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Management Agreements in Dutch Agricultural Law: The Contractual Integration of Agriculture and Conservation

Keywords

Agriculture Law, Conservation, Comparative Law, Land Use Planning

Management Agreements in Dutch Agricultural Law: The Contractual Integration of Agriculture and Conservation

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I. INTRODUCTION

The increasing vulnerability of the world's finite land resources, and especially of the world's agricultural land, has led to implementation of a number of programs designed to prevent conversion of land from agricultural to nonagricultural uses, to protect especially fragile land from gradual loss of productivity through erosion and other causes, and to retain the irreplaceable nature and landscape values that inhere in some land used for farming. These programs vary from nation to nation (and even between states or other governmental subdivisions within a nation), depending on the amount of productive agricultural land and the severity of threats to its retention, attitudes of citizens and governmental officials about the land, and the mechanisms offered by the legal system to protect and regulate use of that land.

A. *Agricultural Land in The Netherlands*

One nation that has adapted comprehensive legal methods to protect its land resources is The Netherlands. Agricultural land is crucial for The Netherlands, which has an intensive agricultural industry that produces high-quality products for consumption at home and abroad. A small nation, with a total area of 4.15 million hectares,¹ The Netherlands has 2.02 million hectares of cultivated land, used for arable farming, grassland, horticulture, and other agricultural purposes.² Although farmers make up

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1. The Netherlands is about the size of the combined states of Massachusetts and Connecticut. Its area includes about 34,000 square kilometers of land and 7000 square kilometers of water areas (lakes and inland sea branches). Each square kilometer is equal to 100 hectares. van Lier, *Rural Land Uses in the Netherlands*, 51 *EKISTICS* 4, 4 (1984).

2. MINISTRY OF AGRICULTURE AND FISHERIES, *DUTCH AGRICULTURE IN FACTS AND FIGURES* 3 (1986) (1985-statistics)[hereinafter *FACTS AND FIGURES*].

only a small proportion of the inhabitants of Holland,³ agriculture contributes significantly to the economy, and agricultural products make up a relatively large percentage of annual exports.⁴

Yet, at the same time, Holland's extreme population density has led to increased pressure on the agricultural land. Interests other than agriculture have demanded a share of rural areas. Urbanization, industrialization, and infrastructural developments have intruded on the countryside. Conversion of agricultural land to other purposes, in The Netherlands as in the United States,⁵ has meant that the amount of land under cultivation has dwindled.⁶ In addition, in recent years special values inherent in the countryside have become important to particular sectors of the Dutch population. For example, increased demands for outdoor recreation have required dedication of rural land to satisfy the recreational needs of those living in cities and towns. Also, and most important in the context of this article, an enhanced realization of the importance of protecting valuable natural resources and landscape characteristics has made new demands on agricultural land, particularly on the management of that land.

In many instances, optimal use of land requires that it satisfy several interests of society simultaneously, when the land-use functions demanded to fulfill those interests are compatible. Multiple uses of land are particularly appropriate in rural areas, and because the majority of rural land in Holland is in agricultural use, this possibility affects agricultural land in particular. In The Netherlands, a distinction is often made between situations involving integration and separation of land uses.⁷ Law and policy concerning land use recognize this distinction. Following the motto "integration where possible, separation where necessary", physical planning policy strives to maintain a diversity of land uses, along with

3. Agriculture, involving 270,000 workers, makes up about 6 percent of the active work force. *Id.* at 3.

4. *Id.* at 4, 14, 19.

5. Much has been written concerning the loss of agricultural land in the United States. See, e.g., GAO, PRESERVING AMERICA'S FARMLAND—A GOAL THE FEDERAL GOVERNMENT SHOULD SUPPORT, Rep. No. B-114833 (1979); NATIONAL AGRICULTURAL LANDS STUDY, THE PROTECTION OF FARMLAND: A REFERENCE GUIDEBOOK FOR STATE AND LOCAL GOVERNMENTS (1981).

6. Presently about 5,000 hectares per year are lost, a significant amount in light of Holland's small size. A. CRIJNS, THE REGULATIVE PHASE OF LAND DEVELOPMENT, at 1 (Landinrichtingsdienst Information Paper 7 (1986)). At the end of the 1960s and during the early 1970s, the annual loss was about 10,000 hectares.

7. A distinction is sometimes made between functional and spatial integration (*verweving*). Functional integration involves a situation in which the manager of an area focuses management on two or more different societal goals for example, a meadow with meadowbirds. This normally occurs within a relatively small scale—an area managed as a unit. Spatial integration is relevant when an area fulfills different functions; management of the area may be in one hand or several (for example, specially managed banks of trees (*houtwallen*) in an agrarian region). See Dauvellier, *Achtergronden en perspectieven van het beleid voor de landelijke gebieden*, in VERWEVING IN HET LANDELIJK GEBIED 5-6, Rijksplanologische Dienst, publicatie 85-4 (1985).

coherence of spatial use in the rural areas.⁸

The issue of integration or separation of land uses has particular relevance for agricultural land with special landscape or natural values. Indeed, in The Netherlands there are 500,000 to 700,000 hectares of agricultural land where natural-scientific or landscape values exist and where integration is desirable.⁹ In these areas, a direct connection often exists between valuable natural conditions and relatively poor farming situations. Such natural conditions as high water levels, for example, interfere with efficient farming, but provide the kind of environment in which valuable birds breed and rare flora thrives.

Dutch law offers several instruments that can help to preserve natural values on agricultural land. In the context of rather complicated and stringent physical planning that strictly regulates development, the municipal land-use plan offers the opportunity to preserve some natural elements by requiring permits before certain damaging activities can be carried out in agricultural or natural areas.¹⁰ It can require a type of passive management, but generally is not effective in limiting the intensity of the land use that can threaten natural elements.¹¹ Another legal instrument, land development—consolidation or reallocation of ownership—also has the potential to contribute to the preservation of natural values, as it restructures entire areas of the countryside to provide the most effective interrelationship of agricultural, natural, and other land uses.¹²

A third instrument is the program of specialized agricultural land management often referred to as *Relatienota* policy, which is the subject of this article. Although the *Relatienota* operates on a relatively small scale, it has demonstrated its potential to integrate agricultural land use with the important and vulnerable nature and landscape values that exist in some areas of The Netherlands. By compensating farmers for activities that maintain existing natural conditions and for the adaptations in their farm businesses that those activities require, this instrument provides the incentive needed for extraordinary efforts to protect environments for valuable plant and animal species. Indeed, it offers some of the Dutch farmers, whose land is characterized by inefficient production circum-

8. RIJKSPLANOLOGISCHE DIENST, MINISTERIE VAN VOLKSHUISVESTING, RUIMTELIJKE ORDENING EN MILIEUBEHEER, RUIMTELIJKE PERSPECTIEVEN, OF WEG NAAR DE 4E NOTA OVER DE RUIMTELIJKE ORDENING 116 (1986).

9. Dauvellier, *supra* note 7, at 14; Brussaard & van Wijmen, *Natuur en landbouw. Enkele juridisch-bestuurlijke beschouwingen over scheiding en verweving*, 46 AGRARISCH RECHT 157, 162 (1986).

10. See *infra* text accompanying notes 232-251 for a discussion of physical planning.

11. This lack of effectiveness is due in part to practical considerations. In rural areas the elected municipal councils charged with enacting land-use plans include farmers, who are reluctant to restrict the use of agricultural land. Even when the provincial deputed states desire restrictions, the councils often do not implement the restrictions fully.

12. See generally Grossman & Brussaard, *The Land Shuffle: Reallocation of Agricultural Land Under the Land Development Law in the Netherlands* 18 CAL. W. INT'L L.J. 209 (1988).

stances, the opportunity to make nature conservation one of the products of their farms. At the same time, it recognizes that integration of agricultural and natural functions does not always serve the best interests of either function. Thus, the policy also provides for establishment of some areas in which farming is terminated in favor of active nature preservation efforts.

Relatienota policy involves the use of private law contracts with individual farmers, as well as government purchase and management of vulnerable land. The policy has used these contracts, referred to as management agreements (*beheersovereenkomsten*) effectively to achieve goals important to Dutch society. This article explores the background and development of this important policy in adapting agricultural and nature conservation practices, and analyzes the process of implementation of the policy in vulnerable regions of The Netherlands. In addition, it considers the contracts entered between farmers and the government, and focuses on difficulties in implementation of *Relatienota* goals. In so doing, the article sheds light on a fascinating aspect of Dutch agrarian law, which has demonstrated potential in accommodating the often-conflicting interests of agriculture and nature.

B. Management Agreements in Perspective

A consideration of the structure and efficacy of Dutch *Relatienota* policy and the management agreements used to implement that policy has potential significance beyond the borders of The Netherlands. Holland is only one of several nations with some type of legally authorized program designed to accommodate agricultural practices to the requirements of nature and landscape. Management agreements are available, for example, in several European Community member states: France, the United Kingdom, the Federal Republic of Germany, and Denmark.¹³ Although the goals of the programs in these states are generally similar, variations in implementation exist; these variations can be explained in part by differences in the legal and administrative frameworks that support the programs.¹⁴

The programs share some general characteristics. They usually are of relatively recent origin and are significant because they provide a necessary supplement to other agricultural and environmental policy instruments. Management agreements can offer flexible protection in areas where stringent land-use regulation or government acquisition and management is impossible. Typically, these agreements operate only in specif-

13. COMMISSIONS OF THE EUROPEAN COMMUNITIES, AGRICULTURE AND ENVIRONMENT: MANAGEMENT AGREEMENTS IN FOUR COUNTRIES OF THE EUROPEAN COMMUNITIES, at vii (EUR 10783 (1986)) [hereinafter COMMISSION OF THE EUROPEAN COMMUNITIES].

14. For information on the legal bases of management agreements in France, the Federal Republic of Germany, and the United Kingdom, see *id.* at 16-18. Concerning the United Kingdom, see also Leonard, *Management Agreements: A Tool for Conservation*, 33 J. AGRIC. ECON. 351 (1982).

ically designated land areas; the kind of site actually eligible for protection varies from state to state.¹⁵ For comparable types of sites, however, the practical management requirements of the various schemes are somewhat similar.¹⁶ Dutch management agreements share these characteristics with programs in other EC states; the Dutch program is unique and perhaps more efficient, because a national agency is the sole authority with power to enter agreements with landowners.¹⁷ In other nations, several different agencies—often at national, regional, or local levels—have the authority to negotiate and enter agreements.¹⁸

As this discussion has indicated, European Community member states have experienced a rapid growth in opportunities to use management agreements to adapt farming practices to wildlife and landscape conservation goals. Interest exists in the possibility of implementing a system of management agreements within the EC. Such a scheme, involving EC financial contributions for qualifying, but optional, national programs, could promote environmentally sensitive agricultural management practices, and thereby conserve vulnerable rural resources. Moreover, with careful design it could help to provide a framework to unify the management agreement schemes now being developed in EC member states.¹⁹ A workable program would require participating farmers to obligate themselves to fulfill active management practices in exchange for realistically high payments made on a flat-rate basis, and reflecting both the income potential of farmers in the sensitive area and the obligations imposed by the agreement.²⁰ The differences in conditions in the member states will require a flexible system, with room for local variation.²¹

An EC management agreement program is not without problems. Cash payments per hectare are convenient, but may not be accepted uniformly by farmers or by member states fearing either the financial commitment or the precedent of payment for environmental conservation. Another difficulty concerns identification of the areas that would qualify for participation. Logically, the scheme should apply to environmentally sensitive areas that are farmed; budgetary realities would require a limit within each state of a percentage of the agricultural land base.²²

Despite the complications inherent in designing and implementing a management agreement scheme adaptable to the different EC member states, the prospect of protection of vulnerable agricultural landscapes

15. COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 18-19.

16. *Id.* at 36.

17. *Id.* at 18-19. Presently, the Netherlands is the only nation in which management agreements are connected with the implementation of the European Community Less Favored Areas Directive. See *infra* text accompanying notes 194-202.

18. *Id.* at 18.

19. *Id.* at 38-39.

20. *Id.* at 40-41.

21. *Id.* at 41.

22. *Id.* at 39-40.

and habitats makes such a program desirable. The Netherlands' management agreement program, thoughtfully designed and carefully implemented, offers an optimistic preview of the viability of an EC scheme. Moreover, its design may well serve as a starting point for consideration of an EC-wide system of management agreements.

II. *RELATIENOTA* POLICY

During the 1970s, the attention of many in The Netherlands turned increasingly to the care of valuable cultural landscapes and the position of agriculture in those areas. Nature and landscape values in vulnerable areas were diminishing rapidly, and agriculture threatened to deteriorate. The importance of intensive attention to these areas was articulated in a physical planning document, the *Oriënteringsnota*, which first appeared in 1973.²³ This document acknowledged the vulnerability of the existing nature areas and cultural landscapes, and articulated a number of measures appropriate for protecting these valuable landscapes. The measures taken included creation of a program directed at landscape management performed by agricultural land users, and establishment of reserves in situations where continued agricultural production was inconsistent with a management directed toward nature and landscape.²⁴

The rather broadly-sketched policy of the *Oriënteringsnota* began to take shape in another policy document, the so-called *Relatienota* or Relationship Report, which appeared in 1975.²⁵ This report, focusing on the relationship of agriculture to nature and landscape conservation,²⁶ reviewed recent developments in agricultural land use from the points of view of both agriculture and conservation, and established a policy framework for coordination of conflicting interests in particularly vulnerable areas. It presented a number of policy resolutions and measures intended to protect the most valuable and sensitive parts of the cultural landscape from further damage and to enable the farmer to carry out responsible nature protection in the framework of farm management.²⁷

23. The final version appeared in 1979. *Derde nota over de ruimtelijke ordening in Nederland—Deel 1e: Oriënteringsnota ruimtelijke ordening (Tekst van de na parlementaire behandeling vastgestelde nota) (1979)* [hereinafter *Oriënteringsnota*].

24. *Id.* at 63. Other measures suggested were the provision of protection through the land use planning system and the development of forms of land development and agricultural management especially appropriate for areas requiring landscape protection. See *Nota betreffende de relatie tussen landbouw en natuur- en landschapsbehoud*, at 29. Tweede Kamer der Staten Generaal, zitting 1974-1975, 13 285, Nos. 1-2 (1975) [hereinafter *Relatienota*]. See also Wind, *Beheersregeling in de praktijk*, 42 *AGRARISCH RECHT* 105, 105 (1982).

25. *Relatienota*, *supra* note 24. For some general information about the Relationship Report in English, see Fornier, *Managing the Natural Environment in Agricultural Areas*, 11 *PLANNING AND DEVELOPMENT IN THE NETHERLANDS* 161 (1979).

26. Its subtitle is "Common starting points for the policy concerning agrarian cultural landscapes valuable from the viewpoint of nature and landscape conservation" (*Gemeenschappelijke uitgangspunten voor het beleid inzake de uit een oogpunt van natuur- en landschapsbehoud waardevolle agrarische cultuurlandschappen*).

27. *Relatienota*, *supra* note 24, at 2.

A. *Agricultural Land Use and Nature Protection: Emerging Conflicts*

1. *Developments in Agriculture*

General prosperity in Holland, leading to an increase in real wages, helped to stimulate the development of labor-saving methods for agriculture. The economic situation required use of those methods to increase production and to keep up with higher incomes in other sectors of society.²⁸ Cultural-technical improvements and intensification of land use, among other factors, made possible a significant increase in worker productivity. But, at the same time, slow growth of markets for agricultural products and a diminished availability of agricultural ground led to decreasing work opportunities in agriculture. Developments in agriculture in the decades before publication of the *Relatienota* were characterized by a noticeable decrease in the number of workers, a resulting decline in the number of farms, an enlargement in scale of surviving farms and tillage units, and increasing specialization.²⁹

The *Relatienota* recognized that significant improvements in productivity can occur from a number of directions: replacement of labor with capital (mechanization); increasing use of "nonfactor inputs" such as artificial fertilizers and feed concentrates; increased animal and crop productivity; improvement of production mechanisms (better machines) and farm organization; or improvement in external production circumstances such as water management, parcel size and shape.³⁰ Each of these possibilities, however, has the potential to influence the natural environment and landscape.

Particular aspects of agricultural development are especially threatening to nature and landscape values. For example, redevelopment in agricultural regions for improvement in access to fields of more workable size and shape (*landinrichting*) usually interferes with natural conditions. Water management directed toward agricultural productivity also threatens some natural environments, as do intensive fertilization and use of concentrates.³¹

At the same time, however, protection of nature can threaten the viability of agriculture. Within certain limits, care of nature and development of agriculture can operate compatibly, allowing the farmer to link his economic function with protection of the environment in which he works. Some nature protection requirements, however, cannot be met without economic disadvantage to farm businesses. The farmer who is required to refrain from making infrastructural improvements or to use less fertilizer and pesticides, for example, will enjoy a less profitable business.

28. The *Relatienota* suggested, however, that maintenance of income in agriculture can also take place by transition to a different type of business through expanding the production tasks not connected to the ground. *Relatienota*, *supra* note 24, at 3.

29. *Id.* at 3.

30. *Id.* at 3, 6.

31. *Id.* at 5.

That farmer will be unable to improve production. He will face higher (or at least not lower) costs for field work and transport, as well as increased expenses for care of animals.³²

Such decreases in farm income are significant even beyond their effect on the individual farmer. The farmer's income is important both for providing the family's livelihood and for financing continued investment in the farm business. When requirements of nature conservation, or other factors often beyond the individual farmer's control, force a decline in income so that investment is impossible, farms eventually decline. Because agriculture is important to the national economy, both for production of food and raw materials and as a source of work opportunities, other sectors dependent on farming also suffer from farm deterioration. Moreover, the socio-economic and social structure of entire agrarian regions can be affected by incursions in agricultural production.³³

2. *Developments in Conservation*

Society in The Netherlands has assigned an increasing value to types of human needs that cannot be expressed in terms of money and property. This trend is reflected, in part, in the more concentrated attention paid to nature and landscape and to its preservation in light of threats from agriculture and other sources, and also in criticism of activities that endanger the natural environment. Rapid changes in the countryside have made such activities pervasive. Natural areas have faced increasing pressure from developments accompanying the prosperity, increased population density, and greater mobility of recent decades. Road building, industrialization, expansion of living areas, and recreational provisions have affected the character and atmosphere of the countryside, both reducing the size of natural areas and threatening the quality of nature and landscape.³⁴

Changes in traditional uses of agricultural land also threaten the environment. Historically-evolved farming practices have helped to shape the Dutch landscape in rural areas. Different rural ecosystems developed in part through application of stable and permanent farming practices, which varied from area to area. The ecosystems thus were dependent on historical types of agricultural land use, which resulted in landscapes characterized by diversity and variety. Changes and intensification of land use threaten these valuable landscapes.³⁵

32. This loss in income can be quantified accurately only in specific cases, but the *Relatienota* makes some general observations on the subject. *Id.* at 6-10.

33. *Id.* at 11-12.

34. *Id.* at 13-14.

35. *Id.* at 14. Of course, these changes are not unique to Holland. See, e.g., COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 15.

The enormous changes which have taken place in European agriculture over the last three to four decades have had a profound effect on the rural environment. Many valued landscapes and wildlife habitats depend on a par-

Agriculture, now focused on enlargement of scale, mechanization, intensification, and specialization, is directed toward increased productivity per worker and per surface unit. In its modernized form, agriculture now often threatens, rather than creates and maintains, valuable cultural landscapes. Species of plants and animals, especially those that require traditional agricultural practices to provide suitable habitats, are disappearing, and small-scale landscapes are threatened.

According to the *Relatienota*, the landscape must be viewed as a source of cultural-historical and natural-historical information. Both types of information are vulnerable to loss through developments in land use. Individual and collective activities play a role in the process of loss.³⁶ Natural elements in the landscape are threatened, for example, by activities like water management, land reclamation, use of chemical pesticides or herbicides, and development to improve access to the countryside. Interference with the natural terrain, through change in parcel size and shape, often displaces elements that have existed for centuries. Other activities, such as changes in the water level or the use of chemicals, lead to a decline in species of plants and animals.³⁷

But developments that modernize agriculture also threaten valuable cultural-historical elements, like traditional structure of farm parcels, with their ancient earth walls and planted hedges, and traditional road and watercourse patterns. Historically valuable farm buildings are lost through modernization or conversion to nonagricultural use, and new buildings often destroy the cultural-historical unity of landscape and character of agricultural construction in the region.³⁸

B. Response: *Relatienota* Policy

In light of these developments, policy directions espoused in the *Relatienota* take their shape from the articulation of the problem:

The problematic nature of these landscapes is that on the one side as a consequence of the developments of agriculture in its economic function (production of food and raw materials) a process of harmful effects on nature and landscape takes place, while on the other side it is important that agriculture continues to fulfill a management function in such areas.³⁹

ticular form of farm management and therefore are vulnerable to change. One form of change is the abandonment of traditional techniques, or even abandonment of farming altogether, another is the removal of existing features, such as hedges, another is the adoption of new techniques which are incompatible with the conservation interest of a site, such as the use of certain herbicides.

See also *id.* at 5.

36. *Relatienota*, *supra* note 24, at 14.

37. *Id.* at 15-18.

38. *Id.* at 18-20.

39. *Id.* Brief van de Staatssecretaris van Cultuur, Recreatie en Maatschappelijk Werk, at 1.

As the *Relatienota* made clear, existing legislative schemes offered only partial solutions to the conflicts between agriculture and nature conservation.⁴⁰ A number of reconsiderations and possible legislative amendments appeared desirable.⁴¹

1. *Financial Compensation*

The *Relatienota* policy, which led to establishment of the instrument called the *beheersovereenkomst* (management agreement), recognized that for generations the farmer has functioned as a protector of nature and landscape. Though modern agricultural practices often threaten, rather than protect, natural values, continued agricultural use remains an essential characteristic of important cultural landscapes. These vulnerable areas require an agricultural management directed towards goals of nature protection. Because such management is not always consistent with the production goals of agriculture, the nature protection function of the farmer must receive financial recognition.⁴² In recommending an administrative system for such recognition, the *Relatienota* recognized two important considerations: that continuation of agricultural activity as such forms an essential part of valuable agrarian cultural landscapes, and that the producing and management functions of farmers are mutually dependent—strengthening of the management function results in declining production, and vice versa.⁴³ Moreover, the level of compensation to the farmer must be related clearly to the required management. At the same time, however, the payment plus production income must offer the farmer an adequate income.⁴⁴

The *Relatienota* suggested three possible types of compensation for the farmer: payment for performance of clearly described maintenance and management activities; payment in connection with permanent natural handicaps, on the basis of the less-favored areas directive (the so-called mountain-farmer rules) of the European Economic Community;⁴⁵ and compensation for adaptations in the farm business, such as underuse of facilities, made necessary by management tailored to nature and landscape interests.⁴⁶ More detailed application of these general suggestions

40. *Id.* at 20-28. The *Relatienota* considered the potential of physical planning law, as well as other legislation. No law could provide the desired imposition of land-use conditions directed to nature conservation along with the necessary financial incentive to farmers.

41. *Id.* at 33-35, 39-40.

42. *Id.* at 30.

43. *Id.* at 31.

44. *Id.* at 31.

45. This program is regulated by Directive 75/268/EEC, and implemented in The Netherlands by the Beschikking bijdragen probleemgebieden, Nr. J. 7398 (Stcrt. 251)(December 22, 1982). For further information about the operation of this program in connection with *Relatienota* policy, see *infra* text accompanying notes 194-202.

46. *Relatienota*, *supra* note 24, at 31. In practice, this third element is not paid separately. Instead, it is part of the total management compensation and can only be awarded in connection with management activities.

was the task of the government.⁴⁷ The possibility of compensation should be available to all farms that demonstrate need for management directed to interests of nature protection.⁴⁸

When a farmer works in a vulnerable natural area and receives compensation for management of nature and landscape, his enterprise ideally should have the same income possibilities as farms with similar external production circumstances,⁴⁹ but without restrictions on management. Thus, the farmer's compensation must ensure maintenance of an adequate income. Nonetheless, the compensation offered to the farmer and necessary for continuation of the business must also bear reasonable relation to the economic importance of the continuation of the agricultural use of the protected area. Payments to the farmer cannot be more than the value that his management activities contribute to society. Otherwise, as the *Relatienota* makes clear, it may be more appropriate to set the area aside as a reserve, rather than to keep it in active, though extensive, agricultural use.⁵⁰

2. *Special Protection: Management Areas and Reserves*

Maintenance of nature and landscape values as envisioned by the *Relatienota*, can be achieved in part through specialized management tasks undertaken by farmers. This can occur in several types of situations. In some areas, the values to be protected are geographically localized; elements like hedges, trees or groups of trees, ditches or pools are prevalent. Depending on their location and their density, these can interfere with development of the farm. To protect such natural elements, the *Relatienota* suggests the use of private contracts called *onderhoudsovereenkomsten* (maintenance agreements), under which the landowner would agree to preserve the natural amenity in exchange for payment for the necessary work and a subsidy for the burden created by the protected element.⁵¹

47. *Id.* at 32.

48. *Id.* at 31.

49. External production circumstances are water management, accessibility, allotment, and parceling or arrangement of farmland parcels.

50. *Relatienota*, *supra* note 24, at 32.

51. *Id.* at 36. The maintenance agreement (*onderhoudsovereenkomst*) is not the major focus of this article. Maintenance agreements are carried out under authorization of the *Natuurbeschermingswet*, 1967 Stb. 572, Ned. Staats. 165 (1981). The program is governed currently by the *Beschikking onderhoudsovereenkomsten landschapselementen*, 1977 Stcrt. 182, as amended, *reprinted* in Ned. Staats. 165, at 65-71, and the *Beschikking aanwijzing landschapselementen*, 1981 Stcrt. 20, as amended, Ned. Staats. 165, at 71-73. The former *beschikking* regulates the formation of contracts and the latter, the areas and landscape elements that can be protected under the contracts. Although these vary from region to region, they include various types of hedges and earthen walls, small natural areas, and woods. Both of the regulatory documents may be amended in the future.

A landowner or user who agrees to preserve an important landscape element signs a formal maintenance agreement contract with a representative of the government. In that contract the landowner or user promises, for a renewable period of six years, to maintain a

In other areas, vulnerable natural values are not separately identifiable elements, but are instead environments that were formed through agricultural exploitation of the area; these include meadow-bird areas or botanically significant grasslands. Agriculturally used buffer zones around nature areas are sometimes also vulnerable. For these areas, in which agriculturally exploited ground itself is the object of protection, the *Relatienota* envisions *beheersovereenkomsten* (management agreements). Under these ordinary private law contracts, the agriculturalist owner or user of the ground would obligate himself to tailor agricultural management to perform certain actions under circumstances, in a form and on a schedule determined to be optimal from the viewpoint of nature and landscape management.

Several distinct types of duties would form part of these contracts. The farmer would obligate himself to perform the needed maintenance of valuable natural amenities. He would also promise to direct his farm management to realize the goals of nature and landscape. Protection of nature values might include refraining from making improvements in external production circumstances (changes in the natural environment) that might otherwise be desirable for optimum agricultural efficiency. In exchange for performing these obligations, financial compensation (the management income) would be available.⁵²

Private contracts to ensure management of sensitive areas pose disadvantages. Such contracts are normally of limited duration, and they are often difficult to enforce. Moreover, as private contracts, they have limited effect against those not party to the agreements. Nonetheless, such contracts are one of the few existing means that can both counteract the degradation of the natural landscape and compensate land users for their involvement in landscape management.⁵³

For some extremely vulnerable areas, however, the actions necessary to meet the goals of nature protection place such intrusive demands on farm management that a profitable farm business is no longer possible. In these instances, often situations involving natural values of particularly high quality and special vulnerability, management agreements cannot ultimately succeed. While private contracts may be desirable on a temporary basis, the necessary management can be achieved only by purchase of these lands and conveyance to a nature protection agency.⁵⁴ Management can then be directed toward maintenance and restoration of the na-

specific landscape element or elements and to avoid activities that will damage or destroy those elements. As compensation, the contracting individual will receive an annual payment from the government. The payment is calculated on the basis of the length or surface area of the landscape element and reflects the cost, in labor and materials, of maintenance. Successors to the land in title or use have the right to continue the agreement, if they wish.

52. *Relatienota*, *supra* note 24, at 36.

53. *Id.* at 26. The document recognizes that, psychologically and economically, private contracts offer a limited contribution; instead public law rules may be more desirable.

54. *Id.* at 37-38.

ture values, as well as increase in quality of the natural environment.

Although the creation of reserves should assume high priority, it raises difficult issues of selection, acquisition, and management. Land can only be identified as a reserve after careful consideration of the nature and landscape values, as well as the planning structure of the region and the agrarian situation. Significantly, the success of even carefully chosen reserves depends in large part on the possibilities available for purchasing these valuable areas from their owners. When purchase on the open land market is required, reserves may not always be successful. Limited mobility of agricultural land in a large number of regions, and the often fragmented ownership situations in vulnerable areas may pose difficulties for purchase on the open market.⁵⁵

3. Implementation of Policy

A society that attaches high values to nature and landscape must expect to bear some financial cost in protecting those values. With natural landscapes in which agriculture forms an important part of the social and geographical structure, protection of nature values often requires an agricultural management that, from an economic point of view, is far from optimal. Thus, payment is necessary both to maintain the living standards of the agrarian population and to ensure the continued existence of agriculture in the area.⁵⁶ Design of a program to accommodate the interests of both agriculture and nature and landscape protection must, according to the *Relatienota*, involve cooperation with the agricultural population. Management functions can be designed only in consultation with the farmers who, in principle, are willing to fulfill the desired management conditions.⁵⁷

The policy direction established in the 1975 *Relatienota* has been developed in the ensuing years. In the Rural Areas Report (*Nota landelijke gebieden*), a planning document that first appeared in 1977,⁵⁸ the government specified that a maximum of 200,000 hectares (approximately one-tenth of the agricultural land in The Netherlands) should be protected through application of the *Relatienota* policy. This maximum would include both reserves and management areas, and would be implemented gradually, depending on the urgency of the need for conservation and the availability of financial means. The first stage would involve approximately 100,000 hectares.⁵⁹

55. *Id.* at 26-27. The *Relatienota* suggests that, while voluntary sale is one method, it is more desirable to have a mechanism for compulsory purchase of such lands. *Id.* at 38.

56. *Id.* at 44.

57. *Id.* at 45.

58. Derda nota over de ruimtelijke ordening. *Nota landelijke gebieden*. Deel 3E: text van de naar aanleiding van de parlementaire behandeling vastgestelde planologische kernbeslissing. Tweede Kamer der Staten-Generaal, Zitting 1983-1984, 14 392, nr. 46 (1983).

59. *Id.* at 23. This recommendation is included in the *Structuurschets voor de landelijke gebieden 1983*, which forms part of the *Nota landelijke gebieden*.

Further documents have implemented this policy. Most important among these is the *Beschikking beheersovereenkomsten* (decree on management agreements),⁶⁰ which will be considered below.⁶¹

C. *Relatienota Infrastructure*

Implementation of the *Relatienota* policy involves close cooperation between governmental entities, nature protection organizations, and private landowners. Several governmental entities established by law have been, and continue to be, involved most closely in the process. An understanding of these entities and their interrelationship is essential to a complete picture of the *Relatienota* policy. In essence, one entity makes policy decisions; another provides personnel to implement these decisions; and one serves as the legal representative in transactions involving land.

1. *Bureau Beheer Landbouwgronden*

The government of The Netherlands sponsors a number of programs involving agricultural land. Among these are land development, creation of wooded areas, maintenance of buffer zones around large cities and in the vulnerable and heavily-populated Western section (*Randstad*) of the country, development of recreation areas, and creation of nature reserves.⁶² These programs often require the purchase of agricultural ground on the open market or through special legal provisions, temporary management of the purchased land, and, in many instances, reconveyance of the land to new owners.

The *Bureau Beheer Landbouwgronden* (Bureau for Agricultural Land Management) is the entity authorized to carry out these transactions on behalf of the government. The Bureau was established by the *Wet agrarisch grondverkeer* (law on the transfer of agricultural land) enacted in 1981.⁶³ It has the status of a juristic person, capable of entering legally binding contracts,⁶⁴ and is represented in each province through a

60. See *infra*, note 71. *Beschikking van de Staatssecretaris van Landbouw en Visserij van 24 December 1982, Nr. J. 7417* (as amended).

61. See *infra* text accompanying notes 111-193.

62. DIRECTIE BEHEER LANDBOUWGRONDEN, MINISTERIE VAN LANDBOUW EN VISSERIJ, BUREAU BEHEER LANDBOUWGRONDEN at 2-6 (1985).

63. *Wet agrarisch grondverkeer*, Ned. Staats. 175 (1984). Enacted in response to fluctuation in land prices, the law establishes a legal framework to ensure a balanced price development for agricultural lands and nature areas. It creates organizations to supervise and act as representative in several programs involving agricultural land, and it gives a legal framework to a land bank system. The law becomes applicable at a time specified by the government, and that time can be different for individual articles. *Id.* art. 70, lid 2. See Ned. Staats. 175, at 77. The regulatory system focused on ground prices has not yet been implemented. At the time the law was published, ground prices were steady and the provisions were not necessary. Although prices have since begun to increase, political considerations have mitigated against regulation of land prices.

64. *Id.* art. 28. See Joustra, *Naar een Beheerswet voor landbouwgronden*, 42 AGRARISCH RECHT 120, 122 (1982). The Bureau is the successor of the *Stichting Beheer Landbouw-*

provincial bureau. Tasks of the Bureau are specified by ministerial regulation.⁶⁵ These tasks involve the acquisition, temporary management, or transfer of real property, as required to carry out specific laws and regulations.⁶⁶ Land acquisition for implementation of the *Relatienota* program is among the responsibilities of the Bureau.⁶⁷ In some instances, the Bureau has the preferential right to buy agricultural land, or even the duty to purchase it.⁶⁸

The Bureau has been engaged in a significant volume of transactions in agricultural land. In 1986, the Bureau had nearly 50,000 hectares under its administration. This total included primarily land owned by the Bureau, but also a small number of hectares held by the Bureau as tenant.⁶⁹ During 1986, the entity purchased 5200 hectares; normally the annual amount of land purchased ranges between 4500 and 6000 hectares.⁷⁰ During the same year, the Bureau transferred 6400 hectares, more land than it purchased, to new owners. This relationship is consistent with the objective to convey land to the appropriate new owners, rather than to retain it indefinitely.

In connection with implementation of the *Relatienota* policy, another important task of the Bureau involves the conclusion of management agreements with individual land owners and users located in management and reserve areas. These are the subject of more detailed

gronden (Agricultural Lands Management Association).

This association was founded in 1946 with the stated goal of management, restoration, and improvement of agricultural land, as well the goal of ensuring that ground would not be used in a way contrary to the general interest. The association could purchase and sell real property. In 1977, the primary task of the association was restructured; its new responsibility was to protect the use of ground most desirable from the point of view of the general interest. Inleiding, *Wet agrarisch grondverkeer*, XXIX, Ned. Staats. 175 (1984) (quoted from the *Memorie van toelichting* at 25).

The *Stichting* was dissolved as of 1 June 1983. Beshikking van de Staatssecretaris van Landbouw en Visserij van 21 december 1982 houdende opheffing van de Stichting Beheer Landbouwgronden, Nr. J. 7130 (Stcrt. 249), reprinted in Ned. Staats. 175, at 110-111 (1984). The rights, duties, and obligations of the *Stichting* passed over to the Bureau. *Wet agrarische grondverkeer*, *supra* note 63, art. 67.

65. *Wet agrarisch grondverkeer*, *supra* note 63, art. 29. This form of regulation is referred to as *algemene maatregel van bestuur*.

66. Beschikking van de Staatssecretaris van Landbouw en Visserij van 28 december 1982, Nr. J. 7164 (Stcrt. 253) betreffende de werkzaamheden van het bureau beheer landbouwgronden, reprinted in Ned. Staats. 175, at 141 (1984). Among these laws and regulations are land development, afforestation, creation of buffer zones, and other purposes.

For a discussion of the land purchase responsibilities of the Bureau, see Hovinga, *Het Bureau Beheer Landbouwgronden als het grondbedrijf in het landelijk gebied*, 16 *BEDRIJFS-SONTWIKKELING* 274 (1985).

67. *Id.* art. 2, lid. k.

68. *Id.* art. 2, leden o, p. On the preferential right, see *Wet agrarisch grondverkeer*, *supra* note 63, arts. 37-52; on the duty to purchase, arts. 53-56. See also text accompanying notes 157-166 *infra*.

69. Interview with W. de Boer and P. Scheele, Directie Beheer Landbouwgronden (June 3, 1987).

70. *Id.*

discussion later in this article.⁷¹

In its transactions, the Bureau is normally represented by its director, a civil servant from the Ministry of Agriculture and Fisheries.⁷² The Bureau itself has no separate personnel; Ministry employees carry out some of its functions. In addition, some of its activities are carried out by individuals who contract to do the required work and who, with proper approval, may receive power of attorney.⁷³ The Bureau's land purchases are negotiated by private individuals (not civil servants) who are paid on a per-hour basis; these individuals are normally experienced and knowledgeable about land purchase and prices. The tasks of the Bureau can be accomplished efficiently because normal activities can occur without special authorization.⁷⁴ Some financial commitments involving large sums, however, must receive prior ministerial approval.⁷⁵

2. *Commissie Beheer Landbouwgronden*

Another important entity, this one more than a juridical person, is the *Commissie Beheer Landbouwgronden* (Central Committee for Land Management). Also authorized by the law on the transfer of agricultural land,⁷⁶ the Committee was constituted in November 1981.⁷⁷ The chair is named by the government, and the secretary of the Committee is the director of the *Bureau Beheer Landbouwgronden*.⁷⁸ The Committee, which meets at least twice a year,⁷⁹ may consist of sixteen members;⁸⁰ these include representatives of several ministries, organizations of lower government, farm and forestry organizations, and nature protection societies.⁸¹

71. Beschikking beheersovereenkomsten 1983, as amended, arts. 24, 25. Beschikking van de Staatssecretaris van Landbouw en Visserij van, 24 december 1982, Nr. J. 7417 (Stcrt. 253). The *Beschikking* has been amended several times: 1983 Stcrt. 80; 1986 Stcrt. 139; 1987 Stcrt. 115, 130.

72. Wet agrarisch grondverkeer, *supra* note 63, art. 32. The director of the Bureau is also director of the Directie Beheer Landbouwgronden.

73. *Id.* art 32, lid 4. See also Beschikking betreffende de vertegenwoordiging van het bureau beheer landbouwgronden, art. 4. Staatssecretaris van Landbouw en Visserij van 13 december 1982, Nr. J. 5602 (Stcrt. 244) reprinted in Ned. Staats. 175, at 109 (1984) [hereinafter *Beschikking* betreffende de vertegenwoordiging].

74. Beschikking Financieel beheer bureau beheer landbouwgronden, art. 6. Beschikking van de Minister van Landbouw en Visserij van 17 augustus 1982, Nr. J. 3694 (Stcrt. 160), reprinted in Ned. Staats. 175, at 99.

75. Beschikking betreffende de vertegenwoordiging, *supra* note 73, art. 3.

76. Wet agrarisch grondverkeer, *supra* note 63, art. 30.

77. Boelen, *Organen bij het beheer van landbouwgronden*, 16 *BEDRIJFSONTWIKKELING* 279, 279 (1985). The Committee was established to replace the administration of the *Stichting Beheer Landbouwgronden*.

78. Wet agrarisch grondverkeer, *supra* note 63, art. 31, leden 3, 4.

79. Besluit van 30 oktober 1981, Stb. 677, houdende voorschriften betreffende de samenstelling en de werkwijze van de commissie beheer landbouwgronden, reprinted in Ned. Staats. 175, at 85 (1984)[hereinafter *Besluit* van 30 oktober 1981].

80. Wet agrarisch grondverkeer, *supra* note 63, art. 31, lid. 3, 6.

81. Besluit van 30 oktober 1981, *supra* note 79, art. 2.

Members serve for renewable five-year terms.⁸²

The Central Committee provides general guidance for the Minister of Agriculture and other ministers on the subject of agricultural land policy and prices, as well as on policies concerning the relationship between agriculture and nature and landscape. In addition, it provides general guidance and supervises the activities of the *Bureau Beheer Landbouwgronden*. The Committee makes policy connected with transactions involving agricultural ground as well as implementation of *Relatienota* programs and the European Economic Community mountain-farmer rules.⁸³

Subcommittees can be established to assist in the work of the Committee.⁸⁴ Each province in Holland has a Provincial Committee for Land Management, charged with local responsibilities connected with *Relatienota* activities, especially the development of management plans, and activities on behalf of the Central Committee.⁸⁵ Chaired by a member of the provincial Deputed States, the local committee consists of twelve members, representative of interested organizations and governmental entities, who serve three-year terms.⁸⁶ The provincial committee can also establish subcommittees to assist in its activities.⁸⁷

3. *Directie Beheer Landbouwgronden*

Although the *Bureau Beheer Landbouwgronden* is an artificially created legal entity with no separate personnel, its activities are carried out under the responsibility of the Ministry of Agriculture and Fisheries. Employees of the *Directie Beheer Landbouwgronden* (Government Service for Land Management), a subunit of the Ministry, carry out the regular activities of the Bureau. The Government Service, with central offices in Utrecht and representatives in each province, performs activities in the areas of structure and management regulation for agricultural lands, and activities involving acquisition, management, and transfer of land.⁸⁸ Many of its decisions, particularly land conveyances and contracts, are then executed by the Bureau.

III. IMPLEMENTING THE *RELATIENOTA* POLICY

The *Relatienota* recognized the importance of accommodating both

82. *Id.* art 3 (the maximum age of service is 65 years).

83. *Wet agrarisch grondverkeer*, *supra* note 63, art. 30. See also *DIRECTIE BEHEER LANDBOUWGRONDEN*, *supra* note 62, at 24.

84. *Besluit van 30 oktober 1981*, *supra* note 79, art. 6.

85. *Instellingsbeschikking provinciale commissies beheer landbouwgronden*, art. 1. *Staatssecretaris van Landbouw en Visserij van 2 december 1982*, Nr. J. 6828 (Stcrt. 236), amended by Nr. J. 73 (Stcrt. 9) (January 9, 1984) reprinted in *Ned. Staats. 175*, at 104 (1984). The document was also amended by 1985 Stcrt. 13 and 1987 Stcrt. 130.

86. *Id.* arts. 2 & 4.

87. *Id.* arts. 11-13.

88. *Boelen*, *supra* note 77, at 280.

agricultural and/or nature values in vulnerable rural landscapes. The policy established in that document reflects two goals. The first is the maintenance and development of natural-scientific and landscape values in the most valuable agrarian cultural landscapes through an adaptation of the agricultural management. This goal is to be achieved in part by giving farmers the opportunity to enter management agreements voluntarily. The second goal is the financial subsidization of the sometimes difficult position of farmers who carry out the farm business in areas valuable for landscape and natural-scientific characteristics.⁸⁹

As earlier discussion has suggested, these broad goals are to be achieved in part by the establishment of *Relatienota* areas: a limited number of geographically-defined regions of particular natural values and vulnerability in which attempts are made to manage the land in light of those values. Because of the different characteristics and vulnerability of these natural environments, two types of areas are possible: management areas and reserve areas.

Management areas are regions in which the present value of nature and landscape is particularly significant. They often harbor important animal species like meadow birds. Nonetheless, in these areas agricultural production is also important and can be continued, often with less intensity and without threat to natural values. In management areas, the objectives of maintaining present nature values and continuing agricultural use of the land are equally important. In these areas, integration of land use functions—agriculture and nature or landscape—is the goal. It is anticipated that farmers will continue to own and manage their land. They will be offered the opportunity, however, to enter contractual management agreements, under which they will receive financial compensation for adapting their farming practices to the requirements of nature and landscape preservation.

Reserve areas are significant both because the present values of nature and landscape are high and because they offer potential for future development of these values. The objectives in reserve areas are to maintain the present values and to increase the potential values. These areas often harbor valuable botanical species (for example, orchids) that are threatened by modern agricultural practices. Continued agricultural use is inconsistent with protection of vulnerable ecosystems; the adaptations in management required to preserve those ecosystems would be too intrusive to allow effective agricultural production. Moreover, the desired management of natural values can ultimately be provided only under supervision of a nature protection organization.

The goal in reserve areas is therefore eventually to end farming entirely. Land in these areas is to be purchased by the *Bureau Beheer*

89. COMMISSIE BEHEER LANDBOUWGRONDEN, MINISTERIE VAN LANDBOUW EN VISSERIJ, BUREAU BEHEER LANDBOUWGRONDEN, JAARVERSLAG 1985, at 26 (1986) [hereinafter BBL, JAARVERSLAG 1985].

Landbouwgronden and transferred to conservation organizations, either governmental or private organizations, for specialized management.⁹⁰ Farmers are not forced to sell, but may do so voluntarily. In reserve areas, the Bureau has an obligation to purchase land offered to it.⁹¹ Until the time of sale, however, farmers in reserve areas have the opportunity to enter into management agreements. These are viewed as transitional, intended to bridge the years between designation of the region as a reserve area and actual creation of the reserve through purchase of the land.

A. *Choosing the Relatienota Area*

Eventually it is expected that 200,000 hectares of vulnerable land will be protected through the *Relatienota* measures.⁹² The intention is that 100,000 hectares will be devoted to management areas and the remaining 100,000 hectares to reserves.⁹³ Actual implementation of the program, however, has occurred slowly and requires decision-making at three separate stages. The first stage involves the general identification of regions to be designated *Relatienota* areas; the second includes the specific delineation of the borders of these regions and the assignment of status as management or reserve area; the third involves establishment of the management plan⁹⁴ as well as the purchase of ground in reserve areas and the conclusion of management agreements.⁹⁵

The first phase of the procedure involves consultation between the state government and provincial authorities, a process that has moved rather slowly. The government started to implement the *Relatienota* policy in 1977 by identifying and recommending to provincial authorities 86,000 environmentally sensitive hectares that most urgently needed protection.⁹⁶ Some of these areas were located within land development projects in preparation or in performance. Actual designation of these regions as *Relatienota* areas required agreement with provincial authorities, some of whom were reluctant to proceed, in part because the effects of the designation were unclear.⁹⁷ By the end of 1985, however, agreement had been reached with most provincial authorities concerning those

90. For example, the *Staatsbosbeheer* (Forestry Service) manages a significant amount of reserve land retained by the government.

91. *Beschikking beheersovereenkomsten*, *supra* note 71 art. 76. *See also* art. 68, and *infra* text accompanying notes 157-166, *infra*.

92. *See* *Nota landelijke gebieden*, deel 3E, *supra* note 58, at 23. For a brief discussion of management agreements in Holland, *see* Bennett, *Management Agreements in the Netherlands*, Annex 3 in COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 153-84.

93. Boelen, *De Relatienota in de praktijk*, 16 *BEDRIJFSONTWIKKELING* 269, 270 (1985).

94. *See infra* text accompanying notes 111-136.

95. BBL, *JAARVERSLAG* 1985, *supra* note 89, at 26-28.

96. *Id.* at 26. The document in which these areas were identified, along with an explanation of the method of selection, was the so-called *Voorrangsinventarisatie Relatienota-gebieden*.

97. Boelen, *supra* note 93, at 271.

86,000 hectares;⁹⁸ during 1986, global identification took place by the Minister of Housing, Physical Planning and the Environment, in agreement with the Minister of Agriculture and Fisheries.⁹⁹ In addition, provinces have been invited to submit their own suggestions for areas to include within the last 14,000 hectares.¹⁰⁰ Although it is expected that eventually another 100,000 hectares will come under the *Relatienota* policy, no money for expansion of the program is now available. Implementation of the second phase will require a specific government decision.¹⁰¹

After the general identification of the *Relatienota* areas, the boundaries can be defined more specifically. Provincial authorities play a role at this second stage too, by submitting proposals for location of areas in their provinces. These proposals are the result of consultation with municipal authorities, water districts, and local organizations. In addition, farmers and interested authorities are consulted, a step viewed as essential for successful implementation of policy.¹⁰²

Definite boundaries for *Relatienota* areas are established in light of provincial recommendations. Outside of land development areas, the boundaries are established formally by the Minister of Housing, Physical Planning and the Environment. Within land development projects, boundaries are set by the Central Land Development Committee.¹⁰³

When an area is marked for special protection, the choice between treatment as management area or reserve is particularly critical; in the second stage of the *Relatienota* process, this choice must be made. Three criteria are important in deciding how to protect an area. The first is the vulnerability of the nature values to be protected in relation to the current agricultural management. Another is the adaptability and suitability of the desired nature-protection management within the agricultural management in the region. The third is cost. If the desired management of a highly-valued natural area is extraordinary, the annual cost of management compensation is too high. In such situations, the government

98. BBL, JAARVERSLAG 1985, *supra* note 89, at 26.

99. COMMISSIE BEHEER LANDBOUWGRONDEN, BUREAU BEHEER LANDBOUWGRONDEN, JAARVERSLAG 1986, at 24 (1987) [hereinafter BBL, JAARVERSLAG 1986].

100. BBL, JAARVERSLAG 1985, *supra* note 89, at 26-27. Provinces have been assigned a share of the available hectares on the basis of existence of valuable cultural landscapes and occurrence of land development projects. During 1986, agreement for global identification was reached in only one province; three provinces have submitted suggested areas. In the other provinces, submissions are being prepared. BBL, JAARVERSLAG 1986, *supra* note 99, at 25.

101. BBL, JAARVERSLAG 1985, *supra* note 89, at 27. This decision, to be suggested by the Ministers of Finance, Housing, Physical Planning, and the Environment, and Agriculture and Fisheries, must be approved by the Parliament. Interview with W. de Boer and P. Scheele, Directie Beheer Landbouwgronden (June 3, 1987).

102. Boelen, *supra* note 93, at 271.

103. BBL, JAARVERSLAG 1985, *supra* note 89, at 26. By the end of 1986, definite boundaries had been established for 14,670 hectares of management areas and 25,961 hectares of reserve areas, for a total of 40,631 hectares. BBL, JAARVERSLAG 1986, *supra* note 99, at 25 (Tabel 9).

may save money by acquiring the property as a reserve, rather than designating it as a management area.¹⁰⁴

This choice between reserve and management area is crucial for owners of land within the area. The establishment of a reserve always means that the government will attempt to obtain ownership and use of the land within the area, with a view to optimal management for nature and landscape values. As might be expected, nature protection interests press for reserve status; if a reserve is formed successfully, the ideal management for a vulnerable area can be assured.¹⁰⁵ Moreover, the role of those organizations in acquiring and managing vulnerable areas forms an essential justification for their continued existence and support by members and by government.¹⁰⁶ In contrast to a reserve, however, the designation of a management area means that agriculture will remain important for the region, and that farmers will be encouraged to continue to farm.¹⁰⁷ The preference of individual farmers for management area or reserve depends to some extent on their own situations. Farmers without successors to continue the farm business often have no objection to reserves. Others, especially in large *Relatienota* areas, may prefer the status of management area.¹⁰⁸ Although it was originally planned that the hectares designated as *Relatienota* land would be divided evenly between reserves and management areas, the first stage of the program has resulted in a majority of the land being established as reserves.¹⁰⁹

B. *The Management Plan*

Even after the boundaries of a *Relatienota* area have been established, the policy of accommodation of agriculture and nature cannot be implemented immediately. Instead, more detailed planning is required.¹¹⁰ This stage of the process is governed by a regulation called the *Beschikking beheersovereenkomsten 1983* (the management agreement decree).¹¹¹

1. *Preparing the Plan*

The Central Committee for Land Management assumes an important

104. Wind, *supra* note 24, at 113. See also Biewinga & Schröder, *Beheersgebied of reservaat*, 46 *AGRARISCH RECHT* 106, 107 (1986).

105. Wind, *supra* note 24, at 114.

106. See Biewinga & Schröder, *supra* note 104, at 113.

107. Boelen, *supra* note 93, at 271.

108. Biewinga & Schröder, *supra* note 104, at 114.

109. About 60 percent of the first 100,000 hectares is designated as reserves. Interview with Drs. P. Slot, Director of Directie Beheer Landbouwgronden (July 22, 1987). See Biewinga & Schröder, *supra* note 104, at 109-110, for a description of the changes in expected designation between the *Voor rangsinventarisatie* and the situation in 1985, as well as some reasons for the changes.

110. For a brief case study of a management area in the northern Holland province of Friesland, see Bennett, Annex 3, *supra* note 92, at 161-69.

111. *Beschikking beheersovereenkomsten 1983*, *supra* note 71.

role in planning, as specified in the *Beschikking beheersovereenkomsten*, which applies as soon as an area is designated.¹¹² After each management or reserve area is defined, the Committee is to establish a cadastral description, with reference to an accompanying map, and give notice to the public and to interested governmental authorities.¹¹³ Before farmers in the area can be offered the opportunity to enter management agreements, a management plan must be in effect. This plan is established formally by the Central Committee, but the plan is actually drafted under the supervision of the appropriate provincial committee for land management.

The provincial committee of the province in which the area, or the greatest part of the area, is located prepares a draft management plan.¹¹⁴ This process may begin as soon as the area is globally identified; the provincial committee need not wait until the management or reserve area has been described cadastrally.¹¹⁵ Although the provincial committee is charged with this responsibility, in practice part of the work is done by a subcommittee appointed by the provincial committee. Consisting of members of the provincial committee, as well as several representatives from the local area (farmers or representatives of nature protection organizations), the subcommittee can ensure better communication with residents of the area and more ready acceptance of the nature conservation policy.¹¹⁶ Formal consultation with interested governmental authorities is re-

112. BBL, JAARVERSLAG 1986, *supra* note 99, at 26.

113. *Beschikking*, *supra* note 71, (arts. 3 and 13). Until amendments to the *Beschikking beheersovereenkomsten* in 1986, 1986 Stcrt. 139, the Central Committee first had to declare that an area, assigned as a *Relatienota* area by the proper authority, came under the operation of the *Beschikking*. Until amendment, the *Beschikking* also specified that, in preparation for declaring the *Beschikking* applicable to an area, the director of the *Bureau Beheer Landbouwgronden* could request the provincial committee to prepare a preliminary draft plan, in consultation with various lower governmental authorities. *Id.*, arts. 7, 8, 9 (These articles were omitted in the 1986 amendment). Because the provincial committee can begin to draw up a draft plan at the time the area is globally identified, the preliminary draft is no longer necessary. *Toelichting bij de wijziging van 18-7-1986, Nr. J. 3861 (Stcrt. 139)*.

114. *Beschikking*, *supra* note 71, art. 10, lid. 1, 2, 4, and art. 11. In article 10(1) the Central Committee can decide that a plan, rather than a draft, be drawn up for a reserve area. In article 10(2) the Committee can call attention to special characteristics of the area or its agricultural management, as well as the implications of these for the establishment of the plan. *Id.* art. 10, lid. 4. The plan is to be drafted in consideration of certain provisions listed in the *Beschikking*.

If a *Relatienota* area is located in more than one province, coordination and agreement between the two provinces is expected. *Id.*, art. 11.

115. *Toelichting bij de wijziging van 18 juli 1986, Nr. J. 3861 (Stcrt. 139)*. Prior to this amendment, the *Beschikking* had to be declared applicable in an area before work on the plan could begin. See *supra* note 113.

116. Interview with W. de Boer and P. Scheele, Directie Beheer Landbouwgronden (3 June 1987). See also *Instellingsbeschikking provinciale commissies beheer landbouwgronden*, *supra* note 85. Contact with farmers in the region (or, in larger areas, with representatives of farmers) is seen as essential for the success of the *Relatienota* program. The cooperation of social-economic and business advisors is also important to help farmers understand the program. Boelen, *supra* note 93, at 272. See *Toelichting op het beheersplan*

quired during development of the plan.¹¹⁷

Several considerations are paramount in drafting an acceptable plan. The management specifications included must be adaptable to current agrarian management and be reasonable to the farmer in technical, economic, and organizational respects. In addition, they must contribute effectively to the protection or development of nature values. The cost of the specifications must be reasonably related to the effect for nature; measures with high cost and relatively little impact on nature must be avoided. Finally, there must be a practical way to ensure that farmers actually carry out the required management practices.¹¹⁸

When the draft of the management plan has been prepared and the director of the *Bureau Beheer Landbouwgronden* has given approval, the provincial committee must send the draft to organizations with whom formal consultation occurred, and make the draft available for public inspection and comment.¹¹⁹ After considering the comments, adapting the plan accordingly, and making a report, the draft management plan is placed in the hands of the Central Committee.¹²⁰

The Central Committee establishes the plan formally. It may make changes in the draft, provided that it first consults with the provincial committee. The Central Committee also sets the date on which the first management period begins.¹²¹ Normally, the management period is established for 6 years. Farmers within the *Relatienota* area receive notice of the establishment of the management plan and the time that the first management period begins. In addition, these land users also learn where and how they can make known their wishes to enter a management agreement, and which persons with rights in the land must also sign the

voor het beheers- en reservaatgebied Westzaan, in COMMISSIE BEHEER, LANDBOUWGRONDEN, BEHEERSPLAN WESTZAAN at 2 (1986). The subcommittee constituted in that region consisted of 2 agricultural representatives from the area, 1 representative of a ground-managing nature protection organization in the region, 2 members of the provincial committee, a secretary, and 2 advisors representing livestock interests and a municipality. The role of the subcommittee was to draw up a concept-draft plan, coordinate consultation in the region between farmers and nature protectors, increase the quality of the plan through use of local knowledge and experience, and increase the involvement (*betrokkenheid*) and understanding with regard to the management rules.

117. *Beschikking*, *supra* note 71, art. 13. The provincial committee must consult with municipalities and water districts within which the *Relatienota* area is located, and with any other institutions identified by the Central Committee. In addition, when the area is located within a land development project, consultation with the appropriate committee for that project must occur.

118. Boelen, *supra* note 93, at 272.

119. *Beschikking*, *supra* note 71, arts. 14-15. The public notice may not take place until after the Director of the Bureau has agreed and the Central Committee has described the area cadastrally. *Id.* art. 14, lid 2.

120. *Id.* art. 16.

121. *Id.* art. 17. The date on which the first management period begins is always the first day of a calendar quarter. Boelen, *supra* note 93, at 273. After the management plan is established, amendments are possible, even before the end of a management period. *See Beschikking*, arts. 19-23.

agreement.¹²²

2. Contents of the Plan

Although formation of the management plan must follow the required procedure, the contents of each individual plan will be tailored to the management requirements of the area involved. Nonetheless, the *Beschikking* requires each plan to include details concerning the natural values in the area and the adaptations required to preserve those values.¹²³ An explanation of these requirements will provide background useful to the later consideration of management contracts based on the plan.¹²⁴

As a starting point, the management plan must describe for its area the goals of nature and landscape management that are to be pursued in connection with agricultural management.¹²⁵ This part of the plan normally describes the natural and landscape values, including information about the scenic values, as well as the presence of vulnerable animal and plant species.¹²⁶ Although the plan itself is relatively brief, an explanation attached to the plan may give more detail.¹²⁷ The goals established must be realistic; for a management area especially, they must be adaptable to continued agricultural production.

These goals are designed to be met by adaptations in agricultural management practices. Thus, in addition to the goals, the plan must specify the practices—actions to be taken or actions to be omitted—that can occur on the farms in the area. The plan should specify the circumstances under which the practices are to take place, the form they will take, and the dates on which they will occur.¹²⁸ The practices vary and include such items as maintaining present water levels, refraining from using chemical pesticides, limiting the number of grazing animals per hectare during certain periods, delaying mowing until bird-breeding season is over, and limiting the amount of manure applied during certain periods.¹²⁹ The desired practices are often grouped into different “packets” of several practices, designed to achieve different levels of protection. The farmer then may

122. *Beschikking*, *supra* note 71, art. 18.

123. *Id.* art. 5.

124. *See infra* text accompanying notes 139-156.

125. *Beschikking*, *supra* note 71, art. 5, lid a.

126. *E.g.*, COMMISSIE BEHEER LANDBOUWGRONDEN, BEHEERSPLAN WESTZAAN, *supra* note 116, at 2. The Westzaan region includes both management and reserve area. The plan for the region describes the species of meadow birds and rare plants that thrive in the area, with its geography influenced by digging of peat in earlier centuries. A general goal of maintaining the rich, characteristic landscape is accompanied by specific goals of maintaining and restoring the varied and rich bird and flora populations.

127. *See, e.g.*, *Toelichting*, in COMMISSIE BEHEER LANDBOUWGRONDEN, BEHEERSPLAN WESTZAAN, *supra* note 116.

128. *Beschikking*, *supra* note 71, art. 5, lid b.

129. COMMISSIE BEHEER LANDBOUWGRONDEN, BEHEERSPLAN WESTZAAN, *supra* note 116, at 3.

choose the packet most appropriate and adaptable to his business. Of course, the compensation the farmer receives is related to the severity of the packet of practices chosen.

Compensation promised to the farmer is based in part on the effect of the desired management practices on the farmer's income and expenses. If practices designed to protect natural values will mean lower production (and thus less income), more working hours (for example, for mechanical rather than chemical weeding), or fewer expenses, these results are reflected in the compensation. To ensure that these determinations can be made rationally, especially in the future, a standard of comparison is necessary. Therefore, an important part of the management plan is identification of a so-called reference or comparison area, which can be used to establish normal agricultural management, expenses, and income.¹³⁰ The area chosen must be similar in nature and types of agricultural practices, but production in the comparison area occurs without the constraints of management agreements.

Further, the management plan must describe the design and practice of farms in both the *Relatienota* area and the reference area.¹³¹ This description includes characteristics of the farms in the regions (for example, size, use of the land, number of animals, production levels, mowing dates, and application of artificial and natural fertilizer) and identification of external production circumstances (for example, parcel size, number of parcels per farm, and presence of ditches).

The compensation to be awarded to individual farmers is established on the basis of foundations articulated in the management plan.¹³² These foundations reflect the differences in production levels, increases in labor requirements, and changes in work costs that flow from the various management practices required for nature and landscape protection.¹³³ These differences vary with the restrictiveness of the management practices. Thus, the difference in production level must be calculated for each of the possible management packets available to farmers in the area. Also, the various packets will not be identical in the amount of extra labor required or the savings in work costs. A monetary value is eventually attached to each of these various effects of management practices.¹³⁴ These monetary amounts are adjusted annually, on the basis of price developments in agriculture.¹³⁵ Hence, the actual compensation payable to the farmer, determined on the basis of foundations set out in the plan, will depend on the packet chosen by each farmer and the current financial situation in agriculture. The management plan must also include an ap-

130. Beschikking, *supra* note 71, art. 5, lid d.

131. *Id.* art. 5, lid c.

132. *Id.* art. 5, lid e.

133. *Id.* art. 6.

134. Beschikking, *supra* note 71, Bijlage.

135. Interview with W. de Boer and P. Scheele, Directie Beheer Landbouwgronden (3 June 1987).

pendix that lists the actual compensation, usually in guilders per hectare, to be received by farmers who follow the management practices required in each of the various packets.¹³⁶

C. Management Agreements

Only after the management plan has been established can the *Relatienota* policy actually begin to operate effectively. For management areas (and for reserve areas, too, before the land is acquired by the *Bureau Beheer Landbouwgronden*),¹³⁷ implementation of the policy on individual parcels of land occurs when *beheersovereenkomsten* (management agreements)¹³⁸ are signed for those parcels.

1. Entering the Contract

Management agreements are private-law contracts, entered between individual farmers and the Bureau, which acts as the contracting party for the government.¹³⁹ The *Beschikking Beheersovereenkomsten* specifies the procedure for entering these voluntary agreements. When a land user indicates his willingness to sign a contract, he must indicate what parcels of land he offers for the agreement, which of the possible packets of management obligations he is willing to follow, and what (if any) ownership of the land he enjoys.¹⁴⁰ The farmer need not commit to an agreement all the land within a management area that belongs to his farm; instead, he is free, within the framework of the management plan, to limit the size of the area he encumbers with a contract.¹⁴¹ In addition, by choosing the nature preservation obligations he will follow, the farmer can tailor the agreement to the needs of his own farm. Thus, not all farmers within a single management area will be obligated to carry out the same manage-

136. *Beschikking*, *supra* note 71, art. 5, lid f.

137. In some situations, the use of *beheersovereenkomsten* in reserve areas is limited. When the land is owned by a public law body or a nature protection organization that manages ground, certain users who began their activities after 1 December 1977 cannot enter contracts. *Id.* art. 24, lid 2.

138. The *beheersovereenkomst* is one of a number of extra-legal, financial instruments, which have proved to be popular during times of economic boom. For such instruments, the government makes money available to the citizen who is willing to perform or refrain from certain activities that fit desired governmental policy. Brussaard & van Wijmen, *supra* note 9, at 175.

139. *Beschikking*, *supra* note 71, art. 24, lid 1.

140. *Id.* art. 26, lid 1.

141. This increased flexibility is the result of a 1983 amendment to the *Beschikking*. Earlier, the farmer had to enter a management agreement for all his land lying within the *Relatienota* area. See Toelichting bij de wijziging van 21-4-1983, Nr. J. 1578 (Stcrt 80). In addition, the amendment made it possible for the farmer to choose between different combinations of management obligations.

In 1985, statistics indicated that on 40 percent of farms with contracts, 30 percent of the surface or less was obligated under the contract. For 15 percent of farms, the surface was 30 to 50 percent; and for the remaining 45 percent, 50 to 100 percent of the ground surface. See Boelen, *supra* note 93, at 273.

ment activities. Each farmer who signs a contract will be committed to some basic management requirements, but other supplementary obligations may vary.¹⁴² If the farmer who wants to enter the contract is not the owner of the land, there must be an indication that the lessor or other owner is also willing to enter the contract; that owner must eventually also sign the management agreement.¹⁴³

After the farmer has asked to conclude a contract, the Bureau considers the request. The Bureau must ensure that the farmer is actually operator of a farm located completely or partly in the *Relatienota* area.¹⁴⁴ In addition, the Bureau must be certain that the management obligations the farmer is willing to assume are consistent with the possibilities created by the management plan for the area.¹⁴⁵ The Bureau need not conclude contracts for parcels on which no contribution would be made to the management goals articulated in the plan.¹⁴⁶ Moreover, the *Beschikking* makes clear that no contract need be entered if, under an agreement in an earlier management period, the acts or omissions of the operator seriously hindered realization of the goals of nature and landscape described in the management plan.¹⁴⁷ If the farmer's request for an agreement is rejected, however, he may appeal to the Minister of Agriculture and Fisheries.¹⁴⁸

When the Bureau decides that an agreement is desirable, it must be offered in writing to the farmer.¹⁴⁹ The contract consists of several parts. The first part establishes the identity of the parties, describes the land both in cadastral terms and on a map. It states that the farmer is to manage the described land from the viewpoint of nature and landscape, and that the Bureau is obligated to pay compensation of a specific amount, subject to annual adjustment. Attached to these specific provisions are a number of general conditions that incorporate relevant provisions of the *Beschikking Beheersovereenkomst*. Finally, the contract lists the specific management treatments—measures to be taken or activities to be avoided—to which the farmer is obligated. The treatments regulate activ-

142. Wind, *supra* note 24, at 116.

143. The *Beschikking* refers to signing by the lessor or by the "blooteigenaar" (that is the owner of land which is subject, for example, to a hereditary lease). Because of the ownership changes involved in land development, some variation from the requirement of signature by the present owner is specified. *Beschikking*, *supra* note 71, art 25, lid 2; art 26, lid 3.

In practice, the requirement that the owner sign the management agreement has meant that contracts on a considerable surface area have failed. The ground user was willing to sign, but the land owner would not cooperate. BBL, JAARVERSLAG 1985, *supra* note 89, at 30.

144. In practice, the head of the provincial bureau office performs this task on behalf of the central *Bureau Beheer Landbouwgronden*. See DIRECTIE BEHEER LANDBOUWGRONDEN, BEHEERSOVEREENKOMSTEN OP HET AGRARISCHE BEDRIJF, 12 (1985).

145. *Beschikking*, *supra* note 71, art. 27, lid 1.

146. *Id.* art. 27, lid 2, 1e.

147. *Id.* art. 27, lid 2, 2e. This provision was added in 1986 Stcrt. 139.

148. *Id.* art. 28. The rejection must be accompanied by reasons, and appeal must be submitted in writing within 30 days of the rejection.

149. *Id.* art. 29, lid 1.

ities like maintenance of water levels; protection of special landscape elements; date of mowing grass, application of fertilizers, pesticides, and other chemicals; and numbers of grazing animals permitted. These measures, tailored to each area and to each parcel, are intended primarily to protect breeding birds, as well as to preserve valuable and vulnerable vegetation.

A management contract will usually then be entered for the duration of the six-year management period. If the contract is entered after a management period has already begun, that contract will be in effect for the remaining duration of the management period. Although the normal contract is intended to last for the entire management period, some flexibility is available so that the farmer who is unsure of the acceptability of a contract may try out the management practices. The farmer has an opportunity to operate his farm under the contract for a one-year trial period; the contract may be terminated if the farmer gives notice at least 30 days before the end of the year.¹⁵⁰

When a contract has been in effect during a management period, it is presumed to be renewed for the next six-year period, unless a party gives notice at least one month before the end of the period.¹⁵¹ To ensure that the farmer enjoys some certainty in adapting his farm operation to the required management, the Bureau's right to end the agreement is limited, when one or more of the other parties prefer to continue.¹⁵² Moreover, the Bureau is also prohibited from seeking to end the agreement if nature and landscape protection requirements, established through law or administrative provisions, mean that the farmer will be unable to follow management that is available in the comparison area.¹⁵³ Management agreements may also be ended if, by decision of the Central Committee, the land involved is no longer part of a *Relatienota* area.¹⁵⁴

Despite the presumption of continuation and some restrictions on ending management agreements, the *Beschikking* allows some flexibility in changing the management obligations required of the farmers. The management plan itself may be amended, following procedures similar to

150. *Id.* art 56. The one-year trial period was introduced in the regulation in 1983 Stcrt. 80.

151. *Id.* art 56, lid 3. If a party to a contract dies, the rights and obligations under that management agreement pass on to his heirs. *Id.* art. 73.

152. *Id.* art. 57, lid 1.

153. *Id.* art. 57, lid 2.

154. *Id.* art. 58, lid 1. In this case, the agreement ends on the first day of the fourth month after written notice from the bureau to the other parties.

Originally, the *Beschikking* provided that the Committee could not decide to remove land from the area if legal or administrative provisions focusing on goals of nature and landscape preservation made it impossible for the farmer to carry out management available in the comparison area. See *Beschikking* 1982 at art. 58, lid 2 (This provision was eliminated by 1986 Stcrt. 139).

Article 59 of the *Beschikking* makes special provision for *beheersovereenkomsten* connected with land in land development areas.

those required for establishing the plan.¹⁵⁵ Moreover, if the Committee changes the obligations to which farmers in an area are bound, the management agreements terminate at the end of the management period, unless the parties agree to replace the contract with a new one that includes the new obligations.¹⁵⁶

2. Sale of Land in a *Relatienota* Region

Land in *Relatienota* areas is marked for special management. Sale of that land, especially after a contract has been entered to ensure the required management, may constitute a threat to the continued protection of the land. Thus, special requirements operate to ensure that management will not cease at the sale of the land. These requirements also are designed to maintain the value of the farmers' land, despite its dedication to nature protection.¹⁵⁷ The obligations connected with sale are different for management and reserve areas.

Transitional management agreements may be entered for land in reserve areas, before the reserve land is acquired by the Bureau. As soon as a farmer on a parcel of contracted reserve ground stops using the land, the owner of the land is obligated to offer the Bureau the first opportunity to purchase the land, a duty referred to as the *optierecht*.¹⁵⁸ This obligation, however, is limited; it does not apply if the farm is used by specific successors (family members) who agree to follow the provisions of the management agreement.¹⁵⁹ In addition, the duty to offer the land to the Bureau also applies when the owner of the land, usually the lessor, decides to sell it, even though the farmer-tenant or a successor plans to continue to farm under the terms of the management agreement.¹⁶⁰

When the owner of reserve land that is operated under a manage-

155. Beschikking, *supra* note 71, arts. 19-23.

156. *Id.* art. 60, lid 1. The agreement can end at the conclusion of the next following management period, if the farmer gives one month notice to the other parties. The Bureau must give prompt notice of changes to the other parties. *Id.* art. 60, lid 2. There are special provisions for revised management agreements when an area is changed from a reserve area to a management area and vice versa. *Id.* art. 61.

157. See generally de Boer, *De positie van landeigenaren in beheers- en reservaat-gebieden*, 28 DE LANDEIGENAAR 94 (1982).

158. The provisions regarding sale of land, like other requirements set out in the *Beschikking*, are incorporated in the general provisions that form part of every contract. *Beschikking*, *supra* note 71, art. 62.

159. *Id.* art. 62, leden 1, 2. The successor (or successors) may be a spouse, certain blood relatives, foster children, or other parties to the contract. The duty to sell can be lifted if the involved party is a public law body or a nature protection organization that manages ground, provided that the Bureau judges the body to act consonantly with the management plan. *Id.* art. 62, lid 3.

160. *Id.* art 63, lid 1. The obligation does not exist if the owner gives the tenant the opportunity to purchase, as required by farm tenancy laws (Pachtwet, arts. 56a-56h, Ned. Staats. 123 (1985)); if the owner mortgages the land; or in other limited circumstances.

Also the Bureau can lift the obligation where an easement is involved, if that easement is consonant with the management plan. *Beschikking*, art. 63, leden 2, 3.

ment agreement offers to sell the land to the Bureau, as required by the *Beschikking Beheersovereenkomst*, the Bureau may exercise its option to purchase the land, or it may decline to purchase and leave the land available for sale to third parties. If the owner can find no one to purchase the property, however, the Bureau is obligated, under the duty to purchase established in the *Beschikking*, to buy the land.¹⁶¹ This duty applies to all land in a reserve area, regardless of whether it is subject to a management agreement.¹⁶² The selling price is established by an appraisal requested by the Bureau. But that appraisal determines the price without consideration of the facts that agricultural practices on the land are restricted by a management agreement or that laws or regulations enacted to protect nature and landscape limit the activities that can be carried out on the land.¹⁶³ This requirement avoids the risk that land in a *Relatienota* area will decline in value. When an owner finds the appraised price unacceptable, another evaluation conducted by three persons may be carried out, and will bind the parties.¹⁶⁴

In management areas, unlike reserves, the Bureau does not seek to acquire the land. Nonetheless, once a management agreement has been signed for land in a management area, the Bureau must ensure that the agreement stays in effect. Thus, the owner of land who wants to sell the property is obligated to satisfy the Bureau that his successor will also agree to the terms of the management agreement.¹⁶⁵ Of course, at the end of the contract term, the successor may choose not to continue the agreement. The Bureau has a duty to purchase in management areas also, if the owner is unable to find a purchaser who is willing to take over the management agreement. The same appraisal requirements as in reserve areas apply to establish the price in management areas.¹⁶⁶

3. *Violation of the Contract*

Like any other contract, the management agreement imposes duties and obligations on the parties. The farmer must cooperate in permitting inspections to ensure that he is fulfilling the obligations of the agreement.¹⁶⁷ In practice, each *Relatienota* area is under the supervision of an employee of Government Service for Land Management, who makes inspections of the land parcels under contract. Inspection seeks to deter-

161. *Beschikking*, *supra* note 71, art. 66. This duty is called the *koopplicht*, or duty to purchase. See *DIRECTIE BEHEER LANDBOUWGRONDEN*, *supra* note 62, at 10. On the duty to purchase, see also *Wet agrarisch grondverkeer*, arts. 53-56, *Ned. Staats.* 175 (1984).

162. *de Boer*, *supra* note 157, at 96.

163. *Beschikking*, *supra* note 71, art. 68.

164. *Id.* art. 69. One member of the appraisal team is chosen by the objecting owner, one by the Bureau, and the third by the first two members of the team. The decision of the appraising team is made by majority vote.

165. *Id.* art. 65. This obligation does not apply if the owner grants a mortgage on the land or (in certain instances) allows an easement. *Id.*, art. 66.

166. *Id.* arts. 67-69.

167. *Id.* art. 75.

mine, for example, that a farmer who has contracted not to mow before a certain date has not mowed earlier. Regular inspections and surprise visits help to ensure that farmers actually earn their management compensation.¹⁶⁸

A party who believes that another party has not observed the terms of the contract may serve notice of that belief on the offending party.¹⁶⁹ If the parties do not reach agreement about contract provisions concerning management obligations and payment of compensation within a month after the notice, the dispute can be submitted to a special dispute committee for a binding recommendation.¹⁷⁰ Each province has such a committee, which decides cases submitted to it on the basis of reasonableness and fairness.¹⁷¹ The committee has the authority to assess a fine against a breaching party, with a maximum amount of twice the management compensation per hectare per year as specified in the agreement. In addition, if the farmer has failed to carry out management duties, the committee can require full or partial repayment of the management compensation for (at most) the past six years.¹⁷²

4. Compensation

The availability of compensation for carrying out specified management practices helps to induce farmers to enter *beheersovereenkomsten*. This compensation has assumed increasing importance in a time when an additional levy has been imposed to limit milk production¹⁷³ and regulations have been issued to limit the production and use of manure.¹⁷⁴ Compensation from management agreements offers farmers the opportunity to make nature conservation a profitable enterprise that supplements other income from farming.

The *Beschikking* indicates that four types of compensation are available: management compensation, adaptation compensation, payment to the lessor, and payment at the termination of a management agree-

168. Interview with W. de Boer, Directie Beheer Landbouwgronden (22 July 1987).

169. *Beschikking*, *supra* note 71, art. 70. Notice must be sent by registered mail.

170. *Id.* art. 77, lid 1.

171. The dispute committees (*geschillencommissies*) are established and regulated by articles 77-79 of the *Beschikking*. Each province has a committee, consisting of three members who are not members of the provincial committee for land management. The secretary of the committee is the head of the provincial Bureau for Agricultural Land Management.

172. *Beschikking*, *supra* note 71, art. 71, leden 2, 3. Article 72 requires payment of the amounts ordered, on demand and without further legal intervention.

173. See *Beschikking* superheffing, *Beschikking* van de Minister van Landbouw en Visserij van 18 april 1984, Nr. J. 1731 (Stcrt. 79), as amended, reprinted in *Ned. Staats.* 110S (1987).

174. On the recent regulation concerning manure, see Brussaard, *De nieuwe regelgeving betreffende de produktie van dierlijke meststoffen*, 47 *AGRARISCH RECHT* 402 (1987); Brussaard, *Mest als nieuw terrein van Milieurecht*, chapter 6 in *ONTWIKKELINGEN IN HET MILIEURECHT* (M. Aalders & N. Koeman eds. 1987). See also *The Manure Action Program in the Netherlands*, 4 *Conservation Focus* (Aug. 1987) (NASDA Research Foundation Farmland Project).

ment.¹⁷⁵ The compensation available to participating farmers is established in conjunction with the management plan for each *Relatienota* area, on the basis of factors established in the *Beschikking*.¹⁷⁶

a. *Payment under the management agreement*

The management compensation is intended to pay the farmer for losses in production and extra expenses encountered in connection with performance of the special nature-protection obligations required by the management agreement. It consists of an amount of money paid per calendar year per hectare, for carrying out the practices required by the *beheersovereenkomst*.¹⁷⁷ Each management plan specifies the compensation available for adapting the various possible packets of management obligations. Therefore, every farmer in the same area who adopts a specific packet will receive the same per-hectare annual compensation.

It is intended that the farmer who enters a management agreement will suffer no loss of income. Hence, the reference area¹⁷⁸ serves as the standard by which the effects of the special management on the farmers' income and required labor are measured. These effects are quantified in the management plan for each *Relatienota* area. Management compensation, then, consists of payments for decline in returns from the land¹⁷⁹ and extra labor requirements, such as extra time spent in mechanical weeding. Adjustments are also made for differences in expenses, such as savings from postponement of work or nonuse of fertilizers, and costs for manure storage. Compensation is adapted annually, on the basis of price developments in agriculture.¹⁸⁰

The farmer who adapts his management to the requirements of nature and landscape may no longer be able to use his facilities to capacity. For example, if the management practices limit the production of grass, the farmer will be able to feed fewer cows and will have empty stalls in the barn. To compensate the farmer for this "slack" in the operation and for the structural changes needed to adjust, adaptation payments are available.¹⁸¹ The amount depends both on the decline in production relative to the initial situation as a result of implementation of management

175. *Beschikking*, *supra* note 71, art. 30, lid 2.

176. *Id.* art. 30, leden 1, 3; arts. 5 & 6.

177. *Id.* art. 31, leden 1, 2.

178. *See supra*, text accompanying notes 130-131.

179. Declines in returns are calculated in units called Dutch feed units lactation per kilogram feed (*kilo voedereenheid melk* or kVEM) per hectare. The kVEM refers to the amount of feed needed for the cow to produce one kilogram of milk. The value of this unit is established annually (for 1987, for example, 0.47 guilders per kVEM). Thus if a management packet resulted in a decline of 2,100 kVEM per hectare, the decline in returns element of the management compensation would be valued at 987 guilders per hectare (2,100 x 0.47). *See DIRECTIE BEHEER LANDBOUWGRONDEN, MANAGEMENT AGREEMENTS IN DUTCH AGRICULTURE 17-18 (1987)*.

180. *Beschikking*, *supra* note 71, art 31, lid 3; art 32, lid 2.

181. *Id.* arts. 35-49.

measures and on the intensity of farming (in livestock units per hectare) in the initial situation.¹⁸² The management plan establishes the circumstances under which adaptation compensation is available.¹⁸³ The plan focuses, for example, on the number of animals on a farm before the management agreement was entered, and the number permitted under the terms of the agreement.¹⁸⁴

Unlike management compensation, adaptation compensation is calculated for each farm, based on the farmer's operation (for example, the stocking density) in the original situation and the adaptations he must make to comply with the management agreement. The *Beschikking* provides rather complicated formulas for making the calculations.¹⁸⁵ Adaptation compensation may continue for up to eighteen years. At the end of the first and second management periods, the farmer's situation is reevaluated. Then, if necessary, the compensation will be extended for subsequent periods, but at a lower rate.¹⁸⁶

The management and adaptation compensations are usually paid to the farmer whose business is operated on the land subject to the agreement. In some instances when that farmer is not owner of the land, compensation may also be available for the lessor.¹⁸⁷ This compensation consists of a sum per calendar year, per hectare of land used under a management agreement and leased for at least six years. The sum payable is based on the amount by which the rent in the *Relatienota* area lags behind rent for similar land in the reference area.¹⁸⁸ When the lessor receives compensation, the farmer's payment is reduced accordingly.¹⁸⁹

Sometimes a management agreement may end because the land involved no longer forms part of a *Relatienota* area¹⁹⁰ or because the parties agree to end it. In such a case, the farmer may be entitled to payment intended to help adapt the farm business to the type of management possible in the reference area. The payment continues for the number of years determined by the Central Committee to be required for the adaptation.¹⁹¹ In the first calendar year, the payment is identical to the

182. DIRECTIE BEHEER LANDBOUWGRONDEN, *supra* note 62, at 15-16.

183. *Beschikking*, *supra* note 71, art. 35, lid 2.

184. *See, e.g., Toelichting*, COMMISSIE BEHEER LANDBOUWGRONDEN, BEHEERSPLAN VOOR DE RESERVAATSGBIEDEN LUTJEGAST-DOEZUM 18-19 (1985).

185. *Beschikking*, *supra* note 71, arts. 36-49. Article 49 allows some flexibility for instances in which the formulas do not reasonably compensate farmers for their adaptations.

186. *E.g., Toelichting*, *supra* note 184, at 19. In the second period, the farmer will receive 70 percent, and in the third period 40 percent, of the original adaptation compensation.

187. *Beschikking*, *supra* note 71, art 50, lid 1. If the lessor is a public-law body or a nature protection organization that manages land, the compensation is not available. *Id.* art. 50, lid 2.

188. *Id.* art. 51. The sum is reconsidered annually.

189. *Id.* art. 34.

190. *Id.* art. 58. *See supra* note 154.

191. *Id.* art. 52.

amount the farmer would have received under the management agreement; in succeeding years, the payment is reduced.¹⁹² The lessor may also be entitled to payment for ending the agreement.¹⁹³

b. *Payment under the EC less-favored areas directive*

Part of the compensation received by farmers in *Relatienota* areas may be paid under the *Bergboerenregeling*—the so-called mountain farmer rules or, more accurately, the less-favored areas directive.¹⁹⁴ These regulations are the Dutch implementation of the European Community program designed for farmers in areas with important nature and landscape values.¹⁹⁵ Indeed, the program serves two interrelated goals: to provide financial support to farmers hindered by unfavorable physical circumstances, and to preserve valuable features of the natural environment.¹⁹⁶ Accordingly, regions eligible for less-favored areas support often suffer from natural handicaps that hinder efficient farming. An important condition for receiving payment under this program is maintenance of existing external production circumstances; thus, the handicaps with importance for nature (for example, high water levels), must not be altered. The program requires the passive management often essential in management areas.

Although European Community policy permits a maximum of 190,000 hectares in The Netherlands to qualify for compensation under

192. *Id.* art. 53.

193. *Id.* art. 54. Lessors who receive compensation pursuant to article 50 of the *Beschikking* are entitled to this payment.

194. This program intended to help farmers in marginal agricultural regions is referred to as mountain-farmer regulations because it was originally intended for farmers in the hilly regions of France, West Germany, and Italy.

195. These are based on Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in less favored areas. See also Council Regulation 797/85 of 12 March 1985, Title III, arts. 13-17 (Special measures to assist mountain and hill farming and farming in certain less favoured areas). Revisions to this rule were expected. Council Regulation 1760/87 (15 June 1987) has amended 797/85, in part to encourage conversion and extensification of production. For Dutch implementation, see *Beschikking bijdragen probleemgebieden*, Nr. J. 7398, 1982 *Stcrt.* 251 (December 22, 1982). For general information on the Dutch implementation of this program, see G. BENNETT, APPLICATION OF THE LFA DIRECTIVE IN THE NETHERLANDS, Countryside Commission, CCP 167 (April 1984). Coordination of provisions of the Dutch implementation of the less-favored areas directive with management agreements is simplified by the fact that the BBL (Bureau for Agricultural Land Management) administers both programs.

The Directive, article 3, specifies that the program is applicable in mountain regions, areas in danger of depopulation, or areas with specific natural handicaps. In The Netherlands only the third is applicable, and four broad categories of natural handicaps are recognized. These handicaps include unfavorable hydraulic conditions (e.g., high water table), fragmented field or landownership patterns, isolated location, and poor ground conditions (e.g., infertile soil). Normally the handicaps that qualify for compensation must be permanent and "external"—that is, not caused by the farmer's own agricultural practices. "Internal" practices (e.g., mowing and use of fertilizers) are regulated by management agreements, instead of through the less-favored areas directive program. G. BENNETT, *supra*, at 6, 8-9.

196. See G. BENNETT, *supra* note 195, at 10.

bergboeren rules, the Dutch government has not made full use of this opportunity. Initially the government tied the measure to *Relatienota* implementation; only in *Relatienota* areas (and, of these, only in management areas) could farmers qualify for payment.¹⁹⁷ Recently, applicability has been broadened somewhat to include reserve areas with no short-term prospect of acquisition by central authorities. In addition, the *bergboeren* rules may also apply in selected regions with parcels of farmland that cannot be reached by road, but only by water.¹⁹⁸ Compensation for passive management under the Netherlands version of the mountain-farmer regulation is limited to a maximum of 180 guilders per hectare, of which the EC reimburses 25 percent to the Dutch government. Actual compensation is calculated on the basis of the intensity of farming, measured by the number of livestock, expressed in large animal units per hectare. Farmers who receive this compensation must include it as part of their total management payment. Because the two types of payments are based on different systems, such farmers actually enter two separate contracts, one for the *bergboeren* compensation¹⁹⁹ and one for the *beheersovereenkomst*.²⁰⁰

197. Of the 100,000 hectares designated as *Relatienota* areas, only 40,000 are management areas. Thus the mountain-farmer rules could apply to a maximum of only 40,000 hectares. Interview with Drs. P. Slot, Director, Directie Beheer Landbouwgronden (22 July 1987).

In actual practice, far fewer hectares have been declared eligible. By the end of 1986, a surface area of 18,000 hectares in Holland had been placed on the EC list of agricultural problem areas. A further 30,000 hectares have been submitted to the EC for inclusion on the list. By the end of 1986, the *Beschikking bijdragen probleemgebieden* had been declared applicable to 47 areas with a total surface of about 11,500 hectares. Five hundred twenty-eight operators had entered agreements on a total of 3991 hectares. BBL, JAARVERSLAG 1986, *supra* note 99, at 33.

198. BBL, JAARVERSLAG 1986, *supra* note 99, at 32.

199. Contracts entered under these rules run for five years. They specify the land area (by cadastral description and a map) for which the subsidy is being paid, prescribe the amount of the subsidy, and list the natural handicaps that the farmer must not destroy or try to eliminate. In exchange for the annual subsidy, the farmer promises to follow the requirements of the *Beschikking* and to maintain the natural handicaps.

200. It has been speculated that the designation of an area under the LFA program acts to speed up the often-slow process of establishing a management plan. The availability of LFA compensation could encourage farmers also to enter a management agreement. G. BENNETT, *supra* note 195, at 9.

Although all *Relatienota* areas do suffer natural handicaps, the Dutch approach has received criticism. The underuse of the potential number of hectares permitted by the EC means that many Dutch farmers cannot take advantage of the supporting measure provided and subsidized by the EC. This measure was intended, critics say, to support agriculture and not the *Relatienota*. This financial support is needed by farmers in many areas of the Netherlands, for example, where water levels are high. Moreover, if the two programs can be separated so that the *bergboeren* rules are used to pay for passive management, management agreements can assume a more clear role in compensating active management. Hermans & Hazenbosch, *De Relatienota op de helling*, 11 NATUUR EN MILIEU 4, 8 (1987).

Government officials have recognized the need to expand the applicability of the *bergboeren* rules to regions other than management areas. These include reserve land that has not yet been acquired (and for which there is no short-term prospect of acquisition) and

Calculation of compensation for the various aspects of the *Relatienota* program is complicated. In practice, the payments that farmers actually receive under management agreements vary, depending on the provisions of the management plan for the area and, within each area, on the severity of the restraints in the packet chosen by each farmer. An individual farmer may receive between 300 and 1600 guilders per hectare per year, with the average payment per hectare being about 750 guilders.²⁰¹ Annual compensation is divided and paid in four installments.²⁰²

IV. CONCLUSION

The *Relatienota* policy articulated in the mid 1970s has led to a thoughtful program designed to encourage and reward the maintenance of valuable natural elements. Where it has been implemented, the program has proved effective in adapting agriculture to nature values in especially vulnerable areas of The Netherlands. Yet, after more than a decade, relatively little of the ground eligible for protection is actually operated under management agreements or purchased as part of a reserve. When the program was initiated, it was expected that after two years, 10,000 hectares would be operated under management agreements.²⁰³ By March 1987, however, twelve years after the *Relatienota* appeared, only about 7000 hectares were being farmed under *beheersovereenkomsten*,²⁰⁴ and about 7300 hectares had been purchased as reserves.²⁰⁵

A. Problems with the Program

1. A Slow Beginning

Several factors help to explain the relatively slow beginnings of the program.²⁰⁶ In part, the complicated nature of the designation procedure itself is to blame.²⁰⁷ A number of steps are involved in identifying *Relatienota* areas, and establishing definite borders was a time-consuming

the so-called *vaargebieden*—regions where the farmer cannot reach his land by road from the homestead, but can only get there by water. Further changes in the Dutch program may occur in connection with revisions in EC Council Regulation 797/85. BBL, JAARVERSLAG 1985, *supra* note 89, at 7-8.

201. Interview with P. Scheele and W. de Boer, Directie Beheer Landbouwgronden (3 June 1987). These sums include both management and adaptation compensation, as well as payment under the *bergboeren* provisions. The Bureau spends about 8 million guilders annually for compensation.

202. Beschikking, *supra* note 71, art. 74.

203. Interview with Drs. P. Slot, Director, Directie Beheer Landbouwgronden (22 July 1987).

204. Interview with W. de Boer & P. Scheele, Directie Beheer Landbouwgronden (3 June 1987).

205. Hermans & Hazenbosch, *supra* note 200, at 4.

206. For an explanation in English of some of the initial reactions to the *Relatienota* policy, see Fornier, *supra* note 25, 172-78. See also Joustra, *supra* note 64.

207. For an explanation of this procedure, see *supra*, text accompanying notes 92-109.

process.²⁰⁸ Also, the requirement that formal management plans be established prior to conclusion of contracts, although necessary, meant that considerable time would elapse before farmers could be offered the opportunity to participate.²⁰⁹

Even when management agreements were available, however, farmers resisted, perhaps from some type of psychological opposition.²¹⁰ The special management dictated for *Relatienota* areas demands extensification of agricultural methods, an approach that contradicts the usual production orientation of the farmer. To extensify, the farmer must abandon some of the technical and scientific developments that have led to more intensive land use and efficient production. Adopting lower production standards in the interest of nature and landscape interferes with the farmer's normal management practices and expectations of himself, and can lead to stress.²¹¹

This psychological opposition included a further element: farmers doubted the expertise, dependability, and credibility of the government. For years government policy had favored intensification, and the Ministry of Agriculture and Fisheries had encouraged farmers to intensify their operations. The new emphasis on extensification gave farmers reason to fear

208. van de Klundert & van Huis, *Verweving van landbouw en natuur*, in VERWEVING IN HET LANDELIJK GEBIED at 37 (Rijksplanologische Dienst, publikatie 85-4 (1985)). Part of the problem also stemmed from the inability of farmers and nature protection representatives to communicate. This failure resulted in significant delays at the beginning of the process. The developing ability of farmers and nature protectors to communicate has been an important by-product of *Relatienota* policy. Interview with Drs. P. Slot, Director, Directie Beheer Landbouwgronden (22 July 1987). This same observation has been made by Bennett, Annex 3, at 175, in COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 92:

the instrument's most important achievement may well be political rather than environmental. Prior to the introduction of management agreements, farmers and conservationists saw their interests as irreconcilable. Now, for the first time, an area of common ground has been found. Farming and conservation can only be reconciled if farmers and conservationists learn to negotiate with each other. At least in the Netherlands they are now on speaking terms.

209. This problem is not unique to management agreements in the Netherlands. Cumbersome procedures exist elsewhere, especially when compensation schemes are complicated. COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 32.

210. Resistance has not been unique to the Netherlands. A multi-national study noted that:

[f]armers who resist or are critical of management agreements often are most concerned about the long-term restrictions which may be placed on their farms, fearing that they will be left behind technically, may be deprived of a valuable business, may be placing a major burden on their successors, may be severely reducing the value of their own assets, may be becoming "park keepers" rather than independent farmers etc.

COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 26.

211. Wind, *supra* note 24, at 109-110. The farmer who must avoid mowing, for example, while his neighbors carry out their usual Spring practices, may experience considerable frustration. Farmers dislike agreements because they see them as "curbing their independence, limiting their incomes or even degrading their status toward that of park keepers." COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 32.

that eventually the government would scale back the promised management compensation.²¹² It was difficult for land users to believe that, despite the vagaries of the budget in ensuing years, the government would honor its commitment to pay.²¹³ Moreover, farmers also believed that their government often acted coercively and consulted too little with the individuals involved.²¹⁴ Another fear experienced by farmers was that their efforts to carry out the promised management obligations would be criticized.²¹⁵ Still others feared that the value of their land would decrease as a result of limitations on land use in favor of nature.²¹⁶

Furthermore, farmers have expressed opposition on technical grounds. The uniformity and lack of flexibility in the initial stages of the program discouraged participation. Amendments in 1983, however, have led to increasing flexibility and the possibility of a trial year.²¹⁷ Some opposition, even to the more flexible system, remains, especially on the part of young farmers who operate intensively. These farmers object to the fact that each farmer who adopts a specific packet of obligations will receive the same compensation, despite the fact that meeting those obligations may be less burdensome for farmers with less intensive operations.²¹⁸

Much of the initial opposition of farmers to the program has diminished. The willingness of some to enter agreements has encouraged others to participate.²¹⁹ In addition, nationwide limitations on production of milk and manure have reduced income possibilities for some farmers.²²⁰ Thus, the *beheersovereenkomst* may offer farmers the opportunity to maintain a reasonable income level and to get paid for a new farm product, the conservation of nature.²²¹ Nonetheless, even with increasing acceptance by farmers, the *Relatienota* program itself raises some unresolved issues that focus in part on effective accomplishment of the

212. van de Klundert & van Huis, *supra* note 208, at 38.

213. Wind, *supra* note 24, at 110.

214. van de Klundert & van Huis, *supra* note 208, at 38.

215. Wind, *supra* note 24, at 110.

216. de Boer, *supra* note 157, at 94.

217. van de Klundert & van Huis, *supra* note 208, at 38.

218. See Wind, *supra* note 24, at 116. This objection may be misdirected. Management compensation is intended to pay for the realization of specific goals. The more flexible adaptation compensation is designed to recognize individual farmers' difficulties in meeting those goals. *Id.*

219. By May 1987, this encouragement was widespread. A management agreement was entered by the thousandth farmer. The government attributed the increasing interest to more farmer involvement in establishing management plans, the possibility of a trial year, and the problems of agricultural surpluses. Nonetheless, further study is planned to simplify both decisionmaking about identification and definite bordering of areas and regulation of the management agreements. Ministerie van Landbouw en Visserij, Persbericht, nr. 154, 8 mei 1987.

220. See *supra* notes 173-74.

221. Interview with W. de Boer and P. Scheele, Directie Beheer Landbouwgronden (3 June 1987).

nature conservation goals of the *Relatienota*.

2. Accomplishing Nature Protection Goals

One practical problem relates to the design and implementation of the desired management practices. It is often difficult to identify a level of management that will make a real contribution to the maintenance of landscape and nature values, and at the same time realistically fit within the framework of farming in the *Relatienota* area. Stringent requirements, which would really protect nature values, may well be unacceptable to farmers and result in no participation and thus no protection. Even when acceptable management packets are designed, some element of compromise remains. The fact that each farmer may choose to implement practices that fit in his business means that no real integrated management for the whole area is likely.²²²

The fact that participation in the *Relatienota* program is voluntary remains a significant issue because it makes *beheersovereenkomsten* particularly vulnerable. The desired nature protection will occur only when individuals are willing to enter contracts.²²³ One may question whether it is wise to tie essential nature protection efforts to private contracts with individuals, when those individuals are free to reject participation. A positive aspect of this voluntary approach, however, is that the individuals who decide to enter management contracts are likely to be particularly careful in carrying out their responsibilities.²²⁴ Moreover, there may be a subtle element of coercion even in the voluntary program. Insufficient cooperation with *Relatienota* efforts may well result eventually in the imposition of protection on especially vulnerable land through another, involuntary program.²²⁵

Closely connected with the problem of voluntary management agreements is the difficulty of forming reserve areas when land can be purchased for reserves only when the owner is willing to sell.²²⁶ Under this system, reserve areas (especially large ones) may take a considerable number of years to purchase. Moreover, the transition period poses difficulties for both the land user and for nature interests. Given the characteristics of areas designated as reserves, production circumstances are likely to be inefficient, with little prospect of adopting new technology.

222. Wind, *supra* note 24, at 115-117.

223. See Brussaard & van Wijmen, *supra* note 9, at 176. Indeed, this aspect may mean that areas farmed by young dynamic farmers, who will be reluctant to restrict activities, will lack protection, even if those areas are particularly sensitive. COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 32.

224. Heida, *Scheiding en verweving. De boer en het landschapsbeheer*, 35 *ARS Aequi* 99, 101 (1986).

225. Wolff, *De toepassing van de Natuurbeschermingswet op landbouwgronden*, 45 *AGRARISCH RECHT* 451, 459 (1985). For example, particularly valuable land could be identified and protected as a natural monument. *Id.*

226. The situation is somewhat different in land development projects under the *Landinrichtingswet*.

But at the same time, even with the possibility of transitional management agreements, it may be difficult to ask landowners to carry out intrusive nature protection measures in an area designated as a reserve, especially when those measures do not adapt well to the business management.²²⁷

A related problem is the issue of continuity of nature protection, especially in management areas. Normally *beheersovereenkomsten* are entered for six-year management periods. Although it is difficult for the government to end an agreement, the land user can ask to terminate the contract. Thus, after any contract period, the needed management can again be lost. Moreover, although the buyer of land must agree to continue an existing contract, he too is free to terminate at the end of the contract period. One can well ask what purpose there is in protecting a vulnerable area only temporarily.²²⁸ A partial answer to that question may be that a more permanent commitment to nature protection demands far more than most farmers are willing to risk. This unrealistic expectation would diminish confidence in the *Relatienota* instrument.²²⁹

The cost of implementation of *Relatienota* policy is high. Both management areas and reserves involve significant government expenditures. Management contracts require annually-adjusted payments of the agreed compensation to farmers.²³⁰ The creation of reserves requires an initial payment to purchase the land, plus continual expenditures to exploit and manage ground that is purchased and retained by the government. Because reserves form a majority of *Relatienota* areas, these costs are burdensome.²³¹

227. Wind, *supra* note 24, at 114.

228. See Heida, *supra* note 224, at 103.

229. Wind, *supra* note 24, at 110.

A further problem, identified by some, is the lack of legal support for *Relatienota* policy. That is, the policy is implemented through the *Beschikking*, rather than through a law (*wet*) enacted after parliamentary treatment. See e.g., Joustra, *supra* note 64, at 120. A draft of the *Wet beheer landbouwgronden*, designed to provide this legal basis, was circulated in 1984, and later revisions were made. In 1986 a draft was sent to the Council of State for advice. BBL, JAARVERSLAG 1986, *supra* note 99, at 25. Although such a law could offer a foundation for management of valuable agricultural cultural landscapes, Brussaard & van Wijmen, *supra* note 9, at 177, in the current situation, it is not entirely clear that the bill will be enacted in the near future. Nor is it entirely clear that such a law will contribute much more to implementation of the policy, given the fact that operation under the *Beschikking* is now working rather well. It is likely, however, that the *Beschikking* will be amended to some extent, even if a law is not enacted.

230. For information on proposed changes, see Bruil, *Wetgeving en literatuur*, 48 AGRARISCH RECHT 124, 126 (1988). The proposed changes would simplify the process of establishing *Relatienota* areas, reduce the number of management obligations, and standardize the compensation system. These payments currently amount to about 8 million guilders per year, but are expected to be over 12 ½ million in the early 1990s. Interview with W. de Boer & P. Scheele, Directie Beheer Landbouwgronden (3 June 1987).

231. Interview with Drs. P. Slot, Director, Directie Beheer Landbouwgronden (22 July 1987). Land purchased for reserves has cost an average of about 25,000 guilders per hectare, with the most expensive costing Hfl 57,000. About half of the reserve land is retained by the

B. Management Agreements and Physical Planning

One of the most difficult problems connected with the system of *beheersovereenkomsten* is their relationship with the *bestemmingsplan*, the municipal land-use plan that forms an integral part of the physical planning system. The Physical Planning Act²³² authorizes a comprehensive system of planning, carried out in a decentralized, but coordinated, manner by the central government, provinces, and municipalities. Central government policy normally influences provincial regional plans (*streekplannen*), which outline in general terms the future spatial development for each province. Municipalities²³³ may issue structure plans to outline the expected development of the area. In addition, allocation or land-use plans (*bestemmingsplannen*) establish the prescribed use of land within the plan areas. Land-use plans are directly binding on citizens, who are forbidden to change the use of their land to a function inconsistent with the plan designation.

Municipalities include rural areas, and for these areas a land-use plan, similar to a zoning plan, is mandatory.²³⁴ The plan normally specifies a destination or use (*bestemming*) for each land parcel. There must be pressing justification for a use designation that limits the most effective use of the land, and the plan can make no demands in connection with the structure of agricultural businesses.²³⁵ Several different use designations are possible in rural areas. Among these are agricultural, agricultural with natural-scientific and/or landscape values, or nature areas.²³⁶ To maintain these values, the plan can impose use restrictions and require permits before specific activities can be carried out. For example, it is possible to restrict activities like converting grassland to cropland, cutting valuable stands of trees, or lowering the groundwater level. In a nature area, a permit can be required for the use of pesticides and fertilizers.²³⁷

Thus, although land-use plans cannot enforce a specific agricultural management directly, their provisions can influence that management indirectly. For example, a provision that grassland cannot be plowed without a permit will help to ensure that the land remains as grassland.²³⁸

government (for example, the *Staatsbosbeheer*—Forestry Service) for exploitation.

232. Wet op de Ruimtelijke Ordening, 5 juli 1962, Stb. 286, effective 1 August 1965; current version, 21 nov. 1985, Stb. 623, 624, 625 (Ned. Staats. 64 (1986)).

233. There are about 800 municipalities (each called a *gemeente*), which include built up areas and also contiguous rural areas.

234. Wet op de Ruimtelijke Ordening, art. 10, Ned. Staats. 64 (1986). In principle, thus, the whole countryside should be subject to land-use plans; in practice, however, all municipalities have not yet developed their plans. van de Klundert & van Huis, *supra* note 208, at 38-39.

235. See Enter, *Relatienota en Bestemmingsplan*, 41 DE PACT 99, 99 (1981).

236. See van de Klundert & van Huis, *supra* note 208, at 39.

237. See van de Klundert & van Huis, *supra* note 208, at 40-41; Enter, *supra* note 235, at 104-05.

238. Enter, *supra* note 235, at 100.

Often the restrictions that are possible through the land-use plan focus on the maintenance of existing external production circumstances. They require the farmer to forego developments that could enhance farm productivity, and thus to give up the possibility of higher income.²³⁹ In the vast majority of instances, the farmer receives no compensation when these restrictions are imposed. Although the Physical Planning Act includes an article that authorizes payment of compensation in cases in which a landowner sustains damage that he cannot reasonably be expected to bear,²⁴⁰ these provisions are rarely used.²⁴¹ Moreover, it probably is not their intention to legitimize compensation for passive measures that merely maintain the status quo.²⁴²

The fact that the *bestemmingsplan*, like the *beheersovereenkomst*, can require the maintenance of existing production circumstances (that is, passive management) is the source of some difficulties and possible confusion.²⁴³ Inconsistent treatment of land users in similar situations is one problem. A type of passive management may be required in one locality by the terms of the *bestemmingsplan*, while in an adjoining area (a *Relatienota* area) similar management limitations may be carried out voluntarily under management agreements.²⁴⁴ The type of management limitations permissible under the land-use plan may vary with the type of area, with more restrictions possible, for example, in a nature area.²⁴⁵ Even so, however, the farmer in the first area is entitled to no compensation, while the other farmer receives management compensation. Another difficulty may occur when a specific *Relatienota* area is also subject to limitations imposed through a land-use destination in a *bestemmingsplan*. Such a situation poses the risk of overlapping requirements or

239. For the view that land-use plans offer little real protection in rural areas, see van Schaik & Wings, *Bestemmingsplannen bieden buitengebied geen bescherming*, 11 NATUUR EN MILIEU 10 (1987).

240. See Wet op de Ruimtelijke Ordening, art. 49, Ned. Staats. 64 (1986). See generally van Wijmen, *Beheersvergoeding en schadevergoeding*, 42 AGRARISCH RECHT 128, 131-32 (1982).

241. Interview with Drs. P. Slot, Director, Directie Beheer Landbouwgronden (22 July 1987).

242. van de Klundert & van Huis, *supra* note 208, at 39-40.

243. Enter, *supra* note 235, at 100, raises several questions: to what extent can special management conditions in connection with the presence of natural-scientific and landscape values be imposed in the *bestemmingsplan*? what rules belong in the *bestemmingsplan* and what in the *beheersovereenkomst*? is it possible to put rules in the *bestemmingsplan* that belong in the *beheersovereenkomst* (and vice versa), and if so, is it possible to choose between management compensation and payment for damages under the Physical Planning Law?

To suggest answers to these questions is beyond the scope of this article.

244. There may be a question about what *bestemming* or destination is appropriate for land in a *Relatienota* area. Enter, *supra* note 235, at 107, suggests that management areas should be called "agricultural regions with (high) natural-scientific and/or landscape value". Reserves, after purchase, should be called "nature areas".

245. See Heida, *supra* note 224, at 102.

perhaps inconsistent rules.²⁴⁶

One result of these problems is the "no pay-no cure" phenomenon: a tendency of provincial regional plans not to require protection of nature and landscape if there is no opportunity for land users to enter management agreements and receive compensation for their efforts. Some provinces have adopted the attitude that outside *Relatienota* areas, there is no possibility or necessity to protect nature values by the system of construction permits made possible by physical planning law.²⁴⁷ In other instances, it was felt that limitations imposed through physical planning will be accepted only if citizens have the opportunity to receive compensation for unreasonable harm, including the harm imposed by the requirement to maintain the present situation.²⁴⁸ These attitudes are inconsistent with the intentions of physical planning law.

In fact, both physical planning law and *Relatienota* policy are needed to protect vulnerable natural areas. The number of hectares of valuable cultural ground in The Netherlands is far greater than the *Relatienota* alone can protect.²⁴⁹ Therefore, most of these areas can only be protected through limitations imposed in land-use plans. Moreover, the nature of land-use plans and management agreements is different. Land-use plans are public-law instruments that bind all citizens, whereas management agreements are private-law contracts. It was never intended that management agreements take over the normal role of land-use plans,²⁵⁰ or that their implementation should cause confusion. Instead, they should provide primarily for activities that go beyond the passive management normally imposed by the *bestemmingsplan*, thus avoiding a situation in which land can be subject to identical or conflicting regulation from two different legal regimes.²⁵¹

C. Concluding Remarks

The designation of *Relatienota* areas, combined with the conclusion of management agreements and eventual purchase of land to form reserves, must be seen as one component of the many efforts in The Netherlands to protect and preserve valuable natural areas. The comprehensive system of physical planning and the equally complex process of land development, plus a number of other laws and administrative programs, also play significant roles in these efforts.²⁵² The careful manage-

246. Heida, *supra* note 224, at 102. When a *Relatienota* area is proposed, it must be tested against the provisions of the provincial *streekplan*. Municipalities and other governmental bodies are also informed. *Id.* Thus, some coordination can be expected.

247. van de Klundert & van Huis, *supra* note 208, at 40.

248. *Id.* See generally Bos, *Ervaringen in het grensvlak van bestemmingsplan en natuurbeheer*, 42 *AGRARISCH RECHT* 142 (1982).

249. van de Klundert & van Huis, *supra* note 208, at 41.

250. See Enter, *supra* note 235, at 100.

251. Enter, *supra* note 235, at 108.

252. For information about aspects of other laws designed in part to protect nature and

ment of a small percentage of the valuable agricultural landscapes in The Netherlands will not preserve the whole natural environment. Nor will the financial compensation offered through management agreements suffice to solve all the problems of farmers whose land suffers from special and therefore valuable geographic handicaps.

Nonetheless, the Dutch implementation of *Relatienota* policy, especially through conclusion of private-law contracts with committed landowners, can be viewed as a model of cooperation between government, farmers, and nature protection interests. And it is expected that heightened concern about the environmental consequences of agriculture, along with other factors, will lead to increased use of these instruments in The Netherlands, as in other nations.²⁵³ The use of *beheersovereenkomsten*, voluntarily entered by land users, is an effective example of the flexibility that private contracts can offer in achieving societal goals. These contracts provide a means of guaranteeing profits to farmers in less than optimal circumstances, while at the same time maintaining the values of nature and rural landscape.²⁵⁴ It is to be hoped that continued cooperation by farmers and government will increase participation in the *Relatienota* program and ensure the survival of the most valuable natural areas in The Netherlands for future generations. Moreover, the lessons of *Relatienota* policy and its careful implementation in The Netherlands may well serve as a catalyst and model for other member states of the European Community.

landscape, see e.g., Brussaard & van Wijmen, *supra* note 9; Wolff, *supra* note 225; van de Klundert & van Huis, *supra* note 208.

253. COMMISSION OF THE EUROPEAN COMMUNITIES, *supra* note 13, at 36-37.

254. See Fournier, *supra* note 25, at 178.