The Commonwealth of Massachusetts

PRESERVING MASSACHUSETTS' PRIME AGRICULTURAL LAND

SECOND INTERIM REPORT
of the
SPECIAL COMMISSION RELATIVE
to the
EFFECTS OF GROWTH PATTERNS
on the
QUALITY OF LIFE
in the
COMMONWEALTH

(under Chapter 98 of the Resolves of 1973)

August 16, 1976
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Resolved, That a special commission, to consist of three members of the senate, seven members of the house of representatives, and five persons to be appointed by the governor, is hereby established for the purpose of making an investigation and study relative to the effect of present growth patterns on the quality of life in the commonwealth. Said commission shall specifically, but without limiting the generality of the foregoing, consider methods to align resource-use patterns with the limited supply of natural resources in the commonwealth, including a broad transformation of current values which lead to unrelieved consumerism; establishing a state demographic information center with the duty of collecting, interpreting, and distributing population information to aid cities and towns in planning for the future; establishing a settlement policy for the commonwealth based on its economic and natural resources and safeguarding the rights and needs of traditionally disenfranchised groups in the commonwealth including the urban poor of all races and nationalities, the elderly, and the young; the desirability of specific methods of community, regional, and state planning, including specific growth limitation, shared land-use responsibility, relocation possibilities, tax incentives, use of rural communities to absorb population growth or preservation of rural areas and open spaces; and the possibilities for cooperation with adjacent states with the intent of achieving the best growth patterns for the New England region.

Said commission may travel without the commonwealth, and shall report to the general court not later than September first, nineteen hundred and seventy-five.

RESOLVE INCREASING THE SCOPE OF THE SPECIAL COMMISSION ESTABLISHED TO MAKE AN INVESTIGATION AND STUDY RELATIVE TO THE EFFECT OF PRESENT GROWTH PATTERNS ON THE QUALITY OF LIFE IN THE COMMONWEALTH.

Resolved, That the special commission, established by chapter ninety-eight of the resolves of nineteen hundred and seventy-three, shall, in the course of its investigation and study, consider the subject matter of current senate documents numbered 1156, establishing an open land reservation program for Massachusetts; and 1157, relative to the management, use, protection and development of coastal zone resources; and current house documents numbered 1047, relative to protecting water and land in certain areas of the commonwealth; 1621, providing for comprehensive land planning; 3149, providing protection from environmental damage from land development; 3374, directing the secretary of environmental affairs to prepare a comprehensive land use plan for the commonwealth; 4736, relative to regulating developments of regional impact; 5337, establishing the division of development investigation in the department of community affairs; and 5338, establishing a state land use agency and office of development assistance, and related matters.

Approved July 9, 1974.
Resolved. That the special commission, established by chapter ninety-eight of the resolves of nineteen hundred and seventy-three, shall, in the course of its investigation and study, consider the subject matter of the investigation and study proposed by current house document numbered 2511, relative to the current status and procedures of statewide land use planning as it relates to zoning and subdivision control; and current house document numbered 4406, relative to regulating the density of Massachusetts housing finance authority dwelling units in towns.

Approved July 9, 1974.
RESOLVE INCREASING THE SCOPE OF THE SPECIAL COMMISSION
ESTABLISHED TO MAKE AN INVESTIGATION AND STUDY RELATIVE TO
THE EFFECT OF PRESENT GROWTH PATTERNS ON THE QUALITY OF LIFE
IN THE COMMONWEALTH.

Resolved. That the special commission, established by chapter
ninety-eight of the resolves of nineteen hundred and seventy-three
shall, in the course of its investigation and study, consider the subject
matter of current senate documents numbered 572, establishing
regional solid waste disposal districts; 573, establishing a regional
solid waste disposal assistance commission for the commonwealth;
574, relative to requiring regional planning agencies established under
chapter forty B of the General Laws and other special laws to
designate solid waste disposal services areas; 1136, providing for
assistance to municipalities in disposing of brush and other waste
materials; and 1153, relative to solid waste disposal contracts with
municipalities and of current house documents numbered 296,
providing that certain solid waste disposal facilities shall be public
utilities; 1461, establishing the Northern Middlesex area commission
as a regional refuse disposal planning board; 1620, relative to the
financing of certain pollution control facilities; 1623, authorizing the
department of public works to give financial assistance to
municipalities forming regional refuse disposal districts; 1817,
authorizing cities and towns to lease private and public land for the
operation of a solid waste disposal area by private interests; 1819,
directing the department of public utilities to establish certain rates
for the Refuse Energy Systems Company in Saugus; 2778,
authorizing the commonwealth to guarantee bonds issued to
construct solid waste disposal facilities; 3142, reimbursing cities and
towns and regional refuse disposal districts for one-half the cost of
constructing incinerators; 3953, relative to amending the authority of
the bureau of solid waste disposal in the department of public works,
and 5112, authorizing and directing the department of public utilities
to review rates charged by certain private waste disposal companies.

Approved July 10, 1974.
Resolved, That the special commission established by chapter ninety-eight of the resolves of nineteen hundred and seventy-three is hereby revived and continued. Said commission shall, in the course of its investigation and study, consider the formulation of a procedure by which certain legislative petitions, filed with the general court, might be systematically evaluated for their impact on the growth patterns of the commonwealth, and said commission shall recommend to the general court means by which such evaluation of legislation may be established, including the possible establishment of a legislative committee for such purpose.

Said commission may cooperate with any agency of the commonwealth, or its political subdivisions, including the office of state planning and the regional planning agencies, in the conduct of its investigation and study; and may enter into cooperative agreements for the receipt and expenditure of federal and other grants and gifts and for professional services, clerical and other services in connection therewith.

Said commission shall report to the general court on or before the first Wednesday of December, nineteen hundred and seventy-seven.

Approved December 12, 1975.
MEMBERS OF THE COMMISSION

Sen. Allan R. McKinnon, Senate Chairman
Sen. Michael LoPresti, Jr.
Sen. William L. Saltonstall
Rep. Robert D. Wetmore, House Chairman
Rep. Richard H. Demers
Rep. Genevra R. Counihan
Rep. Mary E. Fantasia
Rep. Terrence P. McCarthy
Rep. Robert W. Gillette
Prof. Laurence G. Branch, Univ. of Mass., Boston
Mr. Chester N. Gibbs
Mr. Gerard F. McNeil
Mr. Frank Keefe, Dir., Office of State Planning
Mr. William Flynn, Sec., Exec. Office Communities & Dev.
To the Honorable Senate and House of Representatives:

We, the undersigned members of the legislative commission authorized under the provisions of Chapter 98 of the Resolves of 1973 and extended by Chapter 66 of the Resolves of 1975, to make a study relative to the effect of present growth patterns on the quality of life in the Commonwealth and such other matters relative thereto, have investigated the issue of preserving agricultural land in the Commonwealth and herewith submit our second interim report and recommendations.

Respectfully submitted,

Sen. Allan R. McKinnon, Senate Chairman
Sen. William L. Saltonstall
Rep. Robert D. Wetmore, House Chairman
Rep. Richard H. Demers
Rep. Genevra R. Counihan
Rep. Mary E. Fantasia
Rep. Terrence P. McCarthy
Rep. Robert W. Gillette
Prof. Laurence G. Branch
Chester N. Gibbs
Frank Keefe, Director,
Office of State Planning
William Flynn, Sec.,
Exec. Office Communities & Development
The legislative Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth met and organized in June 1974. Sen. Allan R. McKinnon of Weymouth and Rep. Robert D. Wetmore of Barre were selected co-chairmen of the commission. In recognition of the broad mandate of the order creating the commission, the members decided to divide their work into three main areas of investigation and established subcommittees on Growth Policy, Land Use and Demographic Information. Sen. William L. Saltonstall, Rep. Richard H. Demers and Prof. Laurence Branch, respectively, were named chairmen of the subcommittees. The subcommittees were directed to meet as often as necessary and to prepare reports, recommendations and proposed legislation for the full commission. Members were appointed to the subcommittees from a wide range of interest groups and official capacities.

Between September 1974 and March 1975 the Land Use Subcommittee met on a biweekly basis to consider the strengths and weaknesses of the present land use planning and regulatory system in the Commonwealth and to recommend a process to improve that system. As a result of this work, on July 21, 1975 the Commission filed its first interim report (H-6473) recommending a broad based participatory approach to the formulation of land use and growth management policies for the Commonwealth. This approach, known as the "Massachusetts Growth Policy Development Act", was enacted in December 1975 (Chapter 807 of the Acts of 1975). The Massachusetts Growth Policy Development Act is now being implemented, and cities and towns across the Commonwealth are submitting statements of growth management problems and priorities to the Office of State Planning, RPA's and the Commission. These local statements will form the basis for the evaluation of existing state policies and the formulation of new land use and growth management policies for the Commonwealth.

In addition to these activities, the commission established a subcommittee on Food Production and Agriculture in February 1976. This subcommittee was directed to study and coordinate proposals dealing with the provision of an adequate food supply for the Commonwealth. Rep. Robert W. Gillette was appointed
chairman, and the subcommittee’s efforts immediately focused upon the preservation of prime agricultural land. The commission’s second interim report and its recommendations are mainly the result of the work by the subcommittee on Food Production and Agriculture. The commission members especially wish to thank Commissioner Frederic Winthrop, Jr. and the Dept. of Agriculture and his Agricultural Land Preservation Committee for preparing many of the substantive recommendations expressed in this report and providing working drafts of the legislative proposal.

The Commission and the Subcommittee on Food Production and Agriculture submit the recommendations and legislation in this report as the first phase in the development of a comprehensive program to preserve prime agricultural land in the Commonwealth. The subcommittee decided that a pilot program would identify the strengths and weaknesses of the proposed legislative approach and provide an opportunity to work out problems and finalize funding sources for implementation of a full scale program. In addition, the commission and subcommittee members decided that development of a full scale program for the preservation of agricultural land should await completion of the growth policy development process. Communities will be addressing the issue of preserving agricultural land in both question 3:16 of the “Local Growth Policy Questionnaire” and in the “Supplemental Questionnaire on Agriculture.” Recommendations from the communities will be combined with the evaluation of the recommended pilot program in the formulation of comprehensive legislation to preserve agricultural land.

In addition, the commission and subcommittee members view the preservation of agricultural land as a first step in a much broader effort to insure an adequate supply of food for the residents of Massachusetts.

The subcommittee intends to continue its efforts to investigate and coordinate a variety of proposals aimed at increasing food production in the Commonwealth. It is hoped that the findings and recommendations set forth in this report will stimulate greater public and legislative participation in these investigations and eventually lead to the enactment of the various elements of a comprehensive food and agricultural policy for the Commonwealth.
The commission finds that the preservation of prime agricultural land in the Commonwealth is a matter of urgent public concern. Recent worldwide food shortages and increases in the costs of food, transportation and energy have demonstrated the need to preserve the state's and nation's agricultural land base in order to insure future food supplies at affordable prices.

This concern has been expressed most recently in the local growth policy statements stemming from the Massachusetts Growth Policy Development Act. A review of the 132 statements that have been received to date indicates that 75% of those responding feel that the preservation of agricultural land is a priority issue in Massachusetts. The statements calling for the preservation of agricultural land come from urban, suburban and rural communities alike. The message in these statements is virtually unanimous: legislation is needed that will stop the rapid development and withdrawal from production of prime agricultural land.

Since World War II, the number of farms in Massachusetts has declined from 35,000 to approximately 5,000. The number of farmland acres has decreased from over two million to less than 600,000. Massachusetts can expect to lose over 20,000 acres of farmland or 200 farm businesses per year if no state-wide action is taken to preserve prime agricultural land.

The decline of land in active agricultural production has resulted in both the loss of jobs and increasing food prices for Massachusetts residents. Agriculture employs approximately 30,000 people in the Commonwealth and generates $200 million of business annually. Direct farm employment is diminishing at a rate of 400 to 600 jobs per year. Equally significant, however, is the subsequent decline of agricultural support industry which has resulted in the loss of additional jobs and has made the operation of remaining farms more costly and difficult.

Massachusetts presently imports 85% of its food. Approximately $2.8 billion per year flow out of the state's economy to pay for imported agricultural products. In recent years, the increasing costs of energy and transportation have drastically altered the traditional balance between producing food locally and importing from richer...
agricultural regions. Reliance on imports has meant that Massachusetts residents pay from 6 to 10% more for their food than the national average. In addition, it leaves the Commonwealth particularly vulnerable to national and world agricultural production patterns and transportation stoppages. Local food production must be increased in order to reduce the state’s dependence on imports and to guarantee the stability of future food supplies.

In addition to providing food and playing a significant role in the Massachusetts economy, agricultural land is vital to both the environmental and aesthetic quality of life in the Commonwealth. Agricultural lands provide buffer zones between urban areas, often serving to ameliorate air and water pollution problems and breaking the monotony of urban sprawl. The edges that farms create next to forests are essential to many wildlife species. Farms, fields and pastures are an integral part of the New England heritage and scene. They provide recreational opportunities and enhance the scenic beauty which makes the Commonwealth a unique area in which to live.

The commission finds that various local, state and federal programs have unintentionally contributed to the decline of agriculture. Property and inheritance taxes, labor laws, nuisance laws, discriminatory freight rates and the taking of prime lands for highways and other public purposes have all exacerbated the farmer’s problems and increased his operating costs.

Increased operating costs have combined with rising land values to make it virtually impossible for young people or “newcomers” to enter the farming business. As urbanization spills into formerly rural areas, developers and speculators bid up land prices. Potential farmers cannot afford to pay development prices, because the land’s potential farm income cannot justify the capital investment.

The commission also finds that a farmer’s equity in his land is one of his most important resources. To the farmer, rising land values often mean increased borrowing power to buy new equipment and to finance business expenses. The equity a farmer builds in his land is his source of retirement income when the land is sold. Consequently, any program which seeks to preserve prime agricultural land must reimburse the farmer for his equity in the land. Any preservation program must balance the public good, in terms of food, environmental or economic benefits, with the farmer’s property rights and equity considerations.
Finally, the commission finds that public acquisition of development rights on agricultural land appears to be the fairest and most equitable way of protecting the landowner’s equity while preserving the public interest in this resource. Through the public purchase of development rights, the landowner is paid for the sale of his equity. Property and inheritance taxes on the land are based on its value in agricultural use. A market for farm land at farm supportable prices is established. At the same time, the clear public purpose of protecting the Commonwealth’s land base for future food production and the promotion of local farm industry and jobs is accomplished.

In view of these findings, the commission recommends the enactment of legislation that will create a pilot program for the preservation of agricultural land through the public purchase of development rights on select parcels of prime farmland. This program will be limited in scope and funding and is explicitly designed to test the feasibility of development rights or agricultural preservation restrictions (APR’s) as a means for preserving farmland and promoting agriculture in the Commonwealth.

The legislation would amend the “Massachusetts Self-Help Program” (G.L. Ch. 132A & 184) by adding agricultural preservation restrictions (APR’s) to the types of interest in land that may be acquired by the Commonwealth and its cities and towns. The program would be administered by local conservation commissions and the Department of Food and Agriculture in a manner similar to the self-help program for acquiring conservation land and restrictions.

Lands eligible for the program, however, would be limited to those in agricultural or horticultural uses as defined in the “Farmland Assessment Act” (G.L. Ch. 61A); that is, land not less than five acres actively devoted to agricultural or horticultural uses for the past two years and achieving annual gross sales of not less than five hundred dollars for agricultural and horticultural products, plus increments for added acreage.

The program might operate in one of two ways. First, an agricultural landowner might make an offer to the Conservation Commission to sell the development rights on his land, thereby establishing an agricultural preservation restriction on the property. Second, the conservation commission might offer to purchase the development rights on a particular piece of agricultural land. In either
case, the Conservation Commission would then negotiate with the agricultural landowner for the purchase of development rights to establish the agricultural preservation restrictions. The value of development rights would be the difference between the price a developer would pay for the land and the price a farmer would pay based on its value in farming. These values would be determined by customary appraisal procedures as employed in other public acquisition programs. Under rules and regulations promulgated by the Commissioner of Food and Agriculture, the Conservation Commission would make an initial determination of the eligibility of the land and recommend a mutually agreeable purchase price. The town would then forward these findings, the recommended price and an application for the purchase of the development rights to the Department of Food and Agriculture. The Department of Food and Agriculture would consider the application and approve or disapprove the purchase price in an amount determined to be equitable to the anticipated benefits of the proposed project. Upon approval of the application, the city or town would be authorized to draw up the restriction and upon proper registration of the restriction with the Registry of Deeds, the Department of Food and Agriculture would authorize funds to pay the landowner for 100% of the acquisition costs. The land could not be developed for residential, commercial or industrial purposes. These APR’s would be registered in the Registry of Deeds and would remain binding on all future owners of the land. Landowners would retain all other property rights such as the right to privacy, the right to farm, the right to sell and to pass land to future generations, etc.

The act also provides for private acquisition of development rights by charitable trusts in a manner similar to conservation restrictions. Private acquisition, by gift or purchase, would supplement public purchase of development rights.

The program would be voluntary. The farmer would be free to decide whether to sell the development rights on his land, when he wanted to sell, and how he wanted to be paid.

The commission recommends that initial purchases of APR’s be financed through a bond issue of at least five million dollars backed by an appropriation from the general fund. The $5 million figure is the minimum amount necessary to conduct a program that will allow the Department of Food and Agriculture to monitor and evaluate the effectiveness of the agricultural preservation restriction concept.
Finally, the commission recommends that the approach set forth in the previously described legislation serve as the first phase of a more comprehensive program to preserve agricultural land and insure adequate food supplies for the Commonwealth. Toward this goal the commission recommends that the Commissioner of Food and Agriculture appoint a task force to monitor the effectiveness of the APR program and to continue consideration of other mechanisms for the protection and promotion of agriculture in Massachusetts. Specifically, this task force should consider methods for the mapping of farmland, the designation of agricultural districts, the creation of a land trust and the establishment of financing mechanisms which will provide funding for the purchase of agricultural restrictions on the majority of the state's remaining prime agricultural land.
A. History

On February 18, 1976, the Legislative Commission on the Effects of Growth Patterns on the Quality of Life in the Commonwealth established the subcommittee on Food Production and Agriculture. This subcommittee was given the broad mandate to study and coordinate legislative and administrative proposals relating to the preservation of agricultural land, the production, processing and marketing of agricultural produce, the identification and mapping of prime agricultural land and any other agriculture-and food-related issues which might be deemed appropriate.

Representative Robert W. Gillette was appointed chairman of the subcommittee, and he invited a number of legislators, members of the administration, academics and representatives of various organizations interested in food and agricultural problems to join the subcommittee's investigations. (See list of subcommittee members on pages 35 and 36 of this report.)

The subcommittee immediately focused its efforts upon formulating a proposal for the preservation of agricultural land. This work entailed reviewing the findings and recommendations of the Agricultural Land Preservation Committee established by the Department of Food and Agriculture. The subcommittee met on a monthly basis between February and June 1976. During this period, the subcommittee examined the following five substantive issues:

1. Massachusetts' agricultural land base.
2. the viability of the agricultural industry in Massachusetts.
3. alternative techniques for the preservation of agricultural land.
4. the structure and content of pilot legislation involving the public purchase of development rights and the establishment of agricultural preservation restrictions (APR's).
5. the relationship of a pilot APR project to the formulation of a full-scale program to preserve agricultural land in the Commonwealth.
The remainder of this report will summarize the subcommittee’s findings and recommendations with regard to each of these issues.

B. Massachusetts' Agricultural Land Base

Since World War II, the number of farms in Massachusetts has declined from 35,000 to approximately 5,000. The number of farmland acres has decreased from over two million to less than 600,000.

A recent report from the Massachusetts Agricultural Experiment Station estimates that in 1971 the actual number of acres in active farm production in the Commonwealth was 438,644. In this report, active farmland was defined as tilled land, pasture (including improved hayland), orchard, nursery and cranberry bogs.1 In addition, the report estimates that there are approximately 178,000 acres of abandoned farmland that could be reclaimed for immediate agricultural use before they revert to forest, if economic conditions warranted.2

Thus, the decline of lands in active agricultural production is not simply a function of increasing urbanization. The Agricultural Experiment Station Report estimates that of the lands lost from agricultural production between 1951 and 1971, approximately 52% were abandoned, unused or converted to forest use. Approximately 40% was converted directly into urban uses. The remaining 8% went into some other type of use, primarily recreation, but also including waste disposal, mining and wetlands.3

During the period between 1951 and 1971, the total land area in active agricultural production declined below the total area in urban uses for the first time in the state’s history. The 1971 distribution of lands in four major land use categories may be summarized as follows: 9% of the state’s land was in active farm use, 4% was in abandoned farmland, 16% was developed for residential and other urban uses and the remaining 72% was categorized as forestland, wetland or other.4

For the entire period between 1951 and 1971, land was taken out of active agricultural production at an average rate of approximately 12,100 acres per year.5 This average, however, is deceiving. The rate of decline during the 50’s was much slower than in either the 60’s or 70’s. Recently Prof. Eugene Engel, agricultural economist from the University of Massachusetts, estimated that land is presently being
removed from agricultural and horticultural production at a rate of more than 20,000 acres per year. At this rate of decline, it is possible that by 1985 the Commonwealth may totally lose its remaining agricultural land base, and there may be virtually no farming industry left in Massachusetts.

The reasons for the overall decline of Massachusetts' agricultural land resource base are varied and complex. Increased operating costs have combined with rising land values and the unintentional effects of a number of local, state and federal programs to reduce the viability of the farming industry in the Commonwealth. Property and inheritance taxes, labor laws, nuisance laws, discriminatory freight rates, and the taking of prime agricultural lands for other public purposes (i.e. highways, landfills, recreation areas, etc.) have all contributed to the reduction of land in active agricultural production.

These factors will be discussed in more detail in the next section. However, the overall trend is clear: agricultural land in Massachusetts is being converted to other uses at an alarmingly rapid rate. In essence, Massachusetts farming is approaching a point of critical mass. Further losses may mean the dissolution of farm service businesses upon which the existing farming industry depends. Such a dissolution would exacerbate existing problems and could lead to the virtual collapse of the agricultural sector of the Massachusetts economy. As a recent Community Resource Development Report stated, "Once the practice of commercial agriculture entirely vanishes from a region like New England, its re-establishment in terms of land, manpower, capital investment and skills may be beyond feasibility." Massachusetts is presently faced with precisely this possibility. It is, therefore, necessary to evaluate the viability of the agricultural sector of the Massachusetts economy and the potential of public programs to ameliorate these trends in order to assess alternative policy options for food and agricultural production in the Commonwealth.

C. The Viability of the Agricultural Industry in Massachusetts

The agricultural sector of the Massachusetts economy presently employs approximately 30,000 people and generates $200 million of business annually. Direct farm employment is diminishing at a rate of 400 to 600 jobs per year. Equally significant, however, is the subsequent decline of agricultural support industry which has resulted in the loss of additional jobs and has made the operation of remaining farms more costly and difficult.
In contrast, Massachusetts presently imports 85% of its food. Approximately $2.8 billion per year flow out of the state economy to pay for imported agricultural products. Reliance on imports has meant that Massachusetts residents pay from 6 to 10% more for their food than the national average.

These trends suggest two key questions which are essential to the evaluation of the potential of the agricultural sector of the Massachusetts economy. First, what are the factors contributing to the decline of the agricultural sector of the Commonwealth’s economy? Second, how would the loss of the state’s capacity to produce 15% (or more) of its own food effect the residents of Massachusetts?

In response to the first question, a variety of factors have contributed to the decline of farming in Massachusetts. Traditionally, Massachusetts’ soil types, climate and population distribution have dictated that the cost of importing food from richer agricultural regions has been less than the cost of producing food locally. In addition, recent increases in the costs of fertilizer, grains, farm machinery, energy, transportation, taxes and land itself have often placed Massachusetts farmers at a competitive disadvantage compared to importers from richer agricultural regions.

For example, discriminatory freight rates set by the Federal Interstate Commerce Commission mean that Massachusetts farmers must pay more for imported grain shipments from the midwest than southern farmers whose shipments must travel an equivalent distance. In addition, the lack of large grain storage facilities means that the Commonwealth’s farmers cannot take advantage of the economies of scale of very large shipments. Energy costs in Massachusetts are also substantially higher than in other parts of the nation because of New England’s location at the end of the energy pipeline.

Rising land values, increasing property taxes and inheritance taxes have combined with these increased operating costs to make it virtually impossible for young people or “newcomers” to enter the farming business. For example, both state and federal inheritance taxes often force heirs inheriting a family farm to sell all or some of the land to pay the taxes. In Massachusetts, a widow and children are entitled to an exemption on the first $60,000 of an estate’s total value. Such estates are assessed at full market value; that is, the land’s value
for development purposes rather than agricultural purposes. The exemption figure has not changed since 1941. It is obviously long outdated due to spiralling real estate values in the past 35 years.

Most farmers do not have the cash to pay such inheritance taxes and their equity in the land is consequently the only way to meet the tax payments. If land is sold off by each new generation in order to pay the inheritance taxes, the family farm often becomes too small to operate economically.

In addition, as urbanization spills into formerly rural areas, developers and speculators bid up the land prices. Potential farmers cannot afford to pay development prices because the land's potential farm income cannot justify the capital investment.

The rising land values also create a dilemma for existing farmers. The large difference between the returns from continuing to farm and the anticipated financial returns from selling the land for development results in the difficult decision of whether to sell the land while the prices are high or to continue farming. In addition, existing farmers are constrained from expanding by high land prices and must often rely upon rented land, which is owned by speculators, in order to grow important parts of their crops. The farmer has little control over this rented land and it can be withdrawn, often on an annual basis, making long-range planning of the farming operation virtually impossible.

Finally, 100% valuation and increasing property taxes have also contributed to the decline of agricultural industry in Massachusetts. The property tax is another of the farmer's increasing operating costs. Taxation at the land's potential development value rather than its value for agricultural purposes often encourages early conversion to nonagricultural uses.

All of these factors lead to the classic economic argument that locally grown food cannot be produced and distributed as cheaply as imported food products. Therefore, the decline of the agricultural industry in Massachusetts is viewed as competitive self-selection.

"Classic economic theory, however, may pale before the exigencies of scarce resources." Recent worldwide food shortages and increases in the costs of food, transportation and energy have suggested the need to preserve the state's and nation's agricultural land base in order to insure future food supplies at affordable prices for residents of the Commonwealth.
On June 20, 1976, the World Food Council of the United Nations warned that worldwide food shortages may be encountered by as early as 1985 unless nations change many of their food policies. This prediction relates to the Massachusetts situation in terms of policy decisions that would either reduce or enhance the Commonwealth's ability to produce a proportion of its own food needs. If policy decisions are not made to counter existing trends in agricultural production, Massachusetts will become increasingly reliant upon imported food products. Such a reliance upon imports would leave the Commonwealth particularly vulnerable to national and world agricultural production patterns and transportation stoppages. If food shortages actually do occur, prices that Massachusetts residents pay for food could rise above the 6 to 10% over the national average that the state's residents now pay.

In addition, the 1974 Governor's Emergency Food Commission has estimated that only one or two weeks of food supply is on hand at any given time in Massachusetts. This means the Commonwealth could be critically affected by prolonged truck or rail strikes.

While it is doubtful that Massachusetts could become totally self-sufficient in terms of food production, the state's farming industry certainly has the capability of producing a greater share of the Commonwealth's food needs. As a recent report by Robert Lemire states, "...Until I read Helen and Scott Nearing's book Living the Good Life, it seemed to me that we were struggling to preserve a relatively insignificant percentage of Massachusetts' food consumption. What if we lose our last 15% of food self-sufficiency? it could be argued. Although many of us have become uneasy about the long-range prospects for our present sources of food, surely we have gone too far to be food independent — other states would simply have to make up the difference. I had come to take it for granted that it took 3 to 5 acres of land, a lot of machinery, artificial fertilizers, herbicides, and pesticides, and even more gasoline to support each one of us. Then, I read that Helen and Scott Nearing had clearly demonstrated since the depression of the 30's that 1/3 of an acre of average Vermont farmland worked with few aids could readily support all of the food requirements with the exception of grain needed to feed 6 adults. Applying the same proportions, it dawned on me that our 300,000 acres of cropland could indefinitely support our population of 6 million, especially when you add in back yard gardens. Of course,
this would require a great deal of change in our life styles and hopefully will never be required. And yet, the message came through loud and clear. We have not yet gone beyond the point of no return. Although perilously close, we still have the chance to save for our posterity the possibility of being agriculturally self-reliant in case of need.”

In addition, the 1975 Community Resource Development Report by Rutherford Platt stated, “Productivity per farm acre (in Massachusetts) is among the highest in the nation: $198 in 1969 as compared with $109 in California, $108 in Iowa, $96 in New York, $87 in Illinois and $42 nationally.”

All of these factors led the members of the subcommittee to decide that the stabilization of Massachusetts agriculture at approximately its present geographic and economic status would serve as a vital hedge against future fluctuations of food price and supply. The subcommittee felt that local food production must be increased in order to reduce the state's dependence on imports and to guarantee the stability of future food supplies.

The subcommittee also found that the decline of land in active agricultural production had resulted in the loss of a substantial number of jobs. Given the conditions of the state's economy and the high rate of unemployment, it was determined that public investments which would preserve and enhance agricultural job opportunities could have positive multiplier effects through the rest of the economy. Helping to expand a $200million-a-year business was viewed as immensely preferable to increasing the amount of money flowing out of the state for the purchase of agricultural imports.

In addition to providing food and playing a significant role in the Massachusetts economy, agricultural land is vital to both the environmental and aesthetic quality of life in the Commonwealth. Agricultural lands provide buffer zones between urban areas, often serving to ameliorate air and water pollution problems and break the monotony of urban sprawl. The edges that farms create next to forests are essential to many wildlife species. Farms, fields and pastures are an integral part of the New England heritage and scene. They provide recreational opportunities and enhance the scenic beauty which makes the Commonwealth a unique area in which to live.

Given these considerations, the subcommittee decided that the
preservation of agricultural land was a matter of urgent public concern. The subcommittee, therefore, directed its considerations toward the evaluation of a variety of policy options designed to preserve Massachusetts' agricultural land base.

D. Alternative Techniques for the Preservation of Agricultural Land.

The subcommittee focused on four alternative methods for preserving agricultural land: (1) zoning or regulatory devices, (2) the outright purchase of agricultural land, (3) a system of transferable development rights, and (4) the public purchase of development rights.

Relatively few State programs across the country have directly addressed the problem of declining agricultural land resources. Most efforts have been by local governments, and many of these programs have used the traditional tool of zoning to try to protect agricultural land. The local government may attempt to create agricultural zones which restrict all uses except low density residential use. These zones, however, have been subject to a number of criticisms. First, since limited residential development is allowed, the agricultural zone technique is often condemned as exclusionary zoning. In addition, since it is relatively easy to request and receive local zoning changes, critics argue that agricultural zones simply delay development and don't really preserve the agricultural land base.

On the other hand, many farmers whose lands are placed in the agricultural zone feel that the regulation is an undue restriction on their private property rights. They argue that agricultural zoning reduces the potential value or their equity in the land and is, consequently, a taking without just compensation. The farmers argue that their equity in the land is one of their most important resources. To the farmer, rising land values often mean increased borrowing power to buy new equipment and to finance business expenses. The equity a farmer builds in his land is his source of retirement income when the land is sold. Consequently, many farmers argue that any program which seeks to preserve prime agricultural land must reimburse the farmer for his equity rather than simply trying to restrict the lands' use. That is, any preservation program must balance the public good, in terms of food, environmental or economic benefits, with the farmer's property rights and equity considerations. Farmers often feel that zoning and regulatory techniques do not achieve this balance.
At the opposite end of the spectrum from zoning and regulatory techniques as a method for preserving agricultural land is the outright public purchase of prime farmland by communities or the state. This technique has already been employed by a number of Massachusetts communities. For example, Lincoln has purchased over 200 acres of farmland which it now leases back to farmers for production. The town of Harvard has also purchased both farmland and apple orchards in order to help preserve agricultural production in its community. These two cases, and others like them, are essentially a form of land banking. Once the community or the State owns the land, it can decide how it will be used, if and when it will be developed, etc.

There are three main problems with the outright public purchase of agricultural land. First, it is extremely expensive. Few communities have the resources to purchase threatened tracts of their agricultural land; and the State does not have the financial capability to purchase and hold significant amounts of prime farmland. Second, public purchase does not guarantee that the land will remain in agricultural use. Given the vagaries of public policy, it is possible that a town or the State might decide to discontinue leasing the land for agricultural use and convert it to some other use (i.e., recreation, etc.). This would not meet the overall objective of stabilizing the Commonwealth’s agricultural production capabilities. Finally, many farmers prefer to own the land they farm rather than leasing it. There is substantial evidence to support the position that private ownership leads to more efficient production methods and utilization of resources. For these reasons, the subcommittee decided to look beyond outright public purchase for other methods of preserving agricultural land.

The third method for preserving agricultural land which the subcommittee considered was a system of transferable development rights (TDR). The transfer of development rights concept is essentially a system by which the right to develop a piece of land is split off from the other rights of property ownership and a market is created for buying and selling the rights to develop specified land parcels at various densities. As a recent Rutgers report states:

"Under this proposed system an overlay on the current zoning is created wherein a zoning district is established for preservation of agriculture. In this district all development other than farming use is essentially prohibited. The residential development potential of the
zoning district before its agricultural designation is calculated as follows: for each residential dwelling unit eliminated in such a preservation district, a substituted dwelling unit is added to a developable district in the community. In other words, the residential development potential of the preserved area is transferred to other districts in the community which can accommodate the higher densities without causing environmental damage or creating incompatible land use patterns, or putting heavy strains upon existing infrastructure. Development right certificates equal in number to the total dwelling units eliminated in the preserved district are distributed to the landowners in that district on the basis of the ratio of the value of each tract in relation to the total land value of the preserved district. To build a substituted dwelling in the developable part of town, a development right, as well as the appropriate zoning, is required.

Thus, a builder who proposes to construct at a higher density based on the new capacity or density resulting from the establishment of the preserved area must also purchase development rights equal in number to the increased density and at a price arrived at through the bargaining process of the market place. The builder has the right to develop at the lower density permitted by the previous zoning regulations, but he cannot build at the higher densities unless he has development rights. Finally the continued marketability of the development rights is insured by adequate ‘incentive zoning’ in the developable districts. In other words, for this system to remain valid and functional there must always be a market for the development rights. Otherwise, there would be no place to transfer them, and the entire system could become invalidated and inoperative. Such a situation would occur if a builder chose not to build at the new permitted higher density, thereby creating a surplus of development rights equal to the number he could have used and for which there is no longer a market. In such an event the municipality would be required to rezone in such a manner that a market for all outstanding development rights is maintained.”

Thus, by the use of the TDR technique critical natural environmental resources such as prime agricultural lands, aquifer recharge areas, floodplains, wetlands, and woodlands are preserved at no cost to local taxpayers.
As this description indicates, the TDR technique is a complex system of credits and debits based upon preserving certain areas and increasing the allowable densities in other areas. The technique seems to have great potential but it has been used on an experimental basis only in a few communities, e.g., Sunderland, Mass. is presently experimenting with such a system). Consequently, TDR's are poorly understood and the subcommittee decided that such a technique needs more complete examination and experimentation before it could be considered as a realistic option for preserving significant portions of agricultural land.

The final method for preserving agricultural land which the subcommittee considered was the public purchase of development rights. This method would preserve agricultural land by having the State purchase a farmer’s right to develop his land for commercial, industrial or residential purposes. The value of the development rights would be the difference between the price a developer might pay for the land and the price a farmer would pay based upon its agricultural value. If a farmer decided to sell his development rights to the public, he would essentially be accepting a restriction wherein he agreed not to develop the land for housing, business or industry, but to retain the land on agricultural condition. The owner would retain all other property rights. He would simply be severing the right to develop, from his other property rights, and selling it to the public.

Such a program would help to preserve agricultural land in the following ways:
1. **It would lower the farmer's taxes**
   Once the development rights were purchased by the public, the land would be taxed only on the remaining value as farmland. Such values would, in general, be analogous to those used under the Farmland Assessment Act, General Laws, Chapter 61A. This would apply both to the local property tax and also inheritance taxes, both federal and state. Residences on farm property would not be included in the program and would continue to be taxed as other residences in the town.

2. **It would assure continuity**
   With cash in hand, a farmer would be encouraged to continue farming and know that the farm could continue after him. He would know that long-term investments in soil fertility or better farming methods would be worth making for his use or that of his heirs or successors.
3. It would create a farmland market

A supply of land from which development rights have been removed would create a “market” for farmland at farm supportable prices in which a farmer who needed it could buy land to bring his operation to a more economic size. In addition, new farmers, including young people who now find farms for sale only at development prices, could enter this market and get into farming. The supply of land for this “market” would be provided by the purchase of development rights on prime land not now owned by farmers, land lying idle or farms available because of death or retirement.

4. It would put idle equity to work

A farmer could put his “idle equity” to work. Much of a farm owner’s equity is now in the form of “development” value which can be realized only by going out of business and selling the farm for other purposes. By selling his development rights, he could utilize this equity to buy more land in the market created, update his equipment and efficiency, build up his soil or invest in other ways for his retirement. By giving him these options, now denied, and assuring him of continuity with appropriate taxation, his total outlook should be improved. After his death or retirement, the farm could change hands, yet continue as a farm.

The public purchase of development rights would also provide benefits to the community. The community would retain the benefits of local farm businesses and employment, fresh farm produce, a local food supply and permanent open space with all the environmental benefits it entails. Wildlife thrives at field edges, open fields accept rainfall and retain ground water, growing crops replenish the oxygen we breathe. Much farm land is open for hunting, fishing, hiking, skiing and other forms of passive recreation. In short, it would preserve the farms, fields and pastures which are such an integral part of our heritage and the New England scene which makes our region a unique area in which to work, play and visit.

This program would be fair to the landowner as the program would be voluntary and he would be paid in full for his sale of equity. It would be fair to the public as the money spent would be for the clear public purpose of protecting its land base for future food and agriculture production, local farm industry and jobs. The public would also gain the assurance of open space amenities for the future and could plan growth elsewhere around it. Farmland requires no
The program would not take lands needed for homes or industrial expansion. Needed homes and industries would be built anyway only on nonagricultural land. Farmland is a small percent of the total land in the State and by its very nature is "special" in its soil fertility and ability to produce new wealth every year. There is still much undeveloped land which is well suited for development and poorly suited for agriculture. The past trend of development on farmland need not continue.

A recent report by the Massachusetts Department of Community Affairs, entitled *Preserving Agricultural Lands: Case Study Westfield Ma*, documents local attitudes of both farm and nonfarm residents toward a program for the public purchase of development rights. This report illustrates that such a program has considerable potential and support in, at least, one community in Massachusetts.

Finally, Robert Lemire's study on *The Economics of Saving Massachusetts Farmland* indicates that the public benefit of a program for the public purchase of development rights would exceed the cost in three to four years.

Given these considerations, the subcommittee found that public acquisition of development rights on agricultural land appears to be the fairest and most equitable way of protecting the landowner's equity while preserving the public interest in this resource. Through the public purchase of development rights, the landowner is paid for the sale of his equity. Property and inheritance taxes on the land are based on its value in agricultural use. A market for farm land at farm supportable prices is established. At the same time, the clear public purpose of protecting the Commonwealth's land base for future food production and the promotion of local farm industry and jobs is accomplished.

E. The Structure and Content of Pilot Legislation for the Public Purchase of Development Rights

In view of these findings, the subcommittee recommends the enactment of legislation that will create a pilot program for the preservation of agricultural land through the public purchase of development rights on select parcels of prime farmland. This program will be limited in scope and funding and is explicitly designed to test
the feasibility of the purchase of development rights or agricultural preservation restrictions (APR’s) as a means for preserving farmland and promoting agriculture in the Commonwealth.

The legislation would amend the “Massachusetts Self-Help Program (G.L. Ch. 132A & 184) by adding agricultural preservation restrictions (APR’s) to the types of interest in land that may be acquired by the Commonwealth and its cities and towns. The program would be administered by local conservation commissions and the Department of Food and Agriculture in a manner similar to the self-help program for acquiring conservation land and restrictions.

Lands eligible for the program, however, would be limited to those in agricultural or horticultural uses as defined in the “Farmland Assessment Act” (G.L. Ch. 61A); that is, land not less than five actively devoted to agricultural or horticultural uses for the past two years and achieving annual gross sales not less than five hundred dollars for agricultural and horticultural products, plus increments for added acreage.

The program might operate in one of two ways. First, an agricultural land owner might make an offer to the Conservation Commission to sell the development rights on his land, thereby establishing an agricultural preservation restriction on the property. Second, the Conservation Commission might offer to purchase the development rights on a particular piece of agricultural land. In either case, the Conservation Commission would then negotiate with the agricultural land owner for the purchase of development rights to establish the agricultural preservation restrictions. The value of development rights would be the difference between the price a developer would pay for the land and the price a farmer would pay based on its value in farming. These values would be determined by customary appraisal procedures as employed in other public acquisition programs. Under rules and regulations promulgated by the Commissioner of Food and Agriculture, the Conservation Commission would make an initial determination of the eligibility of the land and recommend a mutually agreeable purchase price. The Conservation Commission would then forward these findings, the recommended price and an application for the purchase of the development rights to the Department of Food and Agriculture. The Department of Food and Agriculture would consider the application
and approve or disapprove the purchase price in an amount determined to be equitable to the anticipated benefits of the proposed project. Upon approval of the application, the city or town would be authorized to draw up the restriction and upon proper registration of the restriction with the Registry of Deeds, the Department of Food and Agriculture would authorize funds to pay the landowner for 100% of the acquisition costs. The land could not be developed for residential, commercial or industrial purposes. These APR’s would be registered in the Registry of Deeds and would remain binding on all future owners of the land. Landowners would retain all other property rights such as the right to privacy, the right to farm and the right to sell and pass land to future generations, etc.

The act also provides for private acquisition of development rights by charitable trusts in a manner similar to conservation restrictions. Private acquisition, by gift or purchase, would supplement public purchase of development rights.

The program would be voluntary. The farmer would be free to decide whether to sell the development rights on his land, when he wanted to sell and how he wanted to be paid. The agricultural restrictions could be removed in the event that changing conditions indicated that the land was no longer needed for agriculture by reversal of the approval process. This would require approval by the land owner, conservation commission and a two-thirds vote of the Legislature. The land owner would then be allowed to repurchase the development rights.

The subcommittee recommends that initial purchases of APR’s be financed through a bond issue of at least $5 million backed by an appropriation from the General Fund. The $5 million figure is the minimum amount necessary to conduct a program that will allow the Department of Food and Agriculture to monitor and evaluate the effectiveness of the agricultural preservation restriction concept.

F. Relationship of a Pilot Project to a Fullscale Program to Preserve Agricultural Land

Finally, the subcommittee recommends that the approach set forth in the previously described legislation serve as the first phase of a more comprehensive program to preserve agricultural land and insure adequate food supplies for the Commonwealth. Toward this goal the subcommittee recommends that the Commissioner of Food
and Agriculture appoint a task force to monitor the effectiveness of
the APR program and to continue consideration of other mecha-
nisms for the protection and promotion of agriculture in
Massachusetts. Specifically, this task force should consider methods
for the mapping of farmland, the designation of agricultural districts,
the creation of a land trust and the establishment of financing me-
chanisms which will provide funding for the purchase of agricultural
restrictions on the majority of the State’s remaining prime agricul-
tural land.

This task force should also consider recommendations of the Local
Growth Policy Committees on the preservation of agricultural land. The
Agricultural Land Preservation Committee of the Department of
Food and Agriculture will be producing an interim report in the near
future containing findings and recommendations concerning a
fullscale program for the preservation of agricultural land and its
relationship to the pilot project proposed in the appended legislation.
FOOTNOTES

2. Ibid., p. 5.
3. Ibid., p. 19.
4. Ibid., p. 15.
5. Ibid., p. 18.
8. Ibid., p. 1.
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AN ACT TO PROTECT AND ENCOURAGE MASSACHUSETTS AGRICULTURE
BY MEANS OF ACQUISITION OF AGRICULTURAL LANDS IN FEE OR
LESSER INTERESTS THEREIN.

Whereas, The deferred operation of this act would tend to
defeat its purpose, which is to preserve and protect agricultural
lands in order to ensure the people of Massachusetts a more
adequate supply of food at reasonable prices, therefore, it is
hereby declared to be an emergency law, necessary for the
immediate preservation of the public health, safety, and con-
venience.

Be it enacted by the Senate and House of Representatives in
General Court assembled, and by the authority of the same, as
follows:

SECTION 1. Section 15 of chapter 128A of the General Laws,
as appearing in section 30 of chapter 987 of the acts of 1971, is
hereby amended by striking out, in lines 13, 14 and 15 the words
"and the remainder shall be used in carrying out the provisions of
paragraph (b) and (f) of said section two" and inserting in place
thereof the following words: — and the remainder shall be used
exclusively in carrying out the provisions of paragraph (b) and (f)
of said section two and section eleven A of chapter one hundred
and thirty-two A of the General Laws.

SECTION 2. The first sentence of section 11 of chapter 132A
of the General Laws, as most recently amended by section 268 of
chapter 706 of the acts of 1975, is hereby further amended by
inserting after the words "secretary of environmental affairs", the
words: — "in this chapter called the secretary."

SECTION 3. Said chapter 132A is hereby amended by
inserting after section 11 the following section: —
Section 11A. The secretary shall establish a program to assist the cities and towns, which have established conservation commissions under section eight C of chapter 40, in protecting land actively devoted to agricultural or horticultural uses as defined in chapter 61A, through the acquisition of agricultural preservation restrictions covering such land pursuant to the provisions of sections 31-33, inclusive, of chapter 184. The commissioner of food and agriculture may from funds appropriated from the agricultural purposes fund to carry out the provisions of this section, or received from other sources, pay any agricultural land owner for an approved project submitted by any such city or town under said program in such amount as he shall determine to be equitable in consideration of anticipated benefits from such project. The said commissioner, subject to approval of the secretary, shall establish rules and regulations for the management of this program.

SECTION 4. Section 31 of chapter 184 of the General Laws, as most recently amended by chapter 15 of the acts of 1976, is hereby amended by inserting after the last paragraph of said section the following new paragraph:—

An agricultural preservation restriction means a right either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominately in their agricultural farming or forest use, to forbid or limit any or all (a) construction or placing of buildings except for those used for agricultural purposes or for dwellings used for family living by the land owner, his immediate family or employees; (b) excavation dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such a manner as to adversely affect the lands overall future agricultural potential; and (c) other acts or uses detrimental to such retention of the land for agricultural use.

SECTION 5. Section 32 of said chapter 184 as most recently amended by section 292 of chapter 706 of the acts of 1975 is
3 hereby amended by striking out said section and inserting in place thereof the following section:—

4 **Section 32.** No conservation restriction or agricultural preservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include conservation of land or water areas or of a particular such area, and no preservation restriction, as defined in section thirty-one, held by any governmental body or by a charitable corporation or trust whose purposes include preservation of buildings or sites of historical significance or of a particular such building or site, shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of the benefit being assignable or being assigned to any other governmental body or to any charitable corporation or trust with like purposes, provided (a) in case of a restriction held by a city or town or a commission, authority, or other instrumentality thereof it is approved by the secretary of environmental affairs if a conservation restriction or the commissioner of food and agriculture if an agricultural preservation restriction or the Massachusetts historical commission if a preservation restriction, and (b) in case of a restriction held by a charitable corporation or trust it is approved by the mayor, or in cities having a city manager the city manager, and the city council of the city, or the selectmen or town meeting of the town, in which the land is situated, and the secretary of environmental affairs if a conservation restriction or the commissioner of food and agriculture if an agricultural preservation restriction or the Massachusetts historical commission if a preservation restriction.

Such conservation, preservation, and agricultural preservation restrictions are interests in land and may be acquired by any governmental body or such charitable corporations or trust which have power to acquire interest in the land, in the same manner as it may acquire other interests in land. Such a restriction may be enforced by injunction or proceeding in equity, and shall entitle representatives of the holder to enter the land in a reasonable manner and at reasonable times to assure compliance. Such a restriction may be released, in whole or in part, by the holder for such consideration, if any, as the holder
SECTION 6. The first sentence in the first paragraph of section 33 of said chapter 184 as appearing in section 5 of chapter 666 of the acts of 1969 is hereby amended by striking out in line 4 the words "conservation and preservation restriction", and inserting in place thereof the words: — conservation, preservation and agricultural preservation restriction.

SECTION 7. The third paragraph of said section 33 as appearing in section 295 of chapter 706 of the acts of 1975 is

may determine, in the same manner as the holder may dispose of land or other interests in land, but only after a public hearing upon reasonable public notice, by the governmental body holding the restriction or if held by a charitable corporation or trust, by the mayor, or in cities having a city manager the city manager, and city council of the city or the selectmen of the town, whose approval shall be required, and in case of a restriction requiring approval by the secretary of environmental affairs or the Massachusetts historical commission or the commissioner of food and agriculture, only with like approval of the release. Approvals of restrictions and releases shall be evidenced by certificates of the secretary of environmental affairs or the chairman, clerk or secretary of the Massachusetts historical commission, or the commissioner of food and agriculture, city council, selectmen or the town, duly recorded or registered.

In determining whether the restriction or its continuance is in the public interest, the governmental body acquiring, releasing or approving shall take into consideration the public interest in such conservation, preservation or agricultural preservation, and any national, state, regional and local program in furtherance thereof, and also any public state, regional or local comprehensive land use or development plan affecting the land, and any known proposal by a governmental body for use of the land.

This section shall not be construed to imply that any restriction, easement, covenant or condition which does not have the benefit of this section shall, on account of any provision hereof, be unenforceable. Nothing in this section or sections thirty-one and thirty-three shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise to use land for public purposes.
hereby amended by striking out in line 8 the words “approves a conservation or preservation restriction”, and inserting in place thereof the words: — or the commissioner of food and agriculture approves a conservation or preservation restriction or agricultural preservation restriction.

SECTION 8. The fifth paragraph of said section 33 as most recently amended by section 296 of chapter 706 of the acts of 1975 is hereby amended by striking out said paragraph and inserting in place thereof the following paragraph: —

Except in the case of a restriction noted on the certificate of title of registered land subject thereto, or where the general location of the restricted land is indicated on a zoning map published by a city or town with a reference to a marginal note or list indicating the original or then holder of the restriction and the place of record in the public records of the instrument imposing the restriction, no conservation or preservation restriction or agricultural preservation restriction having the benefit of section thirty-two, and no other restrictions held by any governmental body, which is not so indexed in the public restriction tract index shall be enforceable after thirty years from the recording of the instrument imposing it unless before expiration of such thirty years there is similarly recorded a notice of restriction identifying the instrument and its place of record in the public records and naming one or more of the owners of record of each parcel of land to be affected by the notice, nor enforceable after twenty years from the recording of any such notice unless before the expiration of twenty years another such notice is so recorded, and in each case the notice is indexed in the grantor index under the owner’s name. Such notices may be given by any official of a governmental body holding the restriction or, by the secretary of environmental affairs in case of a restriction approved by him, by the chairman or acting chairman of the Massachusetts historical commission in case of a restriction approved by it, or by the commissioner of food and agriculture in case of a restriction approved by him, or by any official of any charitable corporation or trust holding the restriction or whose purposes include, in case of a conservation restriction, the conservation of land or water areas, or in case of a preservation restriction, the preservation of
34 buildings or sites of historical significance, in case of an
35 agricultural preservation restriction the preservation of
36 agricultural lands.

SECTION 9. To meet the expenditure necessary in carrying
out the provisions of this act, the state treasurer shall, upon
request of the governor, issue and sell at public or private sale
bonds of the commonwealth, registered or with interest coupons
attached, as he may deem best, to an amount to be specified by
the governor from time to time, but not exceeding in the
aggregate, the sum of five million dollars. All bonds issued by the
commonwealth, as aforesaid, shall be designated on their face,
Development Rights Outlay Loan, Act of 1976 and shall be on
the serial payment plan for such maximum term of years, not
exceeding ten years, as the governor may recommend to the
general court pursuant to section 3 of Article LXII of the
amendments to the Constitution of the commonwealth.
maturities thereof to be arranged so that the amounts payable in
the several years of the period of amortization other than the final
year shall be as nearly equal as in the opinion of the state
treasurer it is practicable to make them. Said bonds shall bear
interest semiannually at such rate as the state treasurer, with the
approval of the governor, shall fix. The initial maturities of such
bonds shall be payable not later than one year from the date of
issue thereof and the entire issue not later than June the thirtieth,
nineteen hundred and ninety-one.
All interest payments and payments on account of principal on
the bonds authorized by this act shall be paid from the
agricultural purposes fund or an appropriation from the General
Fund.

SECTION 10. The commissioner of food and agriculture shall
appoint a task force to continue consideration of other
mechanisms for the protection and promotion of agriculture in
Massachusetts, such as the designation of agricultural districts,
creation of a land trust, and extension of the program to cover
other lands and other mechanisms for financing. The task force
shall report its recommendations to the legislature from time to
time, and shall submit a preliminary report to the legislature on
or before January 1, 1978.