

## THE RIGHT STUFF

### DO LAND TRUSTS, PUBLIC AGENCIES, HAVE WHAT IT TAKES TO UPHOLD EASEMENT CONDITIONS?

"We've been lucky," says Leslie Ratley-Beach, director of stewardship for the Vermont Land Trust (VLT). "We've never actually had to go to trial [to defend an easement]." But recently, the statewide nonprofit came close enough to learn several important lessons.

A lawsuit involving easement timber violations on a VLT-conserved mixed forest and farm parcel settled on the courthouse steps — but only after the land trust and its public agency co-easement holders spent nearly four years and more than \$50,000 in staff time on the case. And while the settlement called for punitive damages for the violations, VLT never saw a penny. The owner, a successor to the family that granted the easement, was financially strapped, and prior to the settlement the property had already been sold at auction.

Still, Ratley-Beach says it was well worth the time and money. "It was a significant violation and it is our obligation to uphold these easements."

Both land trusts and public easement holders are adapting to increased stewardship demands as the land protection movement matures and conserved land passes to new owners. From monitoring and enforcement to landowner education and, in a few cases, litigation, both private conservation organizations and public agencies are devoting more resources to protecting and upholding easements.

"As the baby boomer generation ages, a lot of land that has conservation easements on it will go to new owners who don't necessarily have the same commitment as the owner who originally granted the easement," says Russ Shay, director of public policy of the Land Trust Alliance (LTA). "So it's likely that there will be more violations, and more people testing the limits of what is permitted under conservation easements, and, probably, more litigation."

For small, local land trusts with minimal staff it can be particularly challenging to establish the stewardship systems and financial resources needed to ensure that easement conditions are followed. For example, in 1996, after incurring more than \$34,000 in legal fees, the French and Pickering Creeks Conservation Trusts in Pennsylvania turned to fellow conservation organizations for donations to help pay for its highly publicized easement defense case against an owner who had built a 4,800-square-foot residence on land conserved for farming and wildlife habitat.  
*continued on page 6*

## POLICY REPORT

### A CONVERSATION WITH AFT'S RALPH GROSSI

Over the summer, AFT reached its 21st birthday. While many core concerns remain unchanged since AFT incorporated on August 15, 1980, new challenges are emerging as the land protection movement matures and the first generation of protected farms begins to change hands. LandWorks' Connection asked AFT President Ralph Grossi to discuss key issues for land protection over the next few years, ranging from the current climate in Washington to demographic and economic trends that influence land use and agriculture, particularly on the urban fringe. Grossi, 52, is a dairy and beef cattle farmer from Marin County, California. A founding Board member, he joined AFT's staff as its president in 1985.

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# Connection

LANDWORKS

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the land



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## Policy Report *continued from page 1*

### **Connection: What is the current climate for the land protection movement in Washington?**

Grossi: The climate for conservation on private lands is much more positive than some predicted. There are a few reasons: Congress is hearing a good deal from constituents about the problems of sprawl — and farmland protection is now recognized as an important, tangible component of growth management. Also, the 10-year budget agreement has set aside a quite significant increase in public support for farmers. AFT and our partners are making a solid case that some of that increase should be tied to land stewardship. Finally, the Bush administration is more inclined to support conservation on private lands than more public land acquisition. Its just-released "farm policy principles" strongly support that premise.

### **Connection: Do you think the terrorist attacks will affect agriculture and conservation?**

Grossi: It is likely that the events of September 11 have fundamentally changed our operating environment. In the short term, charitable giving and foundation support may very well be diverted (appropriately) to the relief effort to address the needs of the affected families. Longer term, the attacks point to our nation's vulnerability and are likely to raise renewed concerns about the security of our food system — not necessarily quantity, but our ability to ensure its quality and safety. The vulnerability of our energy supplies and transportation system should reinforce the importance of locally grown food. Certainly, we should be taking steps to ensure a healthy, diverse and geographically dispersed production system to minimize the potential for a terrorist to target a highly concentrated system. Protecting our very best lands near metro areas is one obvious step that we can take now.

### **Connection: How important is the 2002 Farm Bill in terms of setting the framework for farmland protection in the future?**

Grossi: The 2002 Farm Bill has huge implications for farmland protection efforts over the next five years. But it is not critical to the continued forward momentum of the issue. As in the past, most of the important work on farmland protection will be done in state and local jurisdictions. However, successful inclusion of substantial funding in the farm bill could give those efforts a significant boost. The key word here is "substantial." Authorization of \$50 million per year for farmland protection matching grants would be helpful, both for the money and for the credibility it would add to the cause. But we will be working with the Senate Agriculture Committee to increase that level substantially, hopefully to more than \$200 million.

### **Connection: What about outside the capital? How might current conditions affect public support?**

Grossi: Economic conditions historically have had an impact — both on bond issues and the willingness of state legislatures to fund conservation; but these are only cycles, which will turn again in due time. We must be ready with the right proposals when the timing is right again, and we must be sure that our message is right for the time.

### **Connection: During the 1980s, farmland protection advocates talked about the need to save farmland to ensure that the nation had an adequate food supply. In the 1990s, farmland protection advocates began focusing on other benefits of conserving farmland — water quality, wildlife habitat and balancing municipal budgets, for example. What issues are emerging today?**

Grossi: I think deep down most Americans are concerned about food security over the long term, especially after September 11, and they appreciate the importance of self-sufficiency to our nation's strength. But the factors driving farmland protection today and for the foreseeable future are more local in nature. Survey results indicate that Americans want to use tax dollars to preserve open space; and over the last several elections, voters have shown their willingness to invest at the state and local level in land protection. People want to be able to buy locally grown produce — AFT's recent public opinion poll showed that 70 percent of Americans bought something directly from a farmer in the last year. They want farms to be a part of the socio-economic structure of their communities, and they appreciate the aesthetics that well-managed farms provide. But the newest factor driving this issue is using farmland protection as a growth management tool. Many of the problems associated with sprawling development — traffic, higher taxes, urban decay, etc. — are complex and difficult to resolve. Protecting farms and open space with conservation easements is something tangible, and permanent, that can be done.

**Connection: How do these issues affect the way state and local professionals do their jobs?**

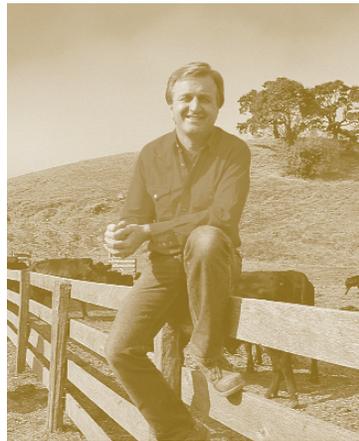
Grossi: More and more land use professionals, and state and local policymakers, are looking into or developing programs to purchase conservation easements (or development rights) to direct future growth in their communities — hopefully away from prime farmland. Used in this way, easement or PDR programs become a very good complement to traditional regulatory tools such as zoning.

**Connection: Organized opposition helped defeat high profile smart-growth measures in two states and weaken Oregon's land use authority. Two statewide resource management proposals — in Maine and Arizona — also were defeated. Are these trends about which we should be concerned?**

Grossi: No, I don't think these are trends, but they do provide some lessons. First, make sure your message is right. Second, understand where you are vulnerable to opposition, for example, to the claim that land conservation makes housing less affordable. Third, don't over-reach. And fourth, some regions simply are not ready for broad initiatives.

**Connection: Will the current economic slowdown have a significant impact on development pressure? And how might that balance with potential reductions in funding — both public and private — to purchase, monitor and maintain conservation easements?**

Grossi: Over the long term, demand will remain high because owning a home is the "American dream," and many government policies are intended to help achieve that dream. Whether or not the current economic slowdown will have an impact on development pressure remains to be seen; so far it has not been characterized by a significant drop in demand for homes. Also, past slowdowns only delayed demand for new homes that later resulted in accelerated growth. As to funding for easement purchasing and monitoring, I firmly believe that the trend is toward more funding, not less. Protecting land while leaving it in private ownership is quickly becoming the preferred conservation technique. 🚜



Ralph Grossi

# Connection

## INNOVATIONS

### FOOD NEXT DOOR: LOCAL MARKETING INITIATIVE SUPPORTS REGION'S FARMERS

By enhancing the economic viability of local agriculture, Community Involved in Sustaining Agriculture (CISA) is protecting farmers and, by extension, valuable farmland in a rapidly urbanizing region. Through an aggressive marketing campaign, the western Massachusetts organization is boosting sales of local farm products and renewing connections between Pioneer Valley farmers and the community at large. Residents receive better access to fresh farm products and throw their support to the producers who grow their food. Founded in 1994, CISA works with farmers, consumers, educators and researchers to strengthen and promote local agriculture.

CISA kicked off the campaign, *Be a Local Hero, Buy Locally Grown*, in early 1999. The campaign promotes local purchases of farm products by linking 58 farmers to markets such as grocery stores and restaurants. CISA's bright yellow labels and promotional materials help the farmers move products at farmstands and in other venues throughout the community, reaching customers directly rather than going to a less profitable wholesale market. The campaign also spotlights the good environmental stewardship practiced by participating farmers.

"It's more than just a 'buy local' campaign," says Clifford Hatch, a Gill, Massachusetts, strawberry grower and founding member of the CISA initiative. "Our real mission is to make everyone in the community aware of the connections they have with one another and how interdependent we all are, whether you're a producer or a consumer or a middleman."

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**“The Be a Local Hero campaign has really made the awareness happen. It’s been incredible.”**

**—Anne Diemand,  
co-owner of Diemand Farm**

The campaign has made a lot of people aware that “they’ve seen us at church, town meetings or the grocery store,” says Anne Diemand, who co-owns a poultry operation with her brother and sister. “After they make that connection, they want to support us.”

Around the nation, several fledgling efforts are working to promote local farm products. In North Carolina, for example, the Appalachian Sustainable Agriculture Project helps open new marketing opportunities and fosters cooperative ventures among farmers through its *Get Fresh – Buy Appalachian!* campaign. Similarly, the *Select! Sonoma County* (California) initiative develops promotions, education programs and marketing opportunities for the county’s diverse farmers and ranchers who raise chocolate, olive oil, teas and wool in addition to more standard commodities like beef and vegetables.

Farmers participating in CISA’s campaign receive stickers, price cards with the CISA logo and free or subsidized advertising in local newspapers. Residents taking public transportation may learn about the campaign from ads draped along buses, and anyone perusing local newspapers may read about the importance of buying local foods through dozens of stories placed by CISA staff.

photo courtesy of CISA



Anne Diemand

Most of the connections are made at the grocery store, whether part of a retail chain or a small “mom and pop” establishment. The campaign has 18 retailers who carry CISA-labeled products in 40 different stores. A dozen restaurants carry campaign-certified foods on their menus, while CISA farmers exhibit at eight farmers’ markets.

Market research shows that the high visibility “buy local” message works. Of 242 western Massachusetts residents recently surveyed, close to eight in 10 can recall seeing or hearing something about the CISA campaign.

“We are lucky that the Pioneer Valley is still predominately an agricultural area, and that’s one of the bigger reasons for the success of the campaign,” says CISA Marketing Director Michael Abbate. “It’s a rural area, so people are very aware of farmland and farm issues by living here, not disconnected like some living in cities.”

photo courtesy of CISA



Clifford Hatch

“There’s a big demand for this,” agrees Mike Messer, manager of the Hadley, Massachusetts, Stop & Shop grocery store. “Our customers want it. CISA has been very good at promoting this, and we’re happy to do it.”

While the store had purchased locally grown corn for years, Messer and his corporate superiors decided to gamble on moving more local products when CISA representatives approached them at the beginning of the campaign. Provided with free signs and banners, in-store tastings and demonstrations — and prices comparable to what they receive via wholesalers — store representatives find it an easy sell, especially if a demo sends the smell of fresh basil wafting down the aisles.

“People buy it to support the local farmers,” Messer says.

Anne Diemand is one Stop & Shop supplier who says her family farm has benefited from the “buy local” campaign. She, along with Peter and Faith Diemand, run a poultry farm first started by their father in 1936. They raise about 15,000 laying chickens for the egg business, along with about 2,000 broilers. Egg sales took off after they joined the campaign, and today, they sell eggs and turkey to up to 10 stores and restaurants.

“Most of the big chain stores aren’t really receptive to buying locally,” Diemand says. It can be a little more expensive, and it’s a hassle to get through to the corporate office, she says. “The *Be a Local Hero* campaign has really made the awareness happen. It’s been incredible.” 🚗

**For more information contact:**

**Local Hero Campaign**  
[www.buylocalfood.com](http://www.buylocalfood.com)

**Select! Sonoma County**  
[www.sonomagrown.com](http://www.sonomagrown.com)

**Get Fresh! Buy Appalachian**  
[www.asapconnections.org](http://www.asapconnections.org)

## LAY OF THE LAND

<b>Acres protected by land trusts through conservation easements</b>	<b>2.6 million</b>
<b>Percentage increase between 1990 and 2000</b>	<b>476 percent</b>
<b>Number of land trusts nationwide</b>	<b>1,273</b>

Source: Summary Data from the National Land Trust Census as reported by the Land Trust Alliance

<b>Average distance food travels from farm to plate in the US:</b>	<b>1,200 miles</b>
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Source: Community Food Security Coalition, October, 2001

<b>Maximum distance food travels in Massachusetts Local Hero campaign:</b>	<b>40 miles</b>
<b>Number of acres of farms involved in Mass. Local Hero campaign:</b>	<b>8,654</b>

Source: Community Involved in Sustaining Agriculture (CISA), October 2001

## USING RESOURCES WISELY

### AGRICULTURAL IMPROVEMENTS, COVERAGE ALLOWANCES AND PROTECTED LAND

When the owner of 93 acres of prime farmland announced his intent to build new greenhouses on his easement-protected property, Lehigh County, Pennsylvania, farmland protection officials knew they had a problem. The farm, where the owner raised nursery stock in greenhouses, had been protected under a conservation easement just three months earlier. Then the owner asked to cover another 5.5 acres, thereby placing almost 20 percent of his property under impervious surface.

The landowner was not in violation of his easement because, at that time, the county lacked a building coverage rule. However, farmland protection advocates were unhappy, recalled Jeff Zehr, a county farmland preservation specialist. "We felt that it was kind of ridiculous when we evaluate [conservation easement] applications based on the quality of the soil, then we get a farm in the program and that soil is permanently covered with agricultural buildings," Zehr said. "Although we want farms to be viable, our program is designed to protect the soil resource."

The conundrum over the greenhouse is increasingly familiar. Throughout towns and counties that protect farmland, people who run easement programs are grappling with how much control to exert over landowners. On one hand, they say, they do not want to restrict farmers from expanding their businesses with legitimate new structures. But, as the Lehigh example illustrates, nor do they want to compromise soil and water quality or the scenic values of the protected property.

Members of the Lehigh County farmland protection board did more than wring their hands over the new greenhouses. They asked the Pennsylvania farmland preservation board to limit the building that can occur on protected farmland. With the board's recommendation, the state Department of Agriculture implemented regulations to allow counties to limit building coverage.

Up until then, "we hadn't given it a lot of thought," said Ray Pickering, director of the Pennsylvania farmland protection program. "It took that example to get us jarred into thinking about the issue. We thought it was probably best decided at the county level."

Lehigh County became the first Pennsylvania municipality to restrict building coverage on protected farmland by limiting landowners to just 10 percent of impervious surface per property — including existing buildings. "We wanted to make the building coverage liberal enough for most ag operations to have plenty of room to expand if needed for processing or roadside stands," Zehr says.

Only a handful of other Pennsylvania counties have adopted such restrictions, all within the 10 percent coverage range, Pickering said. Programs across the country are pondering similar measures.

In Massachusetts, a would-be owner of protected farmland who proposed a series of mushroom production houses prompted the state Department of Food and Agriculture to consider a new *continued on page 8*

**"We're a resource protection program, and one of the reasons we're protecting [farmland] is to keep agricultural options open in the future. We don't know what agriculture will look like 50 or 100 years from now, but we know that land will be available for farming."**

**—Richard Hubbard, Massachusetts Agricultural Preservation Restriction Program**



*New coverage restrictions prohibit extensive greenhouse construction as shown on this protected Lehigh, Pa., farm. The greenhouses were constructed prior to adoption of the restrictions.*

photo courtesy of the Lehigh County Agricultural Land Preservation Board

**“As the baby boomer generation ages, a lot of conserved land will go to new owners who don’t necessarily have the same commitment as the owners who originally granted the easements. So it’s likely that there will be more violations, and more people testing the limits of what’s permitted, and, probably, more litigation.”**

**—Russ Shay,  
director of public policy,  
Land Trust Alliance**

The land trust ultimately prevailed, the owners were forced to remove the home and the litigation helped solidify easements as a secure land protection technique. Still, continuing concerns about the burdens of easement defense prompted the LTA and the Bay Area Open Space Council to launch a joint research project into possible options for collective strategies, such as collective insurance and attorney services. The research phase of the study should be complete by the end of the year; LTA plans to analyze its options during the spring of 2002.

The new initiative “reflects the explosive growth of land trusts and the use of easements,” says Andrew Zepp, LTA vice president for programs.

More than 25 percent of LTA staff time is spent on stewardship training, helping individual trusts build stronger easement defense and stewardship systems. “In addition to those efforts, we recognized that there were some intriguing possibilities regarding collective easement defense,” Zepp says.

According to LTA summaries of the 2000 National Land Trust Census, a total of 6.5 million acres has been protected by regional and local land trusts, an increase of 240 percent since 1990. But the number of acres protected through the use of conservation easements increased from 450,000 to nearly 2.6 million, almost 500 percent.

VLT’s experience with a serious violation prompted increased emphasis on stewardship issues at the statewide organization, which holds approximately 900 easements on 380,000 acres. In addition to its ongoing monitoring and enforcement activities, VLT recently launched a new “Successor Landowner Education Program.” By fostering better communication between VLT and landowners, and by helping new owners of conserved properties better understand the easement conditions, the program aims to avoid violations and litigation. At the same time, VLT, with a seven-person stewardship staff, also quietly launched a new capital campaign specifically for its stewardship endowment and has set aside \$250,000 for an outside litigator should it need to go to trial.

Public easement holders are also making operational changes to improve monitoring and enforcement. “A few years ago, I was spending 80 percent of my time on acquisition and about 20 percent of my time on stewardship. Now it’s flipped,” says Rich Hubbard of the Massachusetts Agricultural Preservation Restriction (APR) Program. Established in 1977, the program was one of the first statewide farmland protection programs in the country. To date, it has protected about 50,000 acres on about 550 properties. In all, there have been about half a dozen cases where disputes over easement restrictions have gone to litigation.

Should it come to litigation, however, public agencies like the Massachusetts Department of Agriculture, which sponsors the APR program, may be in a stronger position than many private land trusts. “Land trusts are often in a difficult position to defend [easements]. In many ways we’re in better shape because we have the resources of the Commonwealth and the attorney general’s office,” says Hubbard, noting that land trusts in Massachusetts are increasingly interested in co-holding easements with public agencies.

In fact, in the Vermont case, the state Department of Forests, Parks and Recreation was an easement co-holder. As a result, a team of state foresters helped VLT document and quantify the damage to the timberland. Moreover, the attorney general’s office helped litigate. Public-private partnerships in easement purchases are common in Vermont, though the stewardship and enforcement benefits were not the chief motivation. “It’s policy, and it’s good to pair public and private because they each have strengths and weakness. But there is a lot of care and feeding of that relationship,” says Ratley-Beach.

Both public and private easement holders say that, by and large, owners of conserved property follow easement conditions. A 1999 LTA study found that most violations of land trust-held easements are minor and unintentional. Land trusts reported that they can typically correct the violation without significant commitment of resources. However, the same study found that all violations that required a significant commitment of land trust resources were committed by successor owners or third parties. The most common violations involved surface alterations, cutting of vegetation and construction of new structures. Legal costs reported for litigated violations ranged from \$5,000 to \$100,000, and averaged \$35,000, according to the study.

Public sector easement holders report similar experiences. “Most violations are somewhat minor in nature... . You could sit down with the landowner and work out a solution,” says Hubbard. “Occasionally, that’s not enough.”

Jim Highsaw, easement program manager at the Maryland Environmental Trust (MET) concurs. Most violations he sees are minor, and landowners voluntarily correct them. But in a handful of cases, MET has gone to court to defend its easements, including one instance where it forced a landowner to remove a large horse barn. Founded in 1967, MET holds 580 easements on 76,000 acres, about two-thirds of which are in active agricultural production. Whatever time MET staff spend on easement monitoring and stewardship is paid through MET's annual operating budget. About two years ago, MET created its first full-time stewardship and monitoring position. "The fact that we had to have someone full-time is an indication of how much it's grown," says Highsaw. Like Massachusetts' APR program, MET legal services are provided by the state attorney general's office.

While public easement holders don't have to pay outright for legal services, LTA's Shay cautions that in some jurisdictions it can be difficult to get a state attorney general's office to commit significant resources to easement violations.

In Massachusetts, says Hubbard, "it hasn't been a problem getting them involved with a major violation — something like building a dwelling on a piece of protected land — but for less significant violations . . . it's sometimes harder to get the attorney general's office to look at it as a priority. They have so much other stuff they're dealing with." In Vermont, agrees Ratley-Beach, "The downside to [working with] the attorney general's office is that their workload is just enormous."

Some land protection professionals say that stewardship concerning land in active agricultural use can be more demanding than land preserved for environmental or recreational uses. "Farms are definitely more work," says VLT's Ratley-Beach. "We're here to preserve the land and make sure the resource remains available. But you have to find the balance between preserving the resource and making sure farms are economically viable."

## EASEMENT VIOLATIONS

### Easement Violations Reported in 1999 Land Trust Alliance Survey

Total number of easement violations	498
Number considered "major"	114
Number in which lawsuits were filed	21
Number of cases adjudicated by a court	6

Source: LTA Exchange

VLT easement language is progressive, and the organization's approach is to see if the easement can be interpreted to allow what the landowner wants. Still, landowner requests to modify buildings, change uses and build new structures are numerous, and they can be tricky, particularly concerning construction for value-adding facilities or farm infrastructure needed for new, and perhaps more financially viable, agricultural enterprises.

By comparison, easements on lands preserved for environmental and recreational purposes require less oversight. "There, pressure isn't on the land to give the owner an income," Ratley-Beach observes.

Regardless of the type of land, following are LTA recommendations:

- Prevent disputes from the outset by ensuring easement language is clear. Anticipate possible interpretations (and misinterpretations) of restrictions.
- Have policies and procedures in place before a violation occurs.
- Conduct routine monitoring visits that include personal visits with landowners.
- Invest in landowner and community relations, paying special attention to successor owners.
- Establish and maintain financial resources to monitor, enforce and defend easements against violations.
- Consult legal counsel as soon as a violation is discovered or suspected.

"While most land trusts are demonstrating that conservation easements are sustainable and effective," says Ratley-Beach, "the mis-step of a single land trust, or the failure to defend an easement, could result in case law that could effectively erode public confidence in conservation easements and inhibit other land trusts' ability to conserve land." 🚧

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## Using Resources Wisely *continued from page 5*

policy limiting impervious coverage. The mushroom producer wanted to buy a parcel protected under the state's Agricultural Preservation Restriction (APR) program, but his plan to erect cinderblock mushroom houses troubled program administrators.

"We're a resource protection program, and one of the reasons we're protecting that resource is to keep agricultural options open in the future," said Assistant Commissioner Rich Hubbard. "We don't know what ag will look like 50 or 100 years from now, but we know that land will be available for farming, even if the mushroom industry goes belly up."

Before the year is out, Massachusetts will likely adopt a policy to deal with a problem that Hubbard describes as growing, partly thanks to the exploding greenhouse industry and a recent preference for large Dutch greenhouses that cover significant ground. That policy likely will restrict coverage to 5 percent of the protected parcel.

Similarly, New Jersey farmland protection officials are considering coverage restrictions. Since the state began a joint protection program with nonprofit organizations, regulators have received requests that they limit coverage based on perceptions that impervious ground cover affects groundwater recharge and water quality, says Hope Gruzlovic with the state agriculture development committee (SADC). New Jersey is beginning to study the issue to see if it merits a statewide coverage rule. In the meantime, SADC has approved some coverage limitations when requested on a few properties, as long as the landowner was in agreement, Gruzlovic said.

In Suffolk County, New York, home to the nation's oldest purchase of development rights program, farmland protection officials handle such "coverage" cases on an individual basis in an attempt to minimize the paving over of valuable farmland.

"It is an issue and a concern," says Roy Fedelem, principal planner for Suffolk County. When a landowner wanted to build a concrete walkway to transport crops from field to truck, the county's farmland committee allowed it as a "necessary" use but asked the landowner to keep coverage minimal. In most cases, local ordinances restrict non-agricultural structures and uses in agricultural zones.

"The farmland program is meant to keep property in agriculture, and we want to minimize conversion of properties to non-agricultural uses," he says. 

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