V - Policy Options

The following analysis is intended to offer descriptions and observations regarding specific farmland preservation tools employed in the Northeast. While a variety of programs are examined from both high growth and low growth areas, all were studied from the perspective of their possible usefulness in Fulton County.

The selected programs do not exhaust those being used but do provide representative examples of several different approaches. The Department of Agriculture and Markets also offers a number of programs discussed in this Plan (e.g. Ag Data Statements, Disclosure Notices, Ag Districts, etc.). Still other programs include Ontario County's Agriculture Industrial Park, the Town of Eden's Agricultural Advisory Committee, Lewis County's Farm Recruitment Program and Monroe County's Open Space Program.

Some general observations that can be drawn from this review include the following:

1) New York State already does a great deal for farmers. Its School Tax Credit program is without equal and effectively provides a large measure of farmland preservation within Fulton County. It may be possible to build on this (and the Agricultural District program) to recruit farmers to the County.

2) Heavy land use regulatory approaches aren't practical in Fulton County. Also, they only work well when combined with expensive PDR or LDR programs that compensate farmers for the downzoning. Land value is all the equity that many farmers have for their retirement. Taking it away is unpopular policy in any form.

3) Economic development approaches seem to be the area with the most potential for the future. They are also an area where there is clearly a gap, because farmers have traditionally been "price-takers" instead of "price-makers."

4) There are several separate and distinct values associated with farmland preservation (e.g. retaining an industry, maintaining a culture, saving open space) that need to be segmented and prioritized for purposes of policy making. Open space is not a major issue in Fulton County and, therefore, an economic approach is more practical.

Overview of Farmland Preservation Policies Employed in the Northeast

Approach	Jurisdiction	Description	Analysis
Leased Development Rights (LDR) Tax Abatements	**Town of Perinton, Monroe County, New York**	The Town has exercised its authority under § 247 of the NYS General Municipal Law to acquire conservation easements on farmland and other open spaces, paying for those easements with preferential tax treatment. Landowners apply for the program and the decision to accept or reject the application is made on the basis of benefit to the Town. These applications are reviewed by a Conservation Board and are subject to a public hearing. The owners are also required to principally and actively use the property for "bona fide agricultural production" for the term of the easement. Easements can be cancelled through a similar application but penalties apply. The proportion of pre-easement property value remaining subject to taxation varies depending on the length of the easement, ranging from 40% for 5 year easements (the minimum length accepted) to 10% for agreements of 15 years or more.	This program has existed since the 1970's. A total of 81 farming easements (62% of all open space acquired under the program) were in effect as of 2000 with some 3,034 acres of farmland protected. This represented 13.% of the Town land area. Perinton, however, is self-described as a suburban Rochester community desiring to preserve remaining open spaces. It is, at over 46,000 persons, larger than many rural counties. The key to the success of this program (rated "fabulous" by the assessor's office) is that it lowers the assessed value well below agricultural value and renders agricultural assessment meaningless. There have been very few cancellations by farmers. This means that it should work just as well in areas where there is a small differential in agricultural and development value. It is also politically appealing due to the flexibility offered to both farmer and municipality. The difficulty with it, of course, is in paying for the lost taxes in communities where there is not a large non-farm base to carry the load. This might be addressed with State assistance or by applying the program across a wider geography.

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Agriculture Protection Zoning	**Shrewsbury Township, York County, Pennsylvania**	The Township has used its general authority under the Pennsylvania Municipalities Planning Code to "preserve prime agriculture and farmland" by creating an agricultural zoning district that limits development on prime agricultural soils. Dwelling numbers are limited on the basis of a sliding scale that allows reasonable amounts of development on smaller tracts of land (1 units for 0-5 acres) but restricts larger parcels to agricultural densities (no more than 7 units for 120-150 acres). There is also a prohibition against subdividing farm parcels into new lots of less than 50 acres each. Similar zoning districts are found in various areas of Pennsylvania (mostly in the Lancaster-York area but also in less pressured areas such as Crawford and Lycoming Counties). Large buffers, maximum building lot sizes, agricultural nuisance notices, design review guidelines, deed restrictions on remaining land and provisions allowing B&B's, farm stands and other ag-related businesses are also common in these districts.	The Township's agricultural zoning district was created in 1976. It covered 12,442 acres or two-thirds of the Township in 1994. Shrewsbury had a population of 5,947 persons in 2000, a density of over 200 persons per square mile. This is a community that is, therefore, urban in some respects but it has many prime farmlands and may have struck a balance between the two. The district was challenged but upheld by the State's highest court in a 1985 case that validated the large lot sizes and low densities on the basis of "extraordinary justification" related to the high quality of the farmland within the district. The ordinance is supported, however, by Pennsylvania's extensive PDR program, which tends to insulate the regulations from farmer challenges. It was enacted, nonetheless, before that program was created. An analysis of development patterns before and after the district's creation (up to 1981) suggested it reduced the rate of development within the district by two-thirds and increased it outside fourfold.

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Transfer of Development Rights (TDR)	**Town of Eden, Erie County, New York**	The Town of Eden adopted Transfer of Development Rights provisions in 1977 as part of its Zoning Law. They remain in the Town Code in 2002 and allow transfers of residential density into three districts where more intense development is allowed, from three other conservation and agricultural districts where agriculture uses predominate. A combination of conservation easements and optional density permits are used to effectuate the transactions. The provisions are written in a fairly straight-forward simple manner and require developers to secure optional density permits at the time they apply for subdivision approval. The application must include a conservation easement that gets recorded by the Town before granting the density permit and final plat approval. The law spells out densities that may be transferred (e.g. one development right per acre of eligble land in the APO District and two per acre in the A District). Overuse use of cross-referencing makes it difficult to assess the extent of developer incentives.	The Town had, as of 2000, processed one transfer involving 31 acres of farmland - not much success, but more than many towns with TDR provisions. Nationwide there are some 50+ jurisdictions with TDR provisions in place and only 56% have protected any farmland. An estimated 67,707 acres have been protected through such programs but two-thirds of that has been in Montgomery County, Maryland. Only 15 programs have protected more than 100 acres. Eden's program has appealing simplicity and the densities that are allowed to be transferred are twice what a developer can achieve by simply subdividing the farmland (e.g. one house per two acres in the APO District and four per acre in the A District). Yet, the program has received little use in a Town with a vibrant farm sector and over 8,000 persons population. The difference may be in the size of the landowner incentives. Successful programs have allowed landowners to develop at only 20-25% of the density available for sale under TDR and have greatly lowered density at the outset. TDR also requires both demand and supply side that don't exist in every instance, particularly in areas not experiencing development pressure.

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Forest Land Tax Reductions (RPTL § 480-a)	**New York State**	New York State has a program in effect now to give preferential tax treatment to forest land. The 480-a program reduces the assessed value of woodland by 80%. It requires a 10 year commitment renewed annually along with a forest management plan. Woodlot owners in the program must thin and/or harvest based on the plan written by a certified forester and approved by the NYS Department of Environmental Conservation. A six percent (6%) stumpage fee is paid to the town when a harvest takes place. There is a large rollback penalty for conversion or if the management plan is not followed. Overall, this program requires a major long term commitment (30+ years) to benefit from the tax savings. It can provide many farmers with added tax benefits from forest land, however. It is, therefore, a farmland protection tool to the extent it improves farm income and lowers the economic rent required from the farmland. NYS-DEC has proposed legislation to improve this program by shifting some its costs and streamlining it.	Approximately 10% of New York State's forestland is held by farmers (nearly 1.5 million acres) and this represents roughly 20% of all farmland. There are some 1,500 enrolled 480-a parcels Statewide that encompass about 500,000 acres or 2-3% of all State forestland. Very little farmland appears to be enrolled. The program hasn't worked well because municipalties have had to absorb all the costs and, therefore, have resisted it. Small landowners have been scared of it because of its stringent rules and the length of the committment involved. The DEC proposed klegislation would correct many of these problems by; 1) reimbursing counties, schools and municipalities for much of their tax loss, 2) allowing some more flexibility in the 50 acre minimum, and 3) somewhat liberalizing the penalties. However, the legislation would not deal with principal landowner objections having to do with the rolling 10-year committment required. This is also essential if the the program is to appeal to smaller landowners such as farmers.

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Purchase of Development Rights (PDR)	**The Commonwealth of Pennsylvania**	The Pennsylvania Agricultural Conservation Easement Purchase Program was created in 1988 to enable county governments to purchase development rights from owners of quality farmland. Counties in the program appoint agricultural land preservation boards oversee purchases. Easements must be a minimum of 50 acres in size unless adjacent to existing preserved farmland or used for the production of unique crops. At least half the tract must either be harvested cropland, pasture or grazing land and it must contain specified amounts of good farming soils. Farms are also rated on the use of conservation practices and best management practices of nutrient management and likelihood of conversion. Other factors can include proximity of farm to sewer/water lines, extent of non-agricultural uses nearby, amount and type of agricultural use in the vicinity and the amount of other preserved farmland inclose proximity. Farmers may choose to receive the proceeds from easement sales in a lump sum payment or in installments. The program has been funded with a combination bond funds, Federal dollars (small) and a dedicated 1% cigarette tax.	Pennsylvania's PDR program has been the most successful in the nation and has worked in areas of the Commonwealth which have not experienced development pressure by allowing farmers to capture farm equity for agricultural development and transfers to younger generations. Since 1989, Pennsylvania has protected more than 1,750 farms, totaling more than 212,000 acres, spending some $425,000,000 to acquire easements in 48 out of 67 counties. Some 176 of the farms were in counties that actually lost population from 1990 to 2000. Less than half were in counties facing development pressure. Susquehanna County borders upstate New York and grew by 4.6% - very comparable to the study area. Fifteen easements on 3,625 acres of farmland have been acquired there at an average of $650/acre, indicating Pennsylvania's program works well in areas without development pressure. A weakness of the program may be that it has too much money to work with. A number of marginal farms have been acquired only to later go out of business. A number of poorly run operations that deserved to go out of business have been continued by using the program as a crutch. These farms are left to compete with good managers and arguably make it more difficult for them to succeed.

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Conservation Reserve Program (CRP) Wetland Reserve Program (WRP)	**U.S. Department of Agriculture (USDA)**	These three programs are designed to take certain farmland out of production but serve to protect it for future use. More importantly, they function as limited LDR/PDR programs for operating farms, turning unproductive farmland into cash and recovering farm equity for reinvestment. Under the CRP program farmers receive annual rental payments to stop growing crops on erodible or environmentally sensitive acreage and plant protective covers of grass or trees. Cost-share payments are also available to establish permanent areas of grass, legumes, trees, windbreaks, or plants that improve water quality and support wildlife. Under the WRP program, the USDA purchases easements from farmers who agree to restore and protect wetlands. Related programs help farmers improve, or restore wetlands through 10-year rental agreements to protect important nesting, breeding, and feeding areas for migratory waterfowl. It is quite commnon for the CRP and WRP programs to be used in tandem with other PDR programs as a source of funding in a package of assistance to farmers who are selling off their development rights. This has been done in the West of Hudson and Delaware watersheds of the New York City water supply system, for example, to make City PDR funds go further.	The CRP and WRP programs have been moderately used in New York State. There were 59,000 acres enrolled in the CRP program in 2001 and 16,000 acres in the WRP program, a total of 75,000 acres. This is a decline from 1997 when 85,000 acres were enrolled by some 1,762 farmers. The current total represents about 1.5% of all cropland in the State. This compares to 2% for Pennsylvania, 3% in Maryland and 7% in Iowa. The amount of use varies from county to county, the primary factor appearing to be motivation of Soil & Water Conservation District officials to enroll participants. Relatively small Yates County, for example, is one of the leaders in New York in promoting this program, largely due to the aggressive approach of its District. It is also a program particularly well-suited to the small farm operations that Yates County is gaining in such large numbers. They tend to be more diversified farms where maximization of income from every acre is important. The overall impact of the programs is, however, limited. They are effective complementary tools in conjunction with other programs but unlikely to preserve much farmland in their own right.

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Farm Property School Tax Credit	**New York State**	New York taxpayers whose federal gross income from farming equals at least two-thirds of excess federal gross income are allowed a credit against income tax equal to the school property taxes they paid on certain agricultural property. The tax credit is limited to 100% of the school taxes paid on a base acreage of qualified agricultural property plus 50% of the school taxes paid on land exceeding the base acreage. The current base acreage is 250 acres; and includes farm buildings. Qualified agricultural property is land used for agricultural production. If agricultural property is converted to a non-qualified use, no credit is allowed that year and recapture is triggered for the previous two taxable years. Excess federal gross income is federal gross income from all sources for the taxable year in excess of $30,000. If the adjusted gross income of the taxpayer less principal paid on farm indebtedness exceeds $100,000 the credit is phased out and completely lost at $150,000. The school tax credit has been expanded to farmers who pay school taxes under a contract to buy farmland.	This has been a remarkably effective program and has no known equal among the States. It provides major benefits to all farmers who are able to pay their taxes. More importantly, it does not penalize municipalities because the reimbursement is through State taxes. It makes New York State very appealing from the standpoint of farm taxes. A comparison of two 60-cow dairies in adjoining Wayne County, PA Pennsylvania and Sullivan County, NY, indicated a $7,500 advantage in net property taxes paid by the New York farmer, despite property tax rates being much higher in New York State. Homeowner tax benefits under the STAR program contribute to this advantage and comparable programs for homeowners exist in other states (including PA) but the major factor is the School Tax Credit. Capitalized, the $7,500 per year is a $80,000 to $120,000 value, approximately $400 to $600 per acre for a typical dairy farm of this size. This is close to PDR value in areas not experiencing development pressure. Therefore, the Farm Property School Tax Credit (combined with STAR) is a very effective farm preservation tool. The fact it is a reimbursement program also tends to steer the help to viable farm operations, although the $150,000 income limit discriminates against the most successful farmers.

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Economic Development Initiative	**Watershed Agricultural Council (WAC)**	Part of New York City's agreement with the towns in its watershed area to protect the water supply preovided for the creation and funding of a unique entity known as the Watershed Agricultural Council. WAC was given several responsibilities and among them were the coordination of "Whole Farm Planning" and an economic development intiative to put the watershed's farmers on a firmer economic foundation. The Whole Farm Plans were designed to qualify area farmers for City financial assistance with nutrient management and conservation improvements that also served to upgrade the farm operations and enhance their prospects for long-term survival. The economic development program used seed money from the City to secure additional grant funds and technical assistance from USDA and Cornell for the purpose of establishing a restaurant supported agriculture program with the City's best eating places. Interested farmers were organized and trained in the growing of specialty crops, including fingerling potatoes. Markets were developed and the Catskill Family Farms cooperative was formed. Several dairy farms diversified into specialty crops and some eventually converted entirely to these new ventures. The cooperative is now largely on its own, supported by its membership. It continues to serve restaurants (through a distributor) and is now involved in Consumer Supported Agriculture (CSA) ventures.	This has been a successful program for a number of farmers. There are now 15 farmers involved who are producing 200,000 pounds of fingerling potatoes and numerous other specialty agricultural products. The project has gone through several changes and faced many start-up issues. Distribution and management proved to be very difficult. Ultimately, Catskill Family Farms opted to take somewhat lower prices (still well above commodity price levels) in return for the services of a distributor. This is a common pattern, however. It is unlikely a distributor could have been attracted without the Cooperative having first demonstrated that there was a market to serve. Likewise, the Cooperative would not have been formed or the new product ventures attempted without the organizational skills and seed money of WAC. The transition period to stability was several years in the making but the Cooperative has, ultimately, achieved its objectives of keeping farmers in business and improving their incomes. These should also be the goals of farmland preservation. The WAC experience is being replicated with smaller projects in various counties where agricultural economic development programs have been created. The Catskill program demonstrates that larger scale success is possible but a combination of adequate seed money, technical assistance, enthusiasm and management is essential. These are far easier to provide on a Statewide or regional basis than as county programs.

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Deregulation of Agricultural Processing (Farm Winery Act)	**New York State**	The New York State Farm Winery Act, passed in 1976, allowed, for the first time, the establishment of wineries making up to 50,000 gallons per year with tasting rooms and retail sales on-site seven days a week, a privilege not accorded to commercial wineries within the State. Wineries had been required to sell 95% of their wines through distributors. So as to encourage the wine industry in the state, the Act provided that farm wineries could use only New York grapes they grew themselves or purchased from other New York State vineyards. The maximum annual production was expanded to 150,000 gallons in1990. The Act also specified that no more than 15% of the grapes used for a regional label wine can come from another New York State wine region. Farm wineries are, today, still strictly regulated in New York State but the Farm Winery Act makes it economically feasible to establish small wineries selling directly to the public, opening up an agricultural niche within the wine-making regions of the State. Several other states are now emulating New York's example with farm winery laws of their own that create opportunities for vineyard owners to construct wineries or wineries to be establshed that buy grapes from local vineyard owners.	The Farm Winery Act has been a great success story by any measure, including farmland preservation. Before the Act, New York had only 21 wineries, but 37 more opened within the next 10 years. Some 102 of New York's 160 wineries have opened since 1985, including 61 during the 1990's and 11 more in 2001 alone. Wineries now operate in 32, or a majority, of New York's counties, with concentrations in such low growth areas as the Finger Lakes and Lake Erie region. Farm wineries, most in the range of 10,000 to 30,000 gallons per year of production, account for 80% of all wineries in the State. Farm wineries produced 1,600,000 gallons of wine in 2000, a threefold increase in 15 years. They only account for about 4% of New York's total wine production but helped to produce a 65% increase in the total due to the attention they drew to the State's wines. The 1,100,000 gallon gain in farm winery wine production since 1985 is equivalent to approximately 31,500 tons or 8,750 acres of grapes. Old vineyards have been recyled for use in growing new varieties and addiditional acreage has also been brought into production. The economic impact from both wine sales and tourism generated from the wine trails is, at an estimated $30/gallon or $13.50 per visitor, some $33,000,000 to $36,000,000 minimum and probably much higher. The Farm Winery Act demonstrates the potential for smaller agricultural producers released from restrictive regulations on processing. .

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Economic Development Initiative (Ag Industry Tax Abatement Program)	**Sullivan County, New York** **Schuyler County, New York**	The County of Sullivan Industrial Development Agency has enacted a targeted tax abatement program specific to agricultural industries. Their program was created in iresponse to a Sullivan County Economic Development Strategy recommendation to make "targeted efforts ... to produce job growth through business expansion." Many of the County's employers were agricultural enterprises and considering expansion. Agriculture enterprises were also acknowledged to generate very high economic multipliers and be "the single most important segment of the County economy after tourism." The program is a targeted tax incentive designed to complement the County's Agricultural Revolving Loan Fund (described below). It allows the County to offer unique packages of benefits to agricultural enterprises and makes it the place to be if one is in those businesses. The abatement schedule is quite generous and allows for 5 years of no taxes on the improvements made, phasing in at 10% per year thereafter. Schuyler County adopted a similar program to help its wineries and Steuben County's Agricultural and Farmland Protection Plan recommends it. Other counties have comparable programs or have offered similar benefits to processors in negotiations to recruit them as industries. These include Broome, Fulton, Greene, St. Lawrence and Yates Counties.	There have been a number of successes with these programs in attracting and keeping those agricultural processors and support industries that ensure a critical mass of agricultural activity within an area. The Sullivan County IDA has used its program twice since adoption in 1998 - once by a feed manufacturer and another time by a farm equipment dealer. Both were located in towns lacking eligibility under Section 485-b of the Real Property Tax Law (which abates 50% of taxes in the first year and phases in at 5% per year). The machinery dealer made a $100,000 expansion. The feed company invested $1,000,000 in modernization of its mill. Each supplier had but one effective competitor. Maintaining that competition was essential to keeping the costs of supplies to local farmers competitive. Greene County was able to attract a large Canadian floral processor using its program (although the deal died following property acquisition for unrelated reasons). Yates County and some others have designed their programs around value-added manufacturing. It recently provided tax abatements to Glenora Wine Cellars with a major expansion project, for instance. That particular project was not treated as value-added because it was primarily a lodging project but IDA officials indicate a winery itself would qualify as value-added, thus giving Yates County a distinct advantage in promoting winery development with associated farmland preservation benefits.

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Economic Development Initiative (Ag Industry Revolving Loan Program)	**Sullivan County, New York**	Sullivan County has used the HUD Community Development Block Grant program to establish an Agricultural Revolving Loan Program. The fund is to agricultural industries, including both farms and processors as well as support enterprises. A $600,000 grant was secured to establish the revolving loan fund. The terms are 4% interest with 7-10 years to amortize the loans. There is a requirement that at least one new job be generated for each $25,000 in funds loaned out.	This program is now almost three years old. Two loans have been made - one in the amount of $360,000 for an egg-breaking operation and another loan of $100,000 to an egg-layer poultry operation recovering from a fire and needing to update equipment. The egg-breaker created 50 new jobs, is making all payments and looking to further expand. The egg-laying operation loan is new but supports a long-standing poultry business in the County. The program is modestly sucessful but suffers from HUD paperwork and documentation requirements. Also, the terms haven't been especially attractive in the current low-interest private market. Agricultural enterprises also have difficulty meeting job targets even though their indirect (multiplied) economic benefits are large. Still another program is that farm assets make difficult collateral because they tend to be special purpose and unusable for otherc enterprises. A poultry house is, in fact, probably a liability to anyone other than the farmer himself. This type of program is only likely to make a major impact on farmland preservation if linked to other financing as a source of second-position matching funds. The investment of time and resources in making it available may not be justified considering the limited market for the assistance. Also, stand-alone programs of this type tend to support unworthy applicants from a credit standpoint, distorting the marketplace, or provide resources already available from private lenders.