Ag land preservation has reached maturity.

Farms and fields stretch as far as the eye can see in areas of Suffolk County, New York, thanks in part to three decades of farmland preservation efforts. The movement is strong in Colorado, too, where rangeland is vulnerable to development—like this low-density subdivision (right) on Denver's fringe.
Just over 30 years ago, the first public purchase of farmland development rights (also known as conservation easements) took place in Suffolk County, New York, on the eastern end of Long Island. Since then more than 8,000 acres of the county’s farmland have been preserved, and the area’s once famous potato fields and duck...
farms have given way to wineries, vegetables, horticulture, and horses.

“The challenge is to adapt to a changing landscape and a changing world for agriculture,” says John Halsey, president of the Peconic Land Trust, based in Southampton. “Farmland preservation is about protecting not only farmland but an industry, too.”

“Farmland preservation is now a mature and sophisticated process,” adds Deborah Bowers, editor and publisher of Farmland Preservation Report, a monthly newsletter published in Maryland. “You have to understand land-use planning, the development process, tax angles, fundraising, and how to put together deals. Above all, you need to understand that farming is a dynamic business, not only a way of life.”

Farmers and ranchers own more than 900 million acres, or about 60 percent of the nation's privately held land. The average age of these landowners is 57, meaning that tens of millions of acres could change hands within the next 20 years. What the heirs and buyers of that land decide to do with it will affect food production, the environment, and development patterns in communities across the country.

To date, landowners have sold or donated conservation easements on more than two million acres of farmland and over 1.3 million acres of ranchland. State-level farmland preservation programs exist in 25 states, and hundreds of local governments have bought conservation easements on farmland. More than 300 private, nonprofit land trusts list farmland preservation as one of their main goals. Although no statistics are available, easements typically save working farms as well as farmland.

Farmland preservation has enjoyed widespread popularity because it is voluntary and provides the landowner with cash or tax benefits. Although preservationists often cite the importance of preserving farmland as a long-term source of food, in many metropolitan counties, farmland preservation has also become a key ingredient in curbing sprawl and providing green infrastructure.

While the surge of activity in urban food production is exciting, the distant countryside will continue to produce most of the nation's grains and livestock, and most of America's fruits, vegetables, and milk will continue to come from farms in metropolitan counties. These counties are expected to absorb most of the nation's additional 115 million residents by 2050, according to the U.S. Bureau of the Census. If energy costs rise, then local and regional production and farmland preservation will become even more important.

**Funding and tax benefits**

Although many states and local governments have cut spending for 2009, Congress last year authorized $733 million for five years of land preservation grants to state and local governments and land trusts. Through the Farm and Ranchland Protection Program, the federal government will pay up to half the cost of purchasing a conservation easement.

A number of states, especially in the Northeast, have made farmland preservation a priority. Pennsylvania, a national leader, has spent more than $1 billion to preserve just over 400,000 acres. The state put in the lion's share of funding through the 1990s, while in recent years county governments have been appropriating more funding for farmland preservation than the state. Because farmland preservation is a long-term capital investment in green infrastructure, counties often have issued bonds to fund their programs.

Congress has also temporarily amended the tax laws on donated easements to encourage farmers and other landowners to donate perpetual conservation easements on farmland. More than 300 private, nonprofit land trusts list farmland preservation as one of their main goals. Although no statistics are available, easements typically save working farms as well as farmland.

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Congress has also temporarily amended the tax laws on donated easements to encourage farmers and other landowners to donate perpetual conservation easements on their land. (Term easements typically last anywhere from 10 to 30 years and then expire.) Until the end of 2009, qualified farmers can use the value of a donated conservation easement as an income tax deduction equal to 100 percent of the farmer's adjusted gross income each year for up to 16 years or until the easement value deduction is reached, whichever comes first.

Legislation is currently pending in Congress (H.R. 1831 and S. 812) to make this increased easement deduction permanent. The cost of making the more favorable deduction permanent has been estimated at between $245 million and $761 million over 10 years.

**Plan to preserve**

According to the Nature Conservancy Trust Alliance, more than 17,000 conservation easements have been completed to date, and as Anthony Anella and John B. Wright note in their book, Saving the Farm: Conservation Easement Design in the American West, only a handful of them have been overturned in the courts. (Colorado’s conservation easement program has, however, been the target of an IRS investigation. See News, October 2008.)

Farmland conservation easements are most effective when they accompany a local comprehensive plan, restrictive agricultural zoning, and growth boundaries. Several of the leading counties in growth management have used this approach, including Baltimore County, Maryland; Lexington-Fayette County, Kentucky; Marin and Sonoma counties in California; and Lancaster County, Pennsylvania. The main strategy for preserving farmland is to form large contiguous blocks of preserved land rather than islands of preservation, which can be vulnerable to neighboring development.

“Bigger blocks of preserved land are always better than small blocks,” says Matt Knepper, director of the Lancaster County Agricultural Preserve Board. That is why the board tries to acquire properties next to existing preserved farms. Today, Lancaster County has more than 80,000 acres of preserved farmland—more than any other county in the nation—and it has created nine blocks of 1,000 or more acres.

**The farming industrial complex**

Agriculture is a big business. In 2007, according to the latest Census of Agriculture, America’s farmers produced $207 billion worth of food and fiber products. Less than two percent of the labor force is directly employed in farming. But add in food processing, marketing, and distribution—not to mention restaurants—and agriculture, broadly speaking, is a more than $1 trillion-a-year industry and employs an estimated 15 percent of the nation’s workforce.

The 2007 Census showed that the number of farms increased by four percent over the 2002 Census, with “farm” defined as any place that produces and sells $1,000 of agricultural products during the census year. Using this definition, the 2007 tally counted 2.2 million farms, but this number is deceptive. Nearly two-thirds of all farms show less than $10,000
a year in sales of farm products and make up just three percent of the nation's farm output. The top 125,000 farms account for three-quarters of all farm products, and the number of farms with annual sales of $1 million or more nearly doubled from 2002 to 2007.

In contrast, the traditional family farm—with sales of $50,000 to $250,000 a year—continues to get squeezed. These farms are declining in number because they often lack the capital to expand and are too small to support their owners financially. These are the farms most vulnerable to development pressure. Their numbers fell by almost nine percent between 2002 and 2007.

For the first time, the 2007 Ag Census has included data on organic farms (20,437), farms generating energy (23,451), and farms that market their products through community-supported agriculture arrangements (12,549), in which the farmer sells shares in his products directly to consumers. Such innovations are examples of how farmers are adapting to consumer demands and developing alternative energy sources in order to stay in business.

CAFO controversy

Some land trusts will buy or accept a donation of a conservation easement only if the property disallows a confined animal feeding operation. The U.S. Environmental Protection Agency categorizes CAFOs as large, medium, and small, based on the number of animals. Large CAFOs, numbering about 13,000 nationwide, are required to obtain a National Pollutant Discharge Elimination permit under the Clean Water Act.

In 2005, the Pennsylvania legislature responded to efforts by several local governments to ban or tightly control the construction or expansion of CAFOs. Act 38, better known as the Agriculture, Communities, and Rural Environment Act 38, as of Vermont, says part of the problem with heirs' lands is that "the fair market value of each share in an in-kind partition would be materially less than the share of each co-tenant in the money equivalent that would be obtained from the sale of the whole, and if an in-kind division would result in material impairment of the co-tenant's rights."

Mitchell Silver, AICP, planning director for the city of Raleigh, says the National Conference of Commissioners on Uniform State Law is developing a uniform tenancy and partition act that would amend state partition laws. Silver says the outcome would affect both rural and urban areas. "It's not just a rural problem, but also a city problem in that we often can't get free title in areas the community wants to see developed," he says.

A house committee of the state's general assembly recently considered but failed to act on a bill addressing some aspects of court-ordered partition. Bill proponents say developers opposed the changes because they often court the owners of relatively small interests in family property. "Laws for partition sales allow any of those heirs to say, 'I want my share,' and that's how [developers] force a sale of the entire property," Silver says.

Disappearing farms

Kathy Ruhf, codirector of Land for Good, a nonprofit that works with farmers and other land managers in New England, says to expect continued loss of farmland, especially heirs' land. "Development pressure on farmland in urbanizing areas is huge," Ruhf says. Bob Parsons, an extension agricultural economist at the University of Vermont, says part of the problem with heirs' lands, in particular, is the continued rise in the value of real property. "We didn't have the escalating land prices like we have today to give people incentive to sell the farm," Parsons says.

While partition laws break up family farms, depriving some African American farmers of their legacy, Parsons adds, many young people aren't interested in farming as a career. "The image of farming and manual labor in agriculture is something young blacks don't see as an opportunity to get ahead. And that means the outlook for preserving black family farms looks pretty bleak," Parsons says.

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state's nutrient management law, right-to-farm law, or other state laws.

The advantage of the ACRE approach, according to Shelly Dehoff of the Lancaster County Conservation District, is that "the review request goes beyond the state right-to-farm law, and a farmer does not need to hire an attorney to have the ordinance reviewed." There have been 52 review requests since 2005. Twenty-three resulted in no legal action, eight are still pending, and 21 raised legal concerns about local ordinances. Of these 21, five have gone to court.

When the ACRE program was created, the Pennsylvania legislature also strengthened the state Nutrient Management Act. A CAFO operator cannot apply manure on land within 100 feet of a stream, lake, or pond unless there is a vegetated buffer at least 35 feet wide to prevent manure runoff into the waterway.

CAFO operators must also draft an odor management plan explaining exactly how they will control farm odors that may travel off the property. The plans must be submitted to the state Conservation Commission for review and approval.

**Taking preservation into their own hands**

Farmland preservation has enjoyed success in the Northeast in part because that region has relatively little public land. It's also taking off in the West, where public land is plentiful. The Intermountain West has been the nation's fastest growing region over the past 20 years, and 48 million more people are expected to live in the 11 western states by 2050 and consume 26 million acres of agricultural land.

Ranches typically cover thousands of acres and provide wildlife habitat, water resources, and buffers between urbanizing areas and the countryside. However, many ranchers are land rich and cash poor, so the sale of land is a valuable option. But as development pressures for second homes and suburbs have intensified, conservation easements have become increasingly popular in ranching country.

In 1995, the Colorado Cattlemen's Association formed its own land trust, the Colorado Cattlemen's Agricultural Land Trust, to work with fellow ranchers on preserving their land. Similar organizations have created land trusts in five other states. In 2004, these land trusts formed the Partnership of Rangeland Trusts to enhance "the voluntary conservation and stewardship of America's rangelands." Besides the Colorado group, PORT members include the California Rangeland Trust, Montana Land Reliance, Oregon Rangeland Trust, Rangeland Trust of Kansas, and Wyoming Stock Growers Agricultural Land Trust.

"PORT was formed to leverage funding for ranchland preservation," explains Nita Vail, chief executive officer of the California Rangeland Trust. "And the exchange of ideas among the member organizations has been very helpful."

PORT members now hold more than 900 conservation easements on 1.3 million acres. The California Rangeland Trust alone holds conservation easements on more than 185,000 acres, including an 80,000-acre easement on the famous Hearst Ranch, and it has applications from 100 landowners who own 450,000 acres altogether.

Vail says that ranchers have sold or donated easements because "they care deeply about their land and the environment. Estate taxes are [also] a common reason." If ranch owners sell or donate an easement, the value of the ranch is reduced for federal estate tax purposes, lowering or avoiding the burden of estate taxes on heirs.

From 2006 through 2008, the first $2 million of an individual's estate was exempt from federal estate tax. In 2009, the first $3.5 million is exempt. In 2010, the estate tax disappears, but returns in 2011 with an exemption of only $1 million. Moreover, estate tax rates start at a rate of 18 percent and can climb as high as 45 percent.

"We work with third- and fourth-generation ranchers who are cash poor
and land rich," Vail adds. "We look for funding tools to carry the land to the next generation," including California state bonds, the federal Farm and Ranchland Protection Program, and foundations such as the Hewlett Foundation.

In other states, a helpful source of funding for rangeland preservation is the Grassland Reserve Program, created in the 2002 Farm Bill. So far, the program has resulted in the acquisition of 250 conservation easements on 115,000 acres.

**Putting commerce and industry to work for farmland preservation**

Warwick Township (pop.15,475) is a suburbanizing municipality in north central Lancaster County, Pennsylvania. The county farmland preservation program drew some attention from township farmers in the early 1990s, but the pace of preservation was slow.

Things changed after 1993, when the township established a transfer of development rights program (which allows development rights on farmland to be shifted off-site to a designated growth area). The township's 7,000-acre agricultural zone, which allows only one house per 25 acres, was designated as the TDR sending area, and the township granted landowners there one TDR per two acres. But only those farms that were not yet preserved under a conservation easement could sell TDRs.

In an unusual move, the township selected its airport-industrial zone as the TDR receiving area. To make TDRs attractive, the township allowed only 10 percent impervious surface coverage by right in the 166-acre airport-industrial zone. For each additional 4,000 square feet of impervious coverage (defined as buildings, roads, sidewalks, or parking lots), the developer would have to purchase one TDR. Using TDRs, a developer could cover up to 70 percent of a lot in impervious surface.

Warwick's TDR program languished until 1998, when the township invested $100,000 in a partnership with the nonprofit Lancaster Farmland Trust to buy 75 TDRs from farmland owners and create a TDR bank. The bank enabled developers to buy TDRs directly from the township, rather than having to negotiate with several landowners in the sending area. In addition, the township could take the proceeds from the sale of the TDRs and buy additional TDRs from farmers. Warwick Township has preserved seven farms to date with the help of the farmland trust.

In 2001, the township entered into a similar partnership with the Lancaster County Agricultural Preserve Board. The board decided to buy development rights from farmers and then turn these development rights into TDRs and give them to the township. Warwick Township could then sell the TDRs and use the proceeds to match preserve board funds to save more farms. The township receives the development rights from these farms, turns them into TDRs and sells the TDRs, in effect creating a revolving funding program. By buying and selling TDRs, the township has preserved 11 farms with the preserve board.

"We made just the $100,000 investment 10 years ago to get the TDR program moving," says Dan Zimmerman, the Warwick Township manager, "and we have gotten back eight to 10 times our investment by partnering with the preserve board and farmland trust."

In 2002, Warwick changed the zoning in the receiving areas to campus-industrial to accommodate the proposed Heart of Lancaster Hospital, which was required to purchase 141 TDRs from the township. The township and its partners have bought 447 TDRs and preserved 1,184 acres to date.

In addition, the township has sold 278 TDRs since 2001, putting $688,000 into farmland preservation. The sale price of the TDRs has averaged a modest $3,000 per TDR, or $1,500 an acre. One result is that commercial development in the receiving area has generated substantial property tax revenue without adding students to the local school district (because there is no new housing there). The result is a net tax gain for the township.

**Lessons learned**

"TDR is a great planning tool," Zimmerman says. "It puts growth where it should be and preservation is what everyone likes." As noted, Warwick's program bypassed one of the traditional obstacles to TDR programs—the increase in local educational expenses, which typically make up two-thirds to three-quarters of the local property tax burden.

A second obstacle is the large amount of land to preserve in the sending area and the small amount of land in the receiving area. Warwick solved this problem by linking the TDRs to impervious surface expansion, by creating the TDR bank, and by generating TDRs from the purchase of development rights to farmland. Also, farmers have the option of selling their development rights to the township in partnership with the Lancaster Farmland Trust or the county's preserve board.

Third, developers often balk at using TDRs because of their cost, but Zimmerman says Warwick has worked with the preserve board and the county farmland trust to keep the cost of TDRs comparatively low. "It's all about customer service," Zimmerman says. "Developers have found that it's not that much extra work to use TDRs." The low cost of the TDRs is important because a successful TDR program is developer-driven.

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Tom Daniels is a professor at the University of Pennsylvania, where he teaches courses in land-use planning and land preservation. He was formerly the director of the Lancaster County Agricultural Preserve Board.

**RESOURCES**

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American Farmland Trust: www.farmland.org.

Additional information on the topic is at www.planning.org/nationalcenters/health/farmpreservation.htm, an educational CD-ROM is at PlanningBooks.com.