



Michigan Association of Planning
A Chapter of the American Planning Association

**Right to Farm Act
Policy Platform
Adopted – February 19, 2010**

Background

Agriculture is the second largest industry in the State of Michigan. In some parts of the state, agriculture is a major engine driving the local economy. As more and more people value the benefits of fresh, locally grown foods, the industry is creatively stepping in to meet market demand and provide specialty products. Depending on the economy, there also has been pressure to develop previously undeveloped and/or agricultural lands to meet market demand for low density housing in serene and pastoral settings. Accommodating these two market forces requires a balanced approach that does not undermine the long-term need for a sustainable agriculture industry in Michigan while still providing for growth of housing, commerce, manufacturing and other land uses.

The Michigan Association of Planning adopted an Agriculture Land Preservation Policy in 2006 that provides general policy statements for agricultural preservation. However, recent court decisions interpreting the Michigan Right to Farm Act (MCL 286.471-286.474) are adversely affecting local government's ability to protect some residential development from the adverse effects of agricultural activity in ways that MAP does not believe were intended in the legislation. The following policy addresses changes MAP believes should be incorporated into the Right to Farm Act; however, this policy does not specifically address urban agriculture. MAP intends to develop a separate policy regarding urban agriculture in the near future.

MAP acknowledges that farms generate noise, odors, and dust in their normal operation and involve the application of a wide range of fertilizers, pesticides, herbicides and other chemicals, and that these aspects of rural agricultural character must be recognized by new residents. The Michigan Right to Farm Act (RTFA) was passed in 1981 (and amended several times since, most recently in 1999) to give farmers protection from nuisance suits. All states have some form of RTFA. In most states, these laws codify the "coming to the nuisance defense," which means that

nuisance immunity is provided if the farm existed prior to changes in surrounding land uses. However, these laws also specify that the protection does not apply if the nuisance results from negligent or improper operation of the farm or if the farm fails to use generally accepted agricultural and management practices (GAAMPs).

The Michigan Association of Planning holds that the use of GAAMPs is intended to protect farm operations that may have preceded a residential use at a less intense level of operations and whose level of operations after the residential use is established was enhanced, expanded, or intensified, by making sure impacts from the changing farm operations to the land and other neighboring uses are as minimal as possible. GAAMPs should also apply to new farms and farm operations in rural areas not near established residential areas.

There is confusion about what the RTFA does, and does not, do. Resources about RTFA and a fact sheet can be found on the Michigan Department of Agriculture's web page. As written, this state statute establishes reasonable approaches that MAP supports. The RTFA includes definitions for farms and farm operations, and the definitions used in the Act are also used for purposes of this policy. In Michigan, a farm or a farm operation is given immunity from nuisance suits if (MCL 286.473):

1. It conforms to GAAMPs.
2. It existed before a change in the land use or occupancy of land within one mile of the boundaries of the farm land, and if before that change in land use or occupancy of land, the farm or farm operation would not have been a nuisance.
3. It conforms to GAAMPs and changes in ownership or size, temporarily ceases operations, enrolls in governmental programs, adopts new technology, or changes the type of farm product being produced.

Summary of Recent Court Decisions

Following is a summary of the impact of several Court of Appeals cases.

- In several cases the Court has concluded that the legislature did not require that both parts one and two of Section 3 of the RTFA (numbers 1 and 2 above) be satisfied to receive nuisance protection (MCL 286.473). This interpretation gives farm operations the right to move into areas, including residential areas, and qualify for nuisance protection under RTFA by using GAAMPs. The implication is that there is no connection between parts one and two, which takes away the important protection provided to neighboring landowners in exchange for their lost ability to bring private rights of action (this protection exists in most states). (e.g. **Padadelis v. City of Troy** and **Charter Township of Shelby v. Papesh**)
- The Court decisions also seem to indicate that expansions of livestock operations pre-dating land use changes will enjoy RTFA protection even if

the GAAMPs for Site Selection and Odor Control for New and Expanding Livestock Facilities are not used. Therefore, adopting GAAMPs as part of a local ordinance would be seen as conflicting with state law.

- The Court of Appeals appears to consider the preemption of local zoning a “clearly expressed intent” of the legislature (expressly in the first **Papadelis** decision and by interpretation of the local zoning ordinance in the second, and less clearly stated in the **Papesh** decision). The Court of Appeals decisions suggest that farms that qualify for nuisance immunity may be undertaken in any location, even in areas designated solely residential. And, recall that to qualify for protection, farms need to use GAAMPs or pre-date land use changes, not both—by court interpretation. (**Padadelis v. City of Troy** and **Charter Township of Shelby v. Papesh**)

It is unlikely that the legislature expected that the Court of Appeals would sanction farming in residential areas or not require them to use GAAMPs if the farming predated surrounding land use changes. It is more likely that the legislature intended in 1981, and with every amendment since, that GAAMPs would be used by all agricultural landowners to protect environmental quality and minimize negative impacts on surrounding land uses. MAP holds that the recent court interpretations were made erroneously and that adequate nuisance protections are at risk unless amendments to the RTFA are advanced that clarify the original intent.

Implications

Although RTFA does not preempt environmental regulations, there is some concern that farms in existence prior to changes in surrounding land uses are protected by RTFA without regard to GAAMPs. This removes the legal incentive to follow GAAMPs, leaving landowners who decide to “come to the nuisance” unprotected from farm operations that do not employ responsible management practices.

In addition to providing nuisance immunity to certain farm operations, the appellate court cases have exempted them from local zoning regulations, despite the Supreme Court’s opinion that local zoning regulations apply (478 Mich 934). In cities, villages and growing rural areas, this undermines planning, negatively affects property values, sanctions land use conflicts for which compensation is no longer possible, and may polarize some communities.

Issues

The Michigan Association of Planning identifies the four following issues as particular problems that need to be addressed by legislative changes to the RTFA in the near future:

1. The section MCL 286.473 issue must be addressed to clarify that both parts (1) and (2) must be met in order to get RTFA protection, not just one or the

other. Part (1) addresses protection if the farm or farm operation conforms to GAAMPS. Part (2) addresses pre-existing farms or farm operations.

2. Agricultural operations should not be permitted to move into already established residential areas and qualify for nuisance protection under the Right to Farm Act by adhering to GAAMPS *unless* the area is planned and zoned as such, which could occur as part of an urban agriculture initiative.
3. The location of agricultural buildings in every city, village, township or county should be required to adhere to basic zoning building setbacks from streets and abutting properties—the same requirement all other buildings must meet—but those setbacks should not be allowed to be increased by local governments to address potential farm nuisances or to implement exclusionary intents.
4. All farm buildings should be required to conform to the State Construction Code if they are used for retail operations (like sale of produce or nursery stock), or for certain commercial operations. This appears to be the law now (State Construction Code), but should be clearly stated in the RTFA.

Principles

The Michigan Association of Planning is dedicated to promoting responsible land use policy. In the case of RTFA, the challenge is to protect prime farmland while accommodating the market demand for housing and other land uses. Of particular importance is the need to protect established residential areas from the nuisance impacts of agricultural operations that began after the development of the residential areas.

Taken together, the following principles provide a framework for the conditions under which agricultural and other land uses might reside in close proximity.

1. Communities have the right and the responsibility for determining the appropriate placement of land uses within their borders and may require adherence to a variety of construction and related code requirements. Communities have a responsibility to protect established residential areas from the nuisance impacts of agricultural operations. Protection of residential areas from nuisances is the fundamental reason and premise upon which local zoning was established and upheld by the US Supreme Court (see **Euclid v. Ambler Realty Co**, 1926).
2. The use of GAAMPs is supported whether or not an agricultural use is in close proximity to other potentially conflicting uses.

3. Farm operations in low density rural areas using GAAMPS should be protected from nuisance lawsuits by people or business operators who have chosen to locate within designated agricultural areas or near existing farm operations. At the same time, since they have no ability to file a private lawsuit, people or businesses located in close proximity to established farms or farm operations protected under RTFA should have assurances that GAAMPS will be followed by farms and farm operations. Institutional incentives for older farm operations to follow GAAMPS should be made available at the state and possibly local level as well.

Policies

1. The Michigan Association of Planning supports the basic tenet of the Right to Farm Act that farms that existed prior to a change in surrounding land use and that employ generally accepted agricultural and management practices (GAAMPS) and adhere to all applicable environmental regulation should be provided nuisance protection.
2. The Michigan Association of Planning supports the right of communities to determine land use through local planning and zoning regulations subject to the exclusionary provisions outlined in the Michigan Zoning Enabling Act. Recent appellate court decisions have interpreted RTFA to preempt local zoning in ways that were not intended when the statute was adopted. MAP believes the Right to Farm Act should NOT preempt local zoning, except as described below.
3. MAP strongly encourages the Michigan legislature to amend RTFA to specify that:
 - a. farms and farm operations must meet both 1 and 2 under subsection 3 (MCL 286.473) of the RTFA in order to enjoy nuisance protection (not 1 or 2).
 - b. local zoning is not preempted by RTFA. This should be done by clarifying the difference between nuisance protection and zoning preemption.
4. The Michigan Association of Planning supports the use of GAAMPS by all farm operations to protect environmental quality and minimize negative impacts on surrounding properties. Over time operations may change and evolve, and if they do, new and expanded operations should adhere to GAAMPS. If there are no relevant GAAMPS for a particular farm operation, local zoning should apply.

5. The Michigan Association of Planning supports protecting farm operations that are using GAAMPs and operating in established agricultural areas, or in areas specifically zoned or planned primarily for agricultural use.
6. MAP supports the RTFA's nuisance protection to the farm or farm operations only if they conform to GAAMPs.
7. MAP supports increasing the understanding of RTFA and GAAMPs through educating and informing planners, local elected and appointed officials, state agencies, developers, residents and farmers.
8. Since the principal problems with implementation of the RTFA generally occur in cities and villages and already established residential areas in townships, MAP supports the inclusion of a zoning district density threshold in the RTFA. Under this provision, new farm operations would not get protection under RTFA if they locate in zoning districts that exceed this density threshold unless the local unit of government chooses to do so through its zoning regulations. This threshold would acknowledge those established residential areas where the residential settlement pattern is of a more dense nature.
9. MAP supports a uniform minimum setback across the entire state (i.e. for all jurisdiction types) for agricultural buildings from all right-of-way lines and from side or rear lot lines, unless the local jurisdiction allows less, would seem easiest to implement. No farm buildings should be permitted to be built in front yards close to the road or too close to occupied structures on adjoining property. The traffic safety and immediate noise or odor problems are too great when there is inadequate setback. All other dimensional local zoning provisions (such as those in a schedule of regulations: height, bulk, lot area, etc.) would apply where the residential density threshold is met. In areas outside the density threshold, all other zoning provisions would apply only if they were not contrary to GAAMPs or the RTFA (which is the way the act is presently written).
10. MAP supports clear statements in the RTFA that all new or remodeled farm buildings in which the public is invited for retail or other commercial operations must be built in conformance with the State Construction Code.

11. MAP supports engaging other stakeholders to discuss policy options that continue to encourage the development of urban agriculture activities as part of local food initiatives, but not to extend Right to Farm Act protection to those activities unless the local unit of government chooses to do so through its zoning regulations; thus local zoning applies to such activities.