# GREENING OUR GARDEN: PUBLIC POLICIES TO SUPPORT THE NEW AGRICULTURE

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## I. INTRODUCTION: HOW DOES PUBLIC POLICY RELATE TO THE NEW AGRICULTURE?

One of the exciting aspects of working on issues of agricultural law and policy is the opportunity to assist in society's consideration of the options available for shaping future public policies. As the United States nears the beginning of the next century, many commentators have focused on the industrialization of agriculture and remarked on its inevitability as the future for the nation's food and farming system.[1] Other commentators, including the author, have questioned both the "gains" to society from such an evolution and the inevitability of this future.[2] It may well be the future for some portions of our food system, but strong reasons suggest that for at least some consumers and producers, an industrialized agriculture and food production system is not what they desire. An earlier article, *Tending the Seeds: The Emergence of a New Agriculture in the United States,* documented a series of developments that provide reasons for optimism about the health and future of a food and agricultural system which has a role for people, sustains communities and resources, and produces quality food.[3] The article discussed how a variety of social developments across the nation involving thousands of farmers, consumers, educators, community activists, food marketers, and chefs, are combining to offer alternatives to industrialization. For lack of a better term, I labeled this emerging network of people, programs, and ideas the "New Agriculture" because in many ways it represents a departure from the attitudes and approaches of the last few decades.[4]

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1. *See* Thomas N. Urban, *Agricultural Industrialization: It's Inevitable*, CHOICES, 4th Quarter 1991, at 4.

2. *See* Neil D. Hamilton, *Agriculture Without Farmers? Is Industrialization Restructuring American Food Production and Threatening the Future of Sustainable Agriculture?,* 14 N. ILL. U. L. REV. 613 (1994); Rick Welsh, *The Industrial Reorganization of U.S. Agriculture: An Overview and Background Report* (Henry A. Wallace Inst. for Alternative Agric.), April, 1996.

3. *See* Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States,* 1 DRAKE J. AGRIC. L. 7 (1996).

4. In my earlier article, I defined the "New Agriculture" as follows:

> In simplest terms it means an agriculture devoted to producing quality food in a system that creates opportunities for farmers, marketers, consumers, and processors to experience the satisfaction and wholesomeness possible in a healthy food system. It is an agriculture that sustains the people, resources, and communities involved, and that educates consumers about how they are directly affected not just by the health and quality of the food they eat, but also by the nature of the system that produces it. It is an agriculture that preserves the heritage of its creation and builds a future for its participants. At its most fundamental level, it is a food system that works to re-establish the linkages and increase the understanding between the parts of the system, which sees farming as only one part of the whole. It is a system in which all participants, from farmers to consumers, take responsibility for their part

The purpose of this Article is to advance the discussion of the New Agriculture another step by considering how public policies and other legal actions can help nurture the seeds of this new system. This Article begins by identifying a series of public policy objectives that provide the basis for developing policies to support initiatives compatible with the concept of the New Agriculture. The application of these objectives to the development of agricultural law is illustrated by a range of recent public policy actions at the federal, state, and local level that help advance the New Agriculture. This Article concludes by examining the need for innovative approaches using public financing and other community-based initiatives to help create opportunities for food production in local economies. The lessons illustrated by the recent public actions and what they suggest for new approaches may provide policy makers examples of the tools available for "greening our garden" so that the future of agriculture includes opportunities for people and communities.

## II. IDENTIFYING FIVE POLICY OBJECTIVES THAT GROUND THE NEW AGRICULTURE

The first challenge in considering how law and policy can be used to promote a more diverse food and agricultural policy for America is to identify the common objectives that provide the basis for the New Agriculture. Once identified, these common objectives can be the starting point or test for developing or evaluating policy proposals. The following five objectives suggest a foundation upon which policies to promote the New Agriculture can rest.

### A. *Enhancing Activities That Educate Society About and Create Community Around Food and Agricultural Issues*

Food and agriculture can be used to increase communication and socialization and to improve society's understanding of food production. The central premise is that by considering how and why people come together around food issues it is possible to improve relations within society. Whether the issue is urban agriculture, school based programs using gardens, or direct marketing, such as farmers' markets, the goal is to use social contacts to enhance the communication, education, training, and fellowship that result from these shared activities. A number of activities associated with the New Agriculture illustrate this objective. These include urban gardens, community supported agriculture, farmers' markets, and cooperatives. Job training or rehabilitation efforts, such as the "Garden Project,"[5] which uses urban gardens to reach at-risk children, and programs like the "edible schoolyard,"[6] are

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> in preserving the quality of the food produced and marketed and sustaining the resources upon which the system depends.

*Id.* at 9-10.

5. *See* Catherine Sneed, The Garden Project—Overview (unpublished manuscript, on file with the *Drake Journal of Agricultural Law*).

6. *See* Sheryl Oring, *Seeds of Hope: Renowned Chef Cooks Up Plan for Junior High*, CHI. TRIB., Mar. 19, 1995, § 6, at 3.

examples of how community and education can be promoted through food system based programs.

B. *Supporting Programs That Establish Linkages Between Consumers and Farmers*

The objective here is to increase the direct contact and communication between participants in the food system. By doing so, human involvement in food production and consumption becomes more apparent and individual decisions that influence how the food system functions become more personal. Activities illustrating this include: (1) environmental stewardship efforts by farmers; (2) various direct and alternative marketing efforts, such as farm stands, farmers' markets, and community supported farms; and (3) the work of the Chefs Collaborative to link chefs with local producers and urban agricultural education programs.

There are two key objectives. First, by helping people make connections, both human and conceptual, across the food system, the potential to improve the performance of the system should be increased in areas such as the production and marketing of foods desired by consumers. Second, by increasing these connections, the quality of the public debate about issues relating to food should be enhanced by elevating the awareness and understanding of participants in that debate. Farmers may have a better feel for consumers' food safety concerns if they actually raise and sell food directly to people. Urban residents may have a better appreciation of the need for farmland protection if they realize the land at stake is the land that produces the food they buy at the farmers' market.

C. *Focusing on Local Food Production as Community and Economic Development*

The objective here is to highlight the economic value of farming, food production, and marketing to local economies. Much attention has been given in recent years to promoting value-added production and to the economic development aspects of agriculture. Often this attention has focused on large scale processing of products, such as packing plants, or the processing of food for export markets.

An alternative approach is to focus on localizing food production and marketing to create new employment opportunities and to capture the tremendous amount of local spending on food. If a goal was set for increasing the local production, processing, and marketing of high quality food within a region, then the economic benefits associated with localized production could become the focus of economic development efforts. These benefits include higher values retained by producers, increased local employment, and improved efficiencies of direct marketing.

Often, economic development is considered simply to be bringing in a new factory, but every region and city already has in place an economic system built around food distribution, marketing, and consumption. Opportunities can be generated by concentrating on the production and marketing of fresh, high-value crops, such as produce and cut flowers, and on the processing and marketing of local food specialties. Many actions associated with the New Agriculture, including

farmers' markets, cooperatives, and local processing of foods, have a direct relationship to economic development.

D. *Employing a Food Systems Approach when Considering Agricultural Issues*

The main objective in this regard is to recognize that agricultural production is only one part of a larger food system that encompasses a much greater array of economic activities and policy considerations. By viewing farming and agriculture as only one aspect of a multi-faceted food system, broader public questions, and their connection with farming, can be made clearer.

Questions relating to opportunities for local food production, food access for the poor, hunger assistance, farmland protection, public understanding of agriculture, and promotion of alternative markets are all included within a broadened food systems focus. Employing a food systems model can build on the linkages that exist in the local economy and political system. Using a food system approach can also help local officials formulate questions that might otherwise go unasked: What are the opportunities for increasing local production of food? Should public institutions purchase more food locally? How do land use policies affect the long term protection of farming?

E. *Integrating Efforts to Protect Farm Land and Support Beginning Farmers*

Farming and agriculture cannot continue to exist in an area unless there are adequate land resources upon which to operate. Similarly, our food and agricultural system will not be able to perform its traditional function in society unless there are opportunities for new people to begin farming. In recent years local farm land preservation programs have attracted both attention and public funding. Furthermore, many states and the federal government have developed programs to assist new and beginning farmers. Unfortunately, there has been little effort to link these endeavors. We may be preserving farmland, but losing farmers and, thus, the battle to maintain a local farm economy on that land.[7]

Integrating the two issues and viewing them as two sides of the same coin can improve the chances to achieve both goals. Farmland protection efforts may provide access to public funding, a key issue in the operation of new farmer assistance programs. Helping plant the next crop of farmers reassures the public that someone will be there to farm the land being protected. These efforts also can include increased attention to public and community mechanisms for supporting agriculture, as reflected in the growth of community supported farms and the activities of some land trusts in farmland protection.

These five policy objectives are a distillation of the basic motivations and social forces that are observable in the developments making up the New Agriculture. As such, they also may serve as a template in developing laws and policies to support

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[7]. *See, e.g.*, *'Aggie Bonds' Unknown to Farmland Preservation States,* 6 FARMLAND PRESERVATION REP. 1 (1996).

the creation of opportunities in that agriculture. The following discussion uses a series of recent legal developments in the United States to demonstrate how the values of the New Agriculture are being integrated into law.

## III. HOW LAW IS CREATING OPPORTUNITIES AND COMMUNITY IN THE FOOD SYSTEM: TEN POLICY INITIATIVES SUPPORTING THE NEW AGRICULTURE

One premise of the New Agriculture is to use a food system analysis which recognizes that agriculture is about more than just farming and farming is about more than just the corn, beans, hogs, cattle, and other crops that predominate in midwestern farm states. At its heart, agriculture is about producing food and caring for the land. It is about creating the system that brings food to consumers and ensures a continuing supply.

Thinking about agriculture in a more inclusive food system approach yields several insights. First, the community of people interested in the issues is broadened. Second, the discussion expands to include a wider range of questions. Third, the stories may become more interesting and optimistic. Travels across the nation reveal hundreds of farmers, consumers, educators, processors, food marketers, and chefs working to create a more productive and fulfilling future.

There are a variety of legal issues relating to the development of these alternative food marketing and production systems. One force underlying the emergence of the New Agriculture is the lingering concern of many consumers about the safety and quality of our food. Food safety concerns will result in continuing refinements in the law, such as the recent adoption of the Hazard Analysis and Critical Control Points (HACCP) and reform of the Delaney Clause.[8] But consumers may respond by seeking out methods of purchasing food that bring more security or satisfaction. Part of the challenge for lawyers and policy makers will be to deal with the unique legal needs of the new farmers and farm operations and those involved in new forms of marketing ventures in response to these consumer desires. Equally important is the development of the public policies and ideas that help this segment of agriculture emerge.

In recent travels throughout the United States I have encountered a series of innovative developments, many supported by legislative authority, that illustrate how

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8. Recently there have been several significant changes in the laws that establish the basic premises of the U.S. food safety and inspection system.

First, Congress passed, and the President signed, the Food Quality Protection Act, which, among other actions, amends the Delaney Clause to substitute a risk based standard for the previous absolute ban on the appearance of known carcinogens such as food additives. The text of the new law, H.R. 1627, can be found in the U.S. Congressional Record, July 23, 1996, at pages H8127 - 47. *See, e.g.,* Heather C. Jones, *Delaney Reform Bill Moves to Clinton for Signature*, FEEDSTUFFS, July 29, 1996, at 1; *Progress of Pesticides*, N.Y. TIMES, July 22, 1996, at A14; *New Pesticide Rules Beneficial to Nation's Kids*, DES MOINES REG., July 26, 1996, at 4A.

Second, the administration approved use of the Hazard Analysis and Critical Control Points (HACCP) approach to meat inspection. This will, among other things, substitute the use of microbial tests for the old touch, view, and smell method. *See, e.g.,* Marian Burros, *Sweeping Changes Set for System of Meat and Poultry Inspection*, N.Y. TIMES, Mar. 14, 1996, at A21.

the New Agriculture is being encouraged by thoughtful governmental or institutional action. The following ten legal developments are examples of the connection between our food system and public actions.

### A. *Support for Farmers' Markets and Direct Marketing*

In recent years there has been a sharp increase in the number of farmers' markets in the United States and in other forms of direct marketing, such as Community Supported Agriculture (CSA).[9] Studies indicate that farmers' markets can play an important role in strengthening local food systems.[10] By creating marketing opportunities, farmers' markets allow local producers to diversify production and to sell food in a manner that allows a larger portion of the return to go directly to the producer. Farmers' markets also offer consumers the opportunity to buy fresh, locally-produced food and to experiment with types of produce not found in other markets.

A significant factor in the development of these alternative forms of marketing has been the efforts by the United States Department of Agriculture and State Departments of Agriculture to support the use of farmers' markets,[11] most notably by providing assistance to purchase local produce from farmers' markets through the Women, Infants, and Children (WIC) Program.[12]

### B. *Programs to Finance Beginning Farmers and Farmers Diversifying Their Crops*

Many states, especially in the Midwest, have programs designed to finance beginning farmers.[13] Some of the programs use state funds; others rely on a federal tax exemption for "aggie bonds." The exemption provides tax exempt treatment for the income from private loans made to qualified farmers. Under the "aggie bonds" program a state authority issues a bond that is sold to the lender who then loans the money to the qualified beginning farmer.[14] In addition, several states use programs like the Linked Deposit Loan or LIFT program, utilized in Iowa, to provide low

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9. For a discussion of the operation of a CSA, see Jay P. Wagner, *Want Fresh Veggies or Flowers? CSAs Link Farmers, Consumers*, DES MOINES REG., Aug. 11, 1996, at 4G. In August the United States Department of Agriculture announced there are now over 2400 farmers' markets in the United States. *See* Carole Sugerman, *Farmers' Market Held in USDA Parking Lot*, DES MOINES REG., Aug. 25, 1996, at 2FC. This is an increase of almost 40% in two years. *See id.*

10. *See generally* DEPARTMENT OF RURAL SOCIOLOGY, CORNELL UNIVERSITY, FARMERS' MARKETS AND RURAL ECONOMIC DEVELOPMENT: ENTREPENEURSHIP, BUSINESS INCUBATION AND JOB CREATION IN THE NORTHEAST-FARMING ALTERNATIVES PROGRAM (1995).

11. For examples of state laws to support such programs, see CAL. CODE REGS. tit. 3, § 1392.1 (1991) (titled Direct Marketing); TEX. AGRIC. CODE ANN. § 15.022 (West 1995) (titled Farmers Market Nutrition Programs); N.Y. AGRIC. & MKTS. LAW § 259 (McKinney 1991).

12. *See* WIC Farmers' Market Nutrition Program (FMNP), 7 C.F.R. § 248 (1997).

13. *See* William L. Oemichen, *State Government Service to the Agriculture of Tomorrow,* 2 DRAKE J. AGRIC. L. 247, 256 (1997) ( noting that eight states—Illinois, Indiana, Iowa, Minnesota, North Dakota, Oklahoma, South Dakota, and Wisconsin—have adopted state agricultural finance programs).

14. *See, e.g.,* IOWA CODE § 175 (1997).

interest loans to farmers who are raising alternative crops or otherwise diversifying local food production and processing.[15] The Texas linked deposit loan program focuses on funding a microenterprise loan program to assist local economic development.[16]

### C. *State and Local Efforts to Fund Acquisition of Development Rights to Preserve Farmland*

Across the nation dozens of states and communities are allocating resources to create effective programs to preserve farmland.[17] As part of the 1996 Farm Bill, Congress authorized spending as much as $35 million a year to support such efforts.[18] Education, including teaching developers and government officials about the value of farmland preservation and demonstrating to home buyers and society that such preservation is necessary, will be a key to succeeding. The American Farmland Trust (AFT) has played a critical role in focusing the Nation's attention on the threat of farmland loss and in developing innovative market-driven approaches to protect farmland.[19] In recent years the AFT has documented that over 50% of the nation's top-value agricultural commodities are produced in metropolitan counties or counties adjacent to them—in other words, on the agricultural land most at risk of

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15. For a discussion of the Iowa program, see TREASURER OF THE STATE OF IOWA, LINKED INVESTMENTS FOR TOMORROW (LIFT) PROGRAM FOR HORTICULTURE AND ALTERNATIVE CROPS (1992). From a financial standpoint, the LIFT program operates by having the state buy a Certificate of Deposit (CD) from the bank and the bank then lends the proceeds to the borrower at no more than four percent additional interest. The bank gets to use the state's money to make loans it otherwise might not be able to make and an alternative farming operation is able to obtain financing. *See* IOWA CODE §§ 12.31-.62 (1997) (discussing the details of the LIFT program); IOWA ADMIN. CODE r. 781-4.1 (1997). IOWA ADMIN. CODE r. 781-4.6(12) (1997) defines "horticultural and alternative crops" as:

> [P]lants and animals which are not traditionally major crops in this state. They include but are not limited to buffalo, canola, Christmas trees, crambe, cuphea, cut flowers, domesticated game birds/animals, fish, fruits, ginseng, goats, herbs, nursery stock, nuts, sorghum, trees, turf, and vegetables. Ineligible items include but are not limited to, alfalfa, cattle, chickens, field corn, cover crops to bridge to an ineligible crop, dairy cows, dogs, eggs, hogs, horses, landscaping, lawn care, oats, rye, sheep, soybeans, turkeys, and wheat.

IOWA ADMIN. CODE r. 781-4.6 (12) (1997).

16. *See* TEX. AGRIC. CODE ANN. § 44 (West 1995). Section 44 is titled "Agricultural Diversification and Microenterprise Support Programs."

17. For a discussion of the history of efforts to use public funds to acquire development rights on agricultural land in order to preserve it, see *Putting Dollars to Work to Save Farmland: 20 Years of PDR Programs*, AMERICAN FARMLAND, Summer 1996, at 9.

18. Congress appropriated only $2 million for use in 1997, but the USDA was able to locate $15 million from other funds for use in 1996. *See Farmland Protection Gets First Year Jump Start of $15 Million*, AGRI-PULSE, Sept. 2, 1996, at 2. The USDA recently promulgated rules for the operation of the Farmland Protection Program. *See* Farmland Protection Program, 61 Fed. Reg. 43,226 (1996).

19. *See, e.g.,* Sonja Hillgren, *On the Green Scene: Ralph Grossi Advocates an Environmental Alliance*, TOP PRODUCER, Jan. 1994, at 12 (discussing a California farmer who is president of AFT and his work to build coalitions between farm and conservation groups).

conversion.[20] One example of an innovative effort to protect farmland while accommodating development is the private development, Prairie Crossing, near Grayslake, Illinois. In addition to combining residential development and farmland preservation, the project uses food production to create a community feeling. Prairie Crossing uses conservation easements, a land trust, and a community supported farm. The project also illustrates the need to educate local planning officials about alternative goals.[21]

### D. *State and Federal Laws to Certify Production of Organic Food*

Organic production is of central importance to the development of the New Agriculture for several reasons:

(1) It is an alternative to conventional production methods.

(2) It is a recognized and marketable valuation alternative for food products.

(3) It addresses the health concerns of many consumers.

(4) It fits the lives and objectives of many producers.

(5) It is becoming the standard for "high quality food."

For these reasons the development of state and federal laws to support production and marketing of organic foods is a prime example of how public policy can create opportunities in our food system.[22] Federal action to develop organic food rules, even though delayed,[23] will play an important role in the growth of this sector of farming once they are in place and create a uniform national standard.[24]

### E. *The Community Food Security Movement Examines Local Food Systems*

Recently a network of community activists, nutritionists, and educators adopted the concept of "Community Food Security" to examine how local food systems operate. Their efforts triggered a surge in local initiatives to improve availability of fresh food and create opportunities in agriculture. The central premise of the movement, as described by the Community Food Security Coalition, is to

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20. *See* Valerie Berton, *Farming on the Edge*, AMERICAN FARMLAND, Summer 1993, at 11; EDWARD THOMPSON, JR., AM. FARMLAND TRUST, FARMING ON THE EDGE: A VERY PRELIMINARY ASSESSMENT OF THE IMPORTANCE OF AND PRESSURES ON URBAN-EDGE AGRICULTURE (1993).

21. For a discussion of the project, see, Frank Edgerton Martin, *Riverside Revisited?*, LANDSCAPE ARCHITECTURE, Aug. 1995, at 11; Dennis Rodkins, *The Good Earth*, CHICAGO, Feb. 1996, at 27.

22. For an example of a state organic statute, see IOWA CODE § 190B (1997); IOWA ADMIN. CODE r. 21-47.1 to 47.9 (1997). The federal organic food law, Organic Food Production Act of 1990, is located at 7 U.S.C. §§ 6501-6522. *See also* Procedure To Submit Names of Substances for Evaluation for Inclusion in the National List To Be Included in the National Organic Program, 60 Fed. Reg. 15,744 (1995).

23. *See* Notice of Meeting of the National Organic Standards Board, 61 Fed. Reg. 43,520 (1996) (announcing a meeting of the NOSB for September 18, 1996 through September 20, 1996).

24. For a discussion of the role of the federal rules, see John Bell Clark, *Impact and Analysis of the U.S. Federal Organic Food Production Act of 1990 With Particular Reference to the Great Lakes*, 26 U. TOL. L. REV. 323 (1995).

insure that "all persons can obtain a nutritionally adequate diet through local non-emergency sources."[25]

One of the most successful programs is the Hartford Food System, established in 1978 to plan, develop, and operate local solutions to the city of Hartford's food problems.[26] Actions have included establishing successful farmers' markets, so Connecticut farmers can bring fresh food into the city. The project has supported urban-agriculture initiatives, including community gardens and greenhouses, and a community-supported farm. It has also worked to improve options for food marketing and distribution in the inner city.[27] This year, the Hartford Food System expanded the concept of food security when the Connecticut legislature created a task force to examine the state's food system.[28] Additionally, The Los Angeles City Council adopted a "Food Security and Hunger Policy" this summer to address problems of hunger and food insecurity.[29]

The community food security movement received a major boost when Congress included funding for "community food projects" in the 1996 Farm Bill.[30] This action by Congress is an excellent example of how public policy can support new agricultural efforts. The Farm Bill authorized $1 million for use in 1996 and $2.5 million for each of the next six years.[31] The funds, which must be matched with local money, are to support projects that "(1) meet the food needs of low-income people; (2) increase the self-reliance of communities in providing for their own food needs; and (3) promote comprehensive responses to local food, farm, and nutrition issues."[32] In late July, the Cooperative Extension Service issued rules for funding requests.[33] United States Department of Agriculture officials were delighted to receive more than 120 grant applications requesting more than $21.5 million. In

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25. COMMUNITY FOOD SECURITY COALITION, FREQUENTLY ASKED QUESTIONS ABOUT COMMUNITY FOOD SECURITY (no date is available for this document) (on file with the *Drake Journal of Agricultural Law*); *see* Robert Gottlieb & Andrew Fisher, *Community Food Security and Environmental Justice: Searching for a Common Discourse*, AGRIC. & HUM. VALUES, Summer 1996, at 23, 24. In reality, the approach moves beyond simply addressing hunger to considering how well the components of the local food system, including farms, grocery stores, and public agencies serve local citizens. Today the community food movement is active in cities across the nation, such as St. Paul, Nashville, and Austin.

26. HARTFORD FOOD SYSTEM, THE HOLCOMB FARM COMMUNITY SUPPORTED AGRICULTURE PROJECT, 1996 ANNUAL REPORT 1 (1997) (on file with the *Drake Journal of Agricultural Law*).

27. PLANNING AND DEVELOPMENT COMMITTEE'S AD HOC FOOD SECURITY COMMITTEE, TOWARD FOOD SECURITY FOR CONNECTICUT 3 (no date available for this document) (on file with the *Drake Journal of Agricultural Law*).

28. *See Connecticut Food Policy Council Bill Becomes Law!!*, SEEDLING (Hartford Food Sys., Hartford, Conn.), Summer 1997, at 3 (on file with the *Drake Journal of Agricultural Law*).

29. *See LAFSHP Sets Sail in L.A. to Address Food Insecurity*, NUTRITION WEEK, Aug. 2, 1996, at 6 (reporting on the formation of a food security and policy council for Los Angeles (LAFSHP stands for Los Angeles Food Security and Hunger Partnership)).

30. *See* H.R. REP. NO. 104-494, at 321 (1996), *reprinted in* 1996 U.S.C.C.A.N. 683, 769.

31. *See* H.R. REP. NO. 104-494, at 321 (1996), *reprinted in* 1996 U.S.C.C.A.N. 683, 769.

32. Federal Agricultural Improvement and Reform Act of 1996, Pub. L. No. 104-127, 1996 U.S.C.C.A.N. (110 Stat.) 1027.

33. *See* Community Food Projects Program, 62 Fed. Reg. 38,524 (1996).

early October, Secretary Glickman announced the thirteen projects that will be funded.[34]

### F. *Municipal Policies to Promote Community Gardening*

In recent years more attention has been given to the idea of urban agriculture and how food production can be developed within cities.[35] The most common form of urban agriculture, which exists in hundreds of cities in the United States and Canada, is the community garden.[36] In some cities the gardens are a function of specific municipality policies or initiatives to support community gardening, such as the Vancouver Parks and Recreation program and Montreal program. They can also be part of the public housing or community services department, such as New York's Green Thumb program. Many of these programs rely on a variety of funding sources. For example, the San Francisco League of Urban Gardeners (SLUG) is very entrepreneurial and uses funds from sources such as the Department of Housing and Urban Development (HUD) and Community Development Block grants. SLUG also uses municipal money to sponsor composting classes and to provide environmental services for lead clean-up and justice system funds to supervise community service for youthful offenders. Many programs received direct funding from the USDA's Urban Gardening Program prior to 1993[37] and some, such as New York's, are still supported by state based programs.[38]

Urban gardening efforts have a variety of uses. For example, Garden Project in San Francisco, provides post-release job training opportunities. Many community gardening programs, such as SLUG, have made special efforts to reach at-risk

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34. *See First Round of Community Food Project Grants Awarded*, COMMUNITY FOOD SERVICE NEWS (CFS Coalition, Hartford, Conn.), Fall 1996, at 1, 8 (on file with the *Drake Journal of Agricultural Law*). Three of the projects selected are as follows:

(1) The Watts Growing project of the Southland Farmers' Market Association in Los Angeles, which received $64,000 to train community gardeners, increase availability of local produce, and create economic opportunities for low-income gardeners; (2) The Community Farm Project in Bloomington, Indiana which received $40,000 to train residents of public-housing to produce food and sell it to local stores and restaurants; and (3) The Economics Micro-Enterprise Development Initiative of Loyola University in New Orleans, which received $148,000 to establish a partnership between rural growers and city dwellers to cultivate small businesses from a thriving farmers' market. Neil H. Hamilton, *Programs Secure Local Sources for Food*, DES MOINES REG., Nov. 16, 1996, at 11.

35. For a recent discussion of this issue on an international level, see UNITED NATIONS DEVELOPMENT PROGRAMME, URBAN AGRICULTURE: FOOD, JOBS AND SUSTAINABLE CITIES, PUBLICATION SERIES FOR HABITAT II, VOL. ONE, 1996.

36. For a discussion of the increase in community gardens, including in the Midwest, see Mary Hill, *Des Moines Inner City Turning Greener*, DES MOINES REG., July 3, 1996, at N1, which estimates more than 160 acres of gardens were cultivated on vacant lots within Des Moines, much of the work supported by USDA/AmeriCorp staff.

37. For an article discussing the importance of federal funding in the operation of many urban community gardening programs, see David Malakoff, *Final Harvest?,* COMMUNITY GREENING REVIEW, 1994, at 4.

38. *See* N.Y. AGRIC. & MKTS. LAW § 31-g (McKinney 1991); TEX. NAT. RES. CODE ANN. § 31.151 (West 1978) (concerning the disposal of public land and its use for community gardens).

children, often through situating gardens in housing projects. One type of municipal policy often used to support community gardening is to identify abandoned properties and city owned lands and make them available for use as urban gardens.

### G. *Using Historic Preservation to Fund Aspects of the Food System*

The connection between historic preservation and our food system is perhaps best reflected in the work of the Pike Place Preservation and Development Authority which manages Pike Place Market in Seattle, one of the most successful public markets in the nation.[39] Historic preservation has been combined with education in the inspired restoration and reuse of Shelburne Farms near Burlington, Vermont as a sustainable agriculture and environmental education training center. Two of our Nation's founders, Thomas Jefferson and George Washington, were proponents of agriculture and innovative farmers in their day. Visitors to Monticello can see the beautiful farm that helped inspire Jefferson's agrarian vision for our Nation. Malabar Farm, home to writer Louis Bromfield whose books, such as *Pleasant Valley*, provide the foundation for sustainable agriculture, is now operated as an Ohio state park devoted to agriculture.

### H. *Promoting Local Processing of Meat and Other Food*

Efforts to increase local production and sale of food will require increasing the opportunities for local food processing. An example of how legislation can be used to create opportunities for small scale producers and improve the operation of local food systems can be seen in the recent effort to amend federal meat inspection laws to allow for interstate movement of state inspected meat.[40] The effort has recently stalled in Congress, in part due to opposition from the Administration, but the debate over local meat inspection has increased the attention given to the impact food processing and marketing laws have on the opportunities in local food systems.

### I. *Educational Efforts Using Gardening and Agriculture*

In recent years local education officials in several cities have created public high schools that use food and agricultural issues as the basis for educational

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[39]. For a discussion of the history of Pike Place Market and the unique issues facing its managers, see John Pastier, *Uncommon Market*, HISTORIC PRESERVATION, Jan.-Feb. 1996, at 50. The legal agreement for the operation of the market is titled "Seattle Ordinance and Agreement Between City of Seattle and the Pike Place Market Preservation and Development Authority," dated August 1, 1983 (on file with the *Drake Journal of Agricultural Law*).

[40]. *See Illogic on Meat Inspection: Rules Against Interstate Shipment Hurt Farmers, Small Businesses*, DES MOINES REG., June 18, 1996, at 10A; s*ee also* Heather C. Jones, *USDA Recommends Interstate Shipment of State-Inspected Meat,* FEEDSTUFFS, July 15, 1996, at 8 (noting the USDA, in a report required under the 1996 Farm Bill reported to Congress, supports the interstate sale of state-inspected meat). The effort to amend the meat inspection laws to allow the interstate movement of state-inspected meat has continued with the introduction of a bill for this purpose in Congress. *See* Heather C. Jones, *Interstate Meat Shipment Bill Introduced*, FEEDSTUFFS, July 29, 1996, at 3.

programs.[41] Several of the programs, such as the Kansas City East Magnet School for Environment and Agricultural Sciences, resulted from federal school desegregation efforts. The motivations behind the programs range from the need to educate urban youth about agriculture and life sciences to the need to prepare students for jobs in the food and agricultural sector.

The Chicago High School of Agricultural Sciences (CHSAS), which graduated its first class in 1989, is a prime example of how agriculture education can make a difference in the performance of inner city students who may be at risk of not finishing high school. The student body, selected by a lottery and application process from throughout the Chicago school system, has an ethnic makeup roughly comparable to the whole district.[42] In terms of performance, the high school graduation rate for the entire Chicago public school system is 52.2%, while the graduation rate at CHSAS has been over 77%.[43]

Other valuable school-based programs have used gardens as a medium for teaching younger children not just about food production but also about math, science, and social studies. The "Edible Schoolyard" project, created by Alice Waters and located at Martin Luther King Junior High in Berkeley, California, is an excellent example of how a garden can be integrated into a school's curriculum. The success of this effort has led the California Superintendent of Education to propose including gardens in all elementary schools in the state. The "Food from the Hood" program at Crenshaw High School in South Central Los Angeles, combines gardening with a business education project. The program has been nationally recognized for improving the education of inner-city youth and helping fund scholarships for their education.

### J. *The Role of Land Trusts in Promoting Agricultural Operations*

The final example of a policy initiative concerns the relationship between programs designed to protect farmland and other initiatives to promote opportunities for new and beginning farmers. One aspect of the direct marketing and horticultural operations, which are part of the New Agriculture, is the locational dimension. The closer the farms are to consumers or urban populations, the greater their possible marketing opportunities. In addition, the higher crop values and per acre returns, which are possible from activities such as intensive vegetable production, may make it possible to afford more expensive land.

The Wisconsin Farmland Conservancy is one organization working on the relation between land trusts and the community funded mechanisms, such as CSAs,

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41. For a discussion of this trend, see Christine McClintic, *Agricultural Education for City Kids*, FURROW, Jan. 1996, at 23.

42. *See* CITY OF CHICAGO SCHOOL DISTRICT 299, 1994 SCHOOL REPORT CARD FOR THE CHICAGO HIGH SCHOOL OF AGRICULTURAL SCIENCE, at 2.

43. *See id.* Equally important, in light of the nature of the student body, the graduates of CHSAS have an admission rate at four-year colleges of more than 70%, and more than 90% when two-year colleges are included. *See id.*

to finance farm operations.[44] The Conservancy currently has several projects that combine traditional agricultural land preservation activities with community supported agriculture and efforts to assist beginning farmers. Behind their efforts is the idea that often the land trust or the public has already paid much of the land's purchase price. From the standpoint of a new or beginning farmer, the land trust may have already assisted the farmer in one of the most difficult tasks, recapitalizing the land cost.

## IV. CONCLUSION: IDEAS ON COMMUNITY-BASED EFFORTS TO PROMOTE FARMING

The preceding discussion has identified a variety of ways that public policies and the law can be used to help support the development of farming and a food system that fits the model of the New Agriculture. The examples given in this Article are just that, examples, and by no means represent the limits of the range of possible creative and innovative efforts possible.

As a final topic, I would like to share some brief thoughts on how alternative or innovative approaches to financing new farmers, community-based agriculture, or both could operate.

There are a number of ways a community could provide opportunities in farming. If the appropriate legal authority was in place, a county or town could create an Agricultural Development Authority (ADA). Its purpose would be to issue bonds, with the proceeds being used to purchase agricultural land. The lands to be acquired could be targeted toward especially strategic lands, such as those which are in danger of conversion or consolidation. An eligible beginning farmer, for instance one who is raising alternative crops (similar to the Iowa LIFT program) or who is involved in local food production and marketing (such as a community supported farm), could be placed in a program to lease or use land acquired by the authority. Eligible farmers could also apply for financial assistance or low interest loans from the authority. Similarly, a person proposing a local food-related, job-creating enterprise could apply for financial assistance from the authority. The long-term goal would be to establish the new farms or enterprises as free-standing businesses that would repay the authority.

As to financing the program, one alternative would be for the beginning farmer or members of the community to buy shares in the agricultural development corporation. Public funds, possibly generated from local tax revenues, may be required to initiate and capitalize the effort. The arrangements with the participating new farmers would need to include some form of equity sharing related to the land they farm. For example, a long-term lease with a right to purchase at a fixed or reduced price could be offered. This would provide part of their inducement to stay and develop the enterprise, as the "sweat equity" would later be reflected in their purchase cost.

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44. *See* Ken Brekke, *Preserving Green Space at Core of Conservancy*, LA CROSSE TRIB,. Aug. 27, 1995, at 390.

To help encourage local investment, the law could also provide that any income received on the shares in the local ADA would be tax exempt and could pass free of estate taxation. In order to encourage existing landowners to place their farms in the program, an estate tax reduction could be used as an incentive for participation by retiring landowners. This could encourage them to sell their farmland to the ADA in exchange for cash or stock in the ADA. Alternatively, they could be encouraged to sell the land directly to qualifying farmers if the proceeds from these sales were made tax exempt.

One aspect of these programs would be to bring some components of the French "SAFER" system to the United States. Under this program an agricultural authority is given the right of first purchase when farmland comes on the market. This insures that all opportunities to use the land to support a new farming operation are explored. The key to such a system is the creation of a process that gives beginning farmers and local communities an opportunity to be in the market for farmland. Without some type of intervention mechanism, most likely in the form of a market or financial incentive, beginning or under capitalized (and thus more risky) new farmers are at a distinct disadvantage when competing against existing farmers with large equity holdings or against non-farm developers or investment interests. The question of how the local ADA could obtain or be given a priority in local farmland transactions is a policy issue that would need to be resolved. Such a program, if developed, could utilize existing state and federal tools, such as linked deposit loans, state agricultural development authority loans, and even local farmland protection money to finance new farming operations. This proposal is just one example of how legislation can help develop laws that support the emerging New Agriculture.

As I noted in the article *Tending the Seeds,* "promoting the profitability of farmers and others in our food system who are taking this road offers many exciting issues in agricultural policy. Helping tend the seeds of the emerging new agriculture may be one of our most important challenges in the decade ahead."[45] If we are to meet that challenge, then we must provide society with more proposals that will help communities develop their own food systems.

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45. Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States,* 1 DRAKE J. AGRIC. L. 7, 9 (1996).