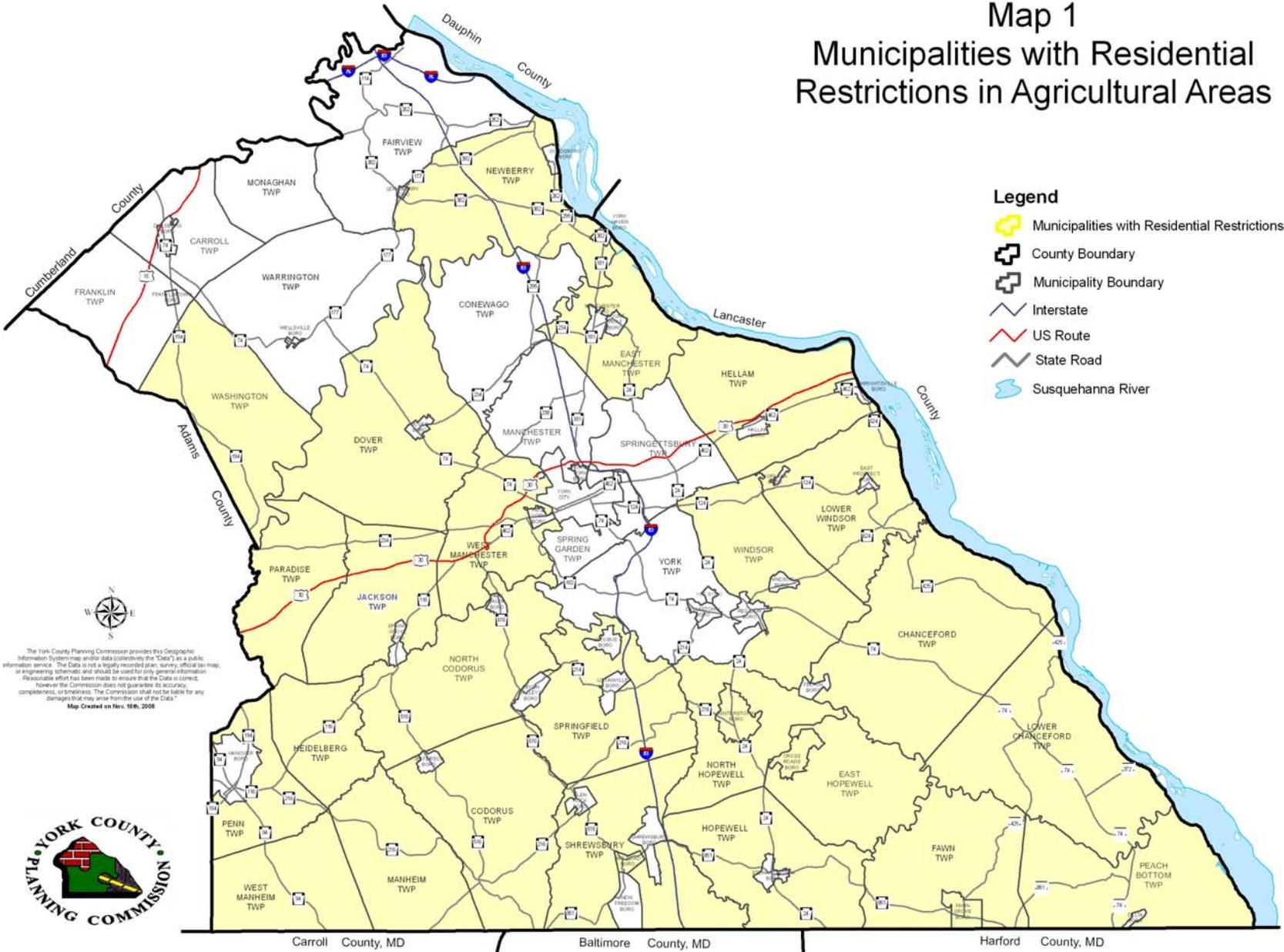
development in growth areas and land in the agricultural zone. There will be less pressure to develop in the rural hinterland as long as some land remains undeveloped in the growth areas. The pressure will also be reduced if agricultural land prices continue to rise relative to other land prices. One thing is certain, based on experience since its inception, the sliding, fixed and percentage based scales are protecting farmland and reducing speculation.

These APZ techniques require continuous monitoring from the first day the ordinance is adopted. At that time, the community must have a tax parcel map or another map which clearly indicates the existing pattern of land ownership. Development allotments should be made for each of the parcels based on the ordinance's scale. As the allotments are used up, the parcel map should be changed to show remaining allotments. Some municipalities have required that dwelling rights be listed on proposed plans to help insure that the allotted number has not been exceeded. Most municipalities use a single map to show allotments, usually a tax parcel map. Since such maps are usually "one of a kind" and in continuous use, it is important to keep them secure and in good condition. If the map became defaced or lost, the process of development regulation could be seriously hampered, unless the information has been computerized. Re-creating such maps is an expensive, time consuming, and frustrating job, since the development allotments would have to be researched on a case-by-case basis in local municipal files and in the County Recorder of Deeds and Tax Offices.

Nevertheless, the actual administration of APZ techniques, at least where development allotments are concerned, is a relatively simple task. Decisions on the number of lots permitted are fairly straightforward. Most of these will be indicated on the tax parcel map, but administrators must ensure that changes are posted on the allocation map, to guarantee a continuing up-to-date development record. Ideally, these changes would also be logged into a computerized data base in conjunction with the parcel map.



# Map 1 Municipalities with Residential Restrictions in Agricultural Areas



### Transfer of Development Rights

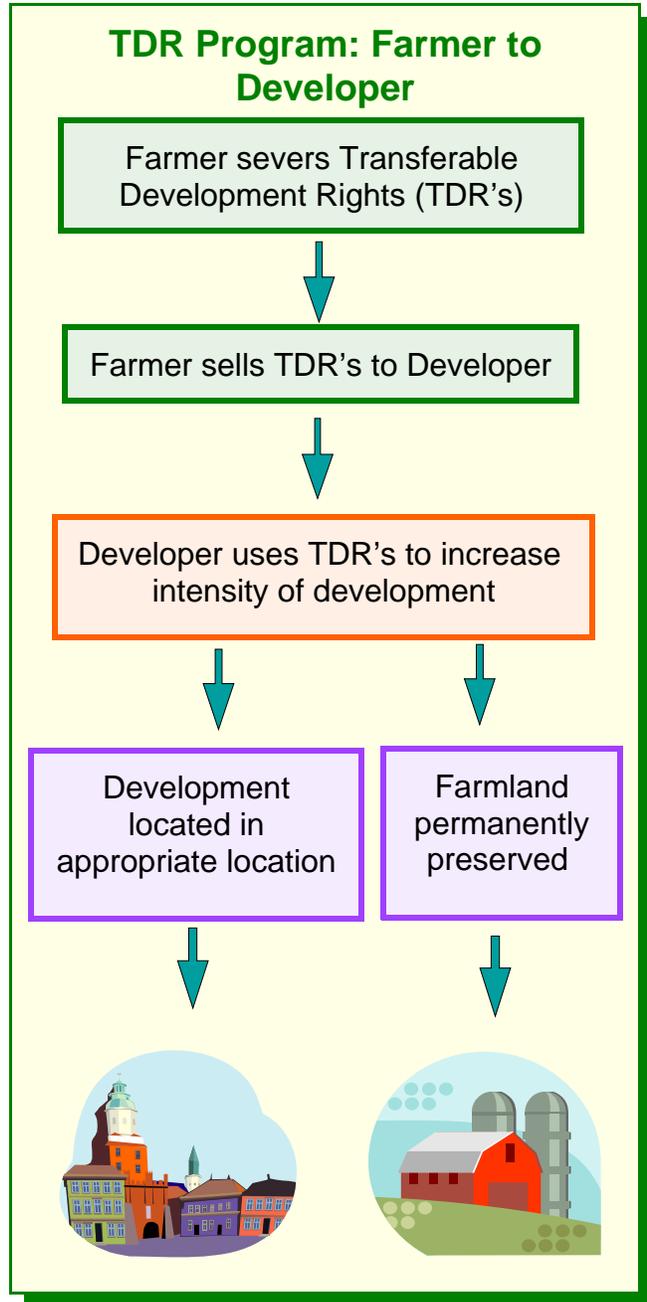
The transfer of development rights is a voluntary agreement under the terms of the municipal zoning ordinance between a willing buyer and a willing seller. The price of the development rights will be determined by the willing buyer and the willing seller.

Once the development rights are attached to a specific parcel of land, the rights run with that specific parcel in perpetuity. To further ensure that the parcel will not be developed in the future, it is recommended that a deed restriction against future residential development be placed upon the parcel from which the development rights have been severed. The deed restriction will not affect the landowner's ability to sell the land after the development rights have been severed; it does however, restrict future development of the land regardless of ownership.

Within York County, there are currently twelve (12) municipalities that have incorporated TDR provisions into their zoning ordinance. The TDR programs in York County operate in one (1) of three (3) ways.

The first option is for a municipality to have designated sending and receiving zones. Three (3) townships (Hellam, Lower Windsor, and Paradise) only permit development rights to be transferred from their agricultural zone (sending area) to a designated receiving area outside the agricultural zone. With this type of program, anyone can buy development rights from a landowner in a sending area but only property owners in a receiving area can use the rights to increase the density of development permitted in residential zones, to increase the permitted floor area of a commercial or industrial use, or to increase the lot coverage permitted in commercial or industrial zones. The seller of the development rights receives compensation from the sale, plus the right to retain the land for agricultural use or other uses permitted in the district in which located. An additional benefit to selling the development rights is that there would be no new non-farming neighbors who would be affected by, or might object to, farming operations which they might consider a nuisance.

In the second option, a municipality only permits the transfer of development rights within their agricultural zone. The intended purpose of this type of TDR program is twofold: to preserve prime



agricultural land by transferring development rights onto less productive soils and, by clustering development, to leave larger uninterrupted areas for agricultural use. Eight (8) of the twelve (12) municipalities (Chanceford, Codorus, East Hopewell, Fawn Grove, Hopewell, Lower Chanceford, Peach Bottom and Shrewsbury) only permit the transfer of development rights within the agricultural zone.

The third option is a combination of one (1) and two (2) above. Springfield Township permits development rights to be transferred either within the agricultural zone or to a designated receiving area outside the agricultural zone.

Municipalities that allow transfers to a designated receiving area typically are serviced, to some extent, by public water and sewer. This technique has the potential to encourage development in the County growth areas and thereby preserve designated agricultural and conservation areas, which are referred to as sending areas. The basic idea is to permit property owners in protection/preservation (sending) areas to sell development rights either directly to a developer or to an entity set up as a TDR bank. Developers then, in essence, purchase the right to build at a higher density, greater lot coverage, or greater square footage in specified development (receiving) areas. The end result is that development occurs in the areas able to accommodate it, important agricultural lands are preserved, and the rural property owner is not financially penalized. A TDR program is a market-driven program that can only succeed if the incentives established are viewed as beneficial by both the seller and buyer of development rights.

While TDR provisions have been in place for a number of years, its usage hasn't been as accepted as its concept. However, in the past year, Hellam Township approved four (4) plans utilizing TDR's. In this municipality, the receiving parcel was located in the commercial zoning district which is within a designated growth area. In addition, approval was given to two (2) preliminary plans utilizing TDR's in Lower Windsor Township.





**SUMMARY OF EXISTING LOCAL REGULATIONS**

The following regulations were compiled from the Zoning Ordinances on file at the York County Planning Commission as of February 2009. The regulations apply to parcels of land as they existed on the effective date of the Ordinance for each respective municipality:

**Chanceford Township**

Single family dwellings are limited in Agricultural and Conservation Districts to the following number per parcel:

Chanceford Township	
Size of Parcel	Single Family Dwelling Units permitted
Up to 80,000 sq ft	1
80,000 sq ft to 15 acres	2
15 to 30 acres	3
30 to 60 acres	4
60 to 90 acres	5
90 to 120 acres	6
Over 120 acres	6, plus 1 per each additional 30 acres or part thereof over 120 acres

Dwellings must be located on a parcel's least agriculturally productive land. Minimum lot size is 40,000 square feet; maximum 45,000 square feet, unless land is of low quality for agricultural use.

Chanceford Township contains TDR provisions in its zoning ordinance. If two or more tracts are within the Agricultural and/or Conservation Districts and in common ownership, the owners may transfer the right to construct dwellings from one tract to another owned by them, provided the single family dwelling units are on land of low quality for agricultural use.

**Codorus Township**

Single family dwellings are limited in the Agricultural District to the following number per parcel:

Codorus Township	
Size of Parcel	Single Family Dwelling Units permitted
0-7 acres	1
7-30 acres	2
30-80 acres	3
80-130 acres	4

Codorus Township	
Size of Parcel	Single Family Dwelling Units permitted
130-180 acres	5
180-230 acres	6
230-280 acres	7
280-330 acres	8
330-380 acres	9
380 acres or over	10

Dwellings must be located on the least agriculturally productive land. Minimum lot size is 40,000 square feet and the maximum is one (1) acre.

Codorus Township contains TDR provisions in its zoning ordinance. In the event two (2) or more parcels are within the Agricultural District, in common ownership, and are contiguous to one another, the owners may transfer the right to construct dwellings from one tract to another provided the dwellings will be located on land of low quality for agricultural use.

**Cross Roads Borough**

Single family dwellings are limited in the Agricultural District to the following number per parcel:

Cross Roads Borough	
Size of Parcel	Single Family Dwelling Units permitted
1-2 acres	1
2-6 acres	2
6-14 acres	3
14-30 acres	4
30-62 acres	5
62+ acres	6, plus 1 per each additional 30 acres or part thereof over 62 acres

The minimum lot size is one (1) acre, and the maximum is one and one half (1.5) acres. New dwellings must be located on land of low quality for agricultural use.

**Dover Township**

Single family dwellings are permitted in the Agricultural District. The minimum lot size is 65,340 square feet (1.5 acres) and the maximum lot size is two (2) acres. The number of permitted dwelling units in the Agricultural District is as follows:

For each twenty-five (25) acres of contiguous ownership, one (1) lot may be subdivided for a single family detached dwelling.

For each parcel of contiguous land in single ownership that is one and one half (1.5) acres or more, but less than twenty-five (25) acres, one (1) lot may be subdivided provided that both the lot to be subdivided and the residual lot meet all applicable requirements of the Ordinance. All residential lots must be located on low quality soils.

**East Hopewell Township**

In the Agricultural (A-1) Zone, for tracts of 20 acres or more, no more than 10% may be subdivided. In the Rural Residential (RR) Zone, for tracts of 10 acres or more, a maximum of 20% may be subdivided. For tracts less than 20 acres (A-1) or less than ten (10) acres (RR), one (1) lot may be subdivided. The minimum lot size is one (1) acre and there is no maximum lot size. Lots must be located on the least agriculturally productive soils.

East Hopewell Township contains TDR provisions in its zoning ordinance. The parcels must be contiguous and within the A-1 or RR Zones. If the transfer is between a parcel in the A-1 Zone and a parcel in the RR Zone, the receiving parcel must be located in the RR Zone. Every effort must be made to transfer only to those portions of a parcel with the least potential for agricultural productivity.

**East Manchester Township**

Single family dwelling are permitted in the Conservation (CO) and the Agricultural (A) Districts as follows:

East Manchester Township	
Size of Parcel	Single Family Dwelling Units permitted
0-1 acre	1
1-10 acres	1
over 10 acres	2, plus 1 per each additional 10 acres

The minimum lot size is five (5) acres in the CO District and two (2) acres in the A District. However, if the parcel has public water and sewer in the A district, the minimum lot size is one (1) acre.

**Fawn Township**

Single family dwellings are limited in the Rural Agricultural (RA) and Conservation (Cv) Zones to a density of one (1) dwelling per every four (4) acres. Minimum lot size in the RA Zone is one (1) acre and the maximum lot size is one and one half (1.5) acres. The minimum lot size in the Cv Zone is two (2) acres and the maximum lot size is four (4) acres. All dwellings must be located on soils classified as low quality for agricultural use.

**Fawn Grove Borough**

Single family dwellings are permitted in the Rural Agricultural (RA) and Conservation (Cv) Zones as follows:

Fawn Grove Borough	
Size of Parcel	Single Family Dwelling Units permitted
Less than 3 acres	1
3-6 acres	2
6-14 acres	3
14-30 acres	4
30-62 acres	5
62+ acres	6, plus 1 per each additional 30 acres or part thereof over 62 acres

The minimum lot size is one (1) acre in the RA Zone and two (2) acres in the CV Zone. The maximum lot size in the RA Zone is one and one half (1.5) acres unless low quality land is involved.

**Heidelberg Township**

Single family detached dwellings are permitted in the Agricultural District and Conservation District according to the following sliding scale:

Heidelberg Township	
Size of Parcel	Number of Lots that May be Subdivided from Parent Tract
0 - 4.99	1
5 - 14.99	2
15 - 29.99	3
30 - 79.99	4
80 - 129.99	5
130 - 179.99	6
180 or more	7, plus 1 for every 50 acres over 180 acres

In the Agricultural District, the minimum lot size is one (1) acre and the maximum lot size is two (2) acres. Minimum lot size is two (2) acres in the Conservation District; there is no maximum lot size. All lots shall be established on non-prime agricultural land.

**Hellam Township**

Single family dwellings are a permitted use in the Rural Agricultural (RA) Zone. For each five (5) acres of undeveloped contiguous land in single and separate ownership, there may be one (1) lot sold or utilized for a single family detached dwelling. The minimum lot size is two (2) acres.

Hellam Township contains TDR provisions in its zoning ordinance. The TDR program in Hellam establishes specific sending and receiving areas. The sending area is comprised of part of the RA zone and the receiving areas include the Residential, Mixed Use, Commercial/Industrial, and Interchange Zones.

**Hopewell Township**

Single family dwellings are permitted in the Agricultural (A) Zone according to the following sliding scale:

Hopewell Township	
Size of Parcel as of June 20, 1974	Number of Dwelling Units Permitted
0 - 6 acres	2
6 - 15 acres	3
15 - 30 acres	4
30 - 80	5
For each 50 acres over 80, one (1) additional dwelling right is permitted to a maximum of 21 dwelling rights	

In the Agricultural (A) Zone, the minimum lot size is 40,000 square feet and the maximum lot size is one (1) acre.

In the Conservation (Cv) Zone, in addition to one (1) existing dwelling unit on the tract of land as of April 4, 1996, one (1) additional dwelling unit is permitted for each 25 acres. Minimum lot size in the Cv Zone is two (2) acres and there is no maximum. All lots must be on the lowest quality soils in both zones.

Hopewell Township contains TDR provisions in its zoning ordinance. If two (2) or more parcels are in common or separate ownership and located within the A or CV Zones, the owners may transfer the right to construct dwellings from one parcel to another, providing the land is of low quality for agricultural use and both parcels are located in the same zone.

**Jackson Township**

Single family detached dwellings are permitted in the Agricultural Protection (AP) Zone according to the following sliding scale:

Jackson Township	
Size of Parcel	Number of Dwellings or Group Homes Permitted
0 - 4.99	1
5 - 14.99	2
15 - 29.99	3
30 - 49.99	4
45 - 59.99	5
60 - 74.99	6
75 - 124.99	7
125 - 174.99	8
175 - 224.99	9
225 or more	One (1) additional for each fifty (50) acres over 225

In the AP Zone, the minimum lot size is one (1) acre and the maximum lot size is one and one half (1.5) acres. Residential lots should be located on the least agriculturally productive land feasible.

**Lower Chanceford Township**

Single family dwellings are permitted in the Agricultural (A) and Conservation (Cv) Districts according to the following sliding scale:

Lower Chanceford Township	
Size of Parcel	Number of Dwelling Units permitted
0-7 acres	1
7-30 acres	2
30-80 acres	3
For each 50 acres over 80, one (1) additional dwelling right is permitted to a maximum of 19 dwelling rights	

Dwellings must be located on the least agriculturally productive land. Lot size is limited to one (1) acre per dwelling unit. Additional dwellings are permitted if all new dwellings are on low quality soil or on land which cannot feasibly be farmed.

Lower Chanceford Township contains TDR provisions in its zoning ordinance. If two (2) or more parcels are in common ownership and located within the A and/or CV Districts, the owners may transfer the right to construct dwellings from one (1) parcel to another providing the land is of low quality for agricultural use.

**Lower Windsor Township**

Single family dwellings are permitted in the Agricultural (AG) District according to the following sliding scale:

Lower Windsor Township		
Size of Parcel Acreage	Granted Development Rights	Permitted Development Rights
0-3.99	1	1
4.00-5.99	2	1
6.00-7.99	3	1
8.00-9.99	4	1
10.00-11.99	5	2
12.00-13.99	6	2
14.00-15.99	7	2
16.00-17.99	8	2
18.00-19.99	9	2
20.00-21.99	10	3
22.00-23.99	11	3
24.00-25.99	12	3
26.00-27.99	13	3
28.00-29.99	14	3
30.00-31.99	15	4
32.00-33.99	16	4
34.00-35.99	17	4
36.00-37.99	18	4
38.00-39.99	19	4
40.00 and Greater	20 DRs plus 1 DR for each 2 acres over 40 acres	5 DRs plus 1 DR for each 10 acre increase over 50

Lower Windsor Township contains TDR provisions in its zoning ordinance. The TDR program in Lower Windsor establishes specific sending and receiving areas. The sending area is located in

the AG District and the receiving areas are located in the Residential, Village and Waterfront Recreation Districts.

The minimum required lot size is one (1) acre and the maximum lot size is two (2) acres. "Granted Development Rights" are the total number of development rights assigned to a parcel based on the acreage. However, only the "Permitted Development Rights" can be used on that parent parcel. The remaining development rights can be transferred/sold to be used within a designated receiving area.

**Manheim Township**

Single family dwellings are limited in the Agricultural (A) Zone to a density of one (1) dwelling per every five (5) acres. Minimum lot size in the A Zone is one (1) acre for single family dwellings.

**Newberry Township**

Single family dwellings are limited in the Agriculture (A) Zone to one (1) dwelling per every five (5) acres. Minimum lot size in the A Zone is one (1) acre for single family dwellings and the maximum lot size is two (2) acres.

**North Codorus Township**

Single family dwellings are permitted in both the Agricultural Protection (AP) District and the Rural Agricultural Conservation (RAC) District. The total area permitted to be subdivided from the parent tract as of the effective date of the Ordinance (July 21, 1998) in the AP District is 20%. The maximum permitted to be subdivided in the RAC District is 25%. The minimum lot area for non-farm parcels is one (1) acre and there is no maximum.

**North Hopewell Township**

Single family and two family dwellings are permitted in the Agricultural (A) and Conservation (Cv) Zones according to the following sliding scale:

North Hopewell Township	
Size of Parcel	Number of Dwelling Units permitted
Less than 75 acres	6
75 - 125 acres	7
126 - 175 acres	8
For each 50 acres over 175, one (1) additional dwelling right is permitted.	

The minimum lot size is one (1) acre in the A Zone and five (5) acres in the Cv Zone. The maximum lot size in the A Zone is one and one half (1.5) acres. There is no maximum in the Cv Zone. The minimum lot size for a two family dwelling is 55,000 square feet. The "prime farmstead" is exempt from the maximum lot size. All dwellings are to be located on the least agriculturally productive soils.

**Paradise Township**

Single family dwellings are permitted in the Agricultural (A) Zone according to the following sliding scale:

Paradise Township	
Area of Parent Tract	Number of Subdivision Rights Granted
90,000sf-25 acres	1
25.01-50 acres	2
50.01 - 75 acres	3
75.01 - 100 acres	4
100.01 - 125 acres	5
125.01 - 150 acres	6
150.01 - 175 acres	7
175.01 - 200 acres	8
For each 25 acres (or fraction thereof) over 200, one (1) additional dwelling right is permitted.	

The minimum lot size is 45,000 square feet and the maximum lot size is 90,000 square feet in the A Zone. All dwellings are to be located on the least agriculturally productive soils.

Paradise Township contains TDR provisions in its zoning ordinance. The TDR program in Paradise establishes specific sending and receiving areas. The sending areas are located in the A and Rural Conservation Zones and the receiving areas are located in the Medium Density Residential and the Village Zones.

**Peach Bottom Township**

Single family dwellings are permitted in the Agricultural (A) Zone according to the following sliding scale:

Peach Bottom Township	
Size of Parcel	Number of Dwelling Units permitted
0-7 acres	1
7-30 acres	2
30-80 acres	3
For each 50 acres over 80, one additional dwelling right is permitted to a maximum of 19 dwelling rights.	

The minimum lot size is 40,000 square feet and the maximum is one (1) acre, unless the entire lot consists of low quality soils, then the maximum is three (3) acres. All dwellings must be located on land of low quality for agricultural purposes.

Peach Bottom Township contains TDR provisions in its zoning ordinance. If two (2) or more parcels are in common ownership and located within the A Zone, the owners may transfer the right to construct dwellings from one (1) parcel to another providing the land is of low quality for agricultural use.

**Penn Township**

Single family detached dwellings are permitted in the Rural Conservation (R-C) Zone, according to the following sliding scale:

Penn Township	
Size of Parcel	Number of Dwellings Permitted
1 - 5	1
6 - 15	2
16 - 30	3
31 - 60	4
61 - 90	5
91 - 120	6
121 - 150	7
151 and more	8, plus 1 for each 30 acres over 150 acres

The minimum lot area in the R-C Zone is one (1) acre. There is no maximum lot area.

**Railroad Borough**

New single family dwellings in the Rural Agricultural (RA) Zone are limited to one (1) unit per parcel, excluding the prime farmstead. Minimum lot size is one (1) acre.

**Shrewsbury Township**

Single family dwellings are permitted in the Agricultural (A) District according to the following sliding scale:

Shrewsbury Township	
Size of Parcel	Single Family Dwelling Units Permitted
0 - 5	1
5 - 15	2
15 - 30	3

Shrewsbury Township	
Size of Parcel	Single Family Dwelling Units Permitted
30 - 60	4
For each 30 acres over 60, one (1) additional dwelling right is permitted.	

Dwellings must be located on the least agriculturally productive land. The minimum lot size is one (1) acre and the maximum lot size is one and one half (1.5) acres. A smaller lot size is permitted if the applicant can demonstrate that the proposed lot size can sufficiently contain all required improvements. In the event that the parcel is comprised entirely of prime agricultural soils, a maximum of three (3) dwellings are permitted.

Shrewsbury Township contains TDR provisions in its zoning ordinance. Development rights may be transferred between parcels in common ownership or may be transferred to a parcel in a designated receiving area which is located in the Agricultural District.

**Springfield Township**

Single family dwellings are permitted in the Agricultural (A) and Conservation (C) Districts according to the following sliding scale:

Springfield Township	
Size of Parcel	Single Family Dwelling Units Permitted
0 - 4.99	1
5 - 14.99	2
15 - 29.99	3
30 - 89.99	5
90 - 149.99	7
150 or more	7, plus one (1) for every 30 acres over 150 acres

Dwellings must be located on the least agriculturally productive land. A minimum lot size of one (1) acre is required in the A and C Districts, however a maximum lot size of two (2) acres is only applicable in the A District.

Springfield Township contains TDR provisions in its zoning ordinance. The TDR program in Springfield contains specific sending and receiving areas. The Conservation and Agricultural Districts are the sending areas, and the Residential Open Space, Residential, and Village Center Districts are the receiving areas.

**Washington Township**

Single family and/or two family dwellings are permitted in the Rural Residential (R) and Woodland Preservation (W) Zones according to the following sliding scale:

Washington Township	
Size of Parcel	Number of Dwellings Permitted
0 - 29.9	3
30 - 59.9	4
60 - 89.9	5
90 - 119.9	6
120 - 149.9	7
150 - 179.9	8
180 - 209.9	9
Over 210	10

Minimum lot size is one (1) acre in the R Zone and three (3) acres in the W Zone; no maximum for either. The dwelling allocation does not apply in the R Zone if public water and public sewer are available. There are limitations on the number of lots permitted on existing road frontages and bonus provisions for cluster developments.

**West Manchester Township**

Single family dwellings are permitted in the Agricultural (A) Zone. For each 25 acres of contiguous land in single ownership, there may be one (1) lot sold or utilized for a single family dwelling. For each parcel of contiguous land in single ownership that is two (2) acres or more but less than 25 acres, there may be only one (1) lot sold or utilized for a single family dwelling. Minimum lot size is 20,000 square feet and the maximum is one (1) acre.

**West Manheim Township**

Single family detached dwellings are permitted in the Farming and Conservation Zones, according to the following sliding scale:

West Manheim Township	
Size of Parcel	Number of Lots that May be Subdivided from Parent Tract
0 - 4.99	1
5 - 14.99	2
15 - 29.99	3
30 - 59.99	4
60 - 89.99	5

West Manheim Township	
Size of Parcel	Number of Lots that May be Subdivided from Parent Tract
90 - 119.99	6
120 - 149.99	7
150 or more	7, plus 1 for every 25 acres over 150 acres

Minimum lot size is one (1) acre and maximum lot size is two (2) acres in the Farming Zone. Minimum lot size in the Conservation Zone is three (3) acres, with no maximum. All uses or lots shall be established on non-prime farmland.

**Windsor Township**

The number of lots permitted to be subdivided in the Agricultural (A) Zone is determined according to the following sliding scale:

Windsor Township	
Size of Parcel	Number of Lots that May be Subdivided from Parent Tract
15 - 39.999 acres	8
40 - 79.999 acres	12
80 or more	12, plus 1 for every 10 acres over 80 acres

The minimum lot size for a single-family detached dwelling is one (1) acre and the maximum lot size is two (2) acres. Lots should be subdivided from areas of the parent parcel with non-prime agricultural soils.

**Winterstown Borough**

Single family dwellings are permitted in the Rural Agricultural (RA) Zone according to the following sliding scale:

Winterstown Borough	
Size of Parcel	Number of Dwelling Units permitted
1.0 - 5.0 acres	1 per acre
5.1 - 50.0 acres	5 total
50.1 - 100 acres	7 total
100.1 or more acres	10 total

Lots must be located on the least agriculturally productive soils. Minimum lot size is one (1) acre and the maximum is one and one half (1.5) acres, unless low quality land is involved.

## **SURVEY RESULTS AND COMMENTS**

In March of 2008, the York County Planning Commission completed a telephone survey with the 29 municipalities which have agricultural protection zoning provisions. These municipalities indicated that they feel zoning has been effective in preserving York County's farmland. The zoning techniques noted most frequently as being the most useful are the Fixed/Sliding Scale/Percentage Development Restrictions. Also noted as being helpful in preserving agricultural lands are regulations requiring maximum lot sizes for residential uses, minimum lot sizes for agricultural uses, and restrictions on development located on prime agricultural soils.

Several municipalities indicated that a few residents and a few farmers feel the agricultural protection zoning is too restrictive and does not allow enough development. In one of those municipalities, this issue was brought up during the conception phase of the regulations and a compromise was reached to make the regulations less strict. Only four (4) municipalities stated they anticipate problems in the future. Possible issues were related to health complaints, development pressure, an increased density in other areas of the municipality, and the Right to Farm Act.

Twelve (12) municipalities in York County have some form of regulations regarding Transfer of Development Rights (TDRs). While the TDR program may not be used very frequently, it has proven to be effective when used. For example, this year in Hellam Township the TDR option has been utilized four (4) times. The TDR's were purchased from parcels in the Agricultural Zone and were developed on parcels within a Commercial Zone that is part of the Township's Primary Growth Area.

Odor and flies were noted as the two (2) most common complaints municipalities receive with regard to agricultural operations. Many municipalities require warning notes to be placed on subdivision plans stating the properties are located in the agricultural zone, and noise, spraying, and odors should be expected.

## **III. AGRICULTURAL SECURITY AREAS**

Pennsylvania Act 43 is known as the Agricultural Area Security Law. This Act enables landowners to initiate the process to establish agricultural security areas. An agricultural security area (ASA) is a unit of 250 acres or more of land, owned by one (1) or more persons, which is used for the production of crops, livestock and livestock products. Participation in an ASA is voluntary and no restrictions are placed on land use.

The agricultural security area process is initiated by landowners who present a proposal to the local governmental unit. Upon receipt of the proposal, the local governmental unit forms an agricultural security area advisory committee which consists of three (3) farmers, each representing a different farm, one (1) citizen residing within the municipality, and one (1) member of the local governing body of the municipality. This committee reviews the proposal and works with the municipal planning commission to prepare a report for the governing body regarding the establishment, modification, or termination of agricultural security areas. The local governmental unit has the

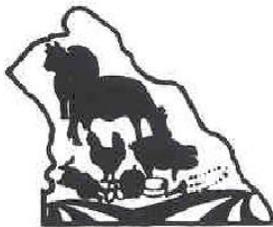


authority to adopt and set the boundaries of the agricultural security area. Once an ASA has been established, its designation must be reviewed every seven (7) years. Although the formation of ASA's does not protect agricultural land from being developed, it does prevent local governments from imposing regulations that unreasonably restrict farming operations and farm structures within the area, unless the laws or ordinances bear a direct relationship to public health and safety. It also protects farming operations from complaints of public nuisance against normal farming operations. Furthermore, limitations are placed on the ability of government to condemn farmland located in an ASA for new schools, highways, parks, or other governmental projects. Also, hazardous waste treatment or storage facilities cannot be located in an agricultural security area. Participation in an ASA is an eligibility requirement for landowners to apply for the York County Agricultural Land Preservation Board's Conservation Easement Program.

According to the PA Department of Agriculture, 166,112 acres of land in York County were enrolled in an Agricultural Security Area through 2007 and includes lands in 38 municipalities. Map 3, however, only shows the location of ASA land that has been reported to the County Planning Commission which totals about 146,699 acres. Although municipalities are required to file a description of the approved ASA with the County Planning Commission, this does not always occur. Currently, the YCPC and the YCALPB staff are working together to obtain the most current information on ASA's in York County and to develop a GIS coverage that is consistent with State and local records.

## **IV. CONSERVATION EASEMENT PROGRAMS**

### **York County Agricultural Land Preservation Board (YCALPB) Program**



The YCALPB has been in existence since June of 1989. This Board is the organization empowered by the York County Board of Commissioners to administer the Agricultural Conservation Easement Program as outlined in Pennsylvania Act 149 of 1988. The purpose of this Act is to preserve and protect the Commonwealth's valuable agricultural resources by selecting farms worthy of preservation through the easement purchase program which includes an application review and ranking process. The Program is further designed to protect normal farming operation in agricultural security areas from non-farmland uses that may render farming impractical; assure conservation of viable agricultural lands in order to protect the agricultural

economy; and maximize agricultural easement purchase funds in order to protect the investment of taxpayers in agricultural conservation easements.

In York County, the YCALPB ranks the applications according to a State and County approved Farmland Ranking System. Factors considered in the review of potential farms for conservation easement purchase include soil classification and productivity of the land; likelihood that the farmland will be converted to a non-agricultural use; pre-existing restrictions against development; location in a rural area as identified in the York County Comprehensive Plan; and the extent that the applicant has demonstrated best management practices, which includes erosion control and nutrient management. Through the first quarter of 2009, the YCALPB has preserved 220 farms covering more than 35,350 acres. These farms include lands in 28 York County municipalities.

**Farm and Natural Lands Trust of York County (FNLТ)**



**FARM & NATURAL LANDS TRUST**  
*of York County*

Dedicated to preserving our farm and natural lands for future generations.

The Farm and Natural Lands Trust of York County (FNLТ) is a private, non-profit land preservation organization created in 1990 that is dedicated to preserving farms and natural land for future generations. It works in cooperation with other preservation organizations, such as the York County Agricultural Land Preservation Board and the Pennsylvania Game Commission, to achieve its mission.

The FNLТ accepts donated conservation easements from landowners. The Trust’s work is a voluntary agreement with the landowners to place a conservation easement on their property, restricting it from development. The farm or natural lands considered for easement must be ten (10) acres or more, but tracts of land that are less than ten (10) acres are considered if they adjoin a property with a conservation easement. Typically, the FNLТ does not purchase easements, but rather provides the opportunity for property owners to secure a charitable deduction for the difference in the fair market value of the land before granting of the easement and its value after granting the easement. However, as a result of a \$1 million grant from York County in 2007 to be expended over three (3) years to preserve land in the County at a bargain sale price, the FNLТ created the Bargain Sale/Open Space Land Preservation Program. The term “bargain sale” implies that the landowner will not receive payment for the full-appraised conservation easement value, but rather will receive a negotiated percentage of that value. For more information on the Bargain Sale/Open Space Land Preservation Program, please see the York County Agricultural Land Protection Plan, a component of the County Comprehensive Plan.

Through the first quarter of 2009, the Trust has preserved 6,714 acres of land through 79 conservation easements, which includes lands in 23 York County municipalities. In May of 2007, the FNLТ kicked off a campaign to preserve 10,000 acres by 2010.



## North American Land Trust (NALT)



Landowners who own large tracts of land are normally faced with few options when they address the future of their holdings. The NALT was created to assist these landowners and to help them expand their options, particularly in regard to conservation incentives. The Trust aims to preserve land through purchase, donation or by other means, plus it also seeks to protect land through other methods, such as negotiating and preparing for acquisition by other organizations or agencies.

The NALT has land under conservation easement in Pennsylvania, plus nine (9) other states. Within Pennsylvania, this includes approximately 99 acres of land in Monaghan Township, York County.



## Heritage Conservancy



The Heritage Conservancy preserves open spaces and historic places that are essential to the region's quality of life by working with citizens, community groups, private landowners, municipalities, and state and federal agencies to promote and implement open space and natural resource protection, green urban planning, agricultural land protection, innovative sustainable land use practices, preservation and/or adaptive re-use of historic structures, wildlife habitat restoration and best land management practices. Through the Conservancy's Conservation Easement Program, which involves the donation of easements as a tax deductible charitable gift, thousands of acres of land and dozens of historic sites have been preserved. This includes easements on just over 393 acres of land in two (2) York County municipalities, East Manchester Township and Springfield Township. The Program is similar to the FNLTP Program.



## **V. THE CLEAN AND GREEN PROGRAM**

The State Legislature enacted the Farmland and Forest Land Assessment Act (Act 319) in 1974. It is also known as the Clean and Green Act and is a tool designed to encourage the preservation of farmland, forest land and open space by taxing land according to its use rather than its market value. In exchange for this tax break, the property owner signs a restrictive covenant to continue using the land for farming, forestry, or open space and to dramatically limit any development of the land. An application for Clean and Green must be filed at the York County Assessment Office. Participation in the Program is voluntary. Designation of land use falls into three (3) categories: agricultural, agricultural reserve, or forest reserve. The following is a summary of the requirements for each of the three (3) land use designations:

### **Agricultural Use**

Land must have produced an agricultural commodity three (3) years prior to application and must presently be devoted to the production of an agricultural commodity. A woodlot of 100 acres or less that is stocked with trees of any size that is contiguous to, or part of, land used in either agricultural or agricultural reserve use is considered to be part of that qualifying use.

If the land is less than ten (10) contiguous acres, the landowner must prove to the County assessor that the land has an anticipated gross income of at least \$2,000 per year from the production of agricultural commodities. Land rented to another person and used to produce an agricultural commodity is considered to be in agricultural use.

### **Agricultural Reserve**

Land must be at least ten (10) acres and may not be used for any commercial purpose. Land must be open to the public for use as outdoor recreation or the enjoyment of scenic or natural beauty. No fee can be charged for the use of the land.

### **Forest Reserve**

Land must presently be stocked with trees capable of producing 25 cubic feet per acre of annual growth.

Land must be ten (10) contiguous acres, unless the owner has other parcels of land located within the agricultural designation that are enrolled or to be enrolled in the Clean and Green Program. In addition, land that is rented to another person for purposes of producing timber or other wood products is also included.

Once accepted into the Program, the land remains in Clean and Green without any yearly renewal by the landowner. If land is removed from the Clean and Green classification, it is subject to a roll-back tax for up to seven (7) years. The landowner at the time the use changes is responsible for paying the roll-back tax plus 6% interest. There are two (2) types of subdivisions permitted under the Clean and Green program: a separation and a split-off. A separation allows a subdivision as long as each new parcel does not change in use. An eligible split-off would consist of two (2) or less acres per year for use of constructing a residence. The total splits cannot exceed 10% of the entire tract of land or ten (10) acres, whichever is less.

Even though owners of farmland pay lower taxes under the Clean and Green Program, the land still provides more in revenue than it requires for municipal services. Residential land may generate higher tax revenue, but it also requires more services than farmland and open space areas. Farmland, as well as commercial and industrial land, often help make up for the municipal budget "deficit" created by residential development.

## VI. LEGAL TESTS OF AGRICULTURAL ZONING RESTRICTIONS

There have been five (5) cases argued in courts to date concerning the agricultural zoning restrictions used in York County. The result of these decisions was the rejection of the uniform approach to dwelling unit limitation but the sliding scale approach has been affirmed.

The first case, **Stewart Snyder vs. Railroad Borough**, challenged, in part, the Borough's uniform limitation of one dwelling unit per tract in the Agricultural Zone. This challenge was unanimously dismissed by the Court of Common Pleas of York County on January 29, 1980. A subsequent appeal to the Commonwealth Court of Pennsylvania resulted in a unanimous order of June 2, 1981 affirming the decision of the lower court concerning the agricultural zone. Therefore, the uniform approach, upon first test, seemed reasonable.

The second case, **Edward Golla vs. Hopewell Township**, challenged, in part, that Township's uniform limitation of five (5) dwelling units per tract in the Agricultural Zone. In split decisions, the Court of Common Pleas of York County on November 30, 1979, the Commonwealth Court on April 21, 1981, and the Supreme Court of Pennsylvania, Middle District, on November 5, 1982, declared the uniform limitation approach to be unreasonably severe and invalidated it. The Supreme Court decision, however, took an extra step and alluded to that Court's belief that a sliding scale approach "... would have a more equitable effect and would avoid impacting landowners on an arbitrary basis." (P. J-176-16 of the Golla case decision).

### York County Court Cases Agricultural Zoning Restrictions

- Uniform: **NO**
- Sliding Scale: **YES**

The third case, **Corstiaan Van Vugt vs. Zoning Hearing Board of Springfield Township**, challenged, in part, the Township's sliding scale restrictions in the Agricultural Zone. The Court of Common Pleas of York County in an unanimous opinion on January 24, 1983, dismissed the challenge with the following affirmation: "The Springfield Township Ordinance .... sets a sliding scale on the number of lots that can be subdivided depending upon the size of the tract of land. We are satisfied that this distinction is significant, and that it bears a rational relationship to the avowed purpose of preserving prime agricultural land within the Township." (P.4 of the Van Vugt decision).

The fourth case, **Boundary Drive Associates vs. Shrewsbury Township**, challenged, in part, that the Township's sliding scale restrictions in the Agricultural Zone were unconstitutional because they were exclusionary and confiscatory. On April 18, 1983, the Court of Common Pleas of York County unanimously dismissed the appeal, thus reaffirming the validity of the sliding scale concept. On March 9, 1984, Boundary Drive's appeal to the Commonwealth Court of Pennsylvania was denied unanimously. That decision states in part that "the fatal flaw in (the Hopewell) ordinance was its provision that all tracts in the agricultural zone could have a maximum of five (5) residential plots, regardless of the size of the original tract. In contrast, the (Shrewsbury) ordinance links the number of permissible dwellings to both the size of the original tract and the quality of the soils present. We conclude that the community interest in protecting irreplaceable prime agricultural lands is sufficiently strong to outweigh the limitation of the owner's ability to use his land as he wishes, particularly where no landowner is prohibited from having at least one dwelling." (Pp. 6 and 7 of the Boundary Drive case decision).

The fifth case, **Rodgers and Hoover vs. Codorus Township**, challenged, in part, the zoning practice of merging contiguous tracts under the same ownership into a single tract for zoning purposes (i.e., accumulated acreage used to set dwelling unit rights) and also questioned the constitutionality of the 50 acre minimum farm lot size. On June 20, 1984, the Court of Common

Pleas of York County affirmed the merger procedure but threw out the 50 acre size provision, suggesting a figure of ten (10) acres or less as appropriate. The Court was not happy, however, about the decision, noting that “future generations are not likely to applaud our actions in implementing the destruction of our food producing base. Nevertheless, we are constrained to follow the holding of our Supreme Court ...” (P.8), and “while we would prefer the law of this Commonwealth to be otherwise, we are bound by the decisions of our Appellate Courts.” (P.9 of the Rodgers case decision). However, on April 30, 1985, the Commonwealth Court of Pennsylvania reversed the lower court’s decision stating, “The ordinance provisions here involved are rationally related to the legitimate goal of preserving agricultural land in Codorus Township. However, we emphasize that a fifty-acre lot area minimum is not necessarily valid in every situation, whether required for agricultural preservation purposes or otherwise, but must be scrutinized, as here, under a substantive due process analysis in the context in which it is presented.” (P. 9 of the Rodgers case decision).

There are also three (3) court cases which are not located in York County but which are important to the protection of agricultural resources in Pennsylvania.

**Heritage Building Group, Inc., Appellant vs. Plumstead Township Board of Supervisors (Bucks County).** The Commonwealth Court affirmed the denial of a substantive validity challenge and rejection of a curative amendment with respect to multi-family housing. Rejecting a claim that the ordinance does not provide for a reasonable range of affordable multi-family housing at a range

of densities, the Court emphasized that fair share principles set forth in *Surrick* only apply to the exclusion of uses, not classes of people. Citing the reservation of agricultural land as a legitimate municipal goal, the Court also concluded that land used for active agricultural purposes (crop farming, general farming, farm support, nursery and horticulture) is “developed”

land for purposes of a *Surrick* fair share analysis. The Court opined that “nothing in *Surrick* suggested that land developed for agricultural purposes could not be considered ‘highly developed’ for purposes of determining how much land was available in a municipality for the construction of housing.” The Court also reiterated the proposition set forth in *Montgomery Crossing* that “if a district containing available land has been zoned to permit a particular use, one may not later base a claim that the use is excluded on the fact that the land has been used for another purpose instead.”

**Surrick vs. Upper Providence Township  
Zoning Hearing Board**  
**Three-prong “Fair Share” Test**  
**1. Is the community in the path of development?**  
**2. Is the community highly developed?**  
**3. Is the Ordinance exclusionary?**

**C& M Developers, Inc. vs. Bedminster Twp. Zoning Hearing Board (Bucks County).** The Township established an agricultural preservation district that encompassed 90% of the Township. The purpose of the district was to preserve and protect agricultural lands. For tracts of more than ten (10) acres, the district regulations required that 60% of prime agricultural farmlands and 50% of farmland of Statewide and/or local importance be set aside for agricultural uses. In addition to the set-asides, the district regulations imposed a minimum lot area of one acre (which could not include floodplains, wetlands and other natural features). The developer argued that these requirements as a whole were unreasonable because they ultimately restrict landowners to developing approximately one (1) home per every three (3) acres. The Commonwealth Court held that the set-aside requirements were reasonable and substantially related to the Township’s interest in preserving agricultural lands and that they adequately balanced the Township’s interest in preserving farmland and the landowner’s interest in developing his/her property. The Court also

held, however, that the additional requirement of a minimum lot area of one (1) acre unreasonably restricted a landowner's ability to sell, subdivide, or develop his property and that this additional requirement is not substantially related to the Township's interest in preserving farmland. The Court specifically noted that the Township offered no justification for the one (1) acre requirement other than that it was a "good number" that would stall development of large homes on small sites.

**Appeal of Realen Valley Forge Greenes Association (Montgomery County).** The officials of Upper Merion Township created an agricultural zoning district in 1953 that encompassed Valley Forge Park, a 135 acre golf course, and the more than 1,500 acres of surrounding land. By 1990, the vast majority of the properties within the agricultural district were rezoned to permit intense commercial uses, such as the King of Prussia Mall. However, the Township took great efforts to try to preserve the golf course as open space. Township officials adopted an ordinance, which was invalidated, and also attempted condemnation of the golf course. After several requests for zoning amendments were rejected, the owner of the golf course filed a substantive challenge. The landowner argued that the Township engaged in reverse spot zoning. The Court ruled in favor of the landowner; specifically noting that it makes no difference whether the subject land is a 1/4 acre or a 50 acre industrial complex. Rather, in cases of spot zoning, the question is whether the difference in zoning from that of adjoining properties can be justified with reference to the characteristics of the tract and its environs.

## **VII. SUMMARY**

York County contains an abundance of valuable farmland and prime soils which are currently being protected or preserved in many municipalities through a number of mechanisms that have been discussed in this report. The level of preservation/protection varies greatly depending on the tool(s) being implemented. Each municipality has to determine which AP techniques are right for them based upon development pressure, case law, and its citizens. The preservation/protection of farmland, however, is not solely the responsibility of municipalities; it requires a cooperative effort from a host of organizations and interests. By focusing preservation efforts, working cooperatively, educating property owners, and making sure the tools adopted by each municipality are implemented, York County should be able to protect its core foundation of farmland well into the future.



*"Conservation is a state of harmony between men and land."*  
-Aldo Leopold