

Chapter 8: Prime Farmland, Rangeland Protection, and Forest Land Preservation Laws

State prime farmland, rangeland protection, and forest land preservation laws

Of the 17 states surveyed, 6 states—Delaware, Pennsylvania, Wisconsin, Iowa, California, and Tennessee—have laws specifically aimed at the preservation of farmland. These laws were enacted with the primary State policy of preserving and protecting the farmland to serve the long-term needs of the agricultural community and the citizens of the respective state. To effectuate this policy, each state offers a slightly different mechanism to protect farmland.

Delaware's Farmland Preservation Act creates agricultural preservation districts. All farmland or forest land, or both, included in the district are subject to a number of restrictions, including—

- no rezoning or major subdivision of the real property is allowed;
- activities conducted on the real property are limited to agricultural and related uses; and
- the restrictions are considered covenants that run with the lands in the district.

The act also creates the Agricultural Land Preservation Foundation. Among other important duties and powers, it must adopt criteria for establishing and maintaining Agricultural Preservation Districts, set forth criteria of agricultural lands preservation easement, and administer and supervise the Delaware Farmland Preservation Fund. Furthermore, the Foundation can use the Fund to acquire, maintain, and enforce agricultural land preservation easements for lands that are located in the districts. Similar to Delaware's agricultural preservation districts are Pennsylvania's agricultural security areas.

Iowa allows the establishment of a county land preservation and use commission in each county. The county commission must compile a land use inventory of the county areas. The county commission is also required to propose to the county board a county land use plan. Moreover, under the Iowa law, a farmlandowner can submit a proposal to the county board to create an agricultural area within the county. To create an incentive to preserve agricultural land, the law provides two statutory incentives. First, a farm or farm operation located in an agricultural area is automatically presumed not to be a nuisance. Second, the Iowa Department of Natural Resources will give priority to the use of water resources by farmers or farm operations.

In California, the authoritative agency is authorized to acquire fee title, development right, easements, or other interests in the land located in the coastal zone to prevent loss of agricultural lands and to assemble such agricultural lands into parcels of adequate size for continued agricultural production. In acquiring interest in agricultural land, the agency must give the highest priority to urban fringe areas where the impact of urbanization on agricultural lands is greatest.

Under the Tennessee law, owners of farmland can enroll land in an agricultural district. The law also allows the local Soil Conservation District Board of Supervisors to serve as the governing body. They will, in turn, notify the local Planning Commission and any local zoning boards of the areas designated as Agricultural Districts.

Of the 17 states surveyed, New Mexico and Utah, have laws that specifically protect state rangeland. The unique features of New Mexico laws are that the State protects its rangeland by assigning to the Department of Agriculture a series of broad powers and duties. For example, among other duties and powers, the department must—

establish contracts with ranchers, Indian tribes and pueblos, local soil and water conservation district boards, and appropriate State and Federal agencies to determine interest for participation in brush and weed control management programs;

prepare and implement a plan for each project to conduct brush and weed control under the guidelines established by the rangeland protection advisory committee; and

coordinate field inspections on participating ranches with ranchers, local soil and water conservation district boards, appropriate State and Federal agencies, and other individuals.

Furthermore, the New Mexico Protection Act creates a rangeland protection advisory committee. It is responsible for developing mutually acceptable general guidelines to be followed for all rangeland protection projects conducted by the Department of Agriculture.

Utah Management of Range Resources law bases the success of rangeland management on sound conservation principles, which include practices to improve range conditions.

Delaware (region 1).—The Delaware Legislature enacted the Delaware Agricultural Lands Preservation Act¹³⁸⁹ to "provide for the creation of permanent agricultural areas comprised of viable farmlands and forest lands to serve the long-term needs of the agricultural community and the citizens of Delaware."¹³⁹⁰

To further its goal, the act created a statewide Agricultural Lands Preservation Foundation, which consists of nine appointed trustees.¹³⁹¹

¹³⁸⁹Delaware Agricultural Lands Preservation Act, DEL. CODE ANN. tit. 3, § 901 et seq. (Supp. 1992). The Delaware Agricultural Lands Preservation Act (of 1981) was first enacted in 1981. In 1991, the 1981 Act was repealed and redesignated and amended.

¹³⁹⁰Id. § 901.

¹³⁹¹Id. § 903. These trustees include:

- The Secretary of the Department of Agriculture (or the authorized designee) serving an indefinite term;
- The Secretary of the Department of Natural Resources and Environmental Control (or the authorized designee) serving an indefinite term;
- The State Treasurer (or the authorized designee) serving an indefinite term;
- A member and representative of the Delaware Farm Bureau, serving an initial term of 2 years;
- A member and representative of the Delaware State Grange, serving an initial term of 2 years;
- An individual actively engaged in farming or some other form of agribusiness, who is resident of New Castle County, serving an initial term of 3 years;
- An individual actively engaged in farming or some other form of agribusiness, who is resident of Kent County, serving an initial term of 3 years;

The foundation must do the following.¹³⁹²

- Adopt, after a public hearing, criteria for establishing and maintaining Agricultural Preservation Districts.
- Adopt, after a public hearing, criteria for the purchase of agricultural land preservation easements.
- Adopt, after a public hearing and consultation with other agencies, a statewide agricultural lands preservation strategy that specifically identifies the areas of the State in which valuable productive agricultural lands are located and which are considered best suited for long-term preservation.
- Administer, operate, and supervise the Delaware Farmland Preservation Fund.
- Monitor and enforce the requirements and restrictions imposed by and under the provisions of this act, adopted regulations and legally binding instruments.
- Establish a program of cooperation and coordination with the governing bodies of localities, private nonprofit or public organizations to assist in preservation of agricultural lands for agricultural purposes.
- Acquire available Federal funding and undertake all necessary actions required to receive such funding, and deposit such moneys received into the Delaware Farming Preservation Fund.
- Perform an annual audit of the foundation's accounts, which will be part of the Foundation's Annual Report.
- Prepare an annual report of the foundation's proceedings and activities.
- Establish a program of education and promotion of agricultural land preservation.
- Develop an effective program to implement fully the provisions of this act.

The foundation is authorized to do the following:¹³⁹³

- Adopt an organizational structure to implement this act.
- Employ a staff subject of the availability of funding.
- Establish an office in the State.
- Retain by contract auditors, accountants, appraisers, legal counsel, and other services required by the foundation.
- Sue and be sued.
- Use a seal.
- Conduct hearings, examinations, and investigations as necessary and appropriate to the conduct of its operations and the fulfillment of its responsibilities.
- Procure and keep in force adequate insurance or otherwise provide for adequate protection of its property, and to indemnify itself and its officers and agents.

– An individual actively engaged in farming or some other form of agribusiness, who is resident of Sussex County, serving an initial term of 3 years; and

– An individual who is a resident of Delaware who is designated as Chairman.

¹³⁹²DEL. CODE ANN. tit. 3, § 904(a).

¹³⁹³Id. § 904(b).

- Purchase, sell, manage, lease, or rent real and personal property for use of the foundation as deemed necessary, convenient, or desirable.
- Act on and approve applications for the establishment of Agricultural Preservation Districts.
- Acquire by gift or purchase agricultural land preservation easements.
- Seek, obtain, or use Federal and private funding for the purposes of this act.
- Make short-term or long-term plans for the protection and preservation of agricultural lands.
- Enter upon lands when necessary to perform surveys, appraisals and investigations.
- Accept gifts, grants or loans of funds, property, or services from any source, public or private.
- Receive funds from sale of general bonds, revenue bonds, or other obligations of Delaware or under the name of the foundation.
- Recover reasonable costs for service provided.
- Delegate to one or more of its trustees, its executive director, or its agents such powers and duties as it may consider necessary and proper for the conduct of its authorized business.
- Select an executive director.
- Adopt procedural rules to govern the manner in which internal affairs of the foundations are conducted.
- Adopt, after notice and public hearing, rules and regulations to fulfill the foundation's responsibilities and fully effectuate the authority, purposes, intent, and activities contemplated under this act.

Under this act, the Delaware Farmland Preservation Fund is created. This fund is composed of all moneys received by the foundation or designated for deposit into it. It is authorized to invest such moneys on a long-term or short-term basis, subject to the approval of the Cash Management Policy Board.¹³⁹⁴ In addition, the act requires each county legislative body to establish a five-member Farmland Preservation Advisory Board that is obliged to advise the foundation concerning any proposed regulations.¹³⁹⁵

Similarly to the soil conservation district laws, the act also provides for the establishment of Agricultural Preservation Districts. It allows owner(s) of contiguous farmland or forest land, or both, containing at least 200 usable acres to apply, on a voluntary basis, for establishment of an Agricultural Preservation District,¹³⁹⁶ and owner(s) of farmland or forest land consisting of less than 200 acres to apply for expansion of an established district.¹³⁹⁷

¹³⁹⁴DEL. CODE ANN. tit. 3 § 905.

¹³⁹⁵Id. § 906. These five members include four active farmers or agribusinessmen residing within the county and one member of the legislative body. Id.

¹³⁹⁶DEL. CODE ANN. tit. 3 § 907(a).

¹³⁹⁷Id. § 907(d). Owner(s) of farmlands or forest lands, or both, of less than 200 acres must satisfy all requirements set forth for the owner(s) of lands of at least 200 acres, and the farmland or forest land is either continuous to the

To be considered for inclusion in an Agricultural Preservation District, an application must satisfy the eligibility requirements and a set of district restrictions. To be eligible, an application must satisfy the following criteria:¹³⁹⁸

- The owner(s) seeking inclusion of real property in the district must hold a title to such property.
- The real property proposed for inclusion must have an agricultural zoning designation and not be subject to any major subdivision plan.
- The real property must consist of viable and productive farmland or forest land, or both, that meet the minimum LESA scoring requirements for eligibility.
- The owner(s) of real property proposed for inclusion must execute a declaration in recordable form pledging commitment to the standards of the district.

All farmland or forest land, or both, included in the district are subject to the following restrictions:¹³⁹⁹

- No rezoning or major subdivision of the real property is allowed.
- Activities conducted on the real property are limited to agricultural and related uses, and residential use of the property is limited to dwelling housing for the owner, his or her relatives, and persons providing permanent and seasonable farm labor services.
- The restrictions will be deemed covenants that run with and bind the lands in the district for 10 years or any extended period from the date of placement of the lands in the district.

Before granting or denying the application, the foundation, the board, and the planning and zoning commission must consider the following factors:¹⁴⁰⁰

- The viability and productivity of the farmland or forest land, or both, based on the LESA scoring system.
- The extent to which the farmland or forest land, or both, are being actively used for agricultural purposes.
- The extent to which the long-term preservation of farmland or forest land, or both, would be consistent with land use plans adopted after public hearings at state and county levels.
- The potential for expansion of the district if established and compatibility with surrounding land uses.
- The ancillary benefit of creating additional open space adjacent to existing established and protected open space.
- The potential for acquisition of agricultural preservation easements under rating or ranking systems that may be adopted through regulations of the foundation.

established district, or located in whole or in part within a 1-mile radius of an established district. Id.

¹³⁹⁸DEL. CODE ANN. tit. 3 § 908(a).

¹³⁹⁹Id. § 909(a).

¹⁴⁰⁰Id. § 908(b).

- The socioeconomic benefits derived from an agricultural and historic perspective as a result of inclusion of farmland or forest land, or both, in the district.
- Consistency with the statewide agricultural lands preservation strategy.

To encourage the preservation of farmland or forest land, or both, the act provides tax exemption benefits for owner(s) of real property located in the district.¹⁴⁰¹

In addition to other duties and authority, the foundation, subject to the availability of funds and compliance with the requirements set forth for acquisition of agricultural lands preservation easements, is entitled to acquire, maintain, and enforce agricultural land preservation easements for land that is located in the Agricultural Preservation Districts.¹⁴⁰² The foundation is authorized to take action in any court of competent jurisdiction to enforce any restrictions or requirements imposed under this act.¹⁴⁰³ The act imposes only civil penalties on violators of this act.¹⁴⁰⁴ Moreover, judicial proceedings to review any rule, regulations or other action of the foundation or to determine meaning or effect of such may be brought in the Superior Court of Delaware.¹⁴⁰⁵

Maryland (region 1).—The Legislature of Maryland enacted a number of provisions governing forest conservancy districts. However, these provisions do not apply to clearing woodland for reservoirs, military, naval, agricultural, communication, and transmission lines, industrial sites, railroads, residential, or recreational purposes. Neither do they apply to maple tree camps or to the business of gathering maple sugar or syrup.¹⁴⁰⁶

The Maryland Legislature specifically declared that State forest land, timberland, woodland, and soil resources are basic assets of the State. Proper use, development, and preservation of these resources are essential to protect and promote the health, safety, and general welfare of the people of the State. State policy encourages economic management and scientific development of its forest and woodland to maintain, conserve, and improve soil resources so that adequate source of forest products is preserved for the people. Floods and soil erosion must be prevented and the natural beauty of the State preserved.¹⁴⁰⁷

The Maryland Department of Natural Resources must do the following:

- Administer forest conservation practices on privately owned forest land and manage publicly owned forest land.
- Keep records of its proceedings.
- With district boards, cooperate with existing public agencies in forest management practices, flood control, recreation, wildlife management, and related activities.

¹⁴⁰¹DEL. CODE ANN. tit. 3 § 911(a).

¹⁴⁰²Id. § 913.

¹⁴⁰³Id. § 920(a).

¹⁴⁰⁴Id. § 902(b).

¹⁴⁰⁵Id. § 927.

¹⁴⁰⁶Annotate Code of Maryland, Natural Resources 1997 § 5-610

¹⁴⁰⁷Id. §.

- Direct and coordinate the activities of the district boards and hear appeals from orders or decisions of the local boards.¹⁴⁰⁸

The department is required to divide Maryland into convenient districts, taking into accounts the character and extent of the timber stand, similarity of forest problems, convenience of administration, and other pertinent factors. By appointment, the department must establish a district forestry board of at least 5 members in each district created.¹⁴⁰⁹

A district forestry board has the following duties:¹⁴¹⁰

- Promoting private forestry by assisting landowners in forest management; planting trees, conservation, and development of tree crops; and protecting forests from fires, insects, and diseases.
- Making available to landowners the services of a forester with regard to their forest and tree crop problems.
- Assisting the county assessors in the appraisal of forest land for tax purposes.
- Disseminating forest conservation information and collecting data concerning forest conservation problems of the State.
- Securing the cooperation and assistance of the Federal Government and any of its agencies and State agencies in conservation of State forest resources.
- Assisting private owners of forest land by advising the construction of flood control measures; seeding and planting of waste slopes, abandoned, or eroded land; and developing wildlife habitat by planting food or cover producing trees, bushes, and shrubs.
- Receiving and passing on proposed work plans for cutting forest land.
- Maintaining an office, keeping a record of its transaction, and promptly filing copies of its decisions and orders with the department.
- Employing personnel, in addition to the district forester, as the department approves.
- Performing all acts necessary to attain the objectives of the law.

The board has a number of powers, including—

entering upon any woodland in the county or district to perform its duties;

holding meetings and demonstrations in regard to conservation of natural resources;

entering into agreements with landowners within its county or district for specified years;

cooperating with other government agencies to achieve better forest growth and promulgating conservation measures;

developing comprehensive forest management plans for conservation of soil resource and for control and prevention of soil erosion within the county or district;

¹⁴⁰⁸Annotate Code of Maryland, Natural Resources 1997 § 5-603.

¹⁴⁰⁹Id. § 5-605.

¹⁴¹⁰Id. § 5-606(a)

enforcing rules and regulations made by the department; and promulgating safeguards for proper forest land use.¹⁴¹¹

The law provides that any individual engaged in a forest products business must have a license issued by the department. The license can be obtained from the Department of Natural Resources for every type of forest products manufacturing plant. Before any sawmill or other plant is erected for the manufacture of lumber or other forest products, or when the location of many the manufacturing plant is to be changed, the location must be reported to the department.¹⁴¹²

The business individuals must do the following:¹⁴¹³

- Leave conditions favorable for growth.
- Leave young growth.
- Arrange for restocking land after cutting by leaving trees of desirable species of suitable size singly, or in groups, well distributed and in a number of secure restocking.
- Maintain adequate growing stock after partial cutting or selective logging.
- Provide for leases and timber cutting rights.
- Make application for inspection.

Within 3 years, but not less than 30 days preceding a cutting, the owner of woodland or his or her agent can apply to the board for inspection of the woodland proposed to be cut. The application must be made to the board of the district in which the land is located and indicate the location of the woodland, its approximate acreage, and the proposed cutting plan.¹⁴¹⁴ Within 30 days after receipt of such application, the board is required to exam the woodland covered in the application. Within reasonable time, the board must advise the owner or his or her agent, in writing, the most practical and satisfactory method of cutting the woodland and assent to the method best adapted.¹⁴¹⁵ However, the provisions governing license for forest products business does not apply to cutting firewood and timber for domestic use for the owner or the tenant.¹⁴¹⁶

¹⁴¹¹Annotate Code of Maryland, Natural Resources 1997 § 5-606.

¹⁴¹²Id. § 5-608(a).

¹⁴¹³Id. § 5-608(b).

¹⁴¹⁴Id. § 5-608(c).

¹⁴¹⁵Id. § 5-608(d).

¹⁴¹⁶Id. § 5-608(e).

Pennsylvania (region 1).—The Agricultural Area Security law¹⁴¹⁷ was enacted with the policy of—

conserving, protecting and encouraging the development and improvement of the state's agricultural lands for the production of food and other agricultural products, and

conserving and protecting agricultural lands as valued natural and ecological resources that provide needed open spaces for clean air and aesthetic purposes.¹⁴¹⁸

To further the State policy, the act has the following purposes:

- Encouraging landowners to make a long-term commitment to agriculture by offering them financial incentives and security of land use.
- Protecting farming operations in agricultural security areas from incompatible nonfarmland uses that may render farming impracticable.
- Assuring permanent conservation of productive agricultural lands to protect the agricultural economy in Pennsylvania.
- Providing compensation to landowners in exchange for their relinquishment of the right to develop their private property.
- Leveraging State agricultural easement purchase funds and protecting the investment of taxpayers in agricultural conservation easements.

The Agricultural Area Security law allows any governing body of any local government to establish an Agricultural Area Advisory Committee that consist of five persons. It has the mandatory duty to advise the local governing body and to work with the planning commission regarding the proposed establishment, modification, and termination of agricultural security areas.¹⁴¹⁹

Under the Agricultural Area Security law, owner(s) of land used for agricultural production can submit a proposal to the governing body for the establishment of an agricultural security area, provided that the owner(s) own at least 500 acres of viable agricultural land proposed to be included in the area.¹⁴²⁰ In determining the creation of such area, the planning commission and the advisory committee must consider the following evaluation criteria:¹⁴²¹

- Land proposed for inclusion must have soils that are conducive to agriculture.
- Use of land proposed for inclusion must be compatible with the local government unit's comprehensive plans.
- The land proposed, and any additions proposed subsequently, must be viable agricultural land.
- Additional factors include the extent and nature of farm improvements, anticipated trends in agricultural economic and technological conditions, any other matter, which may be relevant.

¹⁴¹⁷Agricultural Area Security Law, PENN STAT. ANN. § 901 through 915 (Supp. 1993).

¹⁴¹⁸Id. § 902.

¹⁴¹⁹PENN STAT. ANN. § 904.

¹⁴²⁰Id. § 905(a).

¹⁴²¹Id. § 907.

Participation in the agricultural security area is available on a voluntary basis. Deletion of land in such area can occur only after 7 years, or whenever the area is subject to review by the governing body. Addition of land to such area can occur at any time during the 7 years.¹⁴²² Furthermore, any person aggrieved by the governing body's decision or action regarding the creation, composition, modification, rejection, or termination of an agricultural area can appeal to the Court of Common Pleas.¹⁴²³

To further its policy, the Agricultural Area Security law requires every municipality or political subdivision within the agricultural security area created to encourage the continuity, development, and viability of agriculture by refraining from enacting local laws or ordinances that would unreasonably restrict farm structures or farm practices. Any municipality or political subdivision law or ordinance defining or prohibiting a public nuisance must exclude from the definition of nuisance any agricultural activity or operation conducted in the course of normal farming operations.¹⁴²⁴ Moreover, no state agency having or exercising powers of eminent domain can condemn any land within any agricultural security area, unless prior approval has been obtained from the Agricultural Lands Condemnation Approval Board.¹⁴²⁵

Under the Agricultural Area Security law, the Department of Agriculture and the State Agricultural Land Preservation Board must administer a program for the purchaser of agricultural conservation easements.¹⁴²⁶ After creation of an agricultural security area by the local governing body, the governing body can authorize a program to be administered by the county board for purchasing agricultural conservation easements from landowners whose land is within the area.¹⁴²⁷ However, an agricultural conservation easement is subject to a number of restrictions and limitations.¹⁴²⁸ Furthermore, the State board must make an annual allocation among counties (except counties of the first class) for the purchase of agricultural conservation easements.¹⁴²⁹ The Agricultural Conservation Easement Purchase Fund will be the source from which all moneys are authorized with the approval of the governor to carry out the purpose of this law.¹⁴³⁰

The Agricultural Area Security law requires the secretary of the Pennsylvania Department of Agriculture to promulgate rules and regulations necessary to promote the efficient, uniform, and statewide administration of the law.¹⁴³¹

In Pennsylvania, all counties are authorized to enter into covenants with owners of farmland on an adopted municipal, county, or regional plan for the purpose of

¹⁴²²PENN STAT. ANN. § 908.

¹⁴²³Id. § 910.

¹⁴²⁴Id. § 911. The Pennsylvania Legislature also enacted the Protection of Agricultural Operations from Nuisance Suits and Ordinance Law to protect and conserve and encourage development and improvements of its agricultural land. PENN STAT. ANN § 951 through 957.

¹⁴²⁵Id. § 913.

¹⁴²⁶Id. § 914.1. The State Agricultural Land Preservation Board, consisted of 17 members, is created within the Department of Agriculture.

¹⁴²⁷Id. The county board is composed of 5, 7, or 9 members appointed by the county governing body.

¹⁴²⁸Id. § 914.1(c).

¹⁴²⁹Id. § 914.1(h).

¹⁴³⁰Id. § 914.2.

¹⁴³¹Id. § 915.

preserving the farmland in the designated use.¹⁴³² The property covenanted to be maintained in certain use will receive preferential tax assessment. In other words, the tax assessment reflects the fair market value of the land as restricted by the covenant.¹⁴³³

Although the covenant is in effect, if the landowner (or his or her successors or assigns) alters the use of land to any other use that is not designated in the covenant, the alteration constitutes a breach of covenant. The landowner must pay to the county the difference between the real property taxes paid and the taxes that would have been payable without the covenant (plus interest).¹⁴³⁴

The county governments must establish procedures governing covenants between landowners and counties for preservation of farmland.¹⁴³⁵

Georgia (region 2).—The Georgia Legislature enacted a number of provisions to govern forest resources conservation. The State Forestry Commission is entrusted to manage, conserve, and protect any forest land or forest properties that belong to or are under the jurisdiction and control of any department, board, commission, bureau, agency, or authority of State Government. Such management must conform to the principles of sound forest management and be consistent with the use of such land or properties.¹⁴³⁶

The State Forestry Commission is authorized to sell, contract for the sale of, offer, and accept bids for the sale of timber and other forest products grown or produced on lands subject to the management of the commission. Any funds derived from the sale must be paid into the general fund of the State or to the governmental body having jurisdiction over such lands or properties.¹⁴³⁷

To foster, improve, and encourage reforestation and in furtherance of its duties and powers, the commission is authorized to contract for the production of seedlings, for the purchase of such seedlings for resale to Georgia forest owners or for fulfilling contractual obligations to Georgia forest owners, or for the sale of seedlings to other states and to the federal government.¹⁴³⁸

The State Forestry Commission consist of five members, with three being owners (or representatives of owners) of 50 acres or more of forest land within Georgia and two being manufacturers or processors of forest products (or their representatives). These members are appointed by the Governor and confirmed by the State. They hold office for 7 years and until their successors are appointed and qualified. The Governor cannot be a member of the commission.¹⁴³⁹

¹⁴³²PENN STAT. ANN. § 11943 (Supp. 1993).

¹⁴³³PENN STAT. ANN For an interesting article regarding farmland's preservation, *Agricultural Land Preservation: Can Pennsylvania Save the Family Farm?* 87 DICK. L. REV. 595 (1987).

¹⁴³⁴Id. § 11946 (Supp. 1993).

¹⁴³⁵Id. § 11945.

¹⁴³⁶GEORGIA CODE ANN. § 12-6-6 (a) (1996).

¹⁴³⁷Id. § 12-6-6-(b).

¹⁴³⁸Id. § 12-6-6-(c).

¹⁴³⁹Id. § 12-6-2.

The commission has the following powers and authority:¹⁴⁴⁰

- Taking all actions appropriate to foster, improve, and encourage reforestation.
- Engaging in research and other projects for the ascertainment and promulgation of better forestry practices.
- Offering aid, assistance, and technical advise to landowners relating to the preservation and culture of forests.
- Receiving gifts or donations made to it and expending the same under the terms of such gifts or donations.
- Conducting and directing fire prevention work and maintaining equipment, personnel, and installations for the detection, prevention, and combating thereof.
- Publishing and distributing the results of its research and investigations.
- Cooperating and contracting with other agencies and instrumentalities of government for the advancement of the State forests.
- Creating, establishing, and operating program(s) to facilitate, amplify, or supplement objectives and functions of the commission through the use of volunteer services.

The enumeration of specific powers will not be construed as a denial of others not specified.

The commission must appoint, by and with the consent of the Governor, a director, who will be the executive secretary and administrative officer of the commission.¹⁴⁴¹

The commission has the duty, in cooperation with the director, to submit annual reports to each regular session of the General Assembly together with such information necessary to show the condition of the forest resources of the State, with particular reference to the protection, preservation, and propagation of timber growth, and all other matters pertaining to the forest resources, and with recommendation for necessary legislation as to protection, reforestation, and management.¹⁴⁴²

Wisconsin (region 4).—In 1977, the Wisconsin Farmland Preservation chapter was enacted, which has gone through a series of amendments.¹⁴⁴³ Under the current law, all other State departments and agencies are required to cooperate with the Land Conservation Board and the Department of Agriculture, Trade and Consumer Protection in the exchange of information regarding all projects and activities, which might danger the preservation of agricultural land. The Department of Agriculture, Trade, and Consumer Protection is required periodically to advise other departments and agencies of the location and description of land upon which there exist farmland preservation agreements or zoning for exclusively agricultural use. Moreover, other

¹⁴⁴⁰GEORGIA CODE ANN. § 12-6-5.

¹⁴⁴¹Id. § 12-6-11.

¹⁴⁴²Id. § 12-6-10.

¹⁴⁴³Farmland Preservation, WIS. STAT. ANN. § 91.01 et seq. (West 1990 & Supp. 1993).

State departments and agencies must administer their planning and projects in a manner consistent with the purposes of this law.¹⁴⁴⁴

To assist local government bodies to preserve agricultural land, the Department of Agriculture, Trade and Consumer Protection and the Department of Development must prepare maps that locate lands in the state which would be considered for preservation because of their agricultural significance.¹⁴⁴⁵ The Land Conservation Board is required to review farmland preservation plans and exclusive agricultural use zoning ordinances and certify to the appropriate zoning authority whether the plans and ordinances meet the applicable standards.¹⁴⁴⁶ Moreover, the Department of Agriculture, Trade and Consumer Protection must promulgate rules to implement the Farmland Preservation law, except the provisions regarding the powers and duties of the Land Conservation Board because such provisions are to be promulgated by the board itself.¹⁴⁴⁷

Under Wisconsin law, any owner of farmland can apply for a farmland preservation agreement if—

- the county in which the land is located has a certified agricultural preservation plan in effect, or
- the land is in an area zoned for exclusive agricultural use under an ordinance.¹⁴⁴⁸

An owner of eligible farmlands who wants to have the lands covered by a farmland preservation agreement may do so by applying and filing appropriate documents to the county clerk.¹⁴⁴⁹

A farmland preservation agreement may be relinquished prior to termination date when—

- the landowner submits an application requesting to relinquish the agreement, and
- the local governing body determines that
 - Article I the agreement imposes continuing economic inviability causing hardships through the prevention of necessary improvements to the land,
 - Article II there are significant natural physical changes in the land that are generally irreversible and permanently affect the land, or
 - Article III surrounding conditions prohibit agricultural use.¹⁴⁵⁰

In addition, the Department of Agriculture, Trade and Consumer Protection must relinquish from the farmland preservation agreement land subject to the agreement if the landowner has, before December 31, 1988, obtained State, county, city, village, and town licenses, permits, or approvals to develop the land as part of an area to be converted to nonfarmland use.¹⁴⁵¹ However, if the land is not

¹⁴⁴⁴WIS. STAT. ANN. § 91.01 et seq. (West 1990).

¹⁴⁴⁵Id. § 91.05. In preparation of the map, the Department of Agricultural, Trade and Consumer Protection and the Department of Development must work in conjunction with other state agencies, counties, and county land conservation committees. Id.

¹⁴⁴⁶Id. § 91.06.

¹⁴⁴⁷Id. § 91.07 (West Supp. 1993).

¹⁴⁴⁸Id. § 91.11(1) (West 1990).

¹⁴⁴⁹Id. § 91.13 (West 1990 & Supp. 1993).

¹⁴⁵⁰Id. § 91.19(2) (West 1990).

¹⁴⁵¹WIS. STAT. ANN. § 91.19(6p) (West 1990).

relinquished, and if the owner or successor in title of the land upon which a farmland preservation agreement has been recorded changes the use of the land to a prohibited use, he or she is subject to a civil penalty for the actual damages.¹⁴⁵²

County agricultural preservation plans, established to enable farmlandowners to enter into farmland preservation agreements,¹⁴⁵³ must be based upon studies,¹⁴⁵⁴ and, at a minimum, include the following:¹⁴⁵⁵

- Statement of policy regarding preservation of agricultural lands, urban growth, the provision of public facilities and protection of significant natural resource, open space, scenic, historic, or architectural areas.
- Maps identifying agricultural areas to be preserved, areas of special environmental, natural resource or open space significance, and (if any) transition areas.
- Implementation programs of specific public actions designed to preserve agricultural lands and guide urban growth.¹⁴⁵⁶
- Agricultural preservation plans adopted by municipalities within the county if such plans comply with the requirements of preparing agricultural preservation plans.¹⁴⁵⁷
- Indication of how the county agricultural preservation plan compares with regional plans and an explanation of any discrepancies between the plans.¹⁴⁵⁸

When a county agricultural preservation plan is complete, it must be submitted to the Land Conservation Board for review and certification.¹⁴⁵⁹ Moreover, counties must continually review and evaluate the agricultural preservation plan in light of changing needs and conditions and provide for periodic revision of the plan.¹⁴⁶⁰

For a zoning ordinance to be deemed an exclusive agricultural zoning ordinance, it must follow certain criteria:

- Jurisdictional, organizational, or enforcement provisions are included that are necessary for its proper administration.
- Land in exclusive agricultural use districts is limited to agricultural use and is identified as an agricultural preservation area under any agricultural preservation plans.
- The regulations on the use of agricultural lands in the districts meet the following standards—
 - minimum parcel size to establish a residence or a farm operation is 35 acres;

¹⁴⁵²Id. § 91.21.

¹⁴⁵³Id. § 91.51.

¹⁴⁵⁴Id. § 91.53 (1990).

¹⁴⁵⁵Id. § 91.55.

¹⁴⁵⁶Id. § 91.57.

¹⁴⁵⁷Id. § 91.59.

¹⁴⁵⁸Id.

¹⁴⁵⁹Id. § 91.61.

¹⁴⁶⁰Id. § 91.63.

only residences allowed as permitted uses are those to be occupied by a person or a family, at least one member of which earns a substantial part of his or her livelihood from farm operations on the parcel;

structures or improvements may not be built on the land unless consistent with agricultural uses;

ordinance must be considered local ordinance and provide that gas and electric utility uses not requiring authorization are special exceptions or permitted or conditional uses and do not conflict with agricultural use;

special exceptions and condition uses are limited to those agriculture-related, religious, other utility, institutional or governmental uses which are necessary and do not conflict with agricultural use;

for purposes of farm consolidation and if allowed by local regulation, farm residences or structures that existed before the adoption of the ordinance may be separated from a larger farm parcel; and

a structure or improvement made as an incident to a lease for oil and natural gas exploration and extraction is considered consistent with agricultural use and may be permitted as a special exception or conditional use.¹⁴⁶¹

Interestingly, the Wisconsin law provides that any county, city, village, or town may require by separate ordinance that land for which an owner receives a zoning certificate may be farmed in accordance with reasonable soil and water conservation standards established by the county land conservation committee.¹⁴⁶²

Iowa (region 5).—In 1982, the Iowa Legislature enacted the County Land Preservation and Use Commissions chapter¹⁴⁶³ to "provide for the orderly use and development of land and related natural resources,"¹⁴⁶⁴ and to include farmland in state protection.

This law provides that in each county, a county land preservation and use commission can be established.¹⁴⁶⁵ Each county commission, composed of five appointed members, must compile a county land use inventory of the county area, that includes the following data:

- Land available and used for agricultural purposes (whether by soil suitability classification or land capability classification).
- Land used for public facilities (may include parks, recreation areas, schools).
- Land used for private open spaces (may include woodlands, wetlands, and water bodies).
- Land used for commercial, industrial, residential and transportation uses.
- Land that has been converted from agricultural use, commercial or industrial use, or public facilities since 1960.¹⁴⁶⁶

¹⁴⁶¹WIS. STAT. ANN. § 91.75 (West 1990 & Supp. 1993).

¹⁴⁶²Id. § 91.80 (West 1990).

¹⁴⁶³County Land Preservation and Use Commissions, IOWA CODE ANN. § 352.1 to 352.13 (West Supp. 1993). This chapter was transferred from Chapter 176B, Land Preservation and Use, Code 1991 consisting of § 176B.1 to 176B.13.

¹⁴⁶⁴Id. § 352.1.

¹⁴⁶⁵Id. § 352.3.

¹⁴⁶⁶Id. § 352.4.

In addition, the county commission is also required to propose to the county board a land use plan for the county, or to give the county board the county land use inventory together with the methods of—

- preserving agricultural lands for agricultural production,
- preserving and providing for recreational areas, forests, wetlands, streams, lakes and aquifers,
- providing for housing, commercial, industrial, transportational and recreational needs,
- promoting the efficient use and conservation of energy resources,
- promoting the creation and maintenance of wildlife habitat,
- implementing the plan, if adopted,
- encouraging the voluntary formation of agricultural areas by the farmlandowners, and
- considering the platting of subdivisions and its effect upon the availability of farmland.¹⁴⁶⁷

Under this law, a farmlandowner can submit a proposal to the county board to create an agricultural area within the county.¹⁴⁶⁸ An agricultural area is required to include at least 500 acres of farmland. However, if the area is smaller than 500 acres, the adjacent farmland must be subject to an agricultural land preservation ordinance. The land will not be included in the agricultural area without the permission of the owner, and the use of the land in agricultural areas is limited to farm operations. Moreover, an owner can withdraw from an agricultural area at any time after 3 years from the date of its creation by filing an appropriate request.¹⁴⁶⁹

To encourage the farm landowners to preserve agricultural land, the law provides two statutory incentives. First, a farm or farm operation located in an agricultural area is presumed not to be a nuisance. However, this incentive does not extend to—

- nuisance results from the negligent operation of the farm or farm operation,
- actions or proceedings arising from injury to person or property by the farm or farm operation before the agricultural area's creation, or
- allowance of defeating the right of a person to recover damages for injury sustained by the person because of the pollution or change in condition of the waters of a stream, the overflowing of the person's land, or excessive soil erosion onto another person's land. Second, the department of natural resources will give priority to the use of water resources by farm or farm operations.¹⁴⁷⁰

New Mexico (region 6).—The New Mexico Rangeland Protection Act¹⁴⁷¹ was enacted with the purpose to "apply methods to enhance the multiple-use management, development and conservation of rangeland in New Mexico so as to restore

¹⁴⁶⁷IOWA CODE ANN. § 352.5.

¹⁴⁶⁸Id. 352.6.

¹⁴⁶⁹Id. § 352.9.

¹⁴⁷⁰Id. § 352.11.

¹⁴⁷¹Rangeland Protection Act, N.M. STAT. ANN. § 76-7B-1 to 87-7B-7 (Michie Supp. 1992).

rangeland capacity to carry livestock and wildlife, conserve valuable soil and water resources and restore environmental quality."¹⁴⁷²

To coordinate rangeland protection projects developed under the act, the State Department of Agriculture is endowed with the following mandatory powers and duties:¹⁴⁷³

- To establish contact with ranchers, Indian tribes and pueblos, local soil and water conservation district boards, and appropriate State and Federal agencies to determine interest for participation in brush and weed management programs.
- To coordinate field inspections on participating ranches with ranchers, local soil and water conservation district boards, appropriate State and Federal agencies and other persons with needed expertise to evaluate the extent of the problem.
- To obtain a written recommendation from persons participating in the field inspections relative to need for and feasibility of control.
- To closely coordinate activities with local soil and water conservation district boards.
- To prepare and implement a plan for each project to carry out brush and weed control under the guidelines established by the Rangeland Protection Advisory Committee.
- To conduct the contract process to obtain services for control.
- To supervise and administer the actual contracted control or management projects in the field to assure compliance with the contract.
- To maintain an information repository on current technology for brush and weed control.
- To cooperate and coordinate with any individual or county, state or Federal governmental agency or its subdivisions to carry out its duties under this act.

In addition to these powers and responsibilities, the department is also required to insure the implementation of programs to collect and disseminate information relating to the purposes of the act.¹⁴⁷⁴

The Rangeland Protection Act also creates the Rangeland Protection Advisory Committee,¹⁴⁷⁵ which consists of seven persons.¹⁴⁷⁶ In addition to these seven members, the chairman of the committee is authorized to appoint one additional member for a 1-year term from the ranching industry.¹⁴⁷⁷ Upon the call of the chairman, the committee must meet to develop mutually acceptable general guidelines to be followed for all rangeland protection projects conducted by the

¹⁴⁷²N.M. STAT. ANN. § 76-7B-2(B).

¹⁴⁷³Id. § 76-7B-4.

¹⁴⁷⁴Id. § 76-7B-7.

¹⁴⁷⁵Id. § 76-7B-5(A).

¹⁴⁷⁶Id. These seven members include: the director of the New Mexico Department of Agriculture; the chairman of the Range Improvement Task Force, College of Agriculture of New Mexico State University; the commissioner of public land; the director of the Department of Game and Fish; the secretary of natural resources; the dean of the College of Agriculture of New Mexico State University; and the director of the Environmental Improvement Division of the Health and Environment Department. Id.

¹⁴⁷⁷Id.

department under this act.¹⁴⁷⁸ Moreover, once a year, it must convene to discuss rangeland protection projects during the previous year and to provide updated recommendations and guidance for future projects.¹⁴⁷⁹

Furthermore, regarding funding of the rangeland protection projects, the act provides the following:

- The appropriate Federal department, bureau, agency, or committee with authority for allocating funds, in cases where they participate, must provide funding for projects covering Federal and Indian land.¹⁴⁸⁰
- The owners and operators of deeded lands, in cases where they participate, must provide funding for projects embracing privately owned land.¹⁴⁸¹
- The State, in cases where they participate, must provide funding for projects embracing state trust rangeland.¹⁴⁸²
- The project funding by each type of rangelandownership must be upon a proportional acreage participation basis.¹⁴⁸³

New Mexico is also concerned with forest conservation. The legislature, “recognizing that the forest makes a vital contribution to New Mexico by providing wood products, jobs, grazing, quality water, wildlife habitat, young trees, taxes, and other economic benefits,”¹⁴⁸⁴ enacted the New Mexico Forest Conservation Act¹⁴⁸⁵ in 1978 to preserve and enhance these resources.

To effectuate this act, the Forestry Division of the Department of Energy, Minerals, and Natural Resources has the following responsibilities:

- Enter into contracts and cooperative agreements with the secretary of Agriculture, private landowners, or other State, Federal and private agencies or organizations to prevent forest fires, brush fires, or other wild fires.
- Conduct research on forest conservation methods.
- Provide technical assistance and advice to people of the State.
- Carry out all acts of Congress relating to forest conservation or rural fire defense.¹⁴⁸⁶

The Forest Conservation Act designates the director of the Forestry Division as the State forester.¹⁴⁸⁷ The State forester and the agents are authorized to do the following:¹⁴⁸⁸

- Prevent and suppress all forest fires on nonFederal and nonmunicipal lands of the state.
- Enter upon any lands to make investigations concerning violations of the act.

¹⁴⁷⁸N.M. STAT. ANN. § 76-7B-5(C)(1).

¹⁴⁷⁹Id. § 76-7B-5(C)(2).

¹⁴⁸⁰Id. § 76-7B-6(A).

¹⁴⁸¹Id. § 76-7B-6(B).

¹⁴⁸²Id. § 76-7B-6(C).

¹⁴⁸³Id. § 76-7B-6(D).

¹⁴⁸⁴Forest Conservation Act, N.M.S.A. § 68-2-24 (Michie Supp. 1990).

¹⁴⁸⁵Id. § 68-2-1 to 68-2-25.

¹⁴⁸⁶Id. § 68-2-6.

¹⁴⁸⁷Id. § 68-2-3.

¹⁴⁸⁸Id. § 68-2-8.

- Apprehend and arrest any person who has committed a violation in their presence.
- In the event of a forest fire, call upon any able-bodied man to help suppress the forest fire.
- Request tools or equipment from the landowner or timber operator whose lands are affected by the forest fire.

The State forester and the agents are allowed unrestricted access to any private and State land to prevent and suppress forest fires. Furthermore, the State forester and the agents shall not be liable for any civil actions for trespassing or damaging any lands while acting in accordance with the laws, rules, and regulations set forth in the act.¹⁴⁸⁹

The State treasury shall create and maintain a Conservation Planting Revolving Fund with money appropriated by the legislature and through the sale of trees for conservation planting.¹⁴⁹⁰ All money secured by the Conservation Planting Revolving Fund shall be issued by the State forester for the sale, distribution, or purchase of trees to any schools, community groups, or other organizations for conservation planting or for the benefit of the environment of New Mexico.

Any person who violates the Forest Conservation Act is subject to a fine not to exceed \$1,000 or imprisonment not to exceed 1 year, or both.¹⁴⁹¹

Utah (region 8).—Under the Utah Management of Range Resources law,¹⁴⁹² the Division of State Lands and Forestry is responsible for the efficient management of all range resources on land. Its management must be based on sound conservation principles, including practices to improve range conditions.¹⁴⁹³ To effectuate the management, the division is authorized to do the following:

- Issue grazing leases on State land under terms and conditions established by rule. These terms must be based on the fair market value of the lease. The lease's term cannot exceed 15 years. Furthermore, the division must determine the number and kind of stock that can be grazed each year on state land and regulate the number of days that the land may be grazed.¹⁴⁹⁴
- Enter into cooperative agreements with other public agencies and private landowners for the control of noxious weeds, new and invading plant species, insects and disease infestations on state-owned and adjacent lands.¹⁴⁹⁵

Furthermore, the division must collect an annual fee from each grazing lessee for the control of noxious weeds and new and invading plant species on rangelands.¹⁴⁹⁶

California (region 10).—Under the California Preservation of Agricultural Land provisions,¹⁴⁹⁷ the State Conservancy is authorized to acquire fee title, development right, easements, or other interests in land located in the coastal zone to prevent

¹⁴⁸⁹Forest Conservation Act, N.M.S.A. § 68-2-8.

¹⁴⁹⁰Id. § 68-2-21.

¹⁴⁹¹Id. § 68-2-17.

¹⁴⁹²UTAH CODE ANN. § 65A-9-1 et seq. (1993 & Supp. 1995).

¹⁴⁹³Id. § 65A-9-1 (Supp. 1995).

¹⁴⁹⁴Id. § 65A-9-2.

¹⁴⁹⁵Id. § 65A-9-3.

¹⁴⁹⁶Id. § 65A-9-4.

¹⁴⁹⁷CAL. PUB. RES. CODE § 31150 through 31156 (West 1986 & Supp. 1996).

loss of agricultural land and to assemble such agricultural lands into parcels of adequate size for continued agricultural production. The conservancy must take all reasonable action to return to private use or ownership, with proper use restrictions, all lands acquired for agricultural preservation.¹⁴⁹⁸

In acquiring interest in agricultural land, the conservancy must give the highest priority to urban fringe areas where the impact of urbanization on agricultural lands is greatest.¹⁴⁹⁹ It cannot acquire any interests in lands in the coastal zone for agricultural purposes unless the conservancy finds that both of the following conditions apply to the proposed acquisition, that is, that—

the lands are specifically identified in a certified local coastal plan or program as agricultural lands, or, in the case of San Francisco Bay, the lands are so identified in the Bay Plan, the Suisun Marsh Protection Plan, or in any other local plan that the Bay Commission determines to be consistent with such plans, and

no other reasonable means exists, including the use of police power, of assuring continuous use of such lands for agricultural purposes.¹⁵⁰⁰

However, if the conservancy is unable to acquire agricultural land, it can request the State Public Works Board to acquire the interest under the power of eminent domain.¹⁵⁰¹ It is also authorized to lease acquired lands. When it leases lands to private individuals or groups, the conservancy must, upon appropriation of such amounts by the legislature, transfer 24 percent of the gross income of such leases to the county in which such lands are situated.¹⁵⁰²

The conservancy can award grants to local public agencies and nonprofit organizations for the purpose of acquiring, improving, and developing agricultural lands.¹⁵⁰³

The conservancy can enter into an option to purchase lands if the cost of such option does not exceed \$100,000, when the legislature appropriates funds for purposes of preserving agricultural land.¹⁵⁰⁴

Tennessee (regions 11 & 12).—In 1995, the Agricultural District Bill titled Agricultural District and Farmland Preservation Act of 1995 was enacted with the intent to encourage the conservation, protection, and use of land that is managed for purposes of agricultural production.¹⁵⁰⁵

By enrolling land in a district, landowners are sending the message that this is farmland and it is their desire to continue to farm it. The enrolling is completely voluntary. No landowner is required to enroll any land in an agricultural district. If a landowner does enroll land in an agricultural district, but later decides to withdraw it, that can be done.

¹⁴⁹⁸CAL. PUB. RES. CODE § 31150 (West 1986).

¹⁴⁹⁹Id. § 31151. For an interesting article on farmland trust, see John J. Micek, III, *California Farmland Trust: Proposal to Balance the Rural and Urban Land Use Needs of California*, 18 U.S.F.L. REV. 171 (1984)

¹⁵⁰⁰Id. § 31152 (West 1986).

¹⁵⁰¹Id. § 31153 (West Supp. 1996).

¹⁵⁰²Id. § 31154 (West 1986).

¹⁵⁰³Id. § 31156 (West Supp. 1996).

¹⁵⁰⁴Id. § 31150.1 (West 1986).

¹⁵⁰⁵Agricultural District and Farmland Preservation Act of 1995, S512, Haun--H631, Givens).

To establish an agricultural district, a minimum of 250 contiguous acres is required. The required acreage can be enrolled by one landowner or by several landowners. However, each landowner involved must have at least 10 acres. Within an agricultural district, only those involved in agriculture production may enroll.

The Agricultural District (Ag) Bill also provides that the local Soil Conservation District Board of Supervisors will serve as the governing body. They in turn notify the local Planning Commission and any local zoning boards of the areas designated as Ag Districts.

Landowners who wish to enroll in an Ag District must submit a petition to the local Soil Conservation District Board of Supervisors describing the area and agricultural activities to be included. The Ag District will be established for 5 years and reviewed for rededication every 5 years. The acreage within a district may drop below the initial 250 acres; however, if at any time it drops below 20 acres, the district will cease to exist. Moreover, any landowner within the Ag District who receives a notice of condemnation proceedings against the property may request the local Soil Conservation District to conduct a public hearing to review the project's impact on that property.

Prime farmland, rangeland, and forest land preservation laws in selected counties

Local conservation laws can be classified into two related categories: land use and land management. Although land use is concerned with type of use and type and density of permitted structures, land management relates to the soil and water conservation standards to be met in both ongoing land uses (e.g., agriculture and forestry) and in construction.¹⁵⁰⁶

Since the late 1970's, there has been a great expansion of local land use laws to preserve farmlands, farming as a way of life, and local sources of food in urban fringe areas. There are a few legal devices to protect farmland as well as sensitive lands; however, the two most common devices are the "agricultural zoning" device and the "transfer-of-development right" device. The "transfer-of-development right" device allows owners of lands zoned for exclusive agricultural use to be compensated for the loss of their rights to develop their own lands.¹⁵⁰⁷

To understand local conservation laws, one must understand two particular entities: the local government and the conservation district. Each will be discussed in turn.

The *local general-purpose government* is the chief institution for land use regulation. These local governments derive their legislative powers from state laws or constitutions, but only the cities or counties can exercise all the state's powers to legislate for the public health, safety, and welfare within their jurisdiction. States can also enact new laws to confer additional legislative powers on local governments. Moreover, some levels of local government in every state are always responsible for land use planning and zoning.

¹⁵⁰⁶Holmes, Second Appraisal, *supra* note 16, at 61.

¹⁵⁰⁷*Id.*

Local governments use planning as a process to make decisions. Although these comprehensive or master plans are not legally binding, they are policy documents based on long-term development goals, which set forth the land use goals used in legally binding zoning ordinances. Moreover, zoning relates to the division of a municipality, county, or town into districts for the purpose of regulating private land use. The principal elements of a zoning ordinance consist of a map and a zoning text. The zoning text outlines the land use activities and structures allowed in each zone, the standards governing the uses in each zone, and the procedures citizens and officials must follow. Also, zoning is a common device used by local governments to regulate the type and density of structures allowed on agricultural and sensitive lands.

The *special-purpose local conservation district* is the main institution concerned with land management.¹⁵⁰⁸ These conservation districts are independent entities, not agencies of the local government because they are created originally by referendum, and their governing boards usually are partly elected. Furthermore, these districts can carry out a number of conservation programs on their own initiatives without seeking approval from other levels of government. However, in most states, the enabling authorities do not allow the districts to enact any regulatory ordinances. Moreover, these districts are not permitted to raise money to carry out their own programs but only can receive funds from Federal, state, and local governments, meaning that most district programs are conducted pursuant to Federal, state, county, or municipal legislation.

Baltimore County, Maryland (region 1).—The Baltimore County law provides that Agricultural Land Preservation Districts can be created by legislative act of the county council.¹⁵⁰⁹ Within these districts, a number of activities are permitted, including—

- any farm use of the land;
- operation of machinery used in farm production or the primary processing of agricultural products;
- normal agricultural activities and operations conducted in compliance with good husbandry practices; and
- sale of farm products on farm where the sales are made.¹⁵¹⁰

If there is a sale of any development rights easements over any land including within an Agricultural Land Preservation District, such sale must be approved by resolution of the county council.¹⁵¹¹

Farm owners within the Agricultural Land Preservation District can apply for tax credit, and if qualified, they will be eligible for a 100 percent county property tax credit for a maximum of 10 years.¹⁵¹² To be qualified for the tax credit program, they must satisfy a number of requirements. The farm owners must—

- have recorded a district agreement in the land records of Baltimore County after January 1, 1987;

¹⁵⁰⁸In different states, the "conservation district" is sometimes called soil conservation district, soil and water conservation district, resource conservation district, or natural resource district.

¹⁵⁰⁹Agricultural Land Preservation, Baltimore County, MD § 22-171(a) (1978).

¹⁵¹⁰Id. § 22-170 (1978).

¹⁵¹¹Id. § 22-172.

¹⁵¹²Id. § 22-175.

have an approved soil conservation and water quality plan with the Baltimore County Soil Conservation Office; and
not have sold an easement to the State.¹⁵¹³

If a farm owner, who has been granted a property tax credit for agricultural land, subsequently terminates the Agricultural Preservation District Agreement, the owner is liable for all property taxes that the owner would have been liable for if the tax credit had not been granted as well as the interest on the total tax liability.¹⁵¹⁴

In 1992, the County Council of Baltimore County added to its Environmental Protection and Resources Management law a number of provisions regarding forest conservation.¹⁵¹⁵ This law mainly applies to individuals applying for a development, subdivision, project plan, building, grading, or erosion and sediment control approval on units of land 40,000 square feet or greater.¹⁵¹⁶

This law requires that applicants seeking approvals or permit for development or subdivision, project plan, building, grading, grading plan, or erosion and sediment control plan for an area of land of 40,000 square feet or more must—
submit to the department a forest stand delineation and a forest conservation plan for the land on which the project is located; and
use methods approved by the department to protect retained forest and trees.¹⁵¹⁷

This requirement, however, is exempted from the following activities:¹⁵¹⁸

- Highway construction activities under State Natural Resources article.
- Areas governed by the State Chesapeake Bay Critical Area Protection law.
- Commercial logging or timber harvesting operations.
- Agricultural activities not resulting in a change in land use category.
- Licensed cutting or clearing of public utility rights-of-way.
- Licensed routine maintenance or emergency repairs of public utility rights-of-way.
- Construction of a public utility or highway within a utility right-of-way or highway right-of-way.
- Activities, including construction, of a linear structure conducted by a public utility on more than one lot.
- A forest clearing activity conducted on a single lot of any size if the lot existed before January 1, 1993, provided that applicable conditions are met.
- Strip or deep mining of coal regulated under the State Natural Resources article.

¹⁵¹³Agricultural Land Preservation, Baltimore County, MD § 22-175.

¹⁵¹⁴Id. § 22-176.

¹⁵¹⁵Forest Conservation, County Council of Baltimore County, MD, Legislative Session 1992, Legislative Date No. 24, Bill No. 224-92, *adding to* Environmental Protection and Resource Management, art. X. Forest Conservation, Baltimore County Code, 1988.

¹⁵¹⁶Forest Conservation, County Council of Baltimore County, MD § 14-402.

¹⁵¹⁷Id. § 14-404(A).

¹⁵¹⁸Id. § 14-402(B).

- Noncoal surface mining regulated under the State Natural Resources article.
- Activity required for the purpose of constructing a dwelling house intended for the use of the owner, provided that applicable conditions are met.
- Development in compliance with a valid CRG, development plan, or 3-Lot or less subdivision plan approved by county within a certain time frame.
- Grading and sediment control activities in compliance with a valid, unexpired grading plan, erosion and sediment control plan, or grading permit approved by county.
- A real estate transfer to provide a security, leasehold, or other legal or equitable interest.
- A county capital improvement project.

Unless exempt, applicants must conduct afforestation and retention on the land.¹⁵¹⁹ All land use categories (unless being exempted) are subject to a forest conservation threshold.¹⁵²⁰ Furthermore, the forest conservation provisions also set up priorities and time requirements for afforestation and reforestation.¹⁵²¹

A Forest Conservation Fund is also established to fund costs related to reforestation, afforestation, permanent preservation of priority forests, and implementation of the forest conservation provision.¹⁵²² If a person can demonstrate to the satisfaction of the department that requirements for reforestation or afforestation onsite or offsite cannot be reasonably accomplished, such person is required to contribute 40 cents per square foot to the county Forest Conservation Fund.¹⁵²³

Adams County, Pennsylvania (region 1).—In 1990, Adams County participated in Act 149 County Farmland Preservation Program that was created to preserve farmland. Farmland preservation in the county is important because it is a major producer of agricultural products, ranking fifth in Pennsylvania; it ranks only 44th in size of 67 counties. Moreover, through the adoption of the program, Adams County has protected more acres of farmland than any other county in the State, except Lancaster County.

Although the act uses the direct purchase by county and State Government of development rights, with funds raised from the taxpayer, is effective, it is an extremely expensive program. The effectiveness of this approach depends on the availability of funds. Albeit this discouragement, the county commissioners recognize another strategy that may be used in Adams County is the modern Agricultural Zoning Ordinance.

In the same year, the commissioners of Adams County enacted the Interchange Zoning Ordinance,¹⁵²⁴ with the primary purpose, of preserving appropriately located agricultural areas of Adams County and its communities.¹⁵²⁵

¹⁵¹⁹Forest Conservation, County Council of Baltimore County, MD § 14-409.

¹⁵²⁰Id. § 14-410.

¹⁵²¹Id. § 14-411.

¹⁵²²Id. § 14-412.

¹⁵²³Id. § 14-412(B).

¹⁵²⁴Interchange Zoning Ordinance, Adams County, PA § 100 et seq. (1990), amended in 1993.

¹⁵²⁵Id. § 103.

The ordinance authorizes the county commissioners to appoint a Zoning Hearing Board, consisting of 3 members (and 1 alternate member),¹⁵²⁶ who are required to be residents of Adams County and hold no other office in the county.¹⁵²⁷ The ordinance specifies a number of matters in which the board has jurisdiction to hear and render final adjudication. The matters relating to environmental issues include—

- appeals from the determination of the zoning officer with reference to the administration of any flood plain or flood hazard ordinance or such provisions within a county land use ordinance;

- application for variances from the terms of the zoning ordinance and flood hazard ordinance; and

- appeals from the determination of the zoning officer or municipal engineer in the administration of any land use or provision thereof with reference to sedimentation and erosion control and stormwater management.¹⁵²⁸

To effectuate these provisions, the ordinance provides for a number of remedies, including—

- preventive remedies, which allow the county to take and maintain appropriate actions in law or equity to restrain, correct or abate violations, to prevent unlawful construction, recover damages and to prevent illegal occupancy of a building, structure or premises;¹⁵²⁹ and

- enforcement remedies, which allow the county to impose on violators of the ordinance a civil fine of not exceeding \$500 plus all court costs and reasonable attorney fees.¹⁵³⁰

The ordinance establishes seven districts: the Employment Center District, Highway Commercial District, Agricultural Preservation I District, Agricultural Preservation II District, Rural Residential District, Mixed Density Residential District, and Land Conservation District. However, because natural resources and environments issues are the main concerns of this report, only Agricultural Preservation I District, Agricultural Preservation II District, Rural Residential District, and Land Conservation District will be discussed.

Agricultural Preservation I District.—This district is created with the main purpose of protecting agriculture from incompatible uses.¹⁵³¹ Within this district, the permitted principal uses are—

- farm buildings and agricultural uses;

- forestry uses;

- horticultural activities; and

- single-family detached dwellings.

The permitted accessory uses include—

- buildings accessory to primary agriculture structures;

¹⁵²⁶Interchange Zoning Ordinance, Adams County, PA § 1400.

¹⁵²⁷Id. § 1401.

¹⁵²⁸Id. § 1405.

¹⁵²⁹Id. § 1414.

¹⁵³⁰Id. § 1415.

¹⁵³¹Id. § 600.

produce stands, especially for the sale of *home-grown* or *home-made* products;
 private swimming pools not open to the public; and
 roadside stand selling products grown or produced on the farm.

The uses permitted as *special exceptions* by the Zoning Board are—

farm equipment sales facility;
 house of worship;
 cemetery;
 agricultural society meeting hall or offices, or both;
 noncommercial private park and recreation uses, regulation sized golf courses, and country clubs; and
 intensive animal husbandry.¹⁵³²

Agricultural Preservation II District.—This district is created with a similar purpose as named in the Agricultural Preservation I District. The differences occur in the categorization and types of uses allowed in the district. In Agricultural Preservation II District, only limited commercial use is permitted. For example, the uses of bed and breakfast operations are permitted although it is not in Agricultural Preservation I District part of the ordinance.

Rural Residential District—Within the Rural Residential District, a building can only be erected or used and a lot may be used or occupied for the following purposes:¹⁵³³

- Farm buildings, agricultural and horticultural uses, truck gardening, riding academies, public and private stables, dog kennels and veterinary hospitals.
- Single family detached dwellings.
- Public parks, playgrounds, and open spaces.
- Municipal buildings and uses.
- Accessory uses on the same lot with and customarily incidental to any of the above permitted uses.

In addition to these permitted uses, there are other *special exception uses* that may be permitted if the standards and criteria applicable to the latter uses are met. These special exception uses include—

church, place of worship, parish houses, and convents;¹⁵³⁴
 resort hotels/motels;¹⁵³⁵

¹⁵³²Forest Conservation, County Council of Baltimore County, MD § 601.

¹⁵³³Id. § 701.

¹⁵³⁴These uses require the compliance of the following standards:

- Minimum of 2 acres;
- No building can be located closer than 50 feet from a property line; and
- Parking must meet the parking standards set forth in this Ordinance. Id. § 702.1.

¹⁵³⁵These uses require the compliance of the following standards:

- A minimum lot or site area of 25 acres;
- Applicant must remove only a minimal amount of vegetation from the site;

private campgrounds;¹⁵³⁶ and
home occupation uses.

Land Conservation District.—The Land Conservation District is to conserve and protect open space and agricultural areas, to enhance the rural character of appropriate portions of Adams County, and to provide and design alternatives to standard residential development in rural settings.¹⁵³⁷ Within this district, the maximum density standards require that there can be either a maximum of one dwelling unit per 5 acres, or one dwelling unit per 3 acres if the *cluster residential lot* option is used.¹⁵³⁸

Within this district, the permitted principal uses include—¹⁵³⁹
single-family detached dwellings;¹⁵⁴⁰

- A site development plan must show information, including
 - location of site,
 - metes and bounds of tract,
 - utilities plan,
 - site improvements plan,
 - stormwater runoff calculations and a proposed method of stormwater runoff,
 - impervious coverage (buildings plus paved areas) must not exceed 20 percent of site,
 - sewage and water facilities must be approved by appropriate agencies, and
 - resort developers may be required to submit a study evaluating the impacts of the proposed project on the ground water resources of the area. Id. § 702.2.

¹⁵³⁶These uses require the compliance of the following standards:

- A minimum lot or site area of 15 acres;
- No building, structure, or parking area can be located closer than 75 feet to a property line;
- A minimum amount of vegetation must be removed;
- The maximum impervious lot coverage must be 25 percent; and
- A site development containing the information required for Resort Hotels/Motels must be submitted for review by the Adams County Office of Planning and Development, the Adams County Planning Commission, and the Adams County Soil Conservation District. Id. § 702.3.

¹⁵³⁷Forest Conservation, County Council of Baltimore County, MD § 640.

¹⁵³⁸Id. § 642. Cluster residential lot is a designated parcel of land, smaller than otherwise allowed in the Land Conservation District, established by the subdivision of a tract of land greater than 10 acres, which may be developed as a grouping of single-family residences located to minimize adverse impacts on surrounding environmental features and to provide access to and views of surrounding open land. Id. § 641. For any residential subdivision approval in accordance with the cluster residential lot option, the proposed lot must meet the following standards:

Minimum lot size:	12,000 ft ²
Maximum lot size:	1 acre
Minimum setbacks:	
Front yard:	30 ft. measured from the road or access drive right-of-way
Rear yard:	40 ft. measured from the rear property line
Site yard:	10 ft measured from the side property line
Minimum lot frontage:	75 ft measured from the front yard setback line
Open land:	75% of the land area of the parent tract must remain Open Land

The residential lot must, to the maximum extent feasible, be clustered in areas of the tract that are relatively free of sensitive environmental features including, but not limited to, flood plains, designated wetlands, slopes in excess of 12 percent, and areas of concentrated prime agricultural soils. Id. § 644.

¹⁵³⁹Forest Conservation, County Council of Baltimore County, MD § 643.

¹⁵⁴⁰The single-family detached dwellings must meet the following lot design standards and procedures:

Minimum lot size:	20,000 ft ²
Maximum lot size:	5 acres
Minimum set backs:	
Front yard:	35 feet measured from right-of-way of an adjoining road
Rear yard:	50 feet measured from the rear property line
Side yard:	10 feet measured from the side property line

agricultural activities, including farms; cultivation and harvesting of crops and related products; raising of livestock, along with associated pasture and grazing land; orchards, nurseries, and related horticultural uses;

public and semipublic uses, including nature preserves, wildlife sanctuaries, and similar uses; park and recreation uses and easement areas; and

accessory uses on the same lot and customarily incidental to permitted uses.

In addition, home occupation uses may be permitted as Special Exception Uses if such uses meet the applicable standards.¹⁵⁴¹

Lancaster County, Pennsylvania (region 1).—In 1991, the Board of Commissioners of Lancaster County enacted the Lancaster County Subdivision and Land Development Ordinance, thereby repealing the Lancaster County Subdivision and Land Development Ordinance of 1977.¹⁵⁴²

The 1991 Ordinance has various standards that require compliance by all land developments. For all proposals for possible development of sites into subdivisions of more than 20 lots or that involve the creation of new streets and plans for development of retail and office structures,¹⁵⁴³ the Plan Process Procedures provisions require preliminary plan application¹⁵⁴⁴ and final plan application.¹⁵⁴⁵ Within each of these processes, the applicant must comply with the application requirements for each separate stage,¹⁵⁴⁶ the plan requirements,¹⁵⁴⁷ and distribution requirement.¹⁵⁴⁸ Since the preliminary plan approval is effective for only 5 years, the final plan application must be made within that period.¹⁵⁴⁹ When the final plan is approved by the commission, the applicant must record it in the office of the Lancaster County Recorder of Deeds.¹⁵⁵⁰ Moreover, for minor land development plans,¹⁵⁵¹ only the final plan application is required.¹⁵⁵²

In addition to the above plan processing procedures, developers must show or submit certain information with the subdivision and land development plans.¹⁵⁵³ The County

Minimum lot width: 90 feet measured at the front yard setback line

Open Land: For a tract of land proposed for subdivision (parent tract) of:

Less than 10 acres:	No Open Land must be required
Between 10 and 24.99 acres:	50% of tract must remain in Open Land
25 acres or greater:	75% of tract must remain in Open Land

For a tract of land proposed for subdivision (parent tract) of greater than 10 acres, developer must demonstrate compliance with Open Land Standards. Id. § 643.

¹⁵⁴¹Forest Conservation, County Council of Baltimore County, MD § 645.

¹⁵⁴²Lancaster County Subdivision and Land Development Ordinance of 1977, PA § 101 et seq. (1991).

¹⁵⁴³Id. § 301.01.

¹⁵⁴⁴Id. § 302.

¹⁵⁴⁵Id. § 303.

¹⁵⁴⁶For the application requirements for the preliminary plan and final plan applications, Id. § 302.01 and § 303.01.

¹⁵⁴⁷For the plan requirements of the preliminary plan and final plan applications, Id. § 302.02 and § 303.02.

¹⁵⁴⁸For the distribution requirements of the preliminary plan and final plan applications, Id. § 302.03 and § 303.03.

¹⁵⁴⁹Id. § 302.07.

¹⁵⁵⁰Lancaster County Subdivision and Land Development Ordinance of 1977, PA § 303.10.

¹⁵⁵¹These minor land development plans involve

a single, nonresidential structure on a previously approved and recorded lot or;
the provision of a second principal building on a tract or parcel which currently contains a single principal building; or
development of a single tract or parcel of land which involves a single building containing not more than 4 units of occupancy. Id. § 305.

¹⁵⁵²Id.

¹⁵⁵³Lancaster County Subdivision and Land Development Ordinance of 1977, PA § 401 to 404.03.

Board's conservation purposes can be seen through this required information. For example, the sketch plan for the preliminary plan must provide the data, such as the significant topographical and constructed features (bodies of water, quarries, flood plains, tree masses, structures), the proposed land use, or the statement explaining the methods of water supply and sewage disposal to be used.¹⁵⁵⁴

Before approving any plan, all required improvements set forth in the ordinance must be complied with.¹⁵⁵⁵ Some examples of these required improvements include buffer planting, storm drainage facilities, sanitary sewer facilities, water supply facilities, lot line markers, street trees, or shade trees.¹⁵⁵⁶ The ordinance designates the municipal engineer or an engineer appointed by the county to be responsible for inspection and approval of the required improvements.¹⁵⁵⁷

In addition to other design standards requirements,¹⁵⁵⁸ the ordinance also provides a number of provisions concerning stormwater management,¹⁵⁵⁹ erosion and sedimentation,¹⁵⁶⁰ flood plain,¹⁵⁶¹ wetlands,¹⁵⁶² wooded areas,¹⁵⁶³ and ground cover.¹⁵⁶⁴ Each of these will be discussed briefly in turn.

Stormwater management.—The ordinance requires all subdivision or land development applications, or both, to include stormwater management data in the form acceptable to the commission.¹⁵⁶⁵ However, this requirement does not apply to a number of cases, including—

single lot subdivisions where a principal building exists on the site and no new construction is proposed;

lot add-on plans; and

farm-related businesses conducted within existing agricultural buildings.¹⁵⁶⁶

Moreover, the stormwater management data must be prepared by individuals registered in Pennsylvania to perform such duties.¹⁵⁶⁷ In addition to the above requirements, the applicants must comply with the design standards set forth in the ordinance.¹⁵⁶⁸ These standards are as follows:

- Stormwater management facilities must be provided so that the peak discharge of the calculated post development runoff to an adjacent property does not exceed the peak discharge of the calculated predevelopment runoff.
- The design of stormwater management collection facilities that service drainage areas within the site must be based on a 25-year storm frequency

¹⁵⁵⁴Id. § 401.

¹⁵⁵⁵Id. § 501.

¹⁵⁵⁶Id.

¹⁵⁵⁷Id. § 502.03, § 504.01.

¹⁵⁵⁸These design standards apply to streets, access drives and driveways; vehicular parking facilities; blocks and lots; easements; survey monuments and markers. Id. § 602-606.05.

¹⁵⁵⁹Id. § 607-607.04.

¹⁵⁶⁰Id. § 607.05.

¹⁵⁶¹Id. § 607.06.

¹⁵⁶²Id. § 607.07.

¹⁵⁶³Id. § 608.02.

¹⁵⁶⁴Id. § 608.04.

¹⁵⁶⁵Id. § 607.01.

¹⁵⁶⁶Id.

¹⁵⁶⁷Id.

¹⁵⁶⁸Id. § 607.03.

event; stormwater management facilities that convey offsite stormwater through the site must be designed to convey a 50-year event.

- All developments are required to include design provisions that allow for the overland conveyance of the post 100-year storm flows through the site without damage to any private or public property.
- Runoff calculations for onsite stormwater management facilities must be based on the Rational Method and the NRCS TR-55 Graphical Method.¹⁵⁶⁹
- In the determination of stormwater runoff and design of management facilities, the criteria and assumptions set forth by the ordinance must be used.
- The design plan and construction schedule must incorporate measures to minimize soil erosion and sedimentation.
- Consideration must be given to the relationship of the subject property to the drainage pattern of the watershed.
- Stormwater must not be transferred from one watershed to another.¹⁵⁷⁰
- A concentrated discharge of stormwater to an adjacent property must be within an existing watercourse or enclosed in an easement.
- Retention and detention basins must be designed to safely discharge the peak discharge of a post development one hundred year frequency storm event through an emergency spillway in a manner which will not damage the integrity of the basin.
- Retention and detention basins and water carrying facilities must be stabilized as indicated by the current engineering and NRCS practices.
- Retention and detention basins must be designed and maintained to ensure the design capacity after sedimentation has taken place.
- Basins that are not designed to release all stormwater must be specifically identified as retention basins or permanent pond basins. All other basins must have provisions for dewatering, particularly the bottom, and must not create swampy and/or unmaintainable conditions. Discharge structures must be designed to eliminate the possibility of blockage during operations.
- Retention and detention basins that are designed with earth fill dams must incorporate a number of applicable minimum standards.
- The capacities of the pipes, gutters, inlets, culverts, outlet structures, and swales must consider all possible hydraulic conditions.
- Inlets must be along the curb line.
- Curb, gutter, and roadside swale depths must comply with the applicable requirements.

¹⁵⁶⁹Lancaster County Subdivision and Land Development Ordinance of 1977, PA § 607.03.D. The Rational Method is recommended and preferred for design of all collection, conveyance and retention facilities when drainage areas are less than 1.5 square miles or where times of concentration are less than 60 minutes. The NRCS TR-55 Graphical Method may be used in place of the Tabular Hydrography Method for sizing conveyance system. Id.

¹⁵⁷⁰The ordinance provides some exceptions for this requirement, including

- _ the watersheds are sub-watersheds of a common watershed which join together within the perimeter of the property;
- _ the effect of the transfer does not alter the peak discharge onto adjacent lands; or
- _ easements from the affected downstream landowners are provided. Id. § 607.03.H.

- Curves in pipes or box culverts without an inlet or manhole, tee joints, elbows, and wyes are prohibited.
- Stormwater management pipe collection and conveyance systems must have a minimum diameter of 15 inches and must be made of reinforced concrete pipe, corrugated galvanized metal pipe, or approved equivalent.
- Storm facilities not located within a public right-of-way must be centered within the easement.
- The maximum swale, gutter, or curb velocity of stormwater runoff must be maintained at levels, which result in a stable condition both during and after construction.
- Grass lined channels must be considered stable if the calculated velocity does not exceed the allocable velocities.

Erosion and sedimentation.—The ordinance requires all development applications that involve grading or excavation to comply with the requirements set forth by the Pennsylvania Department of Environmental Resources.¹⁵⁷¹ Furthermore, other requirements regarding erosion and sedimentation control are the following:

- Changes cannot be made in the contour of the land.
- No grading, excavating, removal, or destruction of the topsoil, trees, or other vegetative cover of the land can be commenced within the proposed subdivision or land development tract until the plan for minimizing erosion and sedimentation control has been reviewed by the Lancaster County Conservation District and approved by the Planning Commission.
- A number of measures are effective in minimizing erosion and sedimentation and must be included where applicable in the control plan, including—
 - stripping of vegetation and grading must be kept to a minimum;
 - development plans must preserve significant natural features, cut and fill operations must be kept to a minimum, and plans must conform with topography so as to create the least erosion potential and adequately handle the volume and velocity of surface water runoff;
 - whenever possible, natural vegetation must be retained, protected, and supplemented;
 - the disturbed areas and the duration of exposure must be kept to a practical minimum;
 - disturbed soils must be stabilized by permanent vegetation or by engineered erosion control and drainage measures as soon as practicable in the development process;
 - temporary vegetation or mulching, or both, must be used to protect exposed critical areas during development;
 - provisions must be made to effectively accommodate the increased runoff caused by changed soil and surface conditions during and after development;

¹⁵⁷¹Lancaster County Subdivision and Land Development Ordinance of 1977 § 607.05.

sediment in runoff water must be trapped until the disturbed area is stabilized by the use of debris basins, sediment basins, silt traps, or similar measures;

basin and perimeter controls must be established at the beginning of work on the site;

storage piles must be protected and stabilized within 30 days; and

earth or paved interceptors and diversions must be installed at the top of cut or fill slopes where there is a potential for erosive surface runoff.

- Sediment control devices must be installed prior to any grading, filling, or excavation to prevent pollution of any watercourse and to reduce erosion of soil. Such devices must be designed to retain sediment on the site or flowing adjacent to the site.

Flood plain preservation.—The ordinance provides the following requirements for the establishment and preservation of flood plain areas:¹⁵⁷²

- The 100-year flood plain must be established for all watercourses and must be delineated by one of the methods set forth—
 - a hydrologic report prepared by an individual registered in Pennsylvania to perform such duties, or
 - such report prepared by an agency of the county, State, or Federal Government. Moreover, in case of any dispute regarding when, where, and how the flood plain is to be established, the commission is authorized to determine the ultimate design criteria and/or flood boundary limits.
- Whenever a flood plain is located within or along a lot, the plan must include the boundary of the flood plain, along with the elevation or locational dimensions from the centerline of the watercourse.
- Flood plain must be kept free of structures, fill, and other encroachments.
- Floor elevations for all structures adjacent to the flood plain must be 2 feet above the 100-year flood elevation. This provision does not prohibit a number of structures, including—
 - stormwater management facilities;
 - stream improvements whose sole purpose is to improve aquatic life habitat and which are approved by the Pennsylvania Fish Commission;
 - farm ponds;
 - flood-proofing and flood hazard reduction structures to protect existing buildings;
 - public and private utility facilities (except buildings);
 - water-oriented uses (except building), e.g. docks, piers, boat launching, ramps, hatcheries;
 - water monitoring devices; and
 - culverts, bridges, and their approaches for flood plain crossings by streets, access drives, and driveways.

¹⁵⁷²Lancaster County Subdivision and Land Development Ordinance of 1977 § 607.06.

- However, the uses of these structures are subject to a number of requirements, including—
 - a plan for any uses must be incorporated into the design plans and will be subject to approval by the commission, and the plan must demonstrate that the proposed uses do not increase the height or frequency of flood plain water;
 - are installed so as to withstand the maximum volume, velocity, and force of flood plain water;
 - are flood and flotation proof;
 - do not create unhealthy or unsanitary conditions; and
 - do not degrade the quality of surface water or the quality of ground water.

Wetlands preservation.—In preserving wetlands, the ordinance provides that if wetlands are present on the site, applicants must submit evidence that they have contacted the Planning Commission, the Pennsylvania Department of Environmental Resources, and the U.S. Army Corps of Engineers to determine the ability of State and Federal wetland regulations. Furthermore, any approval of the Planning Commission must be contingent upon full compliance with any requirements of any regulatory agency.¹⁵⁷³

Wooded areas preservation.—To protect the existing wooded areas and to prevent unnecessary destruction, the ordinance provides that at least 25 percent of the number of trees (minimum trunk caliper of 5 inches at 6 inches above the ground) that exist at the time of the plan submission must be maintained or replaced immediately following construction. Replacement trees must be a minimum trunk caliper of 2 inches at a height of 6 inches above finished grade and located within an unbuildable section of the site. Moreover, to show conformance with this provision, plans must be submitted to show existing trees and proposed construction.¹⁵⁷⁴

Ground cover.—The ordinance specifies that ground cover must be provided on all areas of the project to prevent soil erosion. In addition, all areas which are not covered by paving, stone, or other solid material must be protected with a suitable ground cover, consisting of spreading plants including sods and grasses less than 18 inches in height.¹⁵⁷⁵

In 1990, the Lancaster County Municipal Waste Management Plan has addressed grass clippings as a portion of *yard waste*. The plan provides that it is the goal of the authority to minimize the amount of grass clippings that are disposed in the landfill or resource recovery facility, thereby, maximizing the amount of grass clippings that are recycled. Moreover, recycling of grass clippings in Lancaster County will be achieved primarily through the direct application of grass clippings to turf or agricultural soil for the beneficial use of the nutrients. Maximum benefit can be acquired from nutrient content of grass clippings if they are not removed from the yard but allowed to decompose in place and sift through the turf to the soil.

¹⁵⁷³Lancaster County Subdivision and Land Development Ordinance of 1977 § 607.06.

¹⁵⁷⁴Id. § 608.02.

¹⁵⁷⁵Id. § 608.04.

In 1991, the authority issued the 1991 Rules and Regulations that acknowledge that the grass clippings management program can maximize the recycling of grass clippings in the most safe, reliable, and efficient manner by integrating recyclable resources—grass nutrients—with the county's most predominant local industry, farming, in the manner that is beneficial to both the environment and the local economy.

These rules and regulations designate grass clippings (yard waste) as a *source separated recyclable material*, which cannot be mixed with refuse that is delivered to the authority for disposal. In other words, each individual who wants to dispose of grass clippings must arrange to have those clippings picked up separately from refuse and delivered to an approved land application recycling site, or to the authority.

Grass collectors and farmers are encouraged to enter into cooperative agreements that would allow the collector to deliver grass clippings directly to the farmer for a mutually agreeable fee, and for the farmer to apply those clippings to the soil in accordance with a nutrient management plan. This method would benefit both parties. On one hand, the collector benefits in time and money for the delivery sites are close to his or her collection routes and the tips are less than charged by the authority. On the other hand, the farmer also benefits financially because through the tipping fee and in reduced cost for fertilizer because of the beneficial use of the nutrients contained in the grass clippings. Moreover, to encourage cooperative agreements and expand the number of approved sites available for land application in the county, the authority will serve as a facilitator to match interested farmers with grass collectors, provide them with technical and regulatory information, and supply them with a listing of qualified nutrient management planners who can help them in preparing a plan and receiving site approval through the authority.

York County, Pennsylvania (region 1).—Although there is no known county laws affecting conservation in the county of York, there is the York County Farm Easement Board, which administers the Pennsylvania Farmland Easement Program in York County. This Program requires an applicant to this program to have a conservation plan that meets the Pennsylvania Clean Stream laws requirements.¹⁵⁷⁶

Decatur County, Georgia (region 2).—As a result of the tremendous growth in the poultry industry, the County Board of Commission amended the county Land Development Regulations, which became effective on April 1995, to regulate certain poultry related agricultural operations.¹⁵⁷⁷

All persons interested in erecting, constructing, or enlarging any agricultural structure for a poultry operation must obtain a building permit from the Decatur County Building Department. To obtain such permit, the individuals must provide the department a site plan indicating the proposed location for the poultry operation structure; and how it is related to adjacent property lines and residential, commercial, and industrial properties.¹⁵⁷⁸

¹⁵⁷⁶Letter from William H. Clifton, District Conservationist, York Field Office, to Liu Chuang, Natural Resource Inventory Division, dated August 14, 1995 (on file with Liu Chuang).

¹⁵⁷⁷Decatur County Land Development Regulations, effective April 1995.

¹⁵⁷⁸*Id.* § 1

The ordinance requires that each poultry house be no greater than 30,000 square feet, and must meet the following requirements:¹⁵⁷⁹

Area of land for poultry operation:	5 acres / 1 operation
	8 acres / 2 operations
	8 acres for additional pair of houses
From adjacent property line:	At minimum 150 feet
Set back from road right-of-way:	At minimum 150 feet
From habitable dwelling: ¹⁵⁸⁰	At minimum 1,250 feet

However, the Decatur County Planning Commissioner is authorized to waive the regulation requirement of 1,250 feet between the poultry operation and habitable dwelling if, at the time of the building permit request, the operation's developer submits a notarized agricultural adjacency form from the owner of every habitable dwelling within 1,250 feet. Such a notarized agricultural adjacency form will exempt the dwelling units owners from the requirement provided that—

the application for a building permit for such operation is being requested within 1,250 feet of the habitable dwelling,

the proposed (or existing) use may produce noise, odors, dust and other effects, and

by executing this form, the owners waive all objection to those effects.¹⁵⁸¹

Lee County, Georgia (region 2).—Among other districts,¹⁵⁸² the Zoning Ordinance of Leesburg City, which includes Lee County, creates AG-Agricultural Districts with the purposes of—

providing for and protecting single-family residential areas with minimum lot sizes of 15,000 square feet from the depreciating effects of small lot development; and

permitting rural agricultural uses.¹⁵⁸³

Within AG-Agricultural Districts, no building or structure can be constructed unless it complies with the following development standards:¹⁵⁸⁴

Minimum lot area:	15,000 square feet
Minimum lot width:	100 feet
Minimum front yard:	30 feet
Minimum side yard:	10 feet
Minimum rear yard:	30 feet
Maximum height:	35 feet
Maximum lot coverage:	total less setbacks

¹⁵⁷⁹Decatur County Land Development Regulations, effective April 1995 § 2.

¹⁵⁸⁰Habitable dwelling excludes any residential dwelling owned by the poultry operation owner. Id.

¹⁵⁸¹Decatur County Land Development Regulations § 3.

¹⁵⁸²In addition to AG-Agricultural Districts, the Leesburg County Zoning Ordinance creates other districts, including R-1A Low Density Residential Districts, R-1 Medium Density Residential Districts, R-2 High Density Residential Districts, RM Group Development Districts, C-1 Commercial Districts, C-2 Commercial Districts, and M Manufacturing Districts. Zoning Ordinance, Leesburg County, GA § 4 (1975).

¹⁵⁸³Zoning Ordinance, Leesburg County, GA § 4-1.

¹⁵⁸⁴Id. § 5.5.

Any one or corporation who violates the ordinance is subject to a \$100 fine and each day violation constitutes a separate offense.¹⁵⁸⁵ Moreover, in case of violation and in addition to other remedies, the party who is affected by such violation may seek an injunction, mandamus or other appropriate action or proceedings against such violation.¹⁵⁸⁶

However, a party may appeal to the Board of Appeals all decisions, requirements, and orders rendered by the Zoning Administrator in enforcement of this ordinance.¹⁵⁸⁷ Furthermore, upon appeal, the board may grant variance from the terms of this ordinance if the board determines that compliance will result in a practical difficulty or unnecessary hardship and that such variance will not be contrary to the public interest.¹⁵⁸⁸

In addition, the Subdivision Regulations for the city of Leesburg, which also covers Lee County,¹⁵⁸⁹ provides that where a subdivision is traversed by a water course, drainage way, channel, or stream, developers must provide a stormwater easement or drainage right-of-way. Such easement or right-of-way must conform substantially to the lines of watercourse and include additional right-of-way when it is necessary for that purpose. Moreover, developers must provide easements for the location of garbage receptacles if the Planning Commission determines that such easements are essential to provide adequate garbage collection services to the proposed subdivision.¹⁵⁹⁰

Within Townhouse District, in addition to the applicable provisions of the Leesburg Comprehensive Zoning Regulations, developers must make sure that each lot will be served by a community water and sewage system approved by the Georgia Department of Natural Resources.¹⁵⁹¹

Mitchell County, Georgia (region 2).—In 1995, the County Commissioners of Mitchell County enacted the Zoning Ordinance of Mitchell County,¹⁵⁹² which divides the area of Mitchell County into nine zoning districts.¹⁵⁹³ However, for the purpose of this publication, only the Residential, Forest, and Agricultural (AG) District and Flood Hazard (FH) District will be discussed.

Residential, Forest, and Agricultural (AG) District.—In the AG District, the principal use of land is for farming, dairying, forestry operations, and other agricultural operations. This district is created to protect land needed and used for agricultural pursuits from encroachment by untimely and unplanned residential, commercial, and industrial development. The ordinance provides for two types of uses within AG Districts: the permitted uses and the conditional uses. Each shall be discussed in turn.

¹⁵⁸⁵Zoning Ordinance, Leesburg County, GA § 11-1.

¹⁵⁸⁶Id. § 11-2.

¹⁵⁸⁷Id. § 12-14.

¹⁵⁸⁸Id. § 12-15.

¹⁵⁸⁹Subdivision Regulations for Leesburg, GA (includes Lee County), § 101 et seq. Adopted in October 1, 1985.

¹⁵⁹⁰Id. § 403.

¹⁵⁹¹Id. § 408.

¹⁵⁹²Zoning Ordinance of Mitchell County, GA § 1.1 et seq. (effective in September 1995).

¹⁵⁹³Id. § 5.1. These districts include Single-Family Residential I (SFR-I), Single-Family Residential II (SFR-II), Multi-Family Residential (MFR), Residential, Forest and Agriculture (AG), Manufactured Home Park (MHP) and Manufactured Home Subdivisions (MHS), Commercial (C), Industrial (I), Flood Hazard District, and Planned Unit Development (PUD).

Within AG District, the *permitted uses* that are permitted by right include—
conventional single family dwellings and modular homes;
manufactured homes;
any usual agricultural or horticultural activities (provided that structures for animal husbandry uses must be located at least 150 feet from any property line or right-of-way line and 1,250 feet from any habitable dwelling);
accessory buildings and uses;
temporary or portable sawmills for cutting of timber (provided that machine operation is located at least 200 feet from property line);
sale of products or commodities raised on the premises (provided that structures for sales are located at least 30 feet from any property line);
riding stables and academies (provided that enclosure housing animals are located at least 200 feet from any property line);
animal hospitals and kennels,;
commercial fishing ponds;
nurseries and greenhouses; and
libraries, fire stations, and police stations.¹⁵⁹⁴

The *conditional uses*—those that are allowed only upon permission—include—
farm auction facilities;
farm supply stores, feed and grain stores, and agricultural related businesses;
boarding homes, dormitories, and multiple lodging houses for agricultural workers;
home occupations;
colleges, universities, elementary, and secondary schools;
multiple-family dwellings;
rural business;
open air business;
day care and nursery care facilities;
churches, civic clubs, lodges (provided that they are relocated on 2 acres);
country clubs, commercial clubs, and lodges;
radio, satellite, and television broadcast towers;
private air fields;
recreation facilities of an unenclosed commercial nature; and
animal husbandry uses located closer than 1,250 feet from the habitable dwelling (provided that all owners of habitable property within 1,250 feet have signed an agricultural adjacency waiver).¹⁵⁹⁵

¹⁵⁹⁴Zoning Ordinance of Mitchell County, GA § 9.1.

¹⁵⁹⁵Id. § 9.2.

In addition, the ordinance provides for the following standards requirement:¹⁵⁹⁶

Lot width for single-family dwellings:	100 feet
Lot area:	
Single family homes, modular and manufactured home:	1 acre
Multi-family residence:	meet Mitchell County Health Department requirements
Front setback, from centerline of:—	
State or Federal highway:	125 feet
County road:	70 feet
Residential street:	60 feet
Side setback, from each side:	20 feet
Rear setback:	50 feet

Flood hazard (FH) district.—FH district is an area that is subject to frequent periodic flooding and delineated alluvial soils as determined by USDA, NRCS or Mitchell County Planning Commission, or both.¹⁵⁹⁷ The FH district is established with the following primary purposes:¹⁵⁹⁸

- Preventing flood damage to person and properties and minimizing expenditures for flood relief programs, flood control projects, and flood damage repairs.
- Preserving drainage courses that will be adequate to carry stormwater runoff from existing and future land developments, by—
 - prohibiting any structures that would restrict or change the free flow of floodwaters; and
 - prohibiting landfills, junk yards, dumps, outdoor storage, and material or other obstruction to the flow of floodwater.
- Preserving natural conditions that will allow sufficient absorption to maintain an adequate subsurface water level and filter sediment from adjacent or upstream developments.
- Minimizing danger to health by preserving a natural drainage pattern and preventing stagnant or trapped water areas.

Similar to other districts, the ordinance provides the following permitted uses within the FH district:¹⁵⁹⁹

- Agriculture, including forestry and livestock raising requiring no structures within the flood plain.
- Dams, provided that they are constructed in compliance with specifications of the USDA, NRCS and US Army Corps of Engineers, and Mitchell County.
- Fences, provided that no material obstruction to the free flow of waters and water gaps are allowed.
- Outdoor advertising signs.

¹⁵⁹⁶Zoning Ordinance of Mitchell County, GA § 9.3.

¹⁵⁹⁷Id. § 16.1.

¹⁵⁹⁸Id. § 16.2.

¹⁵⁹⁹Id. § 16.3.

- Parking areas, provided that there will be proper drainage of the parking area and there is no obstruction of free flow of floodwaters.
- Roads, provided that adequate capacity for free flow of floodwater is provided.
- Public, semipublic, and commercial recreation uses requiring no structures within the flood plain.
- Greenbelts or yards.
- Public utility poles, towers, pipelines, and sewage treatment outfalls.
- Single-family residence provided that they meet construction requirements in the Mitchell County Flood Plain Ordinance.

The ordinance provides that if the property owner can demonstrate to the satisfaction of the Mitchell County Planning Commission and Mitchell County that his or her property is not subject to flooding, the Planning Commission and Mitchell County may recommend correction of the flood hazard district boundary in question.¹⁶⁰⁰

Adams County, Wisconsin (region 4).—The Zoning Ordinance of Adams County is an extensive zoning ordinance,¹⁶⁰¹ with the authority over all unincorporated land and water within Adams County.¹⁶⁰² This ordinance was created with the following conservation purposes:¹⁶⁰³

- To regulate lot coverage and the size and location of all structures to prevent overcrowding and to provide adequate sunlight, air, sanitation, and drainage.
- To protect and preserve prime agricultural land and to maintain a viable agricultural base.
- To secure safety from fire, panic, flooding, pollution, contamination, and other dangers.
- To preserve and protect the natural and construct esthetic characteristic of the county.
- To prevent and control erosion, sedimentation, and other pollution of the surface and ground water.
- To maintain safe and healthful water conditions.
- To prevent flood-caused damage to persons and property and minimize expenditures for flood relief and flood control projects.
- To implement those municipal, county, watershed, and regional comprehensive plans or components of such plans adopted by the county.

This ordinance creates 16 types of zoning districts; however, because natural resources and environmental issues are the main concerns of this report, only seven types of districts will be discussed. They are A-1 Exclusive Agricultural District; A-2 Agricultural Transition District; A-3 Secondary Agricultural District; R-5 Rural Single-Family Residential District; C-1 Uplands Conservancy; C-2 Shoreland Protection Overlay; and C-3 Landfill Conservancy.

¹⁶⁰⁰Zoning Ordinance of Mitchell County, GA § 16.4.

¹⁶⁰¹Zoning Ordinance, Adams County, WI § 1-1.00 et seq. (adopted in 1983, revised in 1990).

¹⁶⁰²Id. § 3-1.00.

¹⁶⁰³Id. § 1-4.00.

A-1 Exclusive Agricultural District.—This district is organized with a number of purposes, such as—

- preserving agricultural land for food and fiber production;
- protecting productive farms;
- maintaining a viable agricultural base to support agricultural processing and service industries;
- preventing conflicts between incompatible uses;
- reducing costs of providing services to scattered nonfarm uses; and
- pacing and shaping urban growth.¹⁶⁰⁴

Within this district, the ordinance permits a number of agricultural uses, residential uses, and other agricultural structures and improvement uses (and their customary accessory uses). The permitted agricultural uses include—

- bee keeping;
- dairying;
- floriculture;¹⁶⁰⁵
- grazing;
- livestock raising;
- kennels;
- plant nurseries and orchards;
- raising of grain, grass, mint, and seed crops;
- raising of tree fruit, nuts, and berries;
- sod farming;
- tree farming including Christmas trees and pulp wood;
- vegetable raising;
- viticulture;¹⁶⁰⁶
- forest and game management;
- nature trails and walks;
- greenhouses; and
- one roadside stand per farm used solely for the sale of products produced on the premises or adjoining premises.¹⁶⁰⁷

The allowable residential uses include—

- agriculturally related residences;¹⁶⁰⁸
- pre-existing residences;

¹⁶⁰⁴Zoning Ordinance, Adams County, WI § 5-3.01(A).

¹⁶⁰⁵Floriculture means the cultivation of ornamental flowering plants. Id. § 5-3.02(A)3.

¹⁶⁰⁶Viticulture means grape growing. Id. § 5-3.02(A)14.

¹⁶⁰⁷Id. § 5-3.02(A).

¹⁶⁰⁸Agriculturally related residences means the single-family residence or mobile home occupied by a person or family earning a substantial livelihood from the farm operation. Id. § 5-3.02(B)1.

farm residence and related farm structures remaining after farm consolidation;

single-family or two-family dwellings or mobile homes occupied by parents or children of the farm operator; and

recreational vehicles.¹⁶⁰⁹

In addition to the above permitted uses, the ordinance also allows some conditional uses, which are uses that may be allowed after review and approval by the County Planning and Zoning Committee. These uses include—

customary home occupations and professional offices conducted within the accessory to a permitted agricultural residence;

temporary housing for seasonal farm labor;

feedlots and poultry operations involving more than 25 animal units per acre;

permanent saw mills;

fur farms;

stables and paddocks;

equestrian trails;

fish farms;

dams and flowages;

governmental uses, such as police stations, fire stations, and highway storage garages;

religious uses such as churches, schools, and cemeteries;

gas and electric utility uses;

the sale and service of machinery used in agricultural production;

facilities for the centralized bulk collection, storage, and distribution of agricultural products to wholesale and retail markets;

the storage and sale of seed, feed, fertilizer, and other products essential to agricultural production;

facilities used to provide veterinarian services for livestock;

facilities used in processing agricultural products; and

other agricultural-related, religious, utility, institutional, or governmental uses similar to those listed above.¹⁶¹⁰

The ordinance sets forth a number of requirements, including the yard requirements, the height requirements, and the area requirements.¹⁶¹¹ In addition to

¹⁶⁰⁹Zoning Ordinance, Adams County, WI § 5-3.02(B).

¹⁶¹⁰Id. § 5-3.03(A).

¹⁶¹¹To meet the yard requirement, all buildings, structures, or enclosures which house or confine animals, including but not limited to animal hospitals, kennels, barnyards, feedlots, and stables, must generally meet the following minimum setback requirements:

Front yard:	100 feet
Side yard:	100 feet
Rear yard:	100 feet

these requirements, the ordinance also provides standards for traffic, loading, parking, and access,¹⁶¹² as well as sign regulation.¹⁶¹³

Rezoning is permitted; however, the Department of Agriculture, Trade, and Consumer Protection must be notified of the rezoning. Decisions on petitions for rezoning must be based on findings of the following considerations:

- Adequate public facilities are available to serve the present or future development.
- The provision of these facilities will not be an unreasonable burden to local government.
- The land is suitable for development.
- The development will not cause unreasonable air and water pollution, soil erosion, or adverse effects on rare or irreplaceable natural areas.
- The potential for conflict with remaining agriculture uses in the area.
- The need for the proposed development location in an agricultural area.
- The availability of alternative locations.
- The productivity of the agricultural lands involved.
- The location of the proposed development to minimize the amount of converted agricultural land.¹⁶¹⁴

A-2 Agricultural Transition District.—The A-2 Agricultural Transition District is established with the following purposes:¹⁶¹⁵

- To provide for the orderly transition of agricultural land to other uses in areas planned for eventual urban expansion.
- To defer urban development until the appropriate local governmental bodies determine that adequate public services and facilities can be provided at a reasonable cost.
- To ensure that urban development is compatible with local land use plans and policies.

Zoning Ordinance, Adams County, Wisconsin, § 5-3.04.

To meet the height requirements, all single-family dwellings and their accessory structures must not exceed the following maximum requirements:

Principal building & attached accessory buildings: 35 feet
 Detached accessory structures: 20 feet

All other buildings or structures must not exceed the maximum height of 60 feet. Id. § 5-3.05.

To meet the area requirements, all lots must meet the following minimum requirements:

For lot area:

To establish a farm residence or farm operation: 35 acres
 To establish a separate for an additional residence: 20,000 sq. feet

For a farm residence or structure remaining after farm consolidation: 20,000 sq. feet

For lot width:

Id. § 5-3.06. 100

¹⁶¹²Zoning Ordinance, Adams County, WI § 7-1.01 to 7-4.01.

¹⁶¹³Id. § 8-1.00 to 8-9.00.

¹⁶¹⁴Id. § 5-3.09.

¹⁶¹⁵Id. § 5-4.01.

- To provide periodic review to determine whether all or part of the lands should be transferred to another zoning district.

The A-2 Agricultural Transition District has the similar requirements and standards regarding permitted uses,¹⁶¹⁶ conditional uses,¹⁶¹⁷ yard requirements,¹⁶¹⁸ height requirements,¹⁶¹⁹ area requirements,¹⁶²⁰ parking and access,¹⁶²¹ sign regulation,¹⁶²² and standards for rezoning¹⁶²³ as the A-1 Exclusive Agricultural District.

A-3 Secondary Agricultural District.—This district is created with a number of primary purposes of maintaining, preserving, and enhancing land historically used or suited for agricultural or agriculturally-related purposes which are not included within the A-1 Exclusive Agricultural District.¹⁶²⁴ Moreover, this district is intended to include the lands, which are best suited to smaller farm uses including, but not limited to, truck farming, horse farming, hobby farming, and orchards.¹⁶²⁵

In this district, the permitted uses are—

uses permitted in A-1 District;

single family residential and seasonal dwelling(s);

community based residential facilities that have eight or less residents;

recreational vehicles; and

mobile homes existing before July 27, 1990.¹⁶²⁶

The A-3 Agricultural Transition District has the similar requirements and standards regarding conditional uses,¹⁶²⁷ yard requirements,¹⁶²⁸ height requirements,¹⁶²⁹ parking and access,¹⁶³⁰ sign regulation,¹⁶³¹ and standards for rezoning¹⁶³² as the A-1 Exclusive Agricultural District. However, A-3 District's area requirement is different from the A-1 District's area requirement in that in A-3 District, all lots must meet the minimum lot area requirement of 5 acres, and lot width requirement of 200 feet.¹⁶³³

R-5 Rural Single-Family Residential District.—The purpose for creating this district is to preserve existing single-family residential neighborhoods in rural areas adjacent to agricultural zoning districts. Moreover, it is not intended that areas be rezoned to R-5 for the purpose of establishing new or additional parcels.¹⁶³⁴ The

¹⁶¹⁶Zoning Ordinance, Adams County, WI § 5-4.02.

¹⁶¹⁷Id. § 5-4.03.

¹⁶¹⁸Id. § 5-4.04.

¹⁶¹⁹Id. § 5-4.05.

¹⁶²⁰Id. § 5-4.06.

¹⁶²¹Id. § 5-4.07.

¹⁶²²Id. § 5-4.08.

¹⁶²³Id. § 5-4.09.

¹⁶²⁴Id. § 5-5.01.

¹⁶²⁵Id. § 5-5.02.

¹⁶²⁶Id. § 5-5.02.

¹⁶²⁷Id. § 5-5.03.

¹⁶²⁸Id. § 5-5.04.

¹⁶²⁹Id. § 5-5.05.

¹⁶³⁰Id. § 5-5.07.

¹⁶³¹Id. § 5-5.08.

¹⁶³²Id. § 5-5.09.

¹⁶³³Id. § 5-5.06.

¹⁶³⁴Id. § 5-10.01.

only permitted and conditional uses are those allowed in the R-1 Large Lot Single Family Residential district.¹⁶³⁵

C-1 Uplands Conservancy.—This district is created with the purpose to preserve such environmentally sensitive areas as areas of steep slope and to protect the community from the adverse affects of misuse of such lands.¹⁶³⁶ The permitted uses include soil rebuilding, reforestation, hunting, fishing, wildlife preserves, picnicking, and hiking trails.¹⁶³⁷ The conditional uses permitted after review and approval by the committee include—

grazing, wild crop harvesting, power and communication transmission lines, truck farming, orchards, and cultivation; and

dumping, filling, mineral or soil removal, buildings or structures, or any other use that could disturb the natural flora or topography.¹⁶³⁸

C-2 Shoreland Protection Overlay.—This district is zoned accordingly to assure that areas in the Shoreland Protection overland comply with the requirements for both the underlying zoning district and the requirements of the Adams County Shoreland Protection and the Adams County Floodplain Ordinance.¹⁶³⁹ The permitted uses include those—

permitted by both the Adams County Shoreland Protection and the Adams County Floodplain Ordinance and also by the underlying district; and

permitted by the underlying district and have been granted a special exception permit or variance, or both, under the Adams County Shoreland Protection and the Adams County Floodplain Ordinance.¹⁶⁴⁰

The Adams County ordinance also provides provisions regulating signs in the county. These provisions are designed with the intent to provide for and regulate the location and construction of signs and to ensure that signs are compatible with surrounding land uses and express the identity of individual proprietors and the community as a whole.¹⁶⁴¹

To carry out this intent, the ordinance provides that a permit is required for all activities regarding signs.¹⁶⁴² However, a number of signs are exempted from the permit requirement but still are subject to certain requirements.

These signs include—

real estate ground or wall signs not exceeding 8 square feet;¹⁶⁴³

ground signs identifying the name and address of the resident;¹⁶⁴⁴

¹⁶³⁵Zoning Ordinance, Adams County, WI § 5-10.02, 5-10.03.

¹⁶³⁶Id. § 5-18.01.

¹⁶³⁷Id. § 5-18.02.

¹⁶³⁸Id. § 5-18.03.

¹⁶³⁹Id. § 5-19.01.

¹⁶⁴⁰Id. § 5-19.02.

¹⁶⁴¹Id. § 8-101.

¹⁶⁴²Id. § 8-3.01.

¹⁶⁴³Id. § 8-4.01. The construction of these signs must be in the area which advertise the sale, rental, or lease of the premises upon which the signs are located. Moreover, such signs can be placed at the right-of-way line. Id.

¹⁶⁴⁴Id. § 8-4.02. These signs cannot exceed 6 ft² in area, and must be located on the premises. They can be placed at the right-of-way line. Id.

home occupation and professional home office signs;¹⁶⁴⁵
bulletin boards on ground or wall signs;¹⁶⁴⁶
memorial signs, tablets, names of buildings;¹⁶⁴⁷
official ground signs, such as traffic control, parking restrictions,
information, and notices;¹⁶⁴⁸
political signs;¹⁶⁴⁹
field demonstration and test plot signs in agricultural districts;¹⁶⁵⁰ and
No Trespassing, No Hunting, and other private regulatory signs.¹⁶⁵¹

The ordinance permits a certain type of sign for a certain type of district. In residential districts, the signs permitted include—
exempt signs (listed in the above paragraph);
mobile home park identification signs; and
on premise ground signs not exceeding 50 square feet identifying an apartment, condominium, multiple family use or subdivision.

Moreover, signs permitted in the Business, Agricultural, Public and Semi-Public, and Industrial districts may be permitted in the residential district after review and approval by the County Planning and Zoning Committee as a conditional use.¹⁶⁵²

In the Business, Agricultural, Public and Semi-Public, and Industrial districts, the signs that are permitted include—¹⁶⁵³
temporary signs when permitted by the Committee;
wall signs placed against the exterior walls of buildings;¹⁶⁵⁴
projecting signs;¹⁶⁵⁵
awning and canopy signs;¹⁶⁵⁶

¹⁶⁴⁵Zoning Ordinance, Adams County, WI § 8-4.03. These signs cannot exceed 9 ft² in area on any one side. They must be located on premises.—However, they cannot be placed so as to obstruct traffic visibility and not illuminated after 10 p.m. or before 8 a.m. Id.

¹⁶⁴⁶Id. § 8-4.04. These signs cannot exceed 36 ft² in area. They must be located on the premises and used by public, charitable, or religious institutions. They can be placed at the right-of-way line. Id.

¹⁶⁴⁷Id. § 8-4.05.

¹⁶⁴⁸Id. § 8-4.06. These signs may be placed at the curb line or up to the pavement edge. Id.

¹⁶⁴⁹Id. § 8-4.07. To erect political signs, the following requirements must be met:

- No sign is erected more than 60 days before the election;
- All signs are removed within 7 days after the election;
- No signs can be attached or placed on utility poles, or traffic devices within public right-of-way;
- The graphic message must be relate to candidates or beliefs at issue in the current election; and
- Persons or committees authorizing the distribution or posting of campaign materials must be responsible for compliance with the provisions of the Ordinance. Id.

¹⁶⁵⁰Zoning Ordinance, Adams County, WI § 8-4.08.

¹⁶⁵¹Id. § 8-4.09. These signs cannot exceed 1 ft² in area. Id.

¹⁶⁵² § 8-5.01.

¹⁶⁵³Id. § 8-5.02.

¹⁶⁵⁴These signs cannot exceed 300 ft² in area or 30 percent of the signable area of the building, whichever is smaller. Id.

¹⁶⁵⁵These signs cannot exceed 100 ft² in area for any one premise. Moreover, they cannot extend more than 6 ft into any required yard and must be at least 10 ft from all side lot lines. Id.

¹⁶⁵⁶These signs cannot exceed 100 ft² in area for any one premise. They must not extend more than 6 ft into any required yard. Id.

ground signs,¹⁶⁵⁷
 roof signs,¹⁶⁵⁸
 portable signs,¹⁶⁵⁹
 window signs; and
 all exempt signs.

Moreover, advertising signs (outdoor billboards) are permitted if they comply with the applicable standards.¹⁶⁶⁰

Furthermore, in Conservancy districts, all signs are prohibited except those specifically exempted by the ordinance.¹⁶⁶¹

De Baca County, New Mexico (region 6).—Under the De Baca County Subdivision Regulations (1978-80),¹⁶⁶² all applications for approval of a subdivision of a subdivision plat must submit to the De Baca County Board of County Commissioners a water quality plan, a water supply plan, a liquid waste management plan, a solid waste management plan, and a terrain management plan.¹⁶⁶³ However, it should be noted that the De Baca County Subdivision Regulations exempt the subdivisions containing parcels of land, where the smallest of which is not less than 50 acres from all provisions of the regulations.¹⁶⁶⁴ Moreover, variance from the Subdivision Regulations may be sought and approved by the commission.¹⁶⁶⁵

Water supply.—The subdividers of Type-one¹⁶⁶⁶ or Type-two¹⁶⁶⁷ subdivisions are required to provide water from existing or proposed water supply systems for domestic use, fire protection, and any other use proposed by the subdividers.¹⁶⁶⁸

¹⁶⁵⁷These signs cannot exceed 30 ft in height above grade, 80 ft² on one side or 160 ft² on all sides. Moreover, they must not be placed closer than 80 ft to another ground sign. These signs may be placed at the right-of-way line. Id.

¹⁶⁵⁸These signs must be not exceed 10 ft in height above the roof, 300 ft² on all sides for any one premise. They must meet the height requirements for the district in which they are located. Id.

¹⁶⁵⁹These signs cannot exceed 40 ft² on one side or 80 ft² on all sides. Id.

¹⁶⁶⁰These standards include:

- No single advertising sign can exceed 14 ft in vertical measurement nor 50 feet in total length, nor be more than 700 ft² in area.
- No such sign can be closer than 600 ft to another sign. Twin or back-to-back sign structures are considered as one sign.
- No such sign can project higher than 30 ft above grade.
- Signs must be shielded whenever necessary to avoid casting bright light upon property located in any residential district.
- Such signs may be placed at the right-of-way line. Id.

¹⁶⁶¹Zoning Ordinance, Adams County, WI § 8-5.03.

¹⁶⁶²De Baca County Subdivision Regulations, NM, 1979-80, § 1 et seq. It should be noted that the County Commissioners are currently reviewing this Regulation with local attorneys in consideration of updating the regulations.

¹⁶⁶³De Baca County Subdivision Regulations, NM, 1979-80, § 4(A). For detail description of water supply plan, Id. § 5, of water quality plan, Id. § 6, of liquid waste management plan, Id. § 7, of solid waste management plan, Id. § 8, of terrain management plan, Id. § 9.

¹⁶⁶⁴Id. § 27.

¹⁶⁶⁵Id. § 31.

¹⁶⁶⁶Type-one subdivision means any subdivision containing [500] or more parcels, any one of which is less than [10] acres. Id. § 1(EE).

¹⁶⁶⁷Type-two subdivision means any subdivision containing not less than [25] but not more than [499] parcels, any one of which is less than [10] acres. Id. § 1(FF).

¹⁶⁶⁸Id. § 10(A).

Subdividers of Type-three,¹⁶⁶⁹ Type-four,¹⁶⁷⁰ or Type-five subdivision¹⁶⁷¹ are required to provide water supply for all proposed uses within the subdivision, except domestic uses. Subdividers or owners of each parcel may provide a domestic water supply; however, this supply will be at the subdividers' or the owner's own expenses.¹⁶⁷²

However, if the subdivision is within the Fort Sumner Irrigation District, all subdividers must—

provide, at their expenses, a system of concrete ditches or concrete pipe for the proposed subdivision;¹⁶⁷³

furnish a written easement providing for access by the Irrigation District or any person for the purpose of inspecting, repairing and maintaining the distribution system;¹⁶⁷⁴ and

wait for the approval by the Board of Directors of the Fort Sumner Irrigation District before the required construction of the ditch or pipe distribution system.¹⁶⁷⁵

Moreover, the proposed water supply systems must conform with the minimum design standards set forth by the New Mexico Environmental Improvement Agency and the construction industries commission,¹⁶⁷⁶ and the fire flow requirements must conform with the standards set forth by the American Insurance Association.¹⁶⁷⁷

Liquid waste disposal system.—Individual liquid waste disposal systems may be approved only if:

- The systems are not located so as to potentially contaminate or pollute any drinking water supply, watercourse, or body of water.¹⁶⁷⁸
- The systems are located not to potentially degrade any recreational resources.¹⁶⁷⁹
- The systems will not create a nuisance.¹⁶⁸⁰
- The systems are not located in areas where there is evidence that similar individual systems have caused significant ground water contamination or high nutrient levels in any body of waters.¹⁶⁸¹
- Such systems are not located in areas where there is evidence that they will cause hazards to health or to the environment.¹⁶⁸²

¹⁶⁶⁹Type-three subdivision means any subdivision containing not less than [5] but not more than [24] parcels, any of which is less than [10] acres. Id. § 1(GG).

¹⁶⁷⁰Type-four subdivision means any subdivision containing [25] parcels, each of which is [10] acres or more. Id. § 1(HH).

¹⁶⁷¹Type-five subdivision means any subdivision containing not less than [5] parcels and not more than [24] parcels, each of which is [10] acres or more. Id. § 1(II).

¹⁶⁷²Id. § 11(A).

¹⁶⁷³Id. § 10(B)(1).

¹⁶⁷⁴De Baca County Subdivision Regulations, NM, 1979-80 § 19(B)(2).

¹⁶⁷⁵Id. § 10(B)(3).

¹⁶⁷⁶Id. § 10(E).

¹⁶⁷⁷Id. § 10(F).

¹⁶⁷⁸Id. § 15(A)(1).

¹⁶⁷⁹Id. § 15(A)(2).

¹⁶⁸⁰Id. § 15(A)(3).

¹⁶⁸¹Id. § 15(A)(4).

¹⁶⁸²Id. § 15(A)(5).

- The parcels on which the system will be used conform to the minimum lot sizes requirement.¹⁶⁸³ However, the commission may reduce the minimum lot sizes requirement.¹⁶⁸⁴
- The liquid waste system complies with the following requirements—¹⁶⁸⁵
 - the distance between a well and an absorption field or bank used as part of an individual liquid waste disposal system must be at least 100 feet;
 - the distance between a well or body of water used as a public water supply and an absorption field or tank used as part of an individual liquid waste disposal system must be at least 200 feet; and
 - the distance between an absorption field and tank used as part of an individual liquid waste disposal system and the nearest boundary of a floodway must be at least 100 feet.

In addition, a subdivider may propose a community liquid waste treatment system in his or her liquid waste management plan if he or she complies with the applicable requirements.¹⁶⁸⁶

Solid waste disposal systems.—Subdividers must provide for a modified landfill operation at the disposal site at the time of first occupancy if their subdivision has a projected population of less than 3,000 persons based upon four persons per household.¹⁶⁸⁷ Such modified landfill operation must comply with a number of criteria, including—

- fencing to preclude large animal entry;
- a gate or cattle guard the entrance;
- methods to prevent uncontrolled blowing of solid waste;
- trench for deposit of refuse, the bottom of which is at least 20 feet above the ground water level at all times;
- a separate trench for dead animal disposal;
- measures that preclude entrance of runoff water into the fill site;
- signs for location of the fill site and deposition instructions;
- covering of refuse; and
- a plan or management including a delineation of official responsibility for operation.¹⁶⁸⁸

However, if a proposed subdivision has a projected population of 3,000 persons or more, the subdivider must provide for a modified landfill operation and a sanitary landfill operation.¹⁶⁸⁹

Grading.—Provisions applicable to grading in De Baca County are as follows:

- Submission of a grading plan is required before grading activities.

¹⁶⁸³De Baca County Subdivision Regulations, NM, 1979-80 § 15(D).

¹⁶⁸⁴Id. § 15(H).

¹⁶⁸⁵Id. § 15(B).

¹⁶⁸⁶Id. § 16.

¹⁶⁸⁷Id. § 17(A).

¹⁶⁸⁸Id.

¹⁶⁸⁹Id. § 16(B).

- All grading, filling, and clearing operations (including road developments) to be designed to—¹⁶⁹⁰
 - preserve, match, or blend with the natural contours of the land;
 - retain or replace trees and other native vegetation, to stabilize hillsides, retain moisture, reduce erosion, runoff, and preserve the natural scenic beauty;
 - minimize scars from cuts and fills;
 - prevent the deposit of sediment into flood plains, drainage channels, watercourses, and water bodies;
 - reduce the amount of cuts and fills and to round off sharp angles at the top and toe and sides of all necessary cut and fill lopes; and
 - be compatible with the soil survey engineering interpretations and application standards for soil and water conservation.

The following discharge (direct or indirect) attributable to grading are prohibited—¹⁶⁹¹

- sediment and other organic or earthen materials discharged into a watercourse, water body, drainage channel, or flood plain; and
 - material placed in any position which would make it susceptible to erosion and disposition into watercourse, water body, drainage channel, or flood plain.
- If native cover is removed or disturbed, or fill material is placed on the site, the exposed surface must be treated to the extent necessary to eliminate dust arising from the exposed material.¹⁶⁹²
 - Vegetation removed during clearing operations must be disposed of in a reasonable manner.¹⁶⁹³
 - Earth removed during operations must be disposed of in a reasonable manner and place.¹⁶⁹⁴
 - The maximum cut or fill slope must be determined on the basis of the risk of instability or soil erodibility as shown by the soil survey.¹⁶⁹⁵
 - Slopes must be subject to erosion subsidence.¹⁶⁹⁶
 - If the material of the slope's characteristic is unstable under the maximum moisture content anticipated, the subdivider must employ such measures necessary to insure stability of the slope.¹⁶⁹⁷ If mechanical stabilization or containment of the slope by other than the native material is used, the stabilization devices must be at least partially screened by vegetation where practical.¹⁶⁹⁸

¹⁶⁹⁰De Baca County Subdivision Regulations, NM, 1979-80 § 19(A).

¹⁶⁹¹Id. § 19(B).

¹⁶⁹²Id. § 19(C).

¹⁶⁹³Id. § 19(D).

¹⁶⁹⁴Id. § 19(E).

¹⁶⁹⁵Id. § 19(F).

¹⁶⁹⁶Id. § 19(G).

¹⁶⁹⁷Id. § 19(H).

¹⁶⁹⁸Id. § 19(I).

- Organic material, such as vegetation or rubbish or any other material not subject to proper compaction or not conducive to its stability is prohibited in fills.¹⁶⁹⁹
- Rocks or similar irreducible material with a maximum diameter greater than 8 inches are prohibited from being buried or placed in the top 2 feet of fills.¹⁷⁰⁰
- Borrowing for fills is prohibited unless a revegetation proposal for the borrow area is approved by the local district.¹⁷⁰¹
- Each layer of material for fill to be used at the construction site must be compacted at least 90 percent of the in-place dried density of undisturbed adjacent land.¹⁷⁰²
- Fills made by the subdivider which settle by more than 10 percent of the height of the original fill within 3 years of the date of contract completion are to be reopened and properly backfilled at the subdivider's expense.¹⁷⁰³
- Mechanized equipment cannot be operated in watercourses except in a manner approved by the local district.¹⁷⁰⁴
- Appropriate buries around all native vegetation proposed for retention is required during construction.¹⁷⁰⁵
- All grading and filling operation must proceed according to a work schedule included in the grading plan.¹⁷⁰⁶

Flood plain management.—Provisions applicable to flood plain management in De Baca County are as follows:

- All subdivisions must be planned and located to—
 - plan flood plain development in such a way as to lesson the damaging effects of flood;
 - protect individuals from buying lands that are unsuited for intended purposes because of flood hazards; and
 - promote the development in flood plains of private and public uses such as open space, vegetation, recreation, and wildlife habitat.¹⁷⁰⁷
- Flood plains cannot be used for—
 - construction of buildings for human habitation unless all usable floor space is constructed above the maximum probable flood level;
 - structures, excavations, or deposits of material that could obstruct flood flows or adversely affect the capacity of the flood plain; and
 - roads unless approved by the local district.¹⁷⁰⁸

¹⁶⁹⁹De Baca County Subdivision Regulations, NM, 1979-80 § 19(J).

¹⁷⁰⁰Id.

¹⁷⁰¹Id. § 19(K).

¹⁷⁰²Id. § 19(L).

¹⁷⁰³Id. § 19(M).

¹⁷⁰⁴Id. § 19(N).

¹⁷⁰⁵Id. § 19(O).

¹⁷⁰⁶Id. § 19(P).

¹⁷⁰⁷Id. § 20(A).

¹⁷⁰⁸Id. § 20(B).

- Flood fringes cannot be used for—
structures designed for human habitation;
structures with a potential for high flood damage; and
permanent sheltering and respective confining of animals.¹⁷⁰⁹

Fresno County, California (region 10).—The County Board of Fresno County adopted the Fresno County Grading Ordinance with the main purpose of safeguarding life, limb, property, and the public welfare by regulating grading on private property.¹⁷¹⁰ This ordinance first, provides rules and regulations to control excavation, grading, and earthwork construction, including fills and embankments, and second, establishes administrative procedures for issuance of permits, approval of plans, and inspection of grading construction.¹⁷¹¹

Before engaging in any grading activities, this ordinance requires all persons to obtain grading permits from the building official.¹⁷¹² However, there are a number of exceptions to this permit requirement.¹⁷¹³ They are as follows:

- Grading is in an isolated, self-contained area where there is no apparent danger to private or public property.
- An excavation below finished grade for basements and footings of a building retaining wall or other structure authorized by a valid building permit.
- Cemetery graves.
- Refuse disposal sites controlled by other regulations.
- Excavations for wells or tunnels or utilities.
- Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate, or clay where established and provided by law.
- Exploratory excavations under the direction of soil engineers or engineering geologists.
- An excavation that is less than 2 feet in depth, or does not create a cut slope greater than 5 feet in height and steeper than 1 1/2 feet horizontal to 1 foot vertical.
- A fill less than 1 foot in depth, and placed on natural terrain that has a slope flatter than 5 feet horizontal to 1 foot vertical, or less than 3 feet in depth.
- Agricultural grading.
- Grading that is under the supervision of a governmental agency.

The building official is required to inspect all grading operations for which a permit is required.¹⁷¹⁴ Moreover, upon completion of the rough grading work and at the final completion of the work, the building official may also require the permittee to submit reports and drawings and supplements to an as-graded grading plan

¹⁷⁰⁹Fresno County Grading Ordinance, CA § 20(C).

¹⁷¹⁰Id. § 7001 et seq.

¹⁷¹¹Id. § 7002.

¹⁷¹²Id. § 7003.

¹⁷¹³Id.

¹⁷¹⁴Id. § 7014.

prepared by the civil engineer and a soil grading report prepared by the soils engineer.¹⁷¹⁵

In addition to regulations regarding cuts,¹⁷¹⁶ fills,¹⁷¹⁷ setbacks,¹⁷¹⁸ and drainage and terracing,¹⁷¹⁹ the ordinance is also concerned with erosion control. It specifies that the faces of cut and fill slopes must be prepared and maintained to control erosion. Moreover, when necessary, check dams, cribbing, riprap, or other devices or methods must be used to control erosion and provide safety.¹⁷²⁰

San Joaquin County, California (region 10).—County of San Joaquin has a grading ordinance that contains provisions dealing with Agricultural Excavation Permits.¹⁷²¹ This local law was created with the dual purpose of providing a method for allowing the removal of excess material from property to increase the property's agricultural potential, and protecting people, property, and the environment from the impacts caused by the grading excavation.¹⁷²²

The ordinance provides that applications for Agricultural Excavation Permits may be accepted in three zones: AL zone, AG zone, and AU zone.¹⁷²³ To be considered, each application must include—

- a certified grading plan prepared by a registered engineer;
- an operational statement;
- a soils report; and
- a fee.¹⁷²⁴

Before granting such permit, the Review Authority must find that all of the following are true:¹⁷²⁵

- The primary purpose of the proposed excavation is to enhance agricultural suitability of the property.
- The excavation will not have a detrimental effect on any surrounding agricultural lands.
- Issuance of the permit will not be significantly detrimental to the public health, safety, or welfare, or be harmful to the property or improvements in the vicinity. Moreover, the authority's approval is also subjected to the development standards set forth by the county board.¹⁷²⁶

The ordinance does not require a new Agricultural Excavation Permit for the expansion of an existing or approved agricultural excavation, if the applicant complies with a number of requirements, including—

- the proposed expansion cannot involve more than a 10 percent increase in the overall site;

¹⁷¹⁵Fresno County Grading Ordinance, CA § 7014.

¹⁷¹⁶Id. § 7009.

¹⁷¹⁷Id. § 7010.

¹⁷¹⁸Id. § 7011.

¹⁷¹⁹Id. § 7012.

¹⁷²⁰Id. § 7013.

¹⁷²¹Agricultural Excavation Permits, CA § 9-851.1 et seq.

¹⁷²²Id. § 9-851.1.

¹⁷²³Id. § 9-851.2.

¹⁷²⁴Id. § 9-851.3.

¹⁷²⁵Id. § 9-851.5.

¹⁷²⁶Id. § 9-851.6.

the proposed expansion will not have a substantial, adverse effect on adjacent property or on significant biotic resources on the site;

the proposed expansion will comply with the existing requirements of appropriate agencies; and

an improvement plan must be submitted to the county.¹⁷²⁷

Agricultural and open space zoning laws in selected townships in Lancaster County, Pennsylvania (region 1)

This section explores the zoning ordinances of different townships in Lancaster County, Pennsylvania. As a representation, only a number of township ordinances will be discussed in the next section. Furthermore, the conditions of the townships can be determined and compared through the types of uses allowed in the townships.

Most of the township zoning ordinances mirror the county's. However, each township ordinance is discussed separately to see small similarities or differences, or both, among them. For example, for both townships of Conestoga and East Cocalico, display and sale of farm products are considered as permit uses. However, the township of Conestoga ordinance categorizes family day care facilities for not more than six children as a permitted use.¹⁷²⁸ The township of East Cocalico ordinance categorizes the similar use as a special exception use, which may be allowed only after the authorization by the zoning hearing board.¹⁷²⁹ The township of Conestoga ordinance allows double family dwellings as permit use.¹⁷³⁰ The township of East Cocalico ordinance does not categorize similar use as such. Moreover, each township ordinance may impose different area, height, and yard regulations for all buildings and structures within any prescribed districts.

Conestoga Township, Lancaster County, PA (region 1).—The zoning ordinance of Conestoga Township¹⁷³¹ provides for the establishment of two particular districts: the Agricultural (A) District and the Flood Plain Conservation (FP-C) District.

Because the primary purposes of the *Agriculture (A) District* are to protect and stabilize agriculture as an ongoing, viable, major component of the economy of the county,¹⁷³² the permitted uses are structured in favor of the agricultural activities.

These uses include—

- agriculture, animal husbandry, forestry, and horticulture and related land uses;
- single-family detached dwellings, when in conjunction with an agricultural use;
- display and sale of farm products by a person farming land in the A district;

¹⁷²⁷Agricultural Excavation Permits, CA § 9-851.8.

¹⁷²⁸Conestoga Township Zoning Ordinance, Lancaster County, PA § 5.02.03.

¹⁷²⁹East Cocalico, § 300.2.

¹⁷³⁰Conestoga Township Zoning Ordinance, Lancaster County, PA § 5.02.05.

¹⁷³¹Id. § 5.01.00 et seq. (1993).

¹⁷³²Id. § 5.01.00.

processing of farm products as an accessory use to the raising of agricultural products;

double-family dwellings, when at least one dwelling is occupied by person(s) engaged in agricultural activities;

family day care facilities for not more than six children;

signs advertising any use allowed in the A district; and

professional home occupations in single-family dwellings.¹⁷³³

This ordinance also provides for special exception uses, which may be granted by written approval of the zoning hearing board. Some of these special exceptions uses are flea market, farm related business, veterinary facility or kennel, campground, spent mushroom soil processing, or riding school and horse boarding stable.¹⁷³⁴ For nonagricultural land uses, the bulk and lot requirements provide that maximum building height must be 20 feet; the minimum rear yard is 10 feet; the minimum side yard is 15 feet; the minimum front yard setback must be equal to the distance provided for the principal buildings, plus 15 feet; and the maximum aggregate lot coverage is 20 percent.¹⁷³⁵ In addition, because the primary purpose of the A district is to accommodate commercial agriculture, nonfarm dwellings of other nonfarm uses in this district must be subject to common characteristics of agriculture, such as odor and dust, operation of equipment and vehicles during the night, and creation of noise.¹⁷³⁶

The ***Flood Plain Conservation (FP-C) District*** is designated with the intention to protect steep slopes and areas subject to flooding, to allow and encourage the retention of open space, and to guide incompatible developments into other more appropriate zoning districts.¹⁷³⁷ The FP-C district comprises all areas identified as being subject to the 100-year flood in the Flood Insurance Study prepared for Conestoga Township, all lands delineated by the Soil Survey as possessing alluvial or flood plain soils, and all areas containing slopes of over 25 percent.¹⁷³⁸

In the FP-C district, only the following uses are permitted:¹⁷³⁹

- Agriculture, horticulture, forestry, and timber harvesting, excluding any fill or structures.
- Erosion and sedimentation control measures, facilities, and structures.
- Public and private recreational uses.
- Harvesting of any wild crop.
- Activities related to the preservation of natural amenities.
- Open space and front, side, or rear yard areas required by this ordinance.
- Stream improvements whose only purpose is to improve aquatic life habitat.

¹⁷³³Conestoga Township Zoning Ordinance, Lancaster County, PA § 5.02.00.

¹⁷³⁴Id. § 5.03.00.

¹⁷³⁵Id. § 5.06.00.

¹⁷³⁶Id. § 5.07.00.

¹⁷³⁷Steep slopes pose special problems for development, represented by erosion dangers, foundation difficulties, steep driveways, and additional requirements for on-lot sewage disposal designs. Id. § 11.00.00.

¹⁷³⁸Conestoga Township Zoning Ordinance, Lancaster County, PA § 11.01.00.

¹⁷³⁹Id. § 11.02.00.

- Wire fences, except chain link.
- Picnic tables, park benches, fireplaces and grills, and playground equipment, if anchored to prevent flotation.
- Blinds for the shooting and observation of wildlife.
- Farm ponds that do not create any increase in flooding.
- Flood proofing and flood hazard reduction structured to protect only lawfully existing nonconforming structures.
- Public utility facilities (except buildings).
- Marker buoys.

Like the A district, FP-C district provides a number of special exceptions uses, all of which are subject under other provisions of the ordinance. Some of these include bridges, culverts, fish hatcheries, amusement parks, and water monitoring devices.¹⁷⁴⁰ The ordinance, moreover, specifies a number of prohibited uses. Some of these prohibited uses include: sanitary landfills, dumps, junkyards and outdoor storage of vehicles or material; placing, depositing, and dumping any spoil, fill or solid waste; removal of topsoil; damming or relocation of any onsite sewage disposal system; swimming pools; stockpiling, storage or disposal of buoyant materials, logging slash, herbicides; cemeteries for humans or animals; zoo, menagerie, wild or domestic animal farm.¹⁷⁴¹

Unlike the A district, there is no minimum yard, bulk, or lot requirements applicable to the 100-year flood plain areas in the FP-C district. However, areas outside the 100-year flood plain must comply with the yard, bulk, and lot requirements.¹⁷⁴²

In the FP-C district, variances from provisions of the ordinance are discouraged. However, if a variance is requested, the applicant must comply with all applicable requirements; in variance proceedings, the burden of proof is placed on the applicant.¹⁷⁴³

East Cocalico Township, Lancaster County, PA (region 1).—The East Cocalico Township zoning ordinance provides that the A-1 Agricultural District is intended to encourage the preservation and improvement of the agricultural economy of the township in the productive farming areas, and to permit limited residential uses.¹⁷⁴⁴ The A-1 Agricultural Districts are used solely for a number of purposes, including—

- any form of agriculture or horticulture;
- temporary roadside stand for the sale of farm or nursery products produced on the property where offered for sale in season;
- single-family detached dwellings;
- farm dwellings;

¹⁷⁴⁰Conestoga Township Zoning Ordinance, Lancaster County, PA § 11.03.00.

¹⁷⁴¹Id. § 11.07.00.

¹⁷⁴²Id. § 11.05.00.

¹⁷⁴³Id. § 11.06.00.

¹⁷⁴⁴Zoning Ordinance, East Cocalico Township, Lancaster County, PA §300 (1989).

public parks, recreational areas, and playgrounds;
 conservation of open spaces, water, woodland, soil, air, and wildlife resources;
 accessory building, structure and use customarily incidental to the above uses; and
 residential conversion unit.¹⁷⁴⁵

Like other township's ordinances, this ordinance also provides for a number of special exception uses. These special exception uses are as follows: place of worship; club, lodge; institutions, such as educational, health care, and retirement; private park, recreation area, playground; public utility structure; sanitary landfill; cemetery; kennel; and research laboratory.¹⁷⁴⁶

The ordinance also prescribes the area, height and yard regulations for all buildings or structures constructed for any permitted uses in this district.¹⁷⁴⁷ However, buildings devoted to farm use are exempt from the area and height regulations.¹⁷⁴⁸

In addition to these regulations, the ordinance requires compliance to the farm standards for nonagricultural districts;¹⁷⁴⁹ the environmental control houses for livestock, poultry, and mushroom raising;¹⁷⁵⁰ and slope controls.¹⁷⁵¹

East Donegal Township, Lancaster County, PA (region 1).—The East Donegal Zoning Ordinance provides that the Agricultural District (A) is created to protect and stabilize agriculture as an on-going economic activity by allowing only those land uses and activities that are agricultural in character.¹⁷⁵² The uses that are considered as *permitted* mainly are—

the tilling of the soil;
 the raising of crops, fruits, and vegetables; nurseries and horticultural activities;
 the storage and package of fruits and vegetables produced on the premises;
 the hatching, raising, slaughtering, dressing, and marketing on the commercial scale of chickens, turkeys, or other fowl or poultry;
 the raising, grazing, and slaughtering of horses, cattle, hogs, sheep, or goats;
 milk processing and *jugging* operations for the retail sale of milk;
 structures, barns, silos, corncrubs, or poultry houses that are necessary for the proper operation of the agricultural activity; and

¹⁷⁴⁵Zoning Ordinance, East Cocalico Township, Lancaster County, PA § 300.1.

¹⁷⁴⁶Id. § 300.2.

¹⁷⁴⁷Id. § 300.3.

¹⁷⁴⁸Id. § 300.5.

¹⁷⁴⁹Id. § 906.

¹⁷⁵⁰Id. § 909.

¹⁷⁵¹Id. § 911.

¹⁷⁵²The zoning ordinance of East Donegal Township § 402.1 (1994).

customary accessory uses and structures incidental to the above uses.¹⁷⁵³
 However, these uses are also subject to certain general requirements of the ordinance.

East Drumore Township, Lancaster County, PA (region 1).—Like other ordinances, the zoning ordinance of East Drumore township also establishes an Agricultural District (A), in which, agriculture is the primary use with residential uses subject to farm operations.¹⁷⁵⁴ Similar to the Conestoga ordinance,¹⁷⁵⁵ the East Drumore ordinance also indicates that residential uses must accept the nuisances and hazards that are a normal adjunct to farming.¹⁷⁵⁶ The ordinance creates three categories of uses: uses by right, accessory uses, and uses by special exception.

Use by rights (permitted uses) are as follows:¹⁷⁵⁷

- The raising of field and garden crops, vineyard, and orchards farming, forestry, the maintenance of nurseries, and the sale of products thereof.
- Keeping, breeding, and raising of cattle, sheep, goats, pigs, fowl, and horses and rental of horses.
- Farm dwellings including facilities for permanently employed persons and families.
- Nonfarming single family dwellings; facilities for commercial processing of agricultural products; facilities for the warehousing, sale, and service of agricultural equipment or supplies; commercial grain or feed mills; commercial stockyards or feedlots; riding academies or stables; veterinary offices or animal hospitals; and kennels. However, these uses are only permitted on soils with Agricultural Land Capability Classifications of IV, V, VI, VII, or VIII as defined by USDA.

The accessory uses are:¹⁷⁵⁸

- Uses and structures that are customarily associated with the permitted uses.
- Customary home occupations.
- Occupations customarily pursued by farm operators to provide supplemental income.
- Display and sale of farm products by a person farming land in the A district.
- Processing of farm products.
- Signs advertising or identifying any use that has been established in the A district as permitted or special exception uses.

In addition to the above uses, the ordinance provides for the following special exception uses that may be allowed upon approval of the zoning hearing board by a public hearing and recommendation by the commission.¹⁷⁵⁹

¹⁷⁵³The zoning ordinance of East Donegal Township § 402.2.

¹⁷⁵⁴Id. §3.1.3 (1980).

¹⁷⁵⁵Conestoga, § 5.07.00.

¹⁷⁵⁶East Drumore, § 3.1.3.1.

¹⁷⁵⁷Zoning Ordinance, East Drumore Township, PA § 3.1.4.

¹⁷⁵⁸Id. § 3.1.5.

¹⁷⁵⁹Id. § 3.1.6.

The (R-1) Residential District (Low Density) is intended to encourage planned large-lot residential development, and to provide areas for low-density residential uses in locations where on-lot utilities may be feasible.¹⁷⁶⁰ In this district, the permitted uses include single family dwellings and two-family dwellings not to exceed one such structure per lot.¹⁷⁶¹

In addition to these districts, the zoning ordinance further prescribes the (SS) Steep Slope Conservation District, with the main purpose of protecting areas of steep slope from adverse effects created by over development such as erosion and loss of woodland, wildlife and other natural resources.¹⁷⁶² The ordinance provides that all uses proposed for areas within the (SS) district must obtain a special exception subject to regulations and standards of the ordinance.¹⁷⁶³

East Earl Township, Lancaster County, PA (region 1).—The Revised Zoning Ordinance for East Earl Township provides for regulations in the Flood Plain (FP) District.¹⁷⁶⁴ The FP district mainly includes the areas of township that are subject to periodic inundation by flood water.¹⁷⁶⁵ In this district, the permitted uses are identical to those permitted in Flood Plain Conservation District of Conestoga Township.¹⁷⁶⁶ Furthermore, all agricultural and residential uses must comply with the applicable requirements.¹⁷⁶⁷

East Hempfield Township, Lancaster County, PA (region 1).—The East Hempfield Township Zoning Ordinance establishes an Agricultural Zone (A) district to promote a continuation of the rural character of the area located north of PA Route 283.¹⁷⁶⁸ Extensive farming identifies this area and a combination of sparsely developed residential uses and other small-scale nonresidential uses.¹⁷⁶⁹ Thus, residents must be willing to accept the impacts associated with normal farming practices.¹⁷⁷⁰

In the (A) district, only uses with agricultural characteristic are permitted. For example, the ordinance considers agriculture, including one single-family detached dwellings contained on the site as a permitted use; however, it emphasizes that such use excludes commercial poultry operations or commercial livestock operations.¹⁷⁷¹ In addition to these permitted uses, the ordinance designates a number of Special Exception Uses, which may be granted after review of the Zoning Board and compliance with the applicable requirements. These special-exception uses include: ECHO housing, farm operations, home occupations, public uses, riding stables, temporary farm employee housing, two-family conversions, noncommercial keeping of livestock, bed and breakfast, commercial livestock operations, commercial poultry operations, kennels, churches and related uses, public and private schools, bee-keeping, private club houses, farm markets and accessory,

¹⁷⁶⁰Zoning Ordinance, East Drumore Township, PA § 3.2.1.

¹⁷⁶¹Id. § 3.2.2.

¹⁷⁶²Id. § 3.7.1.

¹⁷⁶³Id. § 3.7.2.

¹⁷⁶⁴Revised Zoning Ordinance for East Earl Township, art. 10, § 1001 et seq. (1983).

¹⁷⁶⁵Id. § 1003.

¹⁷⁶⁶Id. § 1004.

¹⁷⁶⁷Id. § 1303-1304.

¹⁷⁶⁸East Hempfield zoning ordinance, PA § 201.1 (1993).

¹⁷⁶⁹Id.

¹⁷⁷⁰Id.

¹⁷⁷¹Id. § 201.2.1. Other permitted uses include: horticultural and forestry-related uses; public and nonprofit parks and playgrounds; public utilities structures; and accessory uses customarily incidental to the above uses. Id.

historic restaurant conversions, and historic office conversions.¹⁷⁷² Furthermore, all structures in the county must comply with the area, yard, and height requirements.

Eden Township, Lancaster County, PA (region 1).—The Eden township Zoning Ordinance establishes an Agricultural Zone (A) district with the purpose to protect and promote agriculture in areas that have been identified as having prime agricultural soils.¹⁷⁷³ Similar to other zoning ordinances, the Eden Township ordinance notifies that all nonfarm residents must be willing to accept the impacts associated with normal farming practices.¹⁷⁷⁴

The Eden Township ordinance provides a similar set of permitted and special exception uses as the East Hempfield Township. However, there are a number of differences. For example, in Eden township, the uses of ECHO housing, public or private schools, noncommercial keeping of livestock, bee-keeping, and temporary farm employee housing are considered as permitted uses; while in East Hempfield, these uses are categorized as special exceptions uses where permission is subject to further review procedures.¹⁷⁷⁵ Moreover, in Eden township, there are only two special exception uses: public uses and kennels.¹⁷⁷⁶ All uses are subject to certain requirements as provided by the ordinance.

Elizabeth Township, Lancaster County, PA (region 1).—The Elizabeth Township zoning ordinance specifies an Agricultural Zone with the purpose of promoting the continuation and preservation of agricultural activities in the areas most appropriate for such activities. Furthermore, it protects and stabilizes the township's viable agricultural economy by eliminating uses that are incompatible with farming, and permitting limited agricultural support businesses. It further notifies that all non-farming residents must be willing to accept the impacts associated with normal farming practices and related businesses.¹⁷⁷⁷ The permitted and special exception uses are similar to those permitted in East Hempfield.¹⁷⁷⁸

¹⁷⁷²Eden Township zoning ordinance, PA § 201.3.

¹⁷⁷³Id. § 201.1.

¹⁷⁷⁴East Hempfield zoning ordinance, PA § 201.1

¹⁷⁷⁵Compare Id. § 201.2 with East Hempfield § 201.2.

¹⁷⁷⁶Eden township, § 201.3.

¹⁷⁷⁷Elizabeth township ordinance, PA § 201.1.

¹⁷⁷⁸Id. § 201.2-.3.

