



*A Chapter of the American Planning Association*

**Right to Farm Act  
Policy Platform  
January 14, 2008 draft**

**Background**

Agriculture is the second largest industry in the State of Michigan. In many parts of Michigan, agriculture is the 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. At the same time, there is increasing 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.

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). In Michigan, a farm or a farm operation is given immunity to nuisance suits if:

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.

- 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. This decision 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).
- 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 considers the preemption of local zoning a “clearly expressed intent” of the legislature. The Court 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.

It is unlikely that the legislature expected that the Court of Appeals would sanction farming in residential areas or not use GAAMPs if they pre-dated 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.

## **Implications**

Although RTFA does not preempt environmental regulations, there may be 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 court cases exempt them from local zoning regulations. In 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.

## **Policies**

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.

Taken together, the following policies provide a framework for the conditions under which agricultural and other land uses might reside in close proximity. First and foremost, the Michigan Association of Planning believes that communities have the right and the responsibility for determining the appropriate placement of land uses within their borders. Secondly, the use of GAAMPS is supported whether or not an agricultural use is in close proximity to other potentially conflicting uses. Third, agricultural operations using GAAMPS should be protected from nuisance lawsuits by people or businesses who have chosen to locate within designated agricultural areas or near existing agricultural operations. At the same time, since they have no ability to file a private lawsuit, people or businesses located in close proximity to agricultural uses should have assurances that the use of GAAMPS will be enforced.

1. The Michigan Association of Planning supports the right of communities to determine land use through local zoning regulations.
2. The Michigan Association of Planning supports the use of GAAMPs by all agricultural operations to protect environmental quality and minimize negative impacts on surrounding properties.
3. The Michigan Association of Planning supports protecting agricultural landowners using GAAMPs and operating in established agricultural areas.
4. The Michigan Association of Planning supports protecting landowners who neighbor agricultural uses through the enforced use of GAAMPs.