

STATE AND COUNTY RURAL LAND  
USE PROGRAMS:  
PROGRAMS FROM OTHER STATES AND  
OPPORTUNITIES FOR HAWAII

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Prepared by:

Horsley Witten Group  
*Sustainable Environmental Solutions*

90 Route 6A • Sandwich, MA • 02563  
Tel: 508-833-6600 • Fax: 508-833-3150 • [www.horsleywitten.com](http://www.horsleywitten.com)



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# **STATE AND COUNTY RURAL LAND USE PROGRAMS: PROGRAMS FROM OTHER STATES AND OPPORTUNITIES FOR HAWAII**

## **Introduction**

The following document was produced as part of the Rural Best Practices project as funded by Hawaii's Coastal Zone Management Program (CZM) and the National Oceanic and Atmospheric Administration (NOAA). The purpose of this document is to first provide an overview of successful state level and county level programs pertaining to different rural planning objectives. With these programs summarized, the report then provides a comparison to similar planning initiatives in the State of Hawaii and its Counties. The comparison is designed to show areas within current Hawaii statutes and codes that may be improved to facilitate better development patterns in existing rural areas.

It is important to note that the word "rural" as it is used in this assessment does not refer to the State's official designation of Rural Districts. The word rural is used here to discuss those land uses, landscapes and cultural assets that are generally associated with areas that experience lower densities of development and services. These lands often serve as the transitional areas between urban and conservation lands and provide a unique mix of small "human" scale village centers, varied sizes of agricultural opportunities, scenic landscapes and lower density workforce housing. Rural areas serve valuable ecological functions with wide areas of open space and greenway corridors. The extractive industries provide stable localized economies for a population that is closely connected with the landscape and values associated with a strong local culture.

The following text is divided into two sections. The first section takes a detailed look at three successful state rural planning programs and how these programs have helped to shape success stories in a local jurisdiction. The three states chosen for the report are Maryland, Kentucky and Washington. The three counties examined from these states are Montgomery County, Lexington-Fayette County, and Skagit County respectively. On many levels, these states each have unique issues to contend with regarding their rural areas. Growth patterns, population densities and property values vary from one state to the next. However, many of the fundamental issues facing their rural lands are the same: loss of agricultural lands to residential sprawl, the need for well-planned services such as wastewater and water supply, and the need to facilitate high quality planning and implementation at the county level.

The second section of this report builds upon the first, and also looks to several other programs, to illustrate the basic framework of effective state and county level programs. Specifically, this section examines:

- 1) Guidance for Comprehensive Planning and Policies in Rural Areas
- 2) Thresholds and Standards for Local Zoning Initiatives
- 3) Policy Guidance for Rural Communities
- 4) Incentives (financial and other) for Rural Economies and Rural Preservation

## Successful State and County Rural Planning Initiatives

### *State of Maryland*

#### Introduction

The state of Maryland has two forms of local government: “home rule” where the counties control their legislative and executive functions; and “county commission” form of government where the local government is bound by state enabling legislation to make any land use changes. The majority of the counties in Maryland are managed through the county commissioner form of government. Through this relationship, the state has provided local government with enabling legislation that allows local jurisdictions to implement rural land use planning and preservation. The *Economic Growth, Resource Protection, and Planning Act* of 1992, established a process by which the state can organize and direct state and local comprehensive planning. A set of policies regarding land use, economic growth, and resource protection were developed, which include the following “vision” statements:

- Development is concentrated in suitable areas.
- Sensitive areas are protected.
- In rural areas, growth is directed to existing population centers and resource areas are protected.
- Stewardship of the Chesapeake Bay and the land is a universal ethic.
- Conservation of resources, including a reduction in resource consumption, is practiced.
- To assure the achievement of the above, economic growth is encouraged and regulatory mechanisms are streamlined.
- Funding mechanisms are addressed to achieve these visions.

State, county and municipal comprehensive plans must include these visions, and associated government entities are mandated to then implement these policy statements through consistent ordinances and local laws. The Act established an Economic Growth, Resource Protection, and Planning Commission to oversee, study, and report on progress towards implementation of these visions.

Article 66B of the Annotated Code of Maryland established additional comprehensive planning requirements. These requirements include that plans prepared by state, county and local jurisdictions also contain a series of specific planning elements such as a land use, community facilities and sensitive areas elements. The sensitive areas element must include goals, objectives, principles, and standards designed to protect streams and buffers, 100-year floodplains, habitat for threatened and endangered species, and steep sloped areas from the adverse effects of development. The Act also requires that comprehensive plans include “regulatory streamlining”, and “achieving environmentally sensitive design” elements.

Maryland has been a leader in the planning field for a number of years, particularly for smart growth planning, natural resource protection and agricultural preservation both at the state and county levels of government. At the state level, the Maryland Smart Growth initiative was developed to identify and protect the state's most valuable farmland and other natural resources, and save taxpayers from the cost of building new infrastructure to support poorly planned development. This initiative sparked the establishment of five key pieces of legislation and budget initiatives: Priority Funding Areas, Brownfields, "Live Near Your Work", Job Creation Tax Credits, and Rural Legacy Program. Of these five pieces of legislation, the Rural Legacy Program is most relevant to the rural planning issues being explored today in Hawaii. Other key state-level legislation pieces that will be reviewed include the Agricultural Land Preservation Program, the Maryland Agricultural and Resource-Based Industry Development Corporation, and the enabling legislation for Transfer of Development Rights.

### Rural Legacy Program

The Rural Legacy Program provides funds to local governments and land trusts to purchase interests in real property from willing sellers, including easements, transferable development rights, and fee estates, focused in designated Rural Legacy Areas. Easements or fee estate purchases are sought from willing landowners in order to protect areas vulnerable to sprawl development that can weaken an area's natural resources, thereby jeopardizing the economic value of farming, forestry, recreation and tourism.

The goals and objectives of the Rural Legacy Program are to: 1) accelerate voluntary land conservation efforts by focusing on preservation of strategic resources; 2) streamline real property acquisition procedures to expedite land preservation; and 3) take advantage of innovative preservation techniques such as transferable development rights and the purchase of development rights. The Program provides the focus and funding necessary to protect large contiguous tracts of land and other strategic areas from sprawl development and enhance natural resource, agricultural, forestry and environmental protection through cooperative efforts among State and local governments and land trusts. A grant program was established to provide funding to local governments and private land trusts to identify Rural Legacy Areas, continue existing land preservation efforts, and/or develop new preservation efforts. Grant applications that best carry forward the goals and objectives of the Program are approved. Specifically, applications for new Rural Legacy Areas and Rural Legacy Plans are evaluated based on the following criteria (excerpt from *The Rural Legacy Program Grants Manual*):

- A. Rural Legacy Areas** will be evaluated under the criteria described in §§ 5-9A-05(C)(1) through 5-9A-05(C)(4), Natural Resources Article, Annotated Code of Maryland and in the Grant Application.
  
- B. Rural Legacy Plans** will be evaluated under the criteria described in §§ 5-9A-05(C)(5) through 5-9A-05(C)(8), Natural Resources Article, Annotated Code of Maryland.

The Plan shall describe in detail the methodology by which the Sponsor will attempt to obtain interests in land, and shall include a map identifying location, priority and significance of the property interests to be acquired. A revised Plan shall be substituted for the original Plan only after being approved by both the Board and the BPW.

The benefits of the Rural Legacy program include drinking water protection, habitat protection, reduction of infrastructure costs, and economic viability. Greenbelts of forested land and open spaces surrounding populated areas protect Maryland's water quality by reducing pollution run-off into streams, rivers, the Chesapeake Bay, and drinking water aquifers. Conservation of natural areas through directed growth reduces the cost of public infrastructure necessary to support sprawl development. Conservation efforts also significantly impact the state's economy by supporting Maryland's resource-based economies of agriculture, forestry, outdoor recreation and tourism. Through the Rural Legacy program, Maryland has been able to protect land at the same pace as development.

### Agricultural Land Preservation Program

The Agricultural Land Preservation (ALP) Program, established by the Maryland General Assembly, is one of the most successful programs of its kind in the country. Through this program, the state has preserved in perpetuity more agricultural land than any other state in the country. The ALP Program differs slightly from traditional Right-to-Farm laws in that it takes more of an active role in protecting agriculture by establishing a guidance program for local governments. The guidance encourages county officials to participate directly in the protection process and is managed by a foundation, which purchases agricultural preservation easements that forever restrict development on prime farmland and woodland.

The ALP Program requires local governments to appoint agricultural preservation advisory boards that assist in the creation of agricultural preservation districts. An agricultural preservation district refers to areas of land where farming is the preferred land use. Farmers in these areas are offered a number of benefits such as exemption from sewer and water assessments, greater protection against eminent domain, and use-value taxation, which provide incentives for them to continue agricultural use of the land. Farmland and woodland areas within agricultural preservation districts are subject to lower assessments where the land is appraised according to its current use and not according to its actual market value. This "agricultural use assessment" serves to remove developmental pressure on the land by holding down the property tax burden.

These districts delineate areas where the subdivision or development of the land is restricted by an agreement between the landowner and the Maryland Agricultural Land Preservation Foundation (MALPF), the administering body for the state program. The state eligibility criteria for establishing an agricultural preservation district include:

- A minimum district size of 50 contiguous acres. If a land owner does not own 50 acres, neighboring landowners can join together to meet the minimum

- requirement. Landowners of less than 50 acres can confer with the local program administrator or petition to establish a district regardless of the acreage.
- It must be formed on land that is either currently being used for producing food or fiber or has the capability to do so. Woodland management and harvesting operations are eligible to join this program. The productivity of the soil as measured by the USDA's Soil Conservation Service Land Classification System is a major criterion.
  - The landowner must commit to keep the land in agriculture for at least five years, and subdivide for agricultural purposes only with prior approval by the Foundation. This agreement forbids the subdivision and development of the land for residential, commercial, or industrial purposes during this period.
  - Land that lies within the boundaries of a 10-year water and sewer service area plan is generally not eligible unless it has extraordinary productive capability and is of significant size.
  - The criteria listed above are the minimum eligibility standards set by the State. The county may impose criteria which could be in addition to and/or more stringent than State criteria.
  - The second step in the ALP Program is the purchase of perpetual agricultural conservation easements. Once a Maryland landowner's property is within an agricultural preservation district, he or she is eligible for applying to sell an agricultural conservation easement to MALPF. In addition to being within an agricultural preservation district, the landowner must also have a soil conservation plan for the property and implement a forest management plan demonstrating proper forest management techniques on wooded acreage (over 50 percent) in order to obtain an agricultural easement. An easement is a legal agreement between a landowner and another entity, such as the State or a public utility, which establishes a right of use of the property for a special purpose. An agricultural easement may allow farming, grazing, and nursery activities in the easement area, as well as construction of new farm buildings and housing for farm employees and family members. MALPF imposes the following restrictions on land under an agricultural easement:
    - The land may not be developed or subdivided for industrial, commercial or residential use except for certain personal eligibility options the landowner retains.
    - Signs or billboards may not be displayed on the property except for signs smaller than four feet squared, which may only be erected for the following purposes:
      - to state the name of the property and the name and address of the occupant;
      - to advertise a home-based occupation consistent with the purposes of the easement; or,
      - to advertise the property's sale or rental.
  - Trash or rubbish may not be dumped on the property.

- Soil and water conservation practices contained within a soil conservation plan approved by the local soil conservation district must be implemented. The practices shall be installed on the land according to the schedule of implementation within the plan. The plan must be completely implemented within ten years of the easement settlement date.
- Representatives of the MALPF shall be permitted to periodically inspect the property for compliance with the conditions of the easement. The representatives shall have no right to inspect the interior of any structures.
- The easement does not grant the public any right to access or use of the land.
- The Agricultural Easement Value according to MALPF is the Fair Market Value (that which a developer might pay) minus the Agricultural Value (that which a farmer might pay). The Foundation determines Agricultural Value by a formula that calculates land rent based on the soil productivity OR the five-year average cash rent in the county, whichever is lower.

Example:

$$\begin{array}{r}
 \$4,000 \text{ per acre - estimated Fair Market Value} \\
 - \$1,200 \text{ per acre - estimated Ag. Value} \\
 \hline
 \$2,800 \text{ per acre - estimated Easement Value}
 \end{array}$$

### Agricultural Transfer Tax

A key funding source for the state's Agricultural Land Preservation Program comes from the state's Agricultural Transfer Tax. This tax is imposed on the sale of land receiving the agricultural easement. The tax serves a dual role: first, as a deterrent to the conversion of the land; and second, as a penalty when the land is sold for development. Finally, these funds are used to purchase easements on existing farms, thereby guaranteeing the land will not be developed.

Interested landowners can purchase easements through an installment purchase agreement (IPA). IPAs are contracts between MALPF and the easement seller to pay the principal unpaid at settlement as a balloon payment at the end of the term of the agreement and to pay the seller tax-exempt interest on the unpaid principal during the period of the agreement. On the side of the seller, an IPA can be attractive because of the tax-advantaged nature of the transaction. The seller is able to defer capital gains taxes until the payment of the principal, and they receive a tax-exempt income stream during the term of the agreement. On the side of the purchaser, a well-conceived IPA has three potential advantages: 1) it creates the potential for the purchaser to buy more easements upfront for the same amount of funds, 2) it may allow MALPF to purchase easements on property at current prices when those properties are still undeveloped rather than purchase them later at higher prices or lose them to development forever, and 3) it could increase participation by landowners otherwise not interested in selling easements.



Local governments can establish a local agricultural land preservation program with more stringent eligibility for participation. For example, in Harford County a landowner must have either a minimum of 50 acres, must have farmed the property for the last 10 or more years, or the property must adjoin an easement property to be eligible for program participation. In the state Agricultural Land Preservation Program, a landowner must have a minimum of 50 acres or the property must adjoin an easement property. Counties are also allowed to establish their own agricultural easement programs under the Maryland Code of Regulations, Title 2, Subtitle 5.

### Maryland Transfer of Development Rights Legislation

Maryland has also promulgated Transfer of Development Rights (TDR) enabling legislation to help protect rural lands from development. As discussed in previous sections, TDR is a method for protecting land by transferring the "rights to develop" in one area to another. This legislation, added into the Maryland Code under Article 66B, Land Use, allows local governments to develop transfer of development rights. In Maryland's case, one of their primary goals in establishing this legislation was to allow counties to adopt TDR programs to divert development away from agricultural land. Although there is little guidance from the state on how to develop county TRD programs, a number of counties in Maryland have used this legislation to develop their own successful TDR programs and to develop their own rules and regulations regarding TDR and development standards. One county in particular has led the state and the nation in implementing a successful TDR program: Montgomery County, Maryland.

### Farm Viability Programs

The Maryland Agricultural and Resource Based Industry Development Corporation (MARBIDCO) is a quasi-public corporation, established by the Governor and General Assembly, to assist Maryland's farm, forestry, seafood and recreation-based businesses in achieving profitability and sustainability. Specifically, MARBIDCO has the authority to provide targeted services that help retain existing production and commerce, promote rural entrepreneurship, and nurture emerging industries. MARBIDCO has developed four business assistance programs to provide funding and technical assistance to farms to help secure their viability:

- Maryland Resource-Based Industry Financing Fund (MRBIF) – This program offers low-interest loans to established Agricultural and Resource Based Industry (Ag/RBI) firms for the purchase of land and capital equipment for production and processing activities, and for environmental or water-quality enhancement projects. Funding priority is given to value-added and niche market-oriented projects as well as beginning or transitioning producers and processors. MARBIDCO will provide up to 45 percent of financing needed for a project under this fund, and a commercial lender and/or another public financing instrumentality must also have an equal financial commitment in any transaction.
- Rural Business Energy Efficiency Loan Fund (RBEE) - The RBEE fund makes low-interest loans available to established firms and producers for the purchase of

- equipment or technology related to lowering farm and business-related energy consumption. MARBIDCO will provide up to 90 percent of needed financing. A copy of a report provided by a qualified third-party energy consultant is required.
- Rural Business Working Capital Fund (RBWC) - The RBWC offers low-interest loans to established Ag/RBI firms and producers for working capital and equipment purchases. Loans can only be offered in Maryland's 18 rural counties and must be used to help create one or more jobs. A commercial lender will underwrite and service the loan which will also require USDA-RD office approval.
  - Maryland Farm and Producer Viability Program (MFPVP) - The MFPVP provides specialized business planning assistance and preferred access to MARBIDCO's low-interest loan programs to producers/processors and/or rural entrepreneurs. The aim of the program is to help early stage enterprises with operational and market risk assessment and with formal business plan development. Once a viable business plan is developed, a program participant should be able to interest a commercial lender to finance a portion of the cost of the new enterprise to be undertaken.

### Case Study: Montgomery County

#### *Overview*

Montgomery County, located adjacent to the nation's capital, includes 497 square miles of land area. They have made the preservation of rural land for agricultural use a high priority in the County, protecting more than 93,000 acres of the County's 316,000 acres for agricultural use. Their overall goal was to balance preservation with growth, i.e., planning for development in desired areas as well as protecting a system of greenways and a critical mass of land for agriculture. In order to reach this goal, they utilized the Maryland Code of Regulations, Title 2, Subtitle 5, Agricultural Land Preservation Program, and Transfer of Development Rights enabling legislation provided by the state to establish their own rural land preservation protection programs.

The County's General Plan created a "Wedges and Corridors" concept to regional planning where growth corridors radiated out from Washington, D.C. like spokes of a wheel that were separated by green wedges of open space, rural and farmland, and lower density residential uses<sup>1</sup>. Although this plan included a rural planning component that directed the protection of open space and agricultural land, it did not stop the conversion of rural lands into developed areas. Therefore, the County drafted the *Functional Master Plan for the Preservation of Agriculture and Rural Open Space*, which established a policy framework to ensure the **continuation** of agriculture. This Plan established a rural zone that identified agricultural as the primary land use, and incorporates "right to farm" provisions stating that all agricultural operations are permitted at anytime, including the operation of farm machinery. The goals of the Functional Master Plan include:

- To create a critical mass of active farmland in an area defined as the Agricultural Preservation Study Area

- Ensure the economic viability of the County’s agricultural industry.
- Farmland, rural open space, and residential development should be compatible within the Agricultural Preservation Study Area.

All elements of the Master Plan are closely linked to the County’s existing growth management program, which encourages compact growth in desired locations. The County’s current rural land use zoning districts were formally introduced in the Functional Master Plan, described in further detail on the following pages, as a definitive method for managing growth and preserving the County’s rural character.

Although Montgomery County worked with the Maryland Agricultural Land Preservation Foundation to purchase local agricultural land preservation easements to protect County farmland, they felt they needed to increase the effectiveness of the preservation efforts in the County. Therefore, their first step was to enact County House Bill No. 56-87, Agricultural Land Preservation, which enabled the County to purchase easements with the County’s share of the state agricultural land transfer tax, directly from the farmland owner or to supplement the purchase price offered by the state. The agricultural land transfer tax applies at the point of sale of land with an agricultural use assessment.

#### *The County Agricultural District*

Under the authority provided by the Maryland Agricultural Land Preservation Program, Montgomery County established a County Agricultural District, which gives land owners “right to farm” protection and also serves as a prerequisite to sale of an agricultural land protection easement to the County. Further, Montgomery County decided to apply more stringent standards than the state, as follows: the County will only purchase easements on 10 acres or more of land that is zoned Rural Density Transfer, Rural, or Rural Cluster, or is in a State or County Agricultural District; they will not purchase easements on land that is already encumbered by a transferable development rights easement. Montgomery County established two methods for determining the maximum monetary value of any easement on agricultural lands: 1) Easement Valuation Procedure, and 2) Easement Appraisal. The landowner may choose either method at time of application to sell.

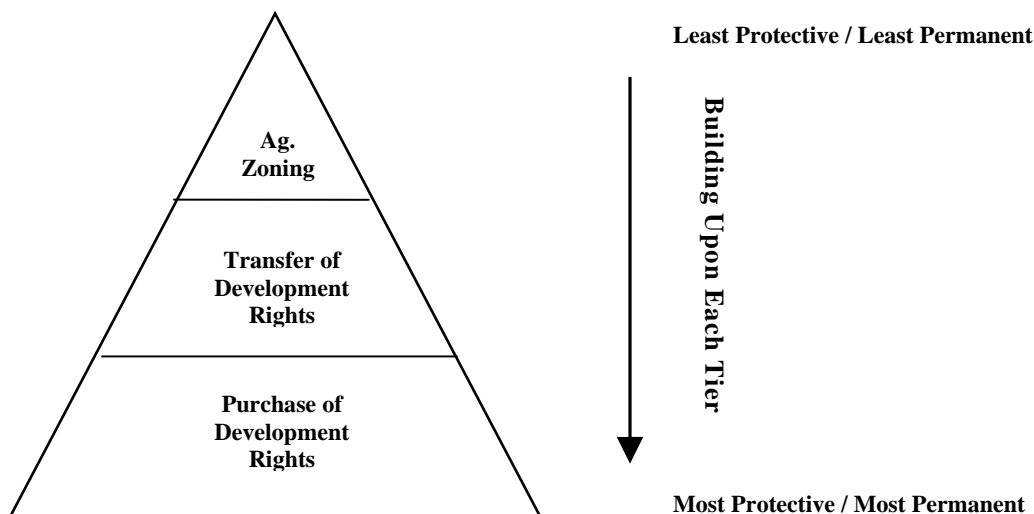
Under the Easement Valuation Procedure, the maximum value of the easement is obtained by combining two separate values: the per acre base value for an easement on agricultural land in the County, and the added value for certain farm quality characteristics. The “farm quality characteristics” that this method is based on are those land characteristics that have a direct effect on the future potential of the land to support agriculture. These characteristics are the size of the land, the land quality (based on soil quality as determined by the U.S. Department of Agriculture), land tenure (based on gross income from farming), road frontage, and agricultural zone edge (how much land is within an agriculture zone). The Easement Appraisal method is similar to the state’s assessment method where the maximum value of the easement is determined by appraisal, and the value is the difference between the fair market values of the land with and without an agricultural preservation easement.

A critical component to Montgomery County’s rural land and agriculture protection program is its economic viability assistance programs, which are managed through the County’s Department of Economic Development Agricultural Services Division (Division). It is important to note how the placement of the Division was critical to the success of these programs. Having the Division located within the Economic Development department allowed for the staff to focus their attention not just on agricultural protection, but the economic viability of farming within the county.

The Division essentially serves as a “watchdog” for the farming community to lookout for changes in county and state legislation that would impact the farming community. They are also given the authority to develop relief programs that would assist farmers in their response to a tax levy and/or change in land-use legislation. For example, the Agricultural Services Division developed a tax relief program for farmers from recent increases to home-heating fuel (same fuel that farmers use on a commercial level). They have also established a county drought assistance program, to account for gaps in the federal assistance program (without crop production, farmers may not be eligible for federal drought assistance funds).

The county assistance program provides approximately \$500,000 to \$1 million in grant funds to the agricultural community to use for start-up seed and fertilizers for completely lost crops. The Division has also provided farm education programs to the public (e.g., farm tours and farmers markets), to promote long-term agricultural viability and the importance of preserving this land use to the general public. The Agricultural Services Division approaches its overall mission with the understanding that in order to protect agriculture, it is crucial to first preserve the land, then ensure economic viability, while providing a service to farmers that is based on trust and a true understanding of agriculture.

In addition to the above programs, baseline codes and regulations, Montgomery County established a tiered system of protection programs, each providing a certain level of land protection (as shown in the pyramid on the next page).



## *Agricultural Zoning*

The first portion of Montgomery County's tiered system is the use of meaningful agricultural zoning. Historically, Montgomery County's zoning codes allowed one dwelling unit for every five acres of land irrespective of its ongoing use as agriculture. Realizing that such permissive zoning would never protect the county's valuable agricultural resources, the County established the baseline agricultural zoning at one dwelling unit per 25 acres. The county felt that it was critical to separate farming operations from rural residential areas in order to avoid the impermanence syndrome. Their agriculture zoning code was developed to stabilize the agricultural land base by keeping large tracts of land free of non-farm development. The types of zones delineated in their agricultural zoning code are as follows:

- Rural – The intent of this zone is to preserve rural areas of the county for agriculture and other natural resource development, residential uses of a rural character, extensive recreational facilities, and protection of scenic and environmentally sensitive areas. This zone allows 1 dwelling unit per every 5 acres.
- Rural Service - The purpose of this zone is to allow limited types of service and commercial uses in rural areas of the County. This zone is located in areas that are not suitable for primarily residential development. Allowed uses must support traditional low density rural land uses, while protecting and maintaining an overall rural character. This zone allows 1 dwelling unit per every 5 acres, with minimum lot size of 2 acres.
- Rural Cluster - The intent of this zone is to provide designated areas in the county for a compatible mixture of agricultural uses and low-density residential development to promote agriculture and to protect scenic and environmentally sensitive areas. This zone allows for 1 dwelling unit per every 5 acres – Mandatory Clustering provision – with 60% open space as the remaining land area.
- Rural Neighborhood Cluster - The intent of this zone is to preserve open land, environmentally sensitive natural resources and rural community character that would be lost under conventional, large-lot development by requiring clusters of residential development in the form of small neighborhoods that provide neighborhood identity in an open space setting. This zone allows for 1 dwelling unit per every 5 acres with a 60% open space provision. In this zone there is also an optional cluster method allowing up to one dwelling unit per acre, with a minimum lot area of 4,000 square feet.
- Rural Density Transfer - The intent of this zone is to promote agriculture as the primary land use for sections of the county designated for agricultural preservation in the General Plan and the Functional Master Plan by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas. This zone allow for 1 dwelling unit per every 25 acres, with an option to transfer development rights.

- Low Density Rural Cluster Development Zone - The purpose of this zone is to implement the general plan for the Maryland-Washington Regional District and the local area master plan by permitting well designed development consistent with the density proposed by the local area master plan. This zone is intended to provide the maximum amount of freedom in lot size and design in order to permit the greatest amount of open space to be conserved, and to prevent detrimental effects on the environment.

### *Transfer of Development Rights*

Historically, Montgomery County’s zoning codes allowed one dwelling unit for every five acres of land – in effect, their residential zoning rule accounted for all areas. The County Council knew such permissive zoning would never protect the county’s valuable agricultural resources, therefore; it established the agricultural zoning to one dwelling unit per 25 acres<sup>2</sup>. This downzoning effort (rezoning of a tract of land to less-dense uses) was quite controversial because landowners feared that they would lose equity in their properties. The Maryland Center for Agro-Ecology, Inc., researched whether downzoning did lead to a loss of equity. The study found that often properties do not lose value, and may actually gain value. However, to address concerns about downzoning and protect landowners’ equity, the council developed a transfer of development rights (TDR) program.

The County found that they needed to establish a model that provides equitable compensation for what an owner is giving up. They assigned one TDR for every five acres of land. This meant that an owner of 100 acres, who under the old zoning could have built one house on every five acres, or 20 houses on his/her 100 acres, now had 20 development rights and could sell them to a developer who wanted to increase the units he/she could build in a zone that the county identified as a development region. The TDRs currently sell for about \$40,000 each and their sales have protected large portions of the agricultural land. The success of their TDR program can be attributed to a handful of factors: 1) working with landowners and developers and establishing their agricultural zoning code, the county was able to first define and quantify the rural land they wanted to protect; 2) employing an agricultural use-based assessment instead of the typical residential use assessment in determining property values (i.e., making it economically viable for the owner); 3) having a county circuit-rider to provide technical assistance to local governments regarding how to manage TDR programs – someone that can serve as a “broker” of TDR transactions.

### *Purchase of Development Rights*

The last protective “tier” of their land protection system is the use of Purchase of Development Rights (PDR). PDRs, as enabled by the state, allow owners to sell the rights to develop their properties (versus transfer), while retaining their property ownership. In Montgomery County, they have used this system to purchase development rights on land that was not transferred or part of an agricultural easement. Often times, land trusts and local governments in the County have purchased development rights

through this method, and have dedicated the land for agricultural conservation easements, when it has not been possible for a farmer to sell an easement on his or her own, protecting it as open space or agricultural areas. The County itself has also purchased development rights to gain conservation easements that protect land, using funding from the county's Agriculture Easement Program and the state's Maryland Agricultural Land Preservation Foundation and Rural Legacy Programs. When development rights are purchased by contiguous farms, development can be more effectively directed away from the agricultural area.

Table 1. Summary of Rural Land Management Tools for the State of Maryland and Montgomery County.

<b>TOOL</b>	<b>ENTITY</b>	<b>BRIEF DESCRIPTION</b>
Rural Legacy Program	State	Provides funds to local governments and land trusts to purchase interests in real property from willing sellers in Rural Legacy Areas.
Agricultural Land Preservation Program	State	Guidance program to county officials for purchase of agricultural preservation easements. Based on the establishment of Agricultural Preservation Districts, an agricultural use assessment of land, and a state Agricultural Transfer Tax.
Maryland Agricultural & Resource-Based Industry Development Corporation	State	A public corporation that will provide financing to agricultural and resource-based businesses.
Maryland Transfer of Development Rights Legislation	State	State enabling legislation promulgated to allow local governments (counties) to develop transfer of development rights programs.
Farm Viability Programs	State	The Maryland Agricultural and Resource Based Industry Development Corporation developed four business assistance programs to provide funding and technical assistance to farms to help secure their viability: the Maryland Resource-Based Industry Financing Fund, Rural Business Energy Efficiency Loan Fund, Rural Business Working Capital Fund, and the Maryland Farm and Producer Viability Program.
Agricultural Zoning	Montgomery County	Meaningful agricultural zoning that separates farming operations from rural residential areas to avoid the impermanence syndrome.
Transfer of Development Rights	Montgomery County	A method for protecting land from development by transferring the rights to develop in one area to another.
Purchase of Development Rights	Montgomery County	Program allowing owners to sell the rights to develop their properties (versus transfer), while retaining their property ownership.



## *Commonwealth of Kentucky*

The Commonwealth of Kentucky allows for a unique governmental format at the city and county level. Two counties in the state have merged their governmental structure with each county's major cities. For example, the county of Fayette has merged governments with the City of Lexington. This merger created a single government which replaces and supersedes the governments of the City of Lexington and Fayette County. This new government is called the Lexington-Fayette Urban County Government, sometimes referred to as the "Urban County Government." Under this merged government structure, the urban county government operates under the Constitution and Laws of the Commonwealth of Kentucky. There is no mandatory planning and zoning set forth at the state level. However, the state has enabled local government to implement rural land use planning and preservation. This legislation, Kentucky Revised Statutes, Chapter 100 (KRS 100) permits cities and counties to initiate planning for their communities. The Statute requires comprehensive planning to occur before local government regulates land within its jurisdiction by imposing zoning regulations. It also describes the responsibilities of local planning commissions and outlines the tools available to manage land use within a community.

Kentucky has been a leader in agricultural preservation over the past decade. The state is famous for its rolling bluegrass hills, diversified farms and world-class horse industry. Its rich farming heritage is the foundation for community and tradition in the state. Kentucky has over 86,541 farms covering 13.8 million acres, which produce more than \$3 billion of agricultural goods and services. Kentuckians take great pride in their agrarian heritage and place a high value on private land ownership, which has provided a built-in cultural incentive for rural land preservation.

### Purchase of Agricultural Conservation Easement Corporation

The Commonwealth's Purchase of Agricultural Conservation Easement Corporation (PACE) program has been quite successful in preserving rural lands. The program authorizes the state to purchase agricultural conservation easements in order to ensure that lands currently in agricultural use, remain available for agriculture, and are not converted to other uses. The PACE state program has purchased agricultural conservation easements on 88 farms, totaling 20,927 acres across the state. These easement costs averaged \$854 per acre, while the farm size averaged 238 acres.<sup>3</sup> In addition, 3,817 acres of land were donated to the program via 27 easement agreements. This brings the total amount of preserved land under the Kentucky statewide PACE program to 116 farms and the protection of 24,744 acres of land.

Agricultural or conservation easements are placed on tracts of privately owned land to specify where these activities are the sole allowable use. These easements are often sold to public or non-profit agencies who serve as "third party" stewards of the easement. The land owner retains ownership and management of the land, and the entity receiving the easement is bound by a legally binding restriction upon the land, which does not affect the rights to sell or pass along the land. An agricultural easement may allow farming,

grazing, and nursery activities, as well as construction of new farm buildings and housing for farm employees and family members. A conservation easement is similar in that it typically limits the development and subdivision of property. Private landowners can be encouraged to sell agricultural/conservation easements to a government agency or private conservation organization. In return, the owner receives payment equivalent to the difference between the use value and the market value (use value meaning the value of the land as restricted, and market value meaning the value of the land for its “highest and best use,” generally residential or commercial development).

In the Kentucky PACE program, the easement value is determined by the following rules:

- The fair market value of an owner’s land is determined according to its development potential.
- The land owner must then estimate the value of the land if its use is restricted to agriculture. The easement value for any given acreage will fall somewhere between the two.
- Landowners can use these two figures to help them determine an asking price. The landowner and the PACE Board will then negotiate the final conservation easement value.

Example: A 200-acre Farm

Appraised at fair market development value: <b>\$2,500 per acre = \$500,000</b>
Estimated farmland restricted value: <b>\$1,200 per acre = \$240,000</b>
Potential conservation easement value: <b>\$1,300 per acre = \$260,000</b>

There are a number of benefits to landowners that participate in the PACE program, including:

- Landowner realization in the equity of their land without having to sell it.
- Proceeds from the sale of an easement can be used for any purpose.
- Increased rate of transition from one generation of farmers to another.

## Purchase of Development Rights

The Lexington-Fayette County PDR program was allowed under Kentucky Revised Statute Chapter 67A (HB 644), which enables urban-county governments to develop PDR programs, with the condition that the PDR program includes the following elements:

- (a) A statement of the purpose of the program;
- (b) A detailed map showing the locations of the properties from which development rights may be purchased;
- (c) The restrictions upon the use and development of the properties from which development rights have been purchased, and the duration of those restrictions which may be perpetual as the equivalent of covenants running with the land;
- (d) The mechanism, if any, for removing the restrictions;
- (e) The procedure for valuation and transfer of the development rights. The instrument of transfer shall be an instrument drawn, executed, and recorded in accordance with KRS Chapter 382, which shall set forth the terms of the restrictions with specificity;
- (f) The entity authorized by the urban-county government to operate the program; and
- (g) Any other provisions the urban-county government deems necessary or appropriate.

The State Statute allows the following mechanisms for funding a PDR program: additional property taxes, an additional room tax, and an additional occupational tax. A real estate transfer tax, which is used to fund PDR programs in other states, is not authorized in Kentucky. Donation or dedication of development rights can be used as a federal income tax deduction and could also reduce the value of the donor's estate at the time estate taxes are due.

## Agricultural District Law

Another important tool Kentucky uses for rural land preservation is their Agricultural District Law, KRS 262.850, which is aimed at protecting the best agricultural land for food and fiber production and discouraging its conversion to non-agricultural uses. Agricultural Districts, administered by county conservation districts under the Kentucky Division of Conservation, allow farmers to form special areas where commercial agriculture is encouraged and protected. They are distinct from local zoning districts and are designed to protect agriculture as a viable portion of the state's economy and the land as an important and valuable natural resource. Agricultural districts offer members the following protection under the law:

- The right to have their land assessed by the local property valuation administration at the land's agricultural use value.
- Deferred assessment of fees for water service extensions until the land is removed from the agricultural district and sold for non-agricultural purposes.

- The right to request that the local soil and water conservation district board hold a public hearing on the proposed taking of land under condemnation proceedings initiated by certain utilities.
- Protection against involuntary annexation.

Districts also benefit members by making them a higher priority for state cost share assistance, a higher ranking in PACE, and eligibility for federal tax benefits for PACE applications.

### Farm Viability Programs

The Commonwealth of Kentucky relies primarily on their universities (the University of Kentucky and Kentucky State University) for management and implementation of their Farm Viability programs, due to the Universities' funding resources, support services, and extensive agricultural study programs. The state has two programs that help support the economic viability of agriculture: the Kentucky Farm Business Management Program, and the Kentucky State University's Land Grant Program, as described below.

#### *Kentucky Farm Business Management Program*

The Kentucky Farm Business Management Program (KFBM) provides records-based information to assist Kentucky farmers in best utilizing their resources to accomplish their goals and objectives. It is a joint effort of the University of Kentucky, Department of Agricultural Economics and five Area Farm Management Groups throughout the state. KFBM provides direct consultation to farmers through research, education and extension programs of the University of Kentucky. KFBM assists member farmers in their tracking of financial performance, determining the profitability of their enterprises, improving management practices, completing tax returns, and making general sound management decisions. Specific benefits to farmers include:

- Counsel with a trained specialist to develop business and family priorities, compare costs and returns, and examine alternative plans for management of the farm business.
- Computerized economic analyses of the farm business, including financial statements, cost and return analysis, crop and livestock enterprise analysis and comparative benchmarking with similar size and type of farm business.
- Information to use with lenders and tax professionals, including balance sheets, accrual income statements, depreciation schedules, and completed income tax returns.
- Personal contact with an area specialist in farm management through on-farm visits, phone calls, newsletters, and office visits.

- Use of a detailed farm record keeping system designed to help with farm management decision-making.

### *Kentucky State University Land Grant Program*

Kentucky State University's Land Grant Program (LGP) works to resolve agricultural, educational, economic, and social problems of the people of the Commonwealth of Kentucky, especially limited resource persons and families. A particular program area of the LGP is the Small Farm Program (SFP), which is designed to enhance the income and sustainability of small farmers in Kentucky with a particular emphasis on limited resource persons. The SFP provides one-on-one educational assistance to small farmers with limited-resources. Participating farmers are taught decision-making skills, production practices, marketing skills, and are encouraged to utilize sustainable farming techniques. Apiculture and aquaculture specialists are also available to provide technical assistance to small farmers through this program. It is estimated that the average participating farmer can increase his/her annual farm income by \$10,000 as a result of participating in the program.

The outreach portion of this program is designed to further improve the financial viability and standard of living for small farmers, limited resources and socially disadvantaged farm operators through outreach and technical assistance programs. Education is provided to small and part-time farmers in group sessions on farm management, marketing, decision-making, new enterprise development, sustainable agriculture, and production practices. SFP staff is responsible for notifying farmers of programs available to them from various USDA Agencies through various outreach mechanisms, developing alternative farming enterprises for farmers, and assisting farmers with record-keeping and completion of financial data. This project is funded in part by the National Office of Outreach's Small Farmer Outreach Training and Technical Assistance Program, as well as by the Kentucky State University Extension Program. Additionally, Efforts are made to educate university, USDA, state and other agencies about the special needs of small, limited-resource, minority, and women farmers.

### Case Study: Lexington-Fayette County

The City of Lexington, located in the heart of the county, became the first municipality in Kentucky to form a consolidated city-county government by merging with Fayette County; the Lexington-Fayette Urban County Government (LFUCG). Lexington-Fayette County is located in the center of Kentucky's Bluegrass Region, which is world-renown for its horse farming industry. This industry has driven the county's interest in preserving rural land, as expressed by Mayor Pam Miller: "The preservation of the horse farms, of our green spaces and rural lands is at the core of our city's identity". However, the area is becoming increasingly developed with residential and commercial properties, particularly around Lexington. Farms are losing ground to this development and are slowly disappearing. Therefore, the county

faces significant challenges in striking a balance between these development pressures and preserving the greenbelts and farmlands that characterize the region.

The LFUCG has been recognized as a national leader in planning for urban growth and rural preservation since the 1950s. They created the first urban service growth boundary in the country. A growth or service boundary can be delineated in a community or region to designate areas where urbanization is appropriate and where rural or conservation lands should remain. These boundaries are often established in the wake of infrastructure planning and delineate the outward extent of utilities such as centralized sewer or water supply networks. Complementary to this boundary was the Rural Service Area Boundary that the county established to protect the state's economic benefits from agriculture; protect farmland from increasing development pressure; protect the rural landscape including its cultural, environmental and historic distinctiveness; and to reduce the high costs of infrastructure as development trends veered away from the urban area.

### *Greenways Master Plan*

The County developed a series of land use plans for Lexington-Fayette County, including the *1996 Comprehensive Plan for Lexington-Fayette County*, the *Urban Service Area Expansion Area Master Plan*, and the *Greenways Master Plan*. The Greenways Master Plan communicates the importance and need for greenways, and recommends a county-wide system of interconnected greenways that, as green infrastructure, will become an integral component in the Community's fabric. It was developed through an extensive data collection and inventory effort of existing physical features and socioeconomic factors in order to define opportunities and constraints for a county-wide greenway system. A series of public workshops were conducted to solicit detailed input from area residents.

The Plan proposes an envisioned a system of protected floodplains and habitats that connected neighborhoods and parks with pedestrian walkways. This idea evolved into the Greenway Concept, which was included in the Comprehensive Plan, and guided Community development over the next several years. The Greenway Master Plan is intended to work concurrently with the goals, policies and provisions of other adopted LFUCG land use and management plans, including the Rural Service Area Land Management Plan (RSALMP).

The greenway master planning process provided a forum in which goals and objectives emerged that began the baseline for a county-wide, multi-objective Greenway System. This Greenway System is comprised of nine conservation greenway corridors, twenty primary greenway trail corridors, a system of secondary and tertiary trails, a system of rural on-road bicycle routes, and three water-based trails. Much of the Master Plan responds to specific comments that were submitted by residents during the series of public workshops.

Regulations were also adopted that established and outlined a Greenway Program, including floodplain management regulations that prohibit development within the 100-year floodplains of any stream. Conservation Greenways were established to preserve floodplains in rapidly developing areas and to aid in the restoration of floodplains in older developed sections of the area. These corridors improve water quality, aid in stormwater management by providing needed temporary storage, provide wildlife habitat, and provide access to the Community's stream resources. In addition, a Greenways Trail System was proposed that incorporates a framework for alternative transportation, recreational, health, economic and educational opportunities.

### *Rural Service Area Land Management Plan*

The Rural Service Area Land Management Plan (RSALMP) is an integral part of the County's land use plans. RSALMP was adopted by the Lexington-Fayette County Planning Commission as an element of the community's Comprehensive Plan. The Plan utilizes preservation tools to protect and preserve the rural service area and to keep the County's agricultural economy viable and strong. The first step that Lexington-Fayette County took to develop the RSALMP was to conduct a land capability analysis. This analysis identified certain areas that, due to their location, their access to the rural road network and their ability to be served by sanitary sewers, will likely have pressure for development at some time in the future. These areas were then closely examined, and assumptions were made regarding the ability of the LFUCG to provide sewers to these locations.

The areas most susceptible to development pressure were then established as the "Transitional Areas and Potential Development Areas" included in the *Tentative Draft Rural Land Management Plan*. Questions were raised as to whether or not the information presented at that time truly depicted the relative sewerability of these different areas; therefore, the Division of Engineering further studied the sewerability issue utilizing the best information and judgment available. Their findings concluded that the following areas should be included in an established Rural Service Area:

- Sewerability Category 1: These are areas where the government could provide public sanitary sewers without reconstruction of existing facilities. In these locations the sewage from the potential developable land could flow naturally to existing public sanitary sewer facilities.
- Sewerability Category 2: These are areas that would not require major reconstruction of existing facilities, and/or areas where new sanitary sewer facilities have already been identified.
- Sewerability Category 3: The entire area is not sewerable; however, sanitary sewers could be provided by the planned trunk sewer.

According to the LFUCG, the creation of urban/rural service boundaries was the keystone to their community planning processes. Currently, the urban service area

includes approximately 30% of the County's land area and the rural service area includes approximately 70% of the land.

It is important to note that a number of concepts related to preservation of rural lands were advocated at different times during the process leading to the final Rural Service Area Land Management Plan. The table below (Table 2) describes some concepts that were not recommended as a part of the plan and the reasoning behind this decision.



Table 2. Summary of Rural Land Management Tools Considered But Not Recommended in the Rural Land Management Plan (Taken from the *Rural Service Area Land Management Plan*)

<b>CONCEPT</b>	<b>BRIEF DESCRIPTION</b>	<b>REASON(S) FOR REJECTION</b>
Transition Areas (From SLM Report)	Areas adjoining the Urban Service Area to be receiver sites for TDRs	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Sewage disposal issues</li> <li>• TDRs not proposed as primary preservation tool</li> </ul>
Crossroads Communities (from SLM Report)	Residential developments near existing 10 acre lot developments (TDR receivers) at a density of up to 6 units per acre	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Sewage disposal issues</li> <li>• TDRs not proposed as primary preservation tool</li> <li>• Places more development in the rural area</li> </ul>
Residential Clusters (from SLM Report)	Residential development at a density of one unit per acre not to exceed 20 units	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Sewage disposal issues</li> <li>• TDRs not proposed as primary preservation tool</li> <li>• Places more development in rural area</li> </ul>
Hamlets (from SLM Report)	125 unit suburban developments in the RSA (TDR receiver)	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Sewage disposal issues</li> <li>• TDRs not proposed as primary preservation tool</li> <li>• Places more development in the rural area</li> </ul>
Country Inns (from SLM Report))	Overnight lodging (up to 25 rooms) and dining as a TDR receiver in the RSA	<ul style="list-style-type: none"> <li>• Ability to control number, intensity and location</li> <li>• TDRs not proposed as primary preservation tool</li> <li>• Sewage disposal issues</li> </ul>
Corporate Office Headquarters (from SLM Report)	Corporate offices in RSA as a TDR receiver	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Sewage disposal issues</li> <li>• TDRs not proposed as primary preservation tool</li> <li>• Traffic issues</li> </ul>
Urban Service Area TDR receiving areas	Residential areas would have increased density by being receivers of TDRs	<ul style="list-style-type: none"> <li>• Public opposition</li> <li>• Urban densities do not reach maximum currently.</li> <li>• Would not use enough TDRs to have sufficient impact on rural preservation</li> </ul>
Specification of future growth area	Based on Land Capability Analysis a future growth area would be determined	<ul style="list-style-type: none"> <li>• Insufficient development in the Expansion Areas to gauge need at this time.</li> <li>• Cost of infrastructure, particularly sewers, could not be determined</li> <li>• Public opposition</li> </ul>
Tax on Property Transfers	Property transfer tax would be used to acquire open space in the rural area	<ul style="list-style-type: none"> <li>• State law does not allow local governments to impose such a tax</li> </ul>

### *Residential Infill and Redevelopment*

Developing vacant land in the inner city, a technique known as infill, is one of the main tools Lexington-Fayette County sought to address additional housing needs while preserving the rural greenbelts and farms surrounding Lexington's urban core. Encouraging compatible infill can moderately increase density, thereby making delivery of services such as infrastructure maintenance and neighborhood facilities more efficient. Previously, the city lacked the necessary rules to promote attractive infill. In 2001, LFUCG undertook a study to address infill and redevelopment in existing neighborhoods in the oldest parts of the urban core.<sup>4</sup> As a result, they established the Residential Infill and Redevelopment Design Standards, and adopted these standards as an element of the 2001 Comprehensive Plan. The standards allow for the implementation of redevelopment incentives, regulatory changes, and coordinated planning.

### *Amendments to Zoning Ordinance and Subdivision Rules:*

The regulatory component was significant to implementing the goals of the Lexington-Fayette County Rural Service Area Land Use Plan. Amendments to existing zoning and subdivision rules and regulations were essential in order to establish base development rights of the Rural Service Area. New or revised provisions to county ordinances included (list taken from the *Rural Service Area Land Management Plan*):

- Amendment of the current agricultural-rural zone (A-R) to achieve the intent of the Plan by establishing a minimum lot size of 40 acres.
- Creation of new zoning categories to correspond to the Natural Areas, Historic Rural Settlements, and Buffer Areas land use categories of the Plan.
- Determination of how development rights from the rural area might be transferred to specific zones in the urban area.
- Development of a protection provision for unique aspects of the rural landscape (e.g., stone fences, wooden fences, trees, special botanical areas, scenic vistas, farm roads and lanes).
- Establishment of special standards for streets, storm water, and sewage disposal to address potential problems with the limited development that will be permitted in the Rural Service Area.
- Establishment of standards for uses for the environmentally sensitive Royal Spring Aquifer.

### *Purchase of Development Rights*

The Rural Service Area boundaries established by LFUCG can be used to leverage more sophisticated planning techniques such as Performance Based Zoning or Purchase/Transfer of Development Rights. Landowners in Fayette County interested in selling agricultural conservation easements can apply to their own local Purchase of Development Rights (PDR) program. Purchase of Development Rights allows owners to sell the rights to develop their properties while retaining their property ownership. Often, land trusts and local governments purchase development rights through this type of

program, and dedicate the land for conservation easements, protecting it as open space or agricultural areas.

The Lexington-Fayette County PDR program was established in accordance with Kentucky Revised Statute Chapter 67A (HB 644), the Lexington-Fayette Urban County Government Charter and the County Rural Land Management Plan. The county PDR program offers financial incentives in exchange for removal of future development rights from the rural land. The program has a goal of protecting 50,000 acres to support farm families, the agricultural sector, and natural resources. Applications are ranked with a scoring system similar to the state PACE program, and an independent real estate appraiser determines the value of the development rights offered for sale. LFUCG committed \$2 million annually to the PDR Program. In addition, the Program has received \$15 million in state grant matching funds and \$4,041,771.00 in Federal grant matching funds to date. Advantages to farmers include:

- The PDR program offers farmers an effective technique to preserve their land for farming and to protect against encroachment of non-farm development.
- PDR funds may help farmers meet financial needs, pay off debts, expand, buy additional land, invest in new crops or purchase needed equipment.

Advantages to landowners when they sell development rights:

- Sellers receive a cash payment for development rights.
- Sellers retain the ownership of the land and can continue farming the land.
- Selling development rights may help heirs retain the family farm.
- Farmland is preserved for future generations of farmers.

The Lexington-Fayette County PDR program is voluntary, yet it promotes long-term preservation of five focus areas identified in the county *Greenspace Plan*: North Elkhorn Creek Area, Boone Creek Area, Kentucky River Palisades, South Elkhorn Creek Area, and Old Frankfort Pike Area. These are significant rural resources that have been identified by the county as needing additional study.

The PDR program contains a Land Evaluation and Site Assessment (LESA) which relies on objective factors and criteria. The voluntary establishment of “agricultural district” designations by associations of farm owners is also used in many jurisdictions as a priority setting criteria. The following list illustrates some of the major criteria and factors that are included in the LESA assessment:

Positive Correlation Factors:

- Size of farm
- Length of public road frontage and visibility
- Proximity to another property with PDR or conservation easement, or “batch” applications
- Quality of soils for agriculture

- Farm product sales
- Scale of agricultural improvements
- Percentage of property in cropland or pasture
- Land stewardship (SCS conservation practices)
- Percent of environmentally sensitive land, especially riparian areas, tree areas, etc.
- Designated rural greenway and/or focus area
- Special natural protection area
- Proximity to and ability to be linked to areas of high environmental value such as parks, nature preserves and sanctuaries
- Consolidation/elimination of undeveloped 10 acre tracts

Negative Correlation Factors:

- The converse of positive factors above
- Location in a rural land category other than CARL or NAT
- Proximity/adjacency to the existing Urban Service Area Boundary; except for rare cases of overwhelming importance as a community icon, or in designated focus areas
- Proximity to existing or planned urban services

Table 3. Summary of Rural Land Management Tools for Commonwealth of Kentucky and Lexington-Fayette County

<b>TOOL</b>	<b>ENTITY</b>	<b>BRIEF DESCRIPTION</b>
Purchase of Agricultural Conservation Easement Program	State	Authorizes the state to purchase agricultural conservation easements to ensure that lands currently in agricultural use remain viable for agriculture and are not converted to other uses.
Agricultural District Law	State	State legislation aimed at protecting the best agricultural land for food and fiber production and discouraging its conversion to non-agricultural uses.
Rural Service Area Land Management Plan	Lexington-Fayette County	A land use plan that utilizes preservation tools to protect and preserve the rural service area and to keep the County's agricultural economy viable and strong.
Residential Infill and Redevelopment	Lexington-Fayette County	County program to encourage the development of vacant land in the inner city as well as redevelopment of inner city sites.
Amendments to Zoning Ordinance and Subdivision Rules	Lexington-Fayette County	Amendments to existing zoning and subdivision rules and regulations that included new or revised provisions to county ordinances in order to establish base development rights within the Rural Service Area.
Purchase of Development Rights	Lexington-Fayette County	County program that allows owners to sell the rights to develop their properties while retaining property ownership.
Greenways Master Plan	Lexington-Fayette County	Communicates the importance and need for greenways, and recommends a county-wide system of interconnected greenways.

## Washington State

### Introduction

Washington State has been among the ten fastest growing states in the nation over the past decade. This growth could have resulted in low density development overtaking the countryside, weakening existing communities and causing a severe infrastructure burden to these outlying areas. In 1990, the State enacted a Growth Management Act (GMA) that called for local government to prepare comprehensive plans and development regulations consistent with 14 goals set forth in the act.<sup>5</sup> The law was later amended several times to

broaden and strengthen its application to most cities and counties in the state.

GMA set the stage for a new level of local land use planning and citizen participation, complemented by programs for infrastructure and the environment.<sup>6</sup> The vision created through the GMA is one of walkable communities, vibrant cities, protected farmlands, healthy economic growth, and a wide array of open space areas

preserving the environment and fostering public use and enjoyment of open space.

A subsequent amendment to the initial act brought in three urbanizing counties in the eastern part of the state and any others that elected to abide by the GMA's requirements. Today, 29 counties and the 281 cities within them, containing about 95% of the state's population, are responsible for complying with the requirements of the act.<sup>7</sup> The act requires local governments to:

- Agree on county-wide planning policies that provide a framework for county and city comprehensive plans;
- Designate critical areas, agricultural land, forest lands, and mineral resource lands and adopt regulations protecting these lands;
- Plan for urban growth by designating urban growth areas (UGAs) to be adopted by each county after consultation with individual municipalities;
- Adopt comprehensive plans that address land use, transportation, capital facilities, housing, shorelines, and rural land use and development;
- Adopt development regulations that carry out the comprehensive plan.

As a result of these amendments the Act has now established that jurisdictions at all levels must plan ahead, and think through the ramifications of their land use decisions. The Act has more carefully protected critical areas with the result that at least some salmon streams

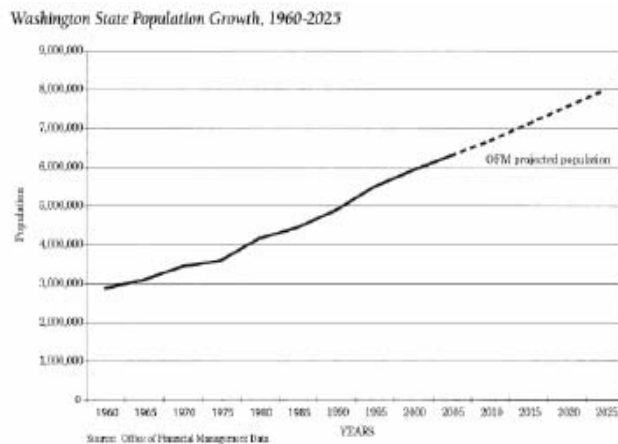


are healthier, some wetlands have been saved and restored, and some shorelines have been enhanced for fish spawning and wildlife.<sup>8</sup> Similarly, Urban Growth Boundaries (UGBs) have encouraged cities to put new growth within their existing service areas and, as a result, downtowns, infill and redevelopment areas are becoming more vibrant with strong market demand.

After 14 years, the GMA and its implementation program constitutes a detailed and interrelated range of requirements for local planning and regulation of community development. Not surprisingly, the variety of approaches adopted by individual cities and counties to meet the requirements has generated a broad range of concerns and issues among public officials, the development community, and the general citizenry.

### Historical Background

The passage of the GMA in 1990 and a second phase in 1991 was the result of a period of explosive growth in Washington, and the growing concern of its citizens that the state was losing its precious natural landscape to traffic congestion and sprawl. Between 1960 and 1990 the state experienced a 41% population increase, much of it in the 1980s, and much of it in the unincorporated areas outside cities.<sup>9</sup> Local governments had neither the funds nor resources to address the problem; growth was to a great extent unplanned and unregulated; and rural lands, wetlands, forests and farms were turning into suburbs overnight.<sup>10</sup>



Although the 1970s began a period of environmental protection in the state with the passage of the Shoreline Management Act (SMA, 1971) and the State Environmental Policy Act (SEPA, 1971) under then Governor Daniel Evans, there were no consistent statewide land use planning tools or

requirements for cities and counties. At the time, only Florida, Oregon, Georgia and New Jersey had growth management acts in place, elements of which were later incorporated into Washington's GMA.<sup>11</sup>

*Goals of the Growth Management Act:* To understand the GMA, it is necessary to know its goals. The following goals were adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040.<sup>12</sup> The thirteen state-mandated Growth Management Act (GMA) goals guide the development and adoption of comprehensive plans and development regulations of counties and cities planning under the GMA. The goals consider: urban growth, reducing sprawl, transportation, housing, economic development, property rights, permits, natural resource industries, open space and

recreation, environment, citizen participation, public facilities and services and historic preservation.

*GMA Requirements and Planning Process:* The GMA has been described by many as a “bottom-up” planning approach because it requires that land use plans be developed by cities and counties, as opposed to state agencies. Comprehensive plans must be submitted to the Washington Department of Community Trade and Economic Development (CTED), which may offer comments on these plans. CTED does not have the authority to accept or reject the plans. Most counties and cities are required to fully plan under the GMA while others with lower populations or slower growth rates may choose to plan under the GMA. Those jurisdictions which do plan under GMA are eligible for state funding.

There is no state agency which approves or certifies local comprehensive plans, but there are three regional Growth Management Hearings Boards which hear and rule on petitions of non-compliance. Those who may file include the governor or specific departments within the administration, the county or city that plans under GMA, or any person or persons who has/have already participated on the petitioned issue during the planning process. A jurisdiction’s plan is only questioned if a petition is filed with a Board. Then it takes a strong “clearly erroneous case” to convince the Board to declare the jurisdiction to be in noncompliance.

As of 2006, there were three Growth Management Hearings Boards: Eastern Washington, Central Puget Sound, and Western Washington. Each board is composed of three members with land use planning experience, all appointed by the Governor. By statute, one member must be a lawyer; one must have been a city or county elected official; and there may be no more than two members from the same political party. The scope of the Board’s review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review. In addition to determining invalidity and requiring a local jurisdiction to revise their plan, the Boards may also recommend gubernatorial sanctions. The Board may also send a plan back to a jurisdiction with recommendations, or in rare cases, invalidate all or parts of a plan.

According to a review from the Boards, the issues most frequently brought to the Boards prior to 2004 were: (1) adequacy of public participation; (2) appropriate urban densities; (3) critical areas as justification for lower urban densities; (4) deficiencies in the transportation element, including concurrency; and, (5) urban growth area expansions.

*GMA Requirements for All Counties and Cities:* Most counties and cities are required to fully plan under the GMA; others with lower populations or slower growth rates may choose to plan under the GMA. Those jurisdictions which do plan under GMA are eligible for state funding. The following elements are required for all counties and cities:

- Designate agricultural, forest, and mineral resource lands.



- Designate critical areas (wetlands, aquifer recharge areas, fish and wildlife habitat, flood plains, geologically hazardous areas) and adopt development regulations to protect them, using best available science.
- Review and update critical areas plans every seven years. They must be reviewed and, if necessary, revised for consistency with comprehensive plans and development regulations to ensure compliance with the GMA.
- Determine that all new subdivisions have adequate services for public health, safety and welfare.
- Determine that adequate potable water is available before issuing new building permits.

*Additional GMA Requirements for Counties & Cities Required or Choosing to Plan:* The following elements are required for all Counties and Cities required or choosing to plan:

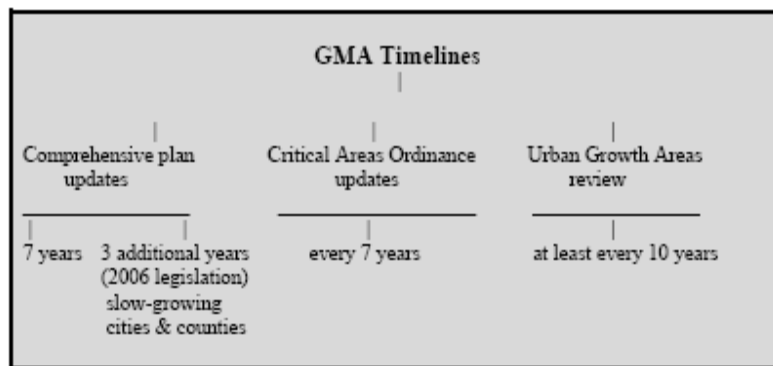
- All counties or cities with a population of 50,000 or more, or a 17% increase in population within the past ten years, are required to prepare and adopt comprehensive plans for 20 years of growth, and to update those plans every seven years. Other counties may choose to plan under the GMA.<sup>13</sup>
- Each comprehensive plan must be internally consistent and include these elements: land use, housing, capital facilities, utilities, transportation, economic development, and parks and recreation, and, for counties only, a rural element. City and county activities and capital budgeting decisions shall conform to the comprehensive plan.
- A plan may also include these optional elements: conservation, solar energy, recreation, transit, public facilities and buildings, redevelopment and financing capital improvements.
- All fully planning counties, in cooperation with the cities, must designate the urban growth areas (UGAs) surrounding the cities. Growth is encouraged within the UGAs; it may occur outside of the UGAs if it is not urban in nature. Jurisdictions must review UGAs at least every ten years.
- All county plans must be coordinated and consistent with plans of each city or county sharing a common border.
- The state's six largest counties and cities within these counties must develop a 20-year population projection based on high, medium, or low figures given by the office of Financial Management (OFM) and determine whether they have enough buildable land available to accommodate projected growth.
- All fully planning counties and cities must adopt development regulations which conserve designated agricultural, forest, and mineral resource lands. Cities and counties must review their critical areas regulations to determine if they are consistent with the adopted comprehensive plan and development regulations. If they are not consistent, they must be updated to make them consistent.
- All development regulations must be consistent with each comprehensive plan.
- Local governments must specify the kinds of services and facilities to be provided to support additional growth, where they will be sited, and how they will pay for them. Development and infrastructure must be planned to occur concurrently.
- Early and continuous public participation is required during the process.

*The GMA Planning Process:* The Washington State Department of Community, Trade and Economic Development (CTED) administers the GMA and helps jurisdictions with

technical assistance and some financing during the development phase of their comprehensive plans and development regulations. Jurisdictions submit their completed plans to CTED for review and CTED may offer comments on plans, but CTED does not have the authority to certify, approve, or reject plans.<sup>14</sup>

Once a plan is developed with input from citizens at a public hearing, it goes to its county or city legislative body for formal approval. If approved, the plan is then certified and presumed valid unless, within sixty days, a participating citizen files an appeal to the hearings board. The plan is then used by the jurisdiction as a guide for future proposed development projects. It is subject to continuing review and evaluation in the form of updates which occur at regular intervals, generally scheduled every seven years. The plan can be amended annually, and in certain cases, even more frequently.

*The GMA Timelines:* Comprehensive Plan and Critical Areas Ordinance updates are reviewed every 7 years. Note, slow-growing cities & counties may receive an additional 3 years. The Urban Growth Area updates are required every 10 years. If a county or city meets its deadlines and the requirements of the Act, it is deemed in compliance, unless within sixty days of adoption a petition is filed with a growth management hearings board.<sup>15</sup>



*Rural Planning:* The GMA requires counties to include in its comprehensive plan "a rural element" which includes lands that are not designated for urban growth, agriculture, forest, or mineral resources. The rural element shall permit appropriate land uses that are compatible with the rural character of such lands and provide for a variety of rural densities and uses. It may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.<sup>16</sup>

Amendments to the Growth Management Act adopted in 1997 as part of ESB 6094 also established that "the rural element may allow for limited areas of more intensive rural development..."<sup>17</sup> These limited areas include the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, the intensification of development on lots containing, or new development of small scale recreational or tourist uses, and the intensification of development on lots containing isolated nonresidential uses, or new development of isolated cottage industries and isolated small-scale businesses that

are not principally designed to serve the rural population but that provide job opportunities for rural residents.

Indisputably, Washington State has grown significantly since the enactment of the GMA. The GMA has helped facilitate increased density in urban areas, taking development pressure off rural areas and reducing sprawl. The requirement to set boundaries for growth has encouraged infill development within urban areas and reduced sprawl in outlying areas.<sup>18</sup> Through enactment of the GMA, jurisdictions now must coordinate and cooperate with each other and think through the regional effects of their decisions. As a result, planning has created stronger levels of infrastructure in many areas.

*Rural Planning & Policy Guidance:* Counties fully planning under GMA are required to include a chapter in their comprehensive plans on planning for rural lands. In accordance with RCW 36.70A.070(5), counties are looking at how to protect rural character, how to reconcile existing development in rural areas with the need to protect rural character, what level of services to provide for rural development, and what types of economic development are appropriate in rural areas. A significant challenge facing counties is providing for development consistent with rural character.

Rural character is defined under the GMA as the patterns of land use and development established by a county in which open space and the natural environment predominate over the built environment. In rural areas, land use patterns need to: (1) foster traditional rural lifestyles and rural-based economies; (2) provide traditional rural landscapes; (3) reduce sprawl and extension of urban services; and (4) protect surface water flows and groundwater recharge areas.<sup>19</sup> As such, each county is to define rural character and determine how rural character will be protected based upon natural environmental features. Rural character needs to be maintained in the effort to provide for rural development. Although counties needs to provide for a variety of rural densities and provision for rural development must be consistent with, and protect, rural character. Rural development should be allowed but with adequate protection of the visual and functional elements such as the natural environment, historic properties, and rural lifestyles, uses, and landscapes.<sup>20</sup>

Visual compatibility is an objective measure that will be developed based on the county's vision of rural character. It can be assured through development regulations and design standards such as density, size and location of clusters, landscape screening from the public roadways, and other site planning requirements. RCW 36.70A.030 (14) defines rural character to "provide visual landscapes that are traditionally found in rural areas and communities." Thus, traditional agricultural structures may not always be aesthetically pleasing but they are part of the traditional rural visual landscape. Thus, counties employ a wide variety of regulatory land use tools, such as sign regulations, buffering and landscape requirements in addition to the standard Euclidean use, dimensional and density requirements.

Land use tools for protecting rural character may also provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural uses not characterized by urban growth.<sup>21</sup> Importantly, the supplemental land use tools adopted by GMA in 1997 in ESB 6094, RCW 36.70A.700 (5) provided non-mandatory options to enhancing rural land protection and economic development.

*Incentives for Rural Land Preservation:* Many developments were built in rural areas before the adoption of county comprehensive plans. Existing developments may be located in unincorporated towns, areas that have grown up around roadside commercial establishments, sprawling low-density subdivisions, or widely scattered subdivisions. These developments may or may not be served by sewer, water, fire protection, and other public services. Counties have struggled with the issue of what to do about existing areas of development in light of the need to prevent further sprawl and protect the remaining rural character. Determining what public facilities and services are appropriate in rural areas is difficult for many counties. Under the GMA, counties, with input from towns and cities, designate urban growth areas (UGAs). Establishing UGAs involves designating an area for urban growth separate from rural areas and resource lands. UGAs include all incorporated towns and cities and, often, land adjacent to them to allow space for the town or city to grow over a 20-year period. Locating population growth in UGAs is encouraged in growth management planning.

As a response to providing services outside these urban areas the GMA requires that urban governmental services are not to be extended or expanded in rural areas except in a very limited number of cases – when such services are necessary to protect public health, safety, and the environment, or if the services are financially supportable at rural densities and do not support urban development. As such, in 1997 amendments to the Growth Management Act were adopted as part of ESB 6094 to established that “the rural element may allow for limited areas of more intensive rural development... (LAMIRDs)”<sup>22</sup>

These LAMIRDs include the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, the intensification of development on lots containing or new development of small scale recreational or tourist uses, and the intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the rural population but that provide job opportunities for rural residents.

Development in rural areas can consist of a variety of uses and residential densities if they are consistent with the preservation of rural character and the requirements of the Rural Element. The GMA requires counties to establish residential densities that reduce the inappropriate conversion of undeveloped land into sprawling, low density development in the rural areas. The primary purpose of the rural areas is not to accommodate growth so minimum lot sizes should directly relate to the viable

resource such as agriculture, forestry and other natural resources exist. The Department of Natural Resources generally recommends residential densities of 1 dwelling unit per 20 acres in rural agricultural and forest land areas. Skagit County designates residential uses to 1 per 10 acres in a rural conservation district; 1 per 20 acres in a secondary forest district; 1 per 40 acres in an agricultural district; and, 1 per 80 acres in a commercial forestry district.

*Incentives/ Programs for Rural Economic Development:* Counties also are struggling to determine what economic development is appropriate in rural areas. One of the goals of the GMA is economic development. This goal encourages economic development throughout the state within the capacities of the state's natural resources, public services, and public facilities. Economic development is to be encouraged in areas experiencing insufficient economic growth. Counties are deciding how to provide for economic development in rural areas consistent with rural character.<sup>23</sup>

The options contained in the 1997 legislative changes to the GMA focus on economic development that is sustainable and consistent with maintaining rural character. Sustainable development is development within the capacity of an area's natural resources and ability to provide for public needs. Accordingly, a county may designate limited areas of more intense rural development to recognize existing areas or existing uses and may provide for infill, development, or redevelopment within these areas. Existing uses may include commercial, industrial, residential, or mixed use. Mixed use is typically a combination of commercial and residential development, for example, when apartments are located above shops.

Logical outer boundaries are established to minimize and contain areas of more intense rural development. The boundaries are to be drawn mainly based on the built environment, such as the existence of buildings or other development. Public facilities and services are provided in a manner that does not promote low-density sprawl in the surrounding rural area. Limited areas of more intense rural development may be set out in the comprehensive plan and included in development regulations that carry out the plan.

Many counties have taken advantage of these options to recognize existing rural communities and neighborhoods and to provide for a variety of economic development opportunities in the rural area. They have developed criteria for designating limited areas of more intense rural development. County plans allow some infill, development, and redevelopment within logical outer boundaries of these areas consistent with the rural character of the community.

*Financing Mechanisms for Rural Planning & Preservation:* The Open Space Taxation Act (OSTA), enacted in 1970, allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use.<sup>24</sup> The Act states that it is in the best interest of the state to maintain, preserve, conserve, and otherwise continue in existence adequate open space lands for the production of food, fiber, and forest crops and to assure the use

and enjoyment of natural resources and scenic beauty for the economic and social well-being of the state and its citizens. The OSTA provides three classifications: open space land; farm and agricultural land; and, timber land.

The assessor is required to maintain two values for each parcel that is classified. The first is the value that would be placed on the land if it was not classified. This is commonly referred to as the “fair market value.” The second is the current use land value based on its present use as classified by the granting authority. The process for determining the value of open space lands is spelled out in statute. The assessor considers only the use to which such property is currently applied and does not consider potential uses of such property.

The land continues in current use classification after the 10-year period until a request for withdrawal is made by the owner, the use of land no longer complies, or the ownership has changed and the new owner has not signed a Notice of Continuance. The land withdrawn from classification is subject to an additional tax equal to the difference between the amount of tax paid under the classification and the tax at true and fair value for the last seven years, plus interest at the statutory rate charged on delinquent property taxes.

### Farm Viability Programs

Washington State University, Center for Sustainable Agriculture and Natural Resources manages and implements two farm viability programs: the Small Farms Program, and the Food Alliance Program, as described below.

#### *Small Farms Program*

The Small Farms Program focuses on education resources for farmers, outreach to communities, and team-based research with farmers. The program provides research-based information and educational programs for farmers, consumers, decision-makers, and others involved in local food systems. The research team is comprised of a statewide affiliation of professionals from WSU, state agencies, and non-governmental organizations, whose primary responsibility is to implement the following primary programmatic goals:

- Build public support for agriculture.
- Preserve Washington farmland for food and fiber production.
- Help farmers adopt practices that are sustainable- economically, socially, and environmentally.
- Unify farmers and consumer in developing local markets and community food access.

#### *Food Alliance Program*

Food Alliance is a nonprofit organization that creates market incentives for the adoption of sustainable agricultural practices, with a special commitment to

supporting the profitability and continued survival of small and mid-sized family-owned farms and ranches. Food Alliance was founded in 1997 through a collaborative initiative by Oregon State University, Washington State University, and the Washington State Department of Agriculture. The Alliance educates business leaders, and other food system stakeholders, on the benefits of sustainable agriculture. It operates a voluntary certification and eco-labeling program based on standards defining socially and environmentally responsible agricultural practices. Farms, ranches and food processors that meet Food Alliance's standards are granted the right to use their eco-label to distinguish their products in the marketplace. To earn certification, farms and ranches must:

- Provide safe and fair working conditions
- Provide healthy and humane care for livestock
- Eliminate the use of Hormones and antibiotics
- Eliminate the use of genetically modified organisms (GMO)
- Reduce pesticide usage and toxicity through Integrated Pest Management (IPM)
- Conserve soil and water resources
- Protect and enhance wildlife habitat
- Show improvement in land stewardship over time.

Food Alliance has also developed a large number of formal “market partnerships” to increase demand for and facilitate sales of certified products. These include agreements with retail grocery stores and food co-ops, restaurants, distributors and food service providers. Market partners include regional businesses and national companies such as Bon Appétit, ARAMARK, Sodexo, and SYSCO Corporation. Market-side partners report strong sales of Food Alliance products, with over half reporting increases in sales because of their participation in the program.

#### *“From the Heart of Washington” Program*

“From the Heart of Washington” is a public awareness campaign designed to increase consumer demand for Washington state food and agricultural products. It is facilitated by the Washington State Department of Agriculture, and advised by a diverse board whose membership consists of governmental, food industry, and small farm interests statewide.

By partnering with local growers, retailers, consumers, and allied industries, From the Heart of Washington serves as the touchstone to hundreds of the best locally-grown and made products. The program also helps retailers promote Washington grown products to consumers through signage and branding programs, which make Washington products easier for consumers to identify at the point of purchase.

#### Case Study: Skagit County

Skagit County is located in the northwestern portion of Washington State. It encompasses 1,735 square miles, ranks 21st in geographic size among the state's counties and had approximately 118,000 residents as of April 2006. As one of the

state's fastest-growing counties, Skagit County, along with its cities, is required to adopt a new comprehensive plan under the GMA. The county has been absorbing urban spillover from the Seattle/Everett metropolitan area and its rural atmosphere is an attraction in the current rural rebound trend. Skagit County's potential for retirement and recreation, and its location between two metropolitan counties, were factors in the growth that spanned the two decades and continued over the past four years.

The Skagit County rural landscape is characterized as areas with open space; natural vegetation; is comprised of a variety of rural densities; farms, forests, mining, and aquatic resource areas; small unincorporated rural communities; small, isolated rural commercial and industrial development; and, regionally important recreation areas.

Skagit County's community planning efforts were designed to strengthen communities at three geographic levels: countywide, sub-area, and joint planning. Functional plans overlay all three community-planning levels. At each level of these community plans, issues and needs vary widely and each plan will be tailored to the unique characteristics and issues of each community plan. Countywide plans are regional in nature while sub-area plans are defined by watershed boundaries, and joint plans address urban growth areas, rural villages and tribal reservations.

The Skagit County Comprehensive Plan manages growth by protecting natural resource lands, open space and rural areas, and establishes urban growth areas where development is directed. Rural areas provide for rural uses compatible with the primary uses of the land for food, agriculture, fiber or minerals that are not of long term significance. Open Space areas are lands with regional importance that have been set aside, dedicated, designated or reserved for public or private use or enjoyment for either active or passive recreation, scenic amenities, natural resources, or for the protection of environmentally sensitive areas.

Skagit County has a marine climate affected by its proximity to Puget Sound and the Pacific Ocean. This proximity results in mild winters and comfortably warm, drier summers. Agricultural resources are an important part of Skagit County's economy and community character, and over 71 different crops are grown. Farming and ranching have been an important part of the community's heritage since early settlement in the 1800's. The Skagit Valley is regarded by many as one of the most fertile valleys in the world. County farms produce major commodities, specialty crops and vegetable seeds and flowers with unique market niches. Forest lands, which predominate much of the county landscape, compose another significant natural resource. The practice of forestry (logging, reforestation, and timber management) was established in the earliest stages of settlement in the county. Large-scale commercial forestry remains a vital industry and is practiced on well over 300,000 acres. Forest lands account for 29% of Skagit County's total land area of 1.1 million acres. Shellfish industries and commercial and recreational fishing represent a third integral natural resource that has influenced Skagit County economically and culturally.



Skagit County began planning under the GMA in 1990, and by 1997, adopted an updated comprehensive plan and related regulation to work from in guiding growth. In developing the plan the County needed to designate agricultural, forest and mineral resource lands that have long-term economic significance and must maintain “rural character”.<sup>25</sup> The measures adopted by the County must protect against conflicts with the use of agricultural, forest, and mineral resource lands.<sup>26</sup> Thus, the GMA provides Skagit County with a wide array of innovate land use tools and programs designed for rural preservation and enhancement programs as follows:

*Urban Growth Areas:* The GMA requires the counties to designate Urban Growth Areas (UGAs) and each city in a county must be included in an UGA.<sup>27</sup> Territory outside a city may be included if it is already characterized by urban growth. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development. Such areas must be served or be serviceable by public facilities and services and provide adequate land to support expected development for 20 years. Skagit County has designated nearly 36,000 acres, or 3.2% of the total land area, as an UGA. This area includes greenbelt and open space areas, includes a reasonable land market supply factor and permits a range of urban densities and uses based on local circumstances.

*Village Center Zoning:* Within the rural element, Limited Areas of More Intensive Rural Development, or LAMIRDs, allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area.<sup>28</sup> Skagit County permits development within designated Rural Village areas consisting of infill development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. Importantly, the County also includes design standards that require any development or redevelopment in terms of building size, scale, use, or intensity to be consistent with the character of the existing areas. The County allows for a range of commercial uses and services to meet the everyday needs of Rural Village residents and natural resource industries, to provide employment opportunities for residents of the rural area, and to provide goods, services, and lodging for travelers and tourists to the rural area.

*Accessory Uses:* Within the rural districts the GMA permits intensification of development on lots containing, or new development of, small-scale recreational, tourist uses or new development of isolated cottage industries, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development.<sup>29</sup> A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Skagit County allows for small-scale recreational and tourist uses that provide opportunities to diversify the rural economy by utilizing, in an environmentally sensitive manner, the County’s abundant recreational opportunities and scenic and natural amenities. The County provides a land use designation to recognize existing and new small scale businesses and cottage industries, in order to enhance rural economic opportunities and provide job

opportunities for rural residents. Farm-based businesses are allowed as an accessory use in Agricultural designated areas.

*Site Plan Review:* New development (including infill, development, redevelopment, or intensification of development) within Rural Villages, Planned Unit Developments and Cluster Subdivision is subject to a wide variety of development regulations and design guidelines intended to maintain the rural character of the area, and to minimize impacts to rural residential areas, resource lands, critical areas, and other sensitive natural features of the environment. These development regulations include standards addressing potable water, buffers, screening, lighting, noise, drainage, traffic impacts, lot coverage, land use intensities, and non-urban levels of service in an effort to maintain the existing character of the rural area in which the commercial use is proposed.

*Transfer of Development Rights (TDRs):* A TDR is defined as the process by which development rights are transferred from one lot, parcel or area of land in a sending district to another lot, parcel or area of land in one or more receiving districts. Among other purposes, TDRs are used to protect agricultural lands from development. A jurisdiction can reduce the allowed density of development for the parcel, and, in return, award development rights. The owner of that parcel of land may then sell those rights to a landowner elsewhere who would then be able to develop at a higher density than otherwise allowed. For the market to work there must be development pressure in the receiving area resulting in a desire by landowners to purchase development rights from the sending area. Skagit County permits *transfer of development rights* to accommodate housing construction in order to achieve the maximum densities permitted by Zoning Ordinances to protect environmentally sensitive areas.

*Purchase of Development Rights (PDRs):* The PDRs, allows a landowner to permanently retire development rights rather than transfer them. In a PDR program a landowner voluntarily sells his development rights to a governmental agency or a land trust, either of which pays the farmer the difference between the agricultural value of the land and the land's potential development value. Coupled with the State and County conservation programs, there are several private organizations in Skagit County that in some way set aside lands for conservation purposes, such as for their ecological, scenic, or natural resource values. Private land trusts, such as the Skagit Land Trust, the San Juan Preservation Trust, and the Nature Conservancy, among others, own or in some way administer a significant amount of land in Skagit County. Skagit County also participates in the Conservation Futures Program that would provide revenue for the acquisition of important critical areas.

*Cluster Subdivisions:* Both the GMA and Skagit County permit Planned Rural Residential Developments (PRRDs) which allow cluster subdivisions; particularly for designated agricultural lands of long-term commercial significance.<sup>30</sup> The County also provides density bonuses for projects demonstrated to be in the public interest by preserving open natural, cultural or historic resources, energy efficiency, public recreational facilities, environmental design, affordable housing or innovative design. The County regulations promote flexibility in site development which may result in

more compact clustered lots or environmentally sound use of the land, while assuring compatible development and maintaining the county's rural character. Buffer areas are required to reduce land use conflicts and minimize the loss of designated natural resource lands. The remaining open space provides the County with greater opportunities for: maintaining larger parcel sizes that will enhance the production of food, fiber, or minerals; potentially be designated urban growth areas in the future; or, provide large tracts of open space land held for recreation, natural resource management, and protection of significant cultural resources and critical areas.

*Affordable Housing:* The GMA requires that each comprehensive plan include a housing element including a needs assessment and provisions for innovated land use management tools including but not limited to density bonuses, cluster housing, planned unit developments with higher densities and affordable accessory dwelling units.<sup>31</sup> In Skagit County, a technical assistance handbook was developed and made available. Such a handbook includes information on: technical assistance programs, housing and site designs, alternative materials, neighborhood conservation and revitalization information, a current, accurate vacant land parcel inventory and available housing development incentives for homes affordable for those earning 80% of median income or below.

The County waives impact fees for developers of very low and low-income housing and a tax-exempt mortgage revenue bond program provides funding for very low and low-income housing. The County permits further division of existing structures in single family and mixed-use neighborhoods in order to provide additional living units. The County also provides surplus public lands where a majority of the developed units shall be affordable to low and moderate income families. Finally, a land-banking program was developed to acquire land that can be sold to developers for very low, low and moderate-income housing.

*Lot Impact Developments (LID):* The GMA includes guidance for developing a model clearing and grading ordinance which is used in reviewing Planned Low Impact Developments (PLIDs).<sup>32</sup> Incentives are offered like streamlined permitting and lower construction costs. In Skagit County, land development regulations require the amount of impervious surface to be minimized and natural drainage systems to be maintained and enhanced to protect water quality, reduce public costs, and prevent environmental degradation.

*Rural Design Standards:* Structures, roads and utility systems shall be designed and constructed to minimize the alteration of the landscape, to preserve natural systems, to protect critical areas, to protect important land features such as ridgelines, to retain historic and cultural structures/landscapes, and scenic amenities. Rural road standards shall minimize paving and right-of way requirements. In addition to level of service and vehicular safety, design standards for rural county roads shall include impacts to local rural residents and community character. Public spending priorities for facilities, services, and utilities within rural areas shall be primarily to maintain or upgrade existing facilities, services, and utilities to serve existing development at

rural service level standards. New facilities, services, roads, and utilities shall be allowed which support planned rural growth at rural service level standards. Standards and plans for roads and utilities shall be consistent with rural densities and uses. Rural road standards shall minimize paving and right-of-way requirements. Utilities that serve urban growth areas but must be located in rural areas shall be designed and scaled to serve designated urban growth areas.

*Agricultural Density Zoning:* The GMA requires that rural residential density be at least one unit for every five acres. However, the act also requires that jurisdictions need a variety of rural densities.<sup>33</sup> In reviewing county plans, the hearings boards usually require a county rural plan to contain a variety of rural lot-size designations from five acres and more per unit. In Skagit County, the Rural Residential district ranges from one dwelling unit per 10 acres for the rural conservation reserve area, to one unit per 20 acres for a secondary forest, 40 acres for agricultural lands and, 80 acres for industrial forestry lands. For properties within or within ¼ mile a Mineral Resource Overlay residential gross densities shall be no greater than 1 residential dwelling unit per 10 acres provided that if the underlying land use designation density of land within ¼ mile of the Mineral Resource Overlay is greater than 1 dwelling unit per 10 acres, the development rights associated with that density may be transferred to and clustered on that portion of the property located outside of ¼ mile from the Mineral Resource Overlay.

*“Right to Farm”:* Right-to-Farm policies are intended to promote a good neighbor policy between natural resource lands and non-natural resource land property owners by advising purchasers and users of property adjacent to or near natural resource land management operations of the inherent potential problems associated with such purchase or residence, including but not limited to the use of chemicals, or from spraying, pruning, harvesting, or mineral extraction with associated activities, which occasionally generate traffic, dust, smoke, noise, odor and the hours of operation that may accompany natural resource land management operations. In Skagit County, mandatory disclosures for the Right-to-Farm/ Forestry/ Manage Natural Resources provide purchasers and users a better understanding of the impact of living near natural resource lands and prepare owners to accept attendant conditions and the natural result of living in or near natural resource lands and rural areas. The County also provides agricultural area signs that read "Agricultural Area--Respect Farm Vehicles" or "Entering Agricultural Zone" or "Ag Zone".

*Tax Benefits Program:* The Open Space Taxation Act (OSTA) is a vital tool for carrying out the GMA requirement that all jurisdictions in the state, whether or not they plan under the GMA, must designate and protect wetlands, aquifer recharge areas, floodplains and geological hazardous areas and ecosystems<sup>34</sup> Many landowners understand the significance of their critical areas and voluntarily protect them. They also have some help from 2005 legislation that clarified taxing buffer areas at their current use rather than at highest and best use. Participation in a current-use tax assessment program derived from the OSTA, RCW 84.33 and 84.34.

*Major Development or Master Planned Resorts:* The Master Planned Resort (MPR) designation provides an opportunity to encourage economic development that takes advantage of the significant rural and scenic resources of the County, particularly in those areas of the County where other opportunities are more limited, or where the local economy's dependence on the natural resource-based industries has dwindled. In Skagit County, Interstate 5 corridor between Seattle and Vancouver, B.C. is a busy year-round thoroughfare for domestic and international travelers. Skagit County sits strategically between the two cities, and also serves as the Highway 20 crossroads between the San Juan Islands and North Cascades National Park. Given the area's strategic location, the Upper Skagit Indian Tribe has purchased a substantial amount of property at the Bow Hill Road / I-5 interchange which it sees as the core of the Tribe's economic self sufficiency efforts and the primary source of current and future employment opportunities for its members. The Upper Skagit Indian Tribe's existing casino at Bow Hill Road already generates 550 jobs with an annual payroll of \$12,000,000. Over 70 jobs are currently held by Tribal members. The Casino serves as the cornerstone of a master planning process for additional commercial and economic development that will draw heavily on the Tribe's culture, history, and its relationship with the land. This area is currently being considered as a Master Planned Resort.

*The Cottage Industry/Small-Scale Business (CSB):* This designation is intended to provide for small-scale commercial or industrial activities involving the provision of services or fabrication or production of goods, primarily for clients and markets outside of the immediate rural area. The CSB designation is consistent with the Growth Management Act's allowance for the "intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents."<sup>35</sup> Uses designated CSB may expand by up to 50 percent of the existing building footprint and/or up to 50 percent of the existing outdoor working area. The expansion is permitted provided that the total expansion does not exceed a total of 1,500 square feet of gross floor area, and that the expansion occurs on the same lot upon which the existing use is located. The total square footage of allowable expansion is determined on a onetime basis, based on the area of use as of June 1, 1997.

*Planned Unit Developments:* Within each comprehensive plan land use designation, innovative techniques for land division are encouraged (e.g., Planned Unit Developments and Conservation and Reserve Developments (CaRD)) as an alternative to traditional and conventional planning and land division regulations. The CaRD land division concept is attractive because it provides future land use options and protects and conserves natural resource lands, rural lifestyles and critical areas. It also allows landowners to maintain some equity and development potential on the land while retaining open spaces and minimizing infrastructure costs. If CaRD land division is not required, sufficient incentives should be provided to encourage voluntarily participation in this approach to land division. A technique related to CaRD land division is the Planned Unit Development (PUD). PUDs

are similar in that they involve variations in controls related to density and other design elements. PUDs and CaRDs are different from standard land divisions, because they routinely involve density bonus beyond what is normally permitted in a given land use designation or zone in exchange for meeting certain land use management objectives such as setting aside land for open space, natural resource land and critical area conservation or to reserve lands for potential future development. PUDs differ from CaRDs in that PUDs normally involve permitting of mixed uses (commercial/residential). Under these comprehensive plan policies, PUDs will also involve higher urban densities than the rural densities found in CaRDs. PUDs are more appropriately located in urban growth areas where urban services and utilities are provided.

*Other Agricultural Supports:* In 2004, an amendment to the GMA provided a new set of regulations for agricultural activities and accessory uses.<sup>36</sup> This amendment provided farmers the ability to sell agricultural products on-site, have agri-tourism attractions, perform agricultural processing on-site, and provide temporary farm worker housing on-site if appropriate. Skagit County appointed an Agricultural Advisory Board consisting of a majority of agricultural producers. The Board advocates sound agricultural policies and programs for Skagit County. The County also mandates that agricultural operations shall be protected by requiring a buffer between the agricultural land use and any new land use adjacent to lands designated as agricultural. The buffer shall occur on the non-agricultural parcel for which a permit is sought and shall favor protection of the maximum amount of farmable land.

Table 4. Summary of Rural Land Management Tools for the State of Washington and Skagit County

<b>TOOL</b>	<b>ENTITY</b>	<b>BRIEF DESCRIPTION</b>
Growth Management Act	State	Umbrella state legislation that authorizes and requires various rural land planning tools including comprehensive planning, urban growth boundaries and limited areas of more intensive rural development.
The Comprehensive Plan “Rural Element”	State/Skagit County	The state provides very clear guidance on which issues must be addressed for rural planning at the county level including preservation, infrastructure, economic development and directing growth.
Urban Growth Areas (UGA’s)	State/Skagit County	State legislation enables the establishment of UGA’s, which are then delineated through the county comprehensive planning process.
Limited Areas of More Intensive Rural Development (LAMIRD’s)	State/Skagit County	State legislation enables the establishment of LAMIRD’s to help smaller scale village-style economic centers get established in rural areas. Skagit implements this provision through Village Center Zoning.
Open Space Taxation Act (OSTA)	State/Skagit County	Allows property owners to have their open space, farm and agricultural, and timber lands valued at their current use rather than at their highest and best use.
Small Farms Program	Washington State University	Provides research-based information and educational programs for farmers, consumers, decision-makers, and others involved in local food systems.
Food Alliance Program	Washington State University	Creates market incentives for the adoption of sustainable agricultural practices, with a special commitment to supporting the profitability and continued survival of small and mid-sized family-owned farms and ranches.
“From the Heart of Washington” Program	State Department of Agriculture	Public Awareness program designed to promote local food and agricultural products.
Accessory Uses	Skagit County	Provides opportunities for cottage industry development based on extractive industries.
Site Plan Review	Skagit County	Coordinated inter-agency review for more intensive development in rural areas to ensure the character, scale and environmental impacts are sustainable.
Transfer of Development Rights	Skagit County	Provides the opportunity to transfer the development potential from a “sending” area to a “receiving” area as defined in the Comprehensive Plan.
Purchase of Development Rights	Skagit County	Provides the opportunity to purchase the development rights associated with a tract of land in order to place a conservation or agricultural easement on that land.
Cluster Subdivisions	Skagit County	Depending on base zoning, these provisions allow for more compact development of residential areas to allow for greater open space protection or the future establishment of village centers.

Table 4. (Continued)

Affordable Housing Technical Assistance and Incentives	Skagit County	Provides technical guidance to developers regarding the potential location, densities and affordability restrictions desired by the county. Also provides for development of surplus county lands and the waiver of impact fees to provide further incentives.
Low Impact Development	Skagit County	Streamlined permitting for better clearing and grading techniques and mandates to reduce impervious cover and maintain natural drainage patterns.
Rural Design Standards	Skagit County	Provides design standards that specifically address the unique character of rural areas and infrastructure.
Agricultural Density Zoning	Skagit County	Specifies a sliding scale of housing density from 1 unit per 5 acres to 1 unit per 80 acres depending on the designated land use.
Right-to-Farm Policies	Skagit County	Provides outreach materials and signage to educate residents regarding the cultural importance of maintaining active agriculture.
Cottage Industry/Small-Scale Business (CSB)	Skagit County	Designation provides for the expansion of isolated businesses associated with local industry.
Major Development or Master Planned Resorts	Skagit County	Takes advantage of strategic location between two economic centers and provides opportunities to develop resort areas while maintaining surrounding rural character.
Planned Unit Development	Skagit County	Allows for the coordinated development of larger tracts of land in a more flexible and potentially more dense manner.

<sup>1</sup> John Zawitowski, personal communication.

<sup>2</sup> Brinsfield, Russell. Maryland Center for Agro-Ecology, Inc. Montgomery Ag Reserve Teaches How to Protect all of Maryland's Working Lands.

<sup>3</sup> Lacy, P. 2006. Farmland Preservation: The Benefits of Saving Our Agricultural Land and Resources.

<sup>4</sup> LFUCG 2001 Comprehensive Plan Update, Section 5.

<sup>5</sup> "The Growth Management Act of Washington State: Success and Challenges", A Report by the League of Women Voters of Washington. August 2006, pg. 10.

<sup>6</sup> "Livable Washington", American Planning Association, November 2002, pg. 1-2.

<sup>7</sup> "Evaluation of Local Implementation of the Washington State Growth Management Act", Douglas Porter, the Growth Management Institute, March 2005, pg. 2.

<sup>8</sup> Ibid, pg. 5

<sup>9</sup> "Creating Livable Communities: Managing Washington's Growth for 15 Years." Washington State Department of Community, Trade and Development (CTED). June 2006. p. 39

<sup>10</sup> Ibid. pg. 15-16

<sup>11</sup> Ibid p.15, 16

<sup>12</sup> "The Growth Management Act of Washington State: Success and Challenges", A Report by the League of Women Voters of Washington. August 2006, pg. 10

<sup>13</sup> Requirements for Jurisdictions Not Previously Planning Under the GMA - If the Office of Financial Management (OFM) certifies that a county which previously was not required to plan under the GMA (because it had a population under 50,000 or an insufficient growth rate for the previous ten years), has now exceeded those two criteria, it will now be required to enact the following:

- 1) development regulations conserving agricultural, forest, and mineral lands; and, in cooperation with its cities,
- 2) a county-wide planning policy;
- 3) designation of urban growth areas (UGAs); and,



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4) a comprehensive land use plan.

<sup>14</sup> “The Growth Management Act of Washington State: Success and Challenges”, A Report by the League of Women Voters of Washington. August 2006, pg. 11

<sup>15</sup> Ibid pg. 16

<sup>16</sup> (RCW 36.70A.070 (5))

<sup>17</sup> (RCW 36.70A.070(5)(d))

<sup>18</sup> “Livable Washington”, American Planning Association, November 2002, pg. 2

<sup>19</sup> Department of Community, Trade and Economic Development, “Keeping the Rural Vision: Protecting Rural Character & Planning for Rural Development June 1999, p. 1.

<sup>20</sup> Ibid p.9.

<sup>21</sup> (RCW 36.70A.070 (5))

<sup>22</sup> (RCW 36.70A.070(5)(d))

<sup>23</sup> Keeping the Rural Vision: Protecting Rural Character & Planning for Rural Development

<sup>24</sup> Department of Revenue Taxpayer Assistance, “Open Space Taxation Act”, November 2005.

<sup>25</sup> GMA: RCW 36.70A.030(15)

<sup>26</sup> Frank, Lawrence. “A Study of Land Use, Transportation, Air Quality, and Health in King County, WA.” Executive Summary. September 27, 2005

<sup>27</sup> RCW 36.70A.110, RCW36.70A.110 (1), (2)

<sup>28</sup> RCW 36.70A.070(5)(d)(i) and (iv).

<sup>29</sup> RCW 36.70A.030(14)

<sup>30</sup> RCW 36.70A.090

<sup>31</sup> Ibid, pg. 20-23

<sup>32</sup> RCW 36.70A.091

<sup>33</sup> “Evaluation of Local Implementation of the Washington State Growth Management Act”, Douglas Porter, The Growth Management Institute, March 2005, pg. 7

<sup>34</sup> Ibid pg. 32.

<sup>35</sup> (RCW 36.70A.070(5)(d)(iii))

<sup>36</sup> Ibid pg. 34-35

## **PROVIDING A FRAMEWORK FOR RURAL PLANNING AND IDENTIFYING OPPORTUNITIES IN HAWAII**

The programs described above demonstrate effective rural planning and implementation on a variety of levels. A close look at the guidance and legislation developed by these states shows that sound rural planning can emerge from three types of programming:

- 1) Guidance for Comprehensive Planning and Policies in Rural Areas
- 2) Thresholds and Standards for Local Zoning Initiatives
- 3) Policy Guidance for Rural Communities
- 4) Incentives (financial and other) for Rural Economies and Rural Preservation

The following text will examine these elements individually for those state programs described above where applicable and will also provide a brief assessment of how these programs compare to relevant state statutes in Hawaii. For the purposes of this comparison, the following statutes were reviewed:

- 1) Chapter 205: Establishment, duties and powers of, and administration of the State Land Use Commission (selected sections)
- 2) Chapter 226: Hawaii State Planning Act (selected sections)
- 3) Chapter 46: Various sections pertaining to the enabling language for County Zoning
- 4) Act 205: Recently passed legislation enabling Counties to recommend changes to state level Rural Districts
- 5) Act 183: Recently passed legislation including language for (but not limited to) the process and criteria for identifying important agricultural lands and the local policy framework for protecting these lands.

It is important to note that the review of these statutes provided in this report was not comprehensive in nature and does not provide any legal opinion. Rather, the review of these statutes was performed to identify areas that could be revised to better address the planning and land use issues described in the review of other state programs.

### **Comprehensive Planning for Rural Areas**

Planning for the sustainable development of rural areas can take many forms and can examine several different issues relative to growth management. From the perspective of true Comprehensive Plans, the program examined in this report that provides the highest level of guidance for rural areas is Washington State's Growth Management Act. Although the rural planning performed in selected counties in Maryland and Kentucky is of the highest caliber, Washington State sets itself apart from these states by specifically requiring a "rural element" in a County's comprehensive plan.

The guidance at the state level for the rural element reflects a respect for the different characteristics of its counties and therefore does not specify the types of "rural densities" that would be appropriate for different areas. These densities are to be determined by the counties. However, the rural element must provide an explanation of how these densities

were chosen and how they are consistent with local needs and character. Also included among these county-specific discussions, the state requires a detailed examination of growth management tools, critical areas, rural industry management, and identification of areas suitable for more intense development.

Aside from comprehensive plan elements, some other rural planning tools examined in the three states include more targeted infrastructure planning, identification of urban boundaries and identification of preservation areas. In Maryland, for example, the state requires counties to map existing sewer service areas as well as those that will receive sewer service over a specific planning horizon (e.g., five or ten years). Their Rural Legacy Program also requires a detailed plan that maps rural lands prioritized for preservation. This combination of identifying lands for preservation as well as areas for more urban service levels provides a clear path for policy and zoning relative to allowable uses, density and other design considerations.

In Hawaii, the County General Plan is the equivalent to what may be called the “Comprehensive” or “Master Plans” in other states. The state statute that specifically addresses the elements of a County General Plan is Chapter 226-58. In terms of prescribing components of the plan, this language requires General Plans to:

“(1) Contain objectives to be achieved and policies to be pursued with respect to population density, land use, transportation system location, public and community facility locations, water and sewage system locations, visitor destinations, urban design, and all other matters necessary for the coordinated development of the county and regions within the county;”

The statute also contains a broad reference to state policies and programs that should serve as a framework for the objectives in the County Plan. Many of these objectives are outlined in the preceding sections of Chapter 226 and deal generally with issues of housing, transportation, infrastructure, and others. The vague language of this statute reflects the need for flexibility as the four counties of Hawaii face very different challenges relative to providing housing, infrastructure, natural resource protection and economic opportunity. However, an examination of the language provided by a state like Washington perhaps provides insights into how Hawaii’s language could be revised in a way that respects the unique qualities of the four counties while providing a more specific planning framework for their rural areas. The Washington State statute specifically acknowledges several fundamental planning principles that are absent or only peripherally addressed in the Hawaii statutes. These include, but are not limited to:

- Appropriate rural housing densities will change from one County or one landscape to another;
- There should be different infrastructure standards in rural areas as compared to suburban or urban environs;
- A variety of innovative tools that are specific to rural areas should be identified in a rural planning element;

- A rural planning element should specifically address measures that can be used to prevent sprawl;
- Techniques should also be identified that will limit the amount of conflicts between agricultural use and residential and/or commercial.

### **Thresholds and Standards for Local Zoning Initiatives**

In the research performed for this report, statutory thresholds and standards that have been developed by state agencies for rural development are rare. Most state planning agencies reviewed in our research provide general guidance regarding different issues relative to rural planning but stop short of actually prescribing specific housing densities, minimum lot sizes or other dimensional requirements. This is generally the case with Kentucky, Maryland and Washington State. Although these states do provide statutory requirements for comprehensive planning and enable specific land use techniques appropriate to rural areas, standards for density and dimensional controls are generally left to local zoning codes.

Other thresholds and standards that potentially apply to local zoning initiatives are those for innovative land use tools including transfer of development rights, cluster housing or conservation subdivision design, planned unit development, and others. Similar to basic density and dimensional thresholds, state legislation often enables these techniques with vague language and leaves the details of the program to be worked out in the local ordinance development process.

In many counties across the U.S., there are good examples of density thresholds being applied in innovative ways to achieve sound rural planning. In Montgomery County, MD, for example, the success of their TDR program relies heavily on the down-zoning of agricultural lands to 1 unit per 25 acres for actual development. If a landowner chooses to transfer his or her rights, however, the transferable density is 1 unit per 5 five acres. This five-fold increase in property yield serves as a tremendous incentive and has made Montgomery County's TDR program one of the most successful in the country. Montgomery County also uses a transect approach to transition from urban to increasingly rural areas. Allowable densities immediately adjacent to urban areas can be as high as one unit per 4,000 square feet and gradually decrease to as low as one unit per 25 acres in the furthest outlying rural areas.

Although not specifically researched for this report, York and Lancaster Counties in Pennsylvania have developed two approaches to establishing allowable densities in rural areas: sliding scale zoning and fixed-area ratio zoning. The two programs have the following common features:

- Provide minimum and maximum lot areas for uses other than farming – homes and farm support businesses
- Limit the number of development rights on a parcel
- Locate dwelling or non-farm uses on areas of the farm property which are the least suitable for agriculture use

- The area remaining after all development rights have been used may not be further subdivided.

The difference between the two techniques is the method of placing limits on the number of development rights (lots to be used for dwellings or non-farm activities) on a parcel.

- Sliding scale zoning: Using a sliding scale the number of development rights varies with the size of the farm parcel. The following example shows the sliding scale used in Shrewsbury Township, York County:

Size of Parcel	# of Development Rights
0-5 acres	1
5-15 acres	2
15-30 acres	3
30-60 acres	4
60-90 acres	5
90-120 acres	6
120-150 acres	7
Over 150 acres over 150 acres	8 plus 1 dwelling for each 30 acres

- Fixed-Area Ratio: The number of development rights is based on a set ratio of rights to the total acreage. Examples include one development right for every 10 acres or one development right for every 25 acres. The size is often based on the county’s definition of a productive farm.

Although many states do not explicitly establish density or dimensional thresholds for use in the County Zoning Codes, many of the states examined for this report do use thresholds for state level incentive programs. These thresholds are used to prioritize or qualify lands for financial assistance that can be applied to outright purchase of development rights, other easements, or as seed money for village center development. The thresholds used in these programs are reviewed in detail above in the research developed for the three effective state and county programs.

In the Hawaii State Statutes reviewed for this report, the two density thresholds that deserve the most attention include those set for Rural and Agricultural Districts. The recently passed Act 205 specifies that housing densities in Rural Districts shall not be lower than one unit per ½ acre. State legislation also specifies that any subdivision within the Agricultural District shall create lots no smaller than one acre.

In studies of other rural counties across the U.S., including those highlighted for this report, State guidance often suggests that counties examine two types of density for their rural areas. Outlying rural lands characterized by agricultural and natural communities should be considered low-density and commercial centers should be considered high density. Typical county-level interpretation of this guidance shows Zoning Codes that often require between 10 and 40 acres per unit as a minimum lot size, far exceeding the

threshold set in the State of Hawaii. Furthermore, typical densities in rural commercial centers often far exceed those allowed by Hawaii in order to create viable mixed use “live-work” village centers.

The minimum lot sizes currently prescribed by Hawaii state law actually provide a significant economic incentive to create suburban sprawl. To maximize the economic yield of a particular tract of land, developers will logically choose to create subdivisions at densities of ½ acre or 1 acre, pending the County Codes follow these thresholds. Furthermore, the manner in which the statute is written seems to preclude the possibility that fee simple single family clusters could be developed at densities higher than the ½ and 1 acre threshold. This is a significant barrier to creating clusters that can adequately be designed in something other than a sprawling pattern. Hawaii should therefore consider revising the density thresholds in these statutes to include much lower densities in both Rural and Agricultural Districts for areas characterized by agricultural activity or natural communities. Where counties identify commercial centers that may become vibrant mixed use communities, the statute should allow for these areas to be developed at much higher densities. This process should build upon the General Plan process and could mimic many of the elements required by Washington State in their rural element piece discussed above.

Within the various county ordinances, minimum lot sizes within Rural or Agricultural Districts generally provide some level of opportunity at the densities prescribed by the state. Some counties have developed approaches to establishing densities in these areas far less than the state level limits. For example, Maui has established an agricultural district with a sliding scale approach similar to the Pennsylvania counties identified earlier. These provisions (Table 1) decrease densities as the overall land area exceeds certain thresholds:

Table 1. County of Maui Agricultural District Allowable Density

Area of lot (in acres)	Maximum number of permitted lots: 2-acre minimum lot size	Maximum number of permitted lots: 15-acre minimum lot size	Maximum number of permitted lots: 25-acre minimum lot size	Maximum number of permitted lots: 40-acre minimum lot size
At least 2 but less than 31	7			
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus one additional lot for each 15 acres	1		
92+	12, plus one additional lot for each 40 acres above 92 acres (not to exceed 14 lots)	2, plus one additional lot for each 60 acres above 92 acres	1, plus one additional lot for each 100 acres above 92 acres	one for each 160 acres above 92 acres

The County of Maui’s Rural District zoning, however, does default to the ½ and 1-acre zoning enabled by the state and therefore lays the groundwork for sprawling residential development in these areas. Recent development patterns on the island demonstrate that market demands will favor this type of zoning and continue to pressure undeveloped areas on Maui to become sprawl.

In terms of innovative zoning tools being applied in Hawaii, counties have logically looked to the enabling statutes to determine which tools are at their disposal. As a result, cluster ordinances, transfer of development rights and planned development represent the most common techniques in local county codes. In general, a review of these codes reveals that many of these codes have very specific guidelines for the densities that can be achieved using these tools, but say little in terms of design guidelines. For example, with cluster development, early attempts at implementing this technique across the U.S. demonstrate a few consistent yet critical deficiencies that can be found in some of the local Hawaiian County Codes. These deficiencies include:

- Not using existing conditions as a basis for identifying open space opportunities;
- Not properly discussing the role of open space in the subdivision process;

- Not allowing for flexibility in roadway design or lotting to account for site specific conditions.

When using cluster zoning in an agricultural setting, the local codes in Hawaii have the opportunity to use the Agricultural Lands of Importance to the State of Hawaii (ALISH) boundaries to frame the preservation opportunities on a site. Outside of agricultural opportunities, however, it is difficult to find strong local zoning language that deals with other natural features to be preserved. As a possible exception, the City-County of Honolulu Zoning Code does require certain natural features to be identified in the Country Cluster application process:

“Approximate location and general description of any historical or significant landmarks or other natural features, and trees with a trunk diameter of six inches or more at five feet above ground, and an indication of the proposed retention or disposition of such features;” (21-3.60-2)

This language provides a good basis for how cluster development can be used in a context sensitive manner to respect existing conditions on an undeveloped site. Further design or programming considerations to consider for the site within the zoning process could include

- Specifying the function of the open space (e.g., natural versus recreational)
- Specifying the type(s) of restriction(s) to be place on the open space;
- Document how the open space will be maintained and/or funding for these activities;
- Providing requirements for connecting the open space from one cluster to another.

### **Policy Guidance for Rural Areas**

In examining most state level programs, looking for numeric thresholds for different zoning based techniques generally yields limited results. Whether addressing basic zoning techniques such as minimum lot sizes and setbacks, or enabling much more advanced mechanisms such as TDR or Conservation Subdivision Design, states generally stop short of quantifying the various thresholds associated with these tools. The logic behind this approach is that states need to respect the different political, environmental, and social climates of local jurisdictions and allow these local practitioners the opportunity to develop specific thresholds that suit the unique conditions of their county.

Although this somewhat “laissez-faire” approach does respect the unique conditions of each municipality or county, it does have potential drawbacks. If state statutes are designed to enable these different techniques, but do not quantify the way they are to be applied, the risk is that local governments may not have the capacity or knowledge-base to implement the tools effectively. This is a common occurrence across the U.S. with many states allowing for innovative planning without seeing any successful implementation at the local level. Where there is success, what sets these states apart is often a strong policy guidance effort to accompany the enabling statutes.



In the states examined for this report, Washington and Maryland stand out as two states which provide a significant level of policy guidance for the programs and techniques enabled by existing statutes. In Washington, the Washington State Community Trade and Economic Development agency published *Keeping the Rural Vision, Protecting Rural Character & Planning for Rural Development* in June 1999. This book is a policy guide to accompany the state statutes that require a rural element with the local comprehensive plan and require the identification of specific development densities and planning tools for rural areas. Where the state statutes are silent regarding specific “low” and “high” density rural thresholds, this piece outlines several specific examples for local practitioners to consider. There are also detailed discussions of different service level standards for rural areas, ways to integrate resorts and cottage industry into the rural landscape, the use of land banks for preservation, and several other techniques. Where the state statute prescribes “what to do”, this guidance piece and others provided by state agencies prescribe “how to do it”.

In Maryland, there are several examples of policy guidance materials that help to expand upon the tools that are enabled at the state level. Similar to the guidance provided by Washington State, the Maryland policy guidance pieces are specifically targeted to address the tools and programs offered at the state level. The following list of policy documents and descriptive text is taken directly from the Maryland Department of Planning website and demonstrates the wide variety of tools and issues for which the state has provided guidance relative to rural areas.

#### Adequate Public Facilities Ordinances, June 2006

This booklet updates the 1996 Models & Guidelines on Adequate Public Facilities Ordinances and provides a definition of APFOs. It offers guidance and direction to local jurisdictions that are considering the adoption or refinement of an APFO, including how to determine whether an APFO program is appropriate, how to design a program, legal issues and municipal applications.

#### Infill and Redevelopment, October 2001

This report includes model zoning codes, examples of existing zoning codes from jurisdictions throughout the country, and a list of minimum requirements that jurisdictions must meet in order to qualify for certain State incentives. This is a companion report to the Smart Neighborhoods Models & Guidelines.

#### Smart Neighborhoods, September 2001

This report provides sample code language that local governments can use to address some of the impediments to smart neighborhood development found in land use regulations. This is a companion report to the Infill and Redevelopment Models & Guidelines.

#### Revisiting the Comprehensive Plan: The Six Year Review, June 2000

This is a resource guide for the periodic assessment of local Comprehensive Plans and implementing regulations and programs.

Sizing and Shaping Growth Areas, December 1998

This is a resource guide for local governments that are considering the creation or refinement of growth boundaries.

Sensitive Areas: Volume II, February 1998

This publication contains descriptions of four broad categories of sensitive areas including tidal wetlands, nontidal wetlands and waterways, groundwater and mineral resources, and landscape conservation. It covers definitions, reasons for protection, protective measures, mapping resources, and a detailed biography.

Smart Growth: Designating Priority Funding Areas, November 1997

This publication features strategies and methodologies to determine the boundaries of Priority Funding Areas in response to the "Smart Growth" Areas Act of 1997. It includes models for calculating residential density, land capacity and future land needs, guidelines for designating rural villages, and a format and procedure for submitting PFAs to the Maryland Department of Planning.

Smart Growth: Municipal Implementation, October 1997

This guide to the "Smart Growth" Areas Act of 1997 offers ways to meet the requirements and take advantages of the benefits of the Act. It includes municipal-county impact fee agreements, school facility standards, and PFA certification models.

Resource Planning, March 1997

This booklet provides an overview of planning and zoning issues for mineral resources extraction. The discussion is concentrated on sand and gravel surface mining, but includes coal and stone resources. County level planning is the primary focus, but some municipal mineral extraction programs are addressed.

Preparing a Comprehensive Plan, January 1996

This document suggests ways to incorporate the seven Visions of the 1992 Planning Act into a Comprehensive Plan. It contains a model outline; a discussion of public participation techniques; and model goals, objectives, and policies.

Urban Growth Boundaries, August 1995

This report examines urban growth boundaries as a technique for concentrating growth in development areas and discouraging it elsewhere. It explains how boundaries are used in Maryland and in other states, outlines the elements that must be present for a growth boundary to be successful, and presents a step-by-step procedure for creating and enacting a boundary.

Achieving Environmentally Sensitive Design, April 1995

This report can help local jurisdictions reconcile protection of sensitive areas and concentrating development. The report describes how regulations can hurt rather than help the environment, offers general design guidelines for protecting forests, wetlands, steep slopes, habitat, and water quality and includes examples of environmentally sensitive projects and flexible ordinances that put innovative projects on a fast track.

### Overlay Zones, March 1995

This booklet describes overlay zoning as an important growth management tool and includes examples for both resource protection areas and growth areas. Overlay zones can be an effective and efficient method for adding or modifying zoning rules to address a planning issue that does not coincide with the boundaries of existing zones.

### Transferable Development Rights, January 1995

This publication offers practical advice to local governments considering use of transferable development rights, describes existing TDR programs in Maryland and other states, and provides guidelines for preparing TDR ordinances and model zoning codes.

### Clustering for Resource Protection, October 1994

This publication offers practical advice to local governments considering use of clustering, contains several planning and zoning models, and a model conservation easement. (Note: This report is out of print, but it can be viewed at the MDP library or at a public library in Maryland.)

### Design Characteristics of Maryland's Traditional Settlements, August 1994

This publication, based on work conducted at the School of Architecture at the University of Maryland, focuses on the detailed design characteristics of several representative towns, villages and neighborhoods in Maryland. The report is richly illustrated with maps, photographs, and streetscape renderings.

### Preparing a Sensitive Areas Element, May 1993

This document covers the four environmentally sensitive areas that require protection under the 1992 Planning Act: streams and their buffers, 100-year floodplains, habitats of threatened and endangered species, and steep slopes. It includes information to aid in identifying and defining sensitive areas and formulating protective goals, objectives, and implementation techniques.

### Procedures for State Project Review Under the Planning Act of 1992, January 1993

This document includes text from the 1992 Economic Growth, Resource Protection, and Planning Policy Executive Order that establishes procedures for review of capital improvement projects for consistency with the State's growth policy.

In Hawaii, the development of state level policy guidance should begin with more prescriptive statutes that outline a stronger comprehensive planning approach to rural areas and a more extensive list of planning tools that could potentially be applied to these areas. With this framework in place, the state can begin to develop policy guidance that is anchored in existing requirements. For example, the limited application of cluster development and transfer of development rights in the four Hawaiian counties speaks to the need for more concrete guidance relative to these and other zoning tools. Although these tools are enabled by statute, county practitioners may not have the resources at their disposal to effectively implement these tools. When detailed planning for issues specific to rural lands becomes more clearly outlined, Hawaii can then provide policy guidance

that will lead counties from the planning phase into concrete zoning initiative and incentive programs.

### **Incentives and Support for Rural Preservation and Rural Industry**

The state level program researched for this report offer several examples of incentive programs targeted toward preserving rural lands and/or agricultural operations. These programs are described in detail above in the research piece for the three successful states and counties. The programs are designed to match specific planning objectives with state level funding including the purchase of development rights, special tax assessments on agricultural property, financial assistance to agricultural enterprise and funding for redevelopment of rural village centers.

Table 2. Incentive Program Summary from Successful States

<b>MARYLAND</b>	
The Rural Legacy Program	Preservation of rural areas through purchased easements.
Smart Growth Priority Funding	Wide variety of funding including rural village centers
Agricultural Land Preservation Program	Permanent preservation of large agricultural tracts through use-tax valuation, sewer exemptions and easement purchase.
Maryland Agricultural and Resource-Based Industry Development Corporation	Capital and credit for agricultural and resource based industry
<b>KENTUCKY</b>	
Purchase of Agricultural Conservation Easement Corporation	Purchase of permanent agricultural easements
Agricultural District Law	Protection against eminent domain, use-tax valuation and utility exemptions.
<b>WASHINGTON</b>	
Washington Open Space Taxation Act	Use-tax valuation
New Farmland Preservation Grant Program	Purchase of agricultural preservation easements

It is important to note that the states of Kentucky and Maryland have produced some of the most prolific preservation programs in the country for rural/agricultural lands. Without the state level funding mechanisms available to counties in these states, there is no doubt that these programs would not be nearly as successful as they are today. Each of these state programs has a limited application process for rural preservation funds that requires a basic explanation of why particular lands are being nominated for protection, the nature of the easements to be provided and other administrative/ownership

information. What is most striking about the Maryland programs, in particular, is the diversity of rural planning objectives that have access to state level funding.

In a state with market pressures as strong as those in Hawaii, strong state level incentives will be a critical component of sheltering rural lands from sprawl. Additionally, Hawaii is faced with existing plantation lands that are characterized by aging infrastructure and centers of mixed use activity that have been neglected as plantation operations have been abandoned over time. County resources are often inadequate to maintain these areas of opportunity and incentive programs could play an important role in revitalizing these potential village centers. Hawaii should therefore strongly consider developing a series of incentives that mirrors the broad scope of what has been implemented in Maryland in order to more effectively support the rural objectives that are already articulated within the State Planning Act.