



4-1-1997

Land Reform in the People's Republic of China: Auctioning Rights to Wasteland

Tim Hanstad

Li Ping

Follow this and additional works at: <https://digitalcommons.lmu.edu/ilr>



Part of the [Law Commons](#)

Recommended Citation

Tim Hanstad and Li Ping, *Land Reform in the People's Republic of China: Auctioning Rights to Wasteland*, 19 Loy. L.A. Int'l & Comp. L. Rev. 545 (1997).

Available at: <https://digitalcommons.lmu.edu/ilr/vol19/iss3/2>

This Article is brought to you for free and open access by the Law Reviews at Digital Commons @ Loyola Marymount University and Loyola Law School. It has been accepted for inclusion in Loyola of Los Angeles International and Comparative Law Review by an authorized administrator of Digital Commons@Loyola Marymount University and Loyola Law School. For more information, please contact digitalcommons@lmu.edu.

Land Reform in the People's Republic of China: Auctioning Rights to Wasteland

TIM HANSTAD* & LI PING** ***

I. BACKGROUND

A. Recent Developments in the People's Republic of China's Rural Reform

Reforms in the People's Republic of China (PRC) since the late 1970s have produced important changes in the PRC's rural land system. Between 1979 and 1983, after more than twenty years of collective farming,¹ Chinese collective farms distributed land use rights to individual households, thereby creating a nation of family farms.² Collective farms distributed the land on an egalitarian basis, giving each household an amount of land proportional to family size.³ Each household would use its land independently, but the collective retained land ownership.⁴

Although the family farm system created by the 1979-1983 decollectivization has generally remained intact, several significant

* Executive Director, Rural Development Institute; Lecturer, University of Washington School of Law. J.D., University of Washington; L.L.M., University of Washington.

** Research Consultant, Rural Development Institute. M.A., Public Policy, Seattle University.

*** We gratefully acknowledge a grant from the Lebrun Foundation, Buffalo, NY, which supported this research.

1. Collective ownership of rural land began in 1956 when the PRC established the Advanced Agricultural Producer's Cooperatives, which "owned" the rural land throughout the PRC. See Wenfang Zhang & Jack Makeham, *Rural Land Use in China*, 68 *LAND ECON.* 139 (1992). Accordingly, the Chinese Constitution strictly prohibited any person or organization from attempting to privately buy, sell, or lease rural land. See XIANFA [Constitution] art. 10, cl. 4 (1982); see also Zhang & Makeham, *supra*.

2. See Zhang & Makeham, *supra* note 1, at 139.

3. See *id.*

4. See *id.*

developments have occurred since 1983. Originally, collective farms gave land to most peasant households for a term of at most three years. In 1984, the Chinese Communist Party (CCP) Central Committee issued Rural Work Document No. 1, urging local officials as follows:

prolong the time period of the contracted land, encourage the peasants to increase their investment to foster the fertility of the soil and practice intensive operation. In general, the time period of the contracted land should be more than 15 years. Projects with a long production cycle and of development nature, such as fruit trees, woods and forests, denuded hills, and wasteland, should have a longer period.⁵

In November 1993, the CCP Central Committee stated that "the term for contracting land may be extended" for another thirty years after the original fifteen-year right expires.⁶ In April 1995, the State Council reiterated the 1993 decision on the extension of land rights.⁷ The 1995 directive also protected the new thirty-year use rights from readjustment based on changes in household size.⁸

These central government policies have focused on farmers' use rights to the PRC's ninety-three million hectares of arable land.⁹ In addition to this arable land, the PRC has at least thirty-three million hectares of uncultivated, but reclaimable, land, which is categorized as "wasteland."¹⁰ During the 1980s decollectiviza-

5. See ROY L. PROSTERMAN ET AL., RURAL DEV. INST., RDI REPORTS ON FOREIGN AID & DEVELOPMENT #85, REFORMING CHINA'S RURAL LAND SYSTEM: A FIELD REPORT (1994).

6. Decision of the CCP Central Committee on Some Issues Concerning the Establishment of a Socialist Market Economic Structure, 14th Central Comm., 3d Plen. Sess., art. 31, reprinted in *Chinese Communist Party Outlines Plan for Socialist Market Economy*, BBC SUMMARY WORLD BROADCASTS, Nov. 18, 1993, available in LEXIS, News Library, Bbcswb File.

7. See Jane Macartney, *China Extends Farmers' Land Contracts*, Reuters World Service, Apr. 20, 1995, available in LEXIS, News Library, Reuwl File.

8. Collective farms initially distributed land to farmers in proportion to their household size subject to future readjustment if the household size changed. See Zhang & Makeham, *supra* note 1, at 139. Our fieldwork revealed that the possibility of land readjustment undermined farmers' tenure security and their willingness to make long-term land improvements.

9. For a discussion of reforms and recommended changes concerning arable land in the PRC, see ROY L. PROSTERMAN ET AL., *supra* note 5, at 8.

10. Chinese officials estimate that the PRC has 33 million hectares of reclaimable wasteland that is transformable into arable land. This land is primarily located in the

tion, the collective did not distribute most of this wasteland to individual households.¹¹ Little of the distributed wasteland has been developed because farmers felt that the use rights were either too short or uncertain.¹²

Developing this wasteland for agricultural production and forestation holds tremendous economic and ecological potential. Due to industrialization and urbanization, the PRC's relatively small amount of arable land is shrinking each year.¹³ The shrinking arable land base has caused some observers to question the PRC's ability to continue feeding its population.¹⁴ Wasteland provides the potential to reverse the decline in the availability of arable land.

Despite this tremendous potential, the Chinese government has not addressed wasteland development in its policy-making agenda. Due in part to the absence of uniform central government guidelines, various regions throughout the PRC have conducted experiments with wasteland use rights, including auctions. Unlike the egalitarian distribution of arable land, the auctioning system involves villages¹⁵ selling use rights to collective-owned wasteland through a competitive bidding process. The use rights to auc-

northeastern and northwestern parts of the PRC, in the Yellow and Huai River deltas, and in the middle and lower reaches of the Yangzi River. Officials also estimate that the PRC has another 133 million hectares of barren hills, beaches, slopes, and gullies that may be developed to grow fruit trees, medicinal herbs, and other cash crops. See Interview by Wen Wei Po with Jiang Chunyun, Vice-Premier (Mar. 21, 1995), reprinted in *The Leadership: Wen Wei Po Interview with Vice-Premier Jiang Chunyun on Agriculture*, BBC SUMMARY WORLD BROADCASTS, Apr. 4, 1995, available in LEXIS, News Library, Bbcwb File.

11. See Zhang & Makeham, *supra* note 1, at 139.

12. See *id.*

13. See Interview by Wen Wei Po with Jiang Chunyun, *supra* note 10, reprinted in *The Leadership: Wen Wei Po Interview with Vice-Premier Jiang Chunyun on Agriculture*, BBC SUMMARY WORLD BROADCASTS, Apr. 4, 1995, available in LEXIS, News Library, Bbcwb File.

14. See *id.*

15. Under the collective system prior to 1980, communes were further divided into brigades and production teams. See PROSTERMAN ET AL., *supra* note 5, at 6. In most Chinese localities, some collective administration still exists at both levels. See *id.* Although the brigade and the production team have been renamed the administrative village and natural village respectively, most farmers still use the terms "brigade" and "production team." See *id.* The production team or natural village administration has been eliminated in some regions, including the Luliang prefecture of Shanxi Province, where we conducted fieldwork on wasteland distribution. This Article uses the terms "village" and "brigade" interchangeably.

tioned wasteland are typically much longer and more secure than use rights to arable land.

*B. Luliang Prefecture*¹⁶

Luliang began sporadically auctioning wasteland in the early 1980s, formalized wasteland auctions in 1992, and was the first prefecture in the PRC to adopt a prefecture-wide program of wasteland auctions. Situated in Shanxi Province along the Yellow River, about 500 kilometers southwest of Beijing, Luliang is one of the PRC's poorest areas, with an average annual income of 735 yuan (U.S.\$90). Arable land accounts for fifty-four percent of Luliang's total land area with wasteland accounting for thirty-seven percent of its total land area.

1. Luliang Documents and Briefing

In June 1995, with assistance from the Ministry of Agriculture's Research Center of Rural Economy, we conducted field research on wasteland auctions in Luliang.¹⁷ Before we interviewed farmers in the field, Luliang officials briefed us on wasteland auctions and also provided us with a compilation of published policy documents on wasteland auction issued by the Prefecture Party Committee and various county governments. A summary of the official briefing and the published policy documents follows.

2. Wasteland Auctions in Luliang

a. Types of Wasteland and Use Rights

Official Luliang documents divide auctionable wasteland into four categories: waste slope, waste mountains, waste gullies, and

16. A prefecture is the largest political subdivision below the province level.

17. Since 1987, we have conducted seven rounds of fieldwork in the PRC's rural land system, including fieldwork in ten provinces: Sichuan, Fujian, Zhejiang, Jiangsu, Anhui, Hainan, Hebei, Guizhou, and Shanxi; and two provincial-level municipalities: Beijing Municipality and Tianjin Municipality. In addition to research on wasteland auctions, this fieldwork has included land system experiments in Meitan and Pingdu Counties and in Guizhou and Shangdon Provinces.

waste riverbeds—collectively called the “four wastes.”¹⁸ All land classified in the “four wastes” is reclaimable.¹⁹ Wasteland is divided into parcels of geographic units called “liu yu,” which encompass the entire land area between natural borders formed by streams or riverbeds within the brigade borders.²⁰ Surface use rights and attachments, including use rights to sporadic plots of arable land within a liu yu, are typically auctioned as one unit.²¹ The State, however, retains mining rights to the land.²²

b. Disposing of Wasteland: Auctions and Sales

Villages sell use rights to wasteland either through closed auctions, open auctions, or negotiated sales. Only farmers from the village that owns the auctioned land may bid in closed auctions.²³ In open auctions, people living outside the village may also offer bids.²⁴ Villages use negotiated sales only when the wasteland for sale is unattractive or when a farmer who is willing to pay for longer use rights has already contracted the wasteland.²⁵

Luliang villages generally use closed auctions when villagers show interest in bidding on the land.²⁶ If villagers do not offer bids, village leaders hold open auctions and invite outsiders.²⁷ Some villages conduct open auctions when collective officials believe outsiders are willing to bid significantly higher than the villagers.²⁸ In open auctions, bidders may be individuals, institutions, farmers, or city dwellers.²⁹ Government employees may not, however, par-

18. See ZHONG GONG LULIANG DI WEI WEN JIAN #14 [CHINESE COMMUNIST PARTY OF LULIANG DOCUMENT #14] (1993) [hereinafter DOCUMENT #14], in HUANG TU DI DE XIN XIWANG [NEW HOPE OF THE YELLOW EARTH] 5, 5 (1994).

19. See *id.*

20. See ZHONG GONG LULIANG DI WEI WEN JIAN #15 [CHINESE COMMUNIST PARTY OF LULIANG DOCUMENT #15] (1992) [hereinafter DOCUMENT #15], in NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 1, 2.

21. See *id.*

22. See *id.*

23. See DOCUMENT #14, *supra* note 18, at 6-7.

24. See *id.*

25. See *id.*

26. See DOCUMENT #15, *supra* note 20, at 2.

27. See *id.*

28. Although Luliang officials acknowledged the existence of such practices, the literature that they provided to us failed to mention any such practices.

29. See DOCUMENT #14, *supra* note 18, at 7.

ticipate in any wasteland auctions.³⁰

A village starts the auction process by organizing an auction leading group, which is comprised of village cadre and representatives.³¹ This auction leading group decides which wasteland parcels will be auctioned and sets a starting bidding price. The group's decisions, however, are subject to the villagers' approval.³² The auction leading group also provides notice of the auction and information on the wasteland parcels.³³ It places this notice and information on the village bulletin board and elsewhere throughout the village approximately one month before the auction date.³⁴ On the auction date, township³⁵ cadre assist with the auction, which takes place in the village itself.³⁶

Depending on the land's desirability, villages usually auction or sell use rights to wasteland for a term ranging between 50 and 100 years.³⁷ The Luliang Prefecture Committee of the CCP issued Document Number 15 of 1992, which provides that a current contractor has the right to extend the contract by making an additional payment to the collective landowner.³⁸ The document fails, however, to provide specific details about the amount of payment or the length of the contract extension. Moreover, inconsistencies between wasteland use contracts and wasteland certificates create more uncertainty about the contractor's right to renew.³⁹

Following auctions or sales, the contractor signs a land use contract with the production brigade, which is the collective landowner.⁴⁰ After signing the contract, the parties must notarize the

30. "Government employees are allowed to purchase wasteland, but only if they sever employment ties with government institutions." *Id.*

31. See DOCUMENT #15, *supra* note 20, at 2.

32. See *id.*

33. See *id.*

34. See *id.*

35. After decollectivization in the PRC, the government abolished communes and replaced them with townships as the basic unit of government administration in the countryside.

36. See DOCUMENT #15, *supra* note 20, at 2.

37. "The term period of auctioned wasteland shall be generally within 50 to 100 years." *Id.* In practice, however, use rights with shorter terms such as 30 years are also sold and auctioned.

38. See *id.*

39. See *infra* note 82 and accompanying text.

40. See DOCUMENT #14, *supra* note 18, at 7.

contract at the township rural economic management station.⁴¹ In addition to the land use contract, the county's land management bureau issues the contractor a land use certificate indicating the user's name, the land's location, size, and the use right term.⁴² The certificate also bears the seal of the county government and the county land management bureau.⁴³

Wasteland use contracts and land certificates are generally uniform throughout the county. A typical contract contains the following provisions: (1) specific term period, with the starting and expiration dates; (2) the parties' rights and obligations; (3) terms of reward and penalty; (4) descriptive location of the land and its attachments; (5) criteria of required improvement; and (6) notarization by the township rural economic management station.⁴⁴ In addition, the parties must sign four copies of the contract.⁴⁵ These copies are distributed to the county's land management bureau, the township administration, the brigade, and the individual contractor.⁴⁶

c. Wasteland Rights, Benefits, and Restrictions

Wasteland use rights may be inherited as long as the transfer does not include compensation. Although wasteland contractors have the general right to transfer their use rights to other private parties for compensation,⁴⁷ the prefecture imposes two restrictions on such transfers. First, contractors may not transfer wasteland for a profit within two years of securing the bid.⁴⁸ Second, contractors may not profit from a waste land transfer until they improve and

41. See DOCUMENT #15, *supra* note 20, at 3.

42. Luliang's government attaches great importance to the uniformity and necessity of the written contract and the land certificate. According to article 4 of Document Number 14 of 1993, "no excuse shall be given for refusing or delaying to sign contracts. Oral contracts and contracts without notarization shall not be acceptable. . . . 'Four Wastes' contract must be printed in a format that is uniform throughout the county. . . ." DOCUMENT #14, *supra* note 18, at 7-8.

43. See *id.*

44. See *id.*

45. See DOCUMENT #15, *supra* note 20, at 3.

46. See *id.*

47. See *id.*

48. See ZHONG GONG LULIANG DI WEI WEN JIAN #22 [CHINESE COMMUNIST PARTY OF LULIANG DOCUMENT #22] (1994) [hereinafter DOCUMENT #22], in NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 14, 16.

develop at least thirty percent of the land.⁴⁹ In addition to these restrictions, wasteland contractors must file and record all transfers with the village.⁵⁰

The prefecture government has issued policy guidelines regarding land use that restrict the land to agricultural or agriculturally related purposes, such as fruit processing.⁵¹ Further, if the contractor has not improved or developed at least thirty percent of the land within three years of obtaining the use rights, the brigade may take back the land without compensation.⁵² Wasteland contractors may build structures on the land, but these structures must be for housing, developing animal husbandry, or processing sideline agricultural products such as fruits and herb medicines.⁵³ Although contractors may plant trees or grass on the wasteland, they may not cultivate annual crops on a slope greater than twenty-five degrees.⁵⁴

Both the prefecture and the various counties offer tax benefits and subsidies to wasteland contractors. Forest and fruit tree products grown on wasteland are exempt from the agricultural specialty tax for a period ranging from ten to twenty years.⁵⁵ Wasteland that is transformed into cultivated land is typically exempt from obligatory state purchase, state agricultural tax, and collective taxes and fees for twenty years.⁵⁶ Wasteland contractors may deduct each

49. *See id.*

50. *See* DOCUMENT #15, *supra* note 20, at 3.

51. The prefecture's regulations on land use restrictions contain some ambiguities. Document Number 15 of 1992, which the Luliang Prefecture Committee of the CCP issued, provides that non-agricultural businesses may use wasteland as long as they "are approved by the co-op economic organization of administrative village," implying the possibility of non-agricultural usage of wasteland. *Id.* On the other hand, Document Number 22 of 1994, which the Luliang Prefecture Committee of the CCP also issued, bans users from developing wasteland for non-agricultural purposes by stating that "four wastes can only be used for agricultural development. Non-agricultural operations on purchased 'four wastes' such as mining for coal, building rocks and other mineral resources are forbidden." DOCUMENT #22, *supra* note 48, at 16. We found in at least one case that auctioned wasteland was being used as a sand quarry. The bidding price for such wasteland was much higher than for wasteland used for agricultural purposes.

52. In Lanxian County of Luliang Prefecture, the required rate of development is 25%. *See* NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 20.

53. *See* DOCUMENT #15, *supra* note 20, at 3.

54. *See id.*

55. *See id.* at 4.

56. Tax benefits vary from county to county. Counties in Luliang exempt wasteland

day that they spend developing their wasteland from their obligatory community labor contribution⁵⁷ on a one-to-one ratio. Agricultural sidelines and food processing businesses developed on wasteland are exempt from income taxes for fifteen years.⁵⁸ Some counties also pay direct subsidies to contractors for developing wasteland.⁵⁹

Contractors pay for wasteland use rights in either a lump sum payment or installments.⁶⁰ The villagers' conference decides which payment method to use based on the resources of potential bidders and the desirability of the land. For poor people, a village may choose to require payment only after the contractor realizes a return on wasteland development.⁶¹ Villages often use the proceeds from the sale of wasteland use rights to reward contractors who have effectively developed wasteland.

d. Wasteland Disputes

Disputes are divided into two categories and pass through two administrative systems. Non-land economic disputes, such as those involving the cutting of existing trees on wasteland, are first subject to arbitration at the township agricultural economic management station. These disputes subsequently proceed to the county agricultural economic management bureau for final arbitration.

Conversely, land disputes are first handled by the township land manager who is a government employee.⁶² If the parties cannot resolve the land dispute at that stage, they may take the case to

from taxes and fees for 8 to 20 years. See NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 251.

57. In addition to making annual financial contributions to the collective, Chinese farmers are required to work for a specified number of days on community projects, such as irrigation maintenance, road repair, or school expansion. Each laborer must work from 5 to 30 days per year.

58. See DOCUMENT #15, *supra* note 20, at 4.

59. For example, bidders in Shilou County are paid 30 yuan, 5 yuan, and 3 yuan for each developed mu of farmland, forest land, and grassland, respectively. See NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 78.

60. See DOCUMENT #14, *supra* note 18, at 7.

61. We found sharecropping arrangements in one village where wasteland was offered to all villagers at set terms, but we did not find similar arrangements with auctioned wasteland. See *id.*

62. See DOCUMENT #22, *supra* note 48, at 16.

the county's land management bureau for arbitration.⁶³ If either party is dissatisfied with the outcome of the bureau's arbitration, they may file a lawsuit in the People's Court at the county level.⁶⁴ That decision may be appealed to the prefecture's intermediate court for a final ruling.⁶⁵

II. FIELDWORK FINDINGS

A. Methodology

Our fieldwork in Shanxi Province was part of our fifth round of fieldwork in the PRC that focused on the rural land system. We interviewed a total of thirty-four farmers, including twenty-one wasteland contractors and four farmers who unsuccessfully bid for wasteland. We conducted all of the wasteland farmer interviews in four Luliang counties.

We used Rapid Rural Appraisal methods in our fieldwork.⁶⁶ These methods allow interviewees to actively participate in the semi-structured interview process. Our questions were based on a checklist of issues. We occasionally failed to address all the issues in one interview and sometimes departed from the basic questions to pursue interesting, unexpected, or new information.

Although the prefecture government allows non-farmers to bid for wasteland, only one of the twenty-one wasteland contractors we interviewed had not previously been a farmer. The largest landholder contracted for 500 mu (33.3 hectares),⁶⁷ while the smallest landholder contracted for only 5 mu (0.3 hectares). The average wasteland holding was about 91 mu (6.1 hectares) per household, though we learned that some large landholders had successfully bid for thousands of hectares of wasteland.⁶⁸

63. *See id.*

64. *See id.*

65. *See id.*

66. For a discussion of Rural Rapid Appraisal, see Robert Chambers, *Shortcut Methods of Gathering Social Information for Rural Development Projects*, in PUTTING PEOPLE FIRST: SOCIOLOGICAL VARIABLES IN RURAL DEVELOPMENT 399, 399-400 (Michael M. Cernea ed., 1991).

67. Fifteen mu equals one hectare.

68. A farm family of seven brothers in Lishi County purchased 50-year use rights to 10,000 mu (666.7 hectares) of wasteland in their village. *See NEW HOPE OF THE YELLOW EARTH, supra* note 18, at 26.

B. Wasteland Distribution Process

Although Luliang's experiment in distributing wasteland was called a wasteland auction, we found that Luliang distributed much of its wasteland through non-auction methods.⁶⁹ Among the twenty-one contractors we interviewed, only ten obtained their wasteland through competitive auctions, all of which were closed auctions limited to village residents. The remaining eleven interviewees obtained wasteland through a non-competitive distribution process on terms set by the brigade.

The competitive auction process described by the contractors we interviewed was very similar to that described by prefecture officials. All interviewees said they learned about the auction approximately one month prior to the auction date through wired broadcasting or the village bulletin board. The information included a description of parcels to be auctioned and their starting bids. Brigade leaders, with assistance from the township government, organized and administered the auctions. Although elected villager representatives were part of auction leading groups, six farmers in Zhongyang County reported that most representatives in their village were former brigade leaders.

The ratio of successful bidders to the total number of auction participants, as well as the difference between starting and purchase prices, indicate that these auctions were competitive. Nearly all successful bidders we interviewed paid a purchase price at least three times higher than the starting bid. We found the greatest difference between starting and purchase prices in the most recent auction conducted during the spring of 1995. This suggests growing competitiveness due to greater interest in, and better awareness of, wasteland auctions.

2. Non-Competitive Distribution of Wasteland in Luliang

In addition to competitive auctions, we found three basic methods of non-competitive wasteland distribution in Luliang. In the first method, which we witnessed in two villages, the brigade distributed wasteland to all households in the early 1980s - the

69. Prefecture officials told us that, of one million mu of wasteland distributed thus far, 35% was through closed auctions, 15% through open auctions, and 50% through negotiated sales without auctions.

same time arable land was initially distributed. The households did not pay for rights to wasteland and did not feel confident in their rights to this wasteland. As a result, most did nothing to develop the wasteland.

In the second method, the brigade offered specific parcels of wasteland to all village residents at a price predetermined by brigade cadres and villager representatives. If more than one household was interested in the same parcel, the brigade divided the parcel among all households willing to buy it.

The third method of non-competitive wasteland distribution involved a situation where the brigade had previously contracted wasteland to a farmer, perhaps in the early 1980s, and was now making a more determined effort to provide long-term security on the wasteland. In this specific situation, the village auctioned previously unavailable fifty-year rights to wasteland. For the previously contracted wasteland, however, the brigade offered a fifty-year extension at a price considerably lower than the starting bid price for other wasteland parcels.

C. Price and Payment Terms

Nearly all farmers who acquired wasteland rights in competitive auctions purchased the use rights at a price much higher than the starting bid. Most paid a price three to six times higher than the starting price. The only exceptions were two brigade leaders; one bid successfully by offering the starting price and the other bid successfully by offering slightly above the starting price.⁷⁰ The price for wasteland ranged from one to thirty-five yuan per mu, depending on land quality, the length of use rights, and the acquisition date of the rights. In at least one village, the wasteland price increased more than tenfold over the past two years.

Most farmers, except one who paid in two installments, paid cash in a lump sum for wasteland use rights, even though prefecture government policies permit multiple payment methods.⁷¹ The

70. We found these two cases in different counties. One possible explanation for why the two brigade leaders successfully bid for wasteland at essentially the starting price is that rank-and-file farmers did not bid against the brigade leaders.

71. "Payment [for use rights to wasteland] can be made in lump sum or installments, depending on the decision made by villagers through discussions." DOCUMENT #15, *supra* note 20, at 3.

prefecture's requirement of a lump sum payment discouraged many poor farmers from bidding even though they were otherwise capable of developing it. Almost all farmers we interviewed who did not participate in auctions, or participated unsuccessfully, cited lack of financial resources as one of the major reasons for their being unable to make successful bids on wasteland.

Some farmers paid for use rights through sharecropping arrangements with the brigade. We interviewed a group of six farmers in the prefecture's Jiaocheng County who entered into sharecropping arrangements with the brigade.⁷² Share cropping terms, which were set by the brigade, varied depending on land quality and the date of acquisition of the rights. Farmers could retain sixty to eighty percent of the income from the contracted wasteland paying the remainder to the brigade.

D. Length of Use Rights

Although prefecture officials told us that the length of use rights to auctioned wasteland varied from 50 to 100 years, the examples we found in the field ranged from 30 to 60 years. The most common term was 50 years. In the 1980's, before the auction process was introduced, use rights for the wasteland distributed to farmers were much shorter, ranging only from 15 to 30 years.

The farmers we interviewed were aware of the specific length of their wasteland use rights. When asked about the length of their use rights, most farmers confirmed the term stated in their land contracts. These responses contrast sharply with our previous field experience with arable land farmers in other regions of the PRC. In previous fieldwork, when asked the length of their use rights, a large majority of farmers answered, "I do not know." Most of these farmers did not have written land use contracts. The difference may be due to the fact that all wasteland contractors interviewed in the present study possessed both written land use contracts and certificates that were clear and definite about the term period. Interestingly, when asked about the length of use rights to their arable land, more than half of the wasteland con-

72. Interestingly, however, these farmers received their wasteland through land distribution rather than land auctions before the prefecture-wide auction program started in 1992. The term periods for their contracted wasteland, which ranged from 15 to 30 years, were much shorter than those for auctioned wasteland.

tractors interviewed in Luliang Prefecture responded, "I do not know."⁷³

E. Land Use Contracts and Certificates

As in previous rounds of fieldwork, we asked interviewees about their land contracts. In our previous fieldwork in other regions of the PRC, we found that most farmers did not have written land use contracts. In Luliang, however, we found that almost every wasteland contractor possessed both a written land use contract with the brigade and a land certificate issued by the county government. Both documents are more sophisticated than most land documents we have witnessed during previous fieldwork. They state a specific term period, provide a detailed description of rights and obligations of both parties, list rewards for honoring contract terms, and enumerate penalties for violations.

The combination of wasteland use contracts and land certificates produced by six farmers in Zhongyang County in Luliang is an interesting example. We found that both the land use contract and land certificate were designed and printed in a uniform format throughout the county. In addition, the contracts commencing in 1994 were slightly improved from previous contracts, indicating a trend of periodic refinement of the uniform contracts.

1. Land Contract

The wasteland use contract, entitled "Contract of Use Rights to Auctioned Four Wastes," is a nine-page document, consisting of three basic portions: (1) term period, rights and obligations of both parties, and rewards and penalties; (2) land description and wasteland development requirements; and (3) notarization. The first portion consists of ten sections:

(1) Signature date of contract, numerical order of the contract and notarization, name of contract issuer or brigade, name of contractor, and purpose of wasteland auction.

(2) Parcel(s), acreage and location (the land is further described in the second portion of the contract).

73. Many farmers in Luliang do not have written land contracts or land certificates for their arable land. In addition, even on the few occasions where farmers actually had an arable land contract, the term period was left blank—a common phenomenon in other parts of the PRC.

(3) Term period: The term period is from year (number) to year (number). Upon expiration, the contractor can continue to use the land after "paying compensation."

(4) Rights and obligations of Party A (contract issuer)

A. Party A has the right to make technical criteria for "four waste" development and to enforce those rules.

B. In addition to incentive measures offered by upper levels of government, Party A may create its own incentives to motivate Party B to make land development.

C. Party A shall make village rules that forbid infringement of Party B's interests in his contracted "four wastes," such as herding animals, cutting trees and picking up firewood within Party B's contracted "four wastes."

D. Party A must work together with the related departments of government to make a general wasteland development plan and monitor implementation of the plan.

(5) Rights and obligations of Party B (contractor)

A. Party B must complete land registration and obtain "four wastes" land certificate after making full payment for use rights to the land.

B. The "four wastes" rights contracted by Party B are allowed to pass by inheritance, transfer or sale. If Party B needs to transfer his "four wastes" rights to others due to some unusual reasons (unspecified), he must be compensated at a reasonable rate for his investment and immovable assets on the land.

C. Party B has the right to build residential houses, small agricultural farms, small forest farms, small animal husbandry farms and businesses for processing agricultural or sideline products on the contracted "four wastes." Party B shall not engage in any non-agricultural businesses on his "four wastes" unless Party A approves, both parties sign a new contract, Party B's payment is adjusted, and registration is made.

D. Returns on development of the "four wastes" generally belong to Party B. For the wasteland of good quality and situated at (blank), both parties shall share the returns at the ratio of (blank).

E. The "four wastes" shall be exempt from agricultural spe-

cialty tax for ten years. They shall be exempt from quota and contribution to the collective and agricultural tax for ten years⁷⁴ after being developed into basic farmland. The period of the exemption shall be calculated from the date the returns on development are realized.⁷⁵

F. On the contracted wasteland, Party B is not allowed to: (1) destroy forest and grass; (2) reclaim land for planting annual crops;⁷⁶ (3) damage already existing transportation and irrigation facilities; (4) cut trees at will; or (5) build large or medium size dams without approval.

G. Party B must meet the "Requirements for the Development of Contracted 'Four Wastes'" detailed in the second part of the contract, according to the general development plans and technical procedures for "four wastes" development formulated by Party A.

(6) Rewards and Penalties:

A. Party B shall make all payments within (numbered) days after signing the contract. Party A has the right to revoke the contract and ask for compensation if all or part of payment is past due.

B. Party A has the right to claim the land back for re-auction if Party B fails to honor the contract, fails to meet the requirements for "four waste" development, or violates the requirement for "five don'ts" (detailed in section F of article 5).

C. Party A shall render spiritual and material rewards to Party B if Party B makes remarkable improvements on wasteland.

D. Party B has the right to revoke the contract and ask for compensation if Party A fails to deliver to Party B use rights to "four wastes" according to the contract. If Party A intercepts all or part of the funding, materials and loans allocated by upper levels of government for "four wastes" development, it shall be penalized by paying Party B (blank) percent of the amount it has inter-

74. The 1993 version of the contract provided a 20-year exemption. *See* NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 251.

75. This sentence was not in the 1993 version of the contract. *See id.*

76. This rule seems inconsistent with article E of the contract, which appears to allow contractors to develop wasteland into "basic farmland." Of the wasteland contractors whom we interviewed, many planted annual crops among fruit trees, but a few planted annual crops only on certain portions of their wasteland that were level or had been terraced.

cepted in addition to all the amount it has intercepted.

(7) Irresistible Force: If Party B fails to honor the contract terms concerning improvement requirements in a timely fashion due to irresistible natural disasters, some lenience is allowed upon verification.

(8) Arbitration Agreement:⁷⁷ When a dispute occurs during the implementation of the contract and cannot be solved by the parties, either party may appeal to the relevant township rural economic management station for mediation. If any party is not satisfied with mediation results, the case may be filed at the county rural economic management bureau for arbitration.

(9) Other: This contract goes into effect from the date it is signed by both parties. It is protected by the state laws. No party is allowed to change or terminate the contract within the term period of the contract. No institution or individual is allowed to sabotage the interests of the contractor. Additional terms may be made to the contract through negotiation between the two parties, if needed. The additions and the contract shall have the same effect.

(10) Additions: [Blank]

This contract has four copies, with each kept by Party A, Party B, the notary of the contract and the issuer of the land certificate.

Party A: (Name of Brigade) (Seal of Brigade)

Representative:(Signature) (Personal Seal)

Party B:Representative:(Signature)(Personal Seal)

Date:

The second portion of the wasteland use contract consists of two parts. The first part describes the wasteland, specifically stating its name, acreage and location. The first part also shows the amount, date, and method of payment. The second part details the criteria of development measured by percentage of land improvement and amount of yields achieved each year from Year One to Year Seven. The contractor must develop eighty-five percent of

77. Article 8 was added in the 1994 version of the contract. See NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 251.

the wasteland he contracts before Year Seven.

The third portion of the contract is the contract notarization. We saw a few notarized land contracts in other regions of the PRC. The notarization portion is as follows:

Zhongyang County Rural Economic Management Bureau

Notarization

(Named) Township Rural Economic Management Station Notarization Serial Number (blank)

This is to certify that the Contract of Use Rights to Auctioned "Four Wastes" signed by the Village Committee of (named village), the seller, and (name) of (named village), the contractor, is complete in contract terms, reasonable in land development criteria, clear and understandable in language description, and legal in content. This is also to certify that the identities, signatures and seals of the representatives of both parties are true.

Notary:(named) Township Rural Economic Station (Seal)

Processor:(name) (personal seal)

Date:

2. Land Certificate

The "Four Wastes" Land Use Certificate is another important document that helps strengthen farmers' security on wasteland. It is a six-page document, issued and sealed by the county people's government and the county land management bureau. The certificate states the user's name, land category, a brief description of land location, size of the land, term period of use rights, and use purpose of the land. It also contains the following regulations:

1. The land use rights registered in this certificate are protected by the state laws from violations by any institution or individual.
2. The use rights registered in this certificate are effective within the stated term period. The use rights may pass by inheritance, transfer, lease, and gift to other people, but any of these transactions must go through transfer procedures.
3. Land users must abide by the state laws on land, water conservation, forests and grassland, and manage the land according to

contract terms.

4. The land use rights shall be taken from the user if the user violates laws and regulations, or fails to honor contract terms.

5. The land use rights may be subject to change upon the expiration of the certificate.⁷⁸

6. Management of the land shall be monitored by departments in charge of water resource management and forests.

When compared to the documentation practices for arable land we have seen in other regions of the PRC, we found that the documentation of use rights to wasteland in Luliang Prefecture has at least four unique features. First, both the land contract and land certificate are uniform in format and language throughout the county. Second, the county's land management bureau issues the land certificate,⁷⁹ which bears the seal of county people's government. Third, the term period of use rights is clearly printed on both documents and finally, notarization is an indispensable part of the land contract.

F. Other Contract Rights and Obligations

Both the written land contract and the prefecture regulations require wasteland contractors to develop the wasteland in a certain manner, to a certain degree, and within a certain period of time. If the contractor fails to meet these requirements, the brigade can take back the land without compensation.

All wasteland contractors reported that unless the sloped land was terraced,⁸⁰ they were required to grow trees or grass on waste-

78. This article appears inconsistent with article 3 of the Contract of Use Rights to Auctioned "Four Wastes," which states: "Upon expiration, the contractor can continue to use the land after paying compensation." It is also inconsistent with the prefecture regulations, which provide: "The buyer [contractor] can continue to use the land with compensation upon the expiration [of the contract]." DOCUMENT #15, *supra* note 20, at 3. Neither the contract nor the document, however, explicitly provide for the level of compensation or the length of the extended use.

79. The Law of the People's Republic of China on Land Management does not assign this task to county level land management departments. It simply provides that "[t]he right to legal use of State owned land by units owned by the whole people, collectively owned units or individuals shall be subject to . . . the issu[ance] of a certificate by the local people's government at county or higher level." Law of the People's Republic of China on Land Management art. 9, *translated in* 2 CHINA L. FOREIGN BUS. (CCH) ¶ 14,715(9) (June 25, 1986) [hereinafter Land Management Law].

80. Many farmers intercropped annual crops with trees on sloped land.

land that was sloped.⁸¹ Most wasteland contractors also reported that the brigade required more development than called for under the explicit terms of either the contract or prefecture regulations. For example, six farmers in Zhongyang County told us that they were required to develop eighty-five percent of the wasteland within three years. Their written contracts, however, required only forty-five percent development by the third year; further, prefecture guidelines require only thirty percent development by the third year.⁸²

The farmers knew their wasteland rights may be inherited and that their use rights were transferable in principle, but only some realized that they could transfer their rights only after developing a required percentage of the land. The absence of specific terms concerning transfer requirements in the land contract may be the cause of farmers' ignorance of their transfer rights.

G. Extent of Wasteland Development

Most farmers we interviewed made or were making substantial investments of cash and labor on their wasteland. This was striking for one of the poorest areas in the PRC where the annual income per capita is only 735 yuan.

All twenty-one wasteland contractors we interviewed reported that they spent most or all of their time on wasteland development and management. When asked how much time they spent on their wasteland, a typical answer was "every day." Sixteen of the twenty-one contractors made cash investments in wasteland development. Among them, six contractors spent more than 100 yuan per mu. The interviewee making the largest cash investment had invested 500 yuan per mu on 35 mu of his wasteland. He also planned to spend another 30,000 yuan on the remaining 100 mu with income from selling fruits currently grown on

81. Sloped land is usually defined as land with a slope of 25 degrees or more. See NEW HOPE OF THE YELLOW EARTH, *supra* note 18, at 20.

82. The written contract, which is uniform throughout the county, requires that the contractor complete 85% development within seven years of the date that the land is contracted. Although the prefecture government does not have explicit regulations requiring the achievement of a specific development rate by a given date, article 10 of Document Number 22 of 1994, which the Luliang Prefecture Committee of CCP issued, states, "The collective may take the contracted wasteland back if it is developed less than 30 percent, or not development at all, within three years." See DOCUMENT #22, *supra* note 48, at 16.

his improved land. Because each of these contractors had up to hundreds of mu of wasteland, cash investment per household reached tens of thousands of yuan, a scale we have never witnessed in other parts of the PRC. All farmers expected returns of at least ten times greater than their investments.

Nearly all of the wasteland contractors we interviewed were primarily planting trees for fruit, nuts, or timber.⁸³ Contractors used the cash investments in wasteland development for leasing land reclamation equipment, hiring outside labor, and buying young trees. Most farmers solved their financial needs by depleting their savings and borrowing money from relatives. Few obtained bank loans, but most reported that they lacked access to bank credit.

We also asked seven of the twenty-one wasteland farmers about long-term investments on their arable land. Six of the farmers made no such investments on their arable land. When asked why he spent 2,000 yuan on 15 mu of his wasteland one farmer said, "because arable land is readjusted all the time."⁸⁴ All six of these farmers reported that they either did not have written arable land contracts or that the brigade periodically readjusted their arable land.

83. Of the 21 wasteland contractors whom we interviewed, only one was not planting timber, nut, or fruit trees as a primary crop.

84. In response to demographic change an egalitarian distribution of arable land continues to be emphasized in most Chinese villages through a process of land readjustments. Such readjustments are designed to maintain the egalitarian distribution of land within the village as the village population changes. Two general types of readjustments occur: "small" readjustments and "big" readjustments.

"Small" readjustments consist of adding to or taking away from a household's existing landholding when the household size changes. See PROSTERMAN ET AL., *supra* note 5, at 30. Small readjustments may take place on a continuing basis as the household size changes, or every few years to reflect changes in the intervening years. See *id.* In either case, households that remain the same size will continue to farm the same landholding.

"Big" readjustments involve an overall change in all households' landholdings. See *id.* All the farmland in the village is returned to the collective management and reallocated among village households. As a result, each household receives an entirely different parcel of land. Big readjustments generally occur every three to six years. In big readjustments, even households that have not added or lost members will receive an entirely new landholding. Some villages undergo both periodic big readjustments and continuing small readjustments.

III. RECOMMENDATIONS

The PRC has a small and shrinking base of cultivated land. Yet, the country has at least thirty-three million hectares of undeveloped, but cultivable wasteland.⁸⁵ Formulating a successful model of wasteland development in the PRC could have a tremendous impact on its agricultural economy.

Luliang's experience with auctioning and selling use rights to wasteland is a starting point for wasteland distribution in the PRC. Building on the many positive initiatives by Luliang in wasteland distribution, we offer twelve recommendations for promoting an equitable and economically efficient method of promoting wasteland development in the PRC. Our recommendations fall under four main areas: (1) access to wasteland for all farmers, regardless of income; (2) secure use rights to wasteland; (3) facilitating transfers of wasteland rights; and (4) access to credit for wasteland development.

A. Increasing Access to Wasteland

Villages introduced competitive auctions for wasteland use rights to depart from patterns of egalitarian land distribution. Through our fieldwork and exchanges with Chinese officials, we found that the inequality in the distribution of wasteland and the resulting income may pose a social problem when wasteland development begins to generate more revenue. Although we do not recommend sacrificing the market mechanism for egalitarian fallacy, improvements to current methods of wasteland distribution, payment arrangements, and income distribution may minimize the inequality and maximize the number of wasteland contractors. In addition to serving agricultural and environmental objectives, wasteland distribution and development should address poverty alleviation in the PRC's poorer regions.

Recommendation No. 1: Increased use of Closed Auctions Rather than Open Auctions in Poor Villages

All of the poor villages we visited in Luliang conducted closed auctions that limited participation to village residents. Prefecture officials reported that a village would open the auction to outsiders

85. See *supra* note 10 and accompanying text.

only if the closed auction failed to attract the interest of village residents. This is a sensible policy. Opening auctions in poor villages to outsiders would likely attract wealthy non-residents with whom the village residents would not be able to compete. This would lead to a concentration of landholding among non-residents and a potentially unstable social situation, especially in poor areas where wasteland is prevalent. To avoid these harmful situations, the untapped wealth and potential in the wasteland should be offered first to area residents who generally have limited opportunities for financial betterment.

Recommendation No. 2: Land Ceilings on the Amount of Wasteland per Family

Currently, no limit exists on the amount of wasteland one person or household can hold. We learned that some households have contracted as much as 10,000 mu of wasteland through auctions.⁸⁶ The absence of limits on the amount of land per household may intensify the inequality between farmers with financial resources and those without. This may lead to the reappearance of big landlords and the polarization of wealth. We recommend that each province or prefecture set specific land ceilings for use rights to "four wastes."⁸⁷

Recommendation No. 3: Emphasizing Public Education About the Auction Process

Most villages we visited in Luliang succeeded in informing and educating village residents about the wasteland auction process well in advance of the auction. To encourage widespread and informed participation, comprehensive information about all wasteland parcels to be auctioned, including the rights and obligations of wasteland contractors, and the bidding process should be made available in the village at least thirty days before the auction. For open auctions, such information should be published in the

86. The Land Management Law requires State Land Administration Bureau approval for the development of wasteland with an area of between 10,000 and 20,000 mu. See Land Management Law, *supra* note 79, art. 13, translated in 2 CHINA L. FOREIGN BUS. (CCH) ¶ 14,715(13) (June 25, 1986).

87. Administering land ceilings will require a basic land registration system. See *infra* Recommendation No. 11.

media available to local residents. The more farmers are educated about the auction process, the more likely they will participate.

Recommendation No. 4: Alternative Methods of Payment

Most villages that conduct wasteland auctions require successful bidders to pay for their use rights in one lump sum after the auction.⁸⁸ This requirement limits wasteland accessibility to farmers who have immediate access to significant amounts of cash. Several farmers we interviewed desired use rights to wasteland but lacked the financial resources necessary to obtain and develop the land. Villages conducting auctions should make wider use of installment payments and sharecropping terms to make wasteland purchase and development affordable to poorer farmers.

a. Installments

Even though Luliang rules permit contractors to pay for wasteland use rights in installments,⁸⁹ installment payments are rarely used in practice. Possible reasons include: (1) the prefecture government authorizes the brigade villagers' conference to choose a payment method,⁹⁰ which makes it possible for brigade cadre to manipulate the conference into adopting a lump sum payment method; and (2) farmers are not aware that installment payments are permissible.

Installment payments for wasteland would encourage many farmers who presently lack adequate financial resources to participate in the auction process. Because many farmers are unaware that installment programs are acceptable, villages should also increase awareness about this payment method.

b. Sharecropping

Two of the villages we visited established sharecropping terms with wasteland contractors. Although the terms varied, farmers typically paid the village twenty to forty percent of the gross income from the land. Although sharecropping arrangements are highly skewed against the sharecropper in many parts of the world,

88. See DOCUMENT #14, *supra* note 18, at 7.

89. See *id.*

90. See *id.*

we recommend the use of regulated sharecropping arrangements for wasteland contracting in the PRC. Sharecropping arrangements, like installment payments, make wasteland contracting more affordable to a greater number of farmers. Moreover, sharecropping agreements spread the risks (and benefits) of development between the farmer and the collective owner, generally the village, because payment depends upon results.

Villages may even try auctioning use rights to wasteland according to bids based on the sharecropping terms. For example, the village might use a sharecropping split of 15:85 (collective owner:farmer) as a starting bid. Farmers could bid for the wasteland parcel by increasing the ratio, and the farmer willing to give the collective owner the largest share of the gross income would be the winning bidder.

In sum, we recommend that lump sum payment methods be the exception rather than the rule. Policy and legal rules should promote the use of installment payments and sharecropping arrangements as methods to pay for wasteland rights. Both these methods will make wasteland more accessible to more farmers.

Recommendation No. 5: Progressive Taxation of Wasteland Income

Both policy designers and farmers expressed concern about the polarization of wealth and the further discrepancy in income between the rich and the poor. Some of this concern stems from the unknown potential of wasteland. Those expressing concern are worried that after contractors fully develop wasteland, the land will generate substantial income for contractors who acquired it at low prices. Some officials are even worried about the possibility that the developed wasteland may be taken back under the pressure from the low income people who do not have wasteland. We recommend that, in addition to land ceilings and different payment methods, moderately progressive taxes be used to facilitate redistribution of wasteland income.

B. Providing Secure Use Rights to Wasteland

In order to have the incentives necessary to make the costly, long-term investments to develop wasteland, farmers must possess secure and long-term use rights to wasteland. Luliang has made

substantial strides in providing such long-term and secure use rights. Their efforts, however, are not enough. We have several recommendations to refine the Luliang model.

Recommendation No. 6: Give Farmers Perpetual Use Rights

Luliang rules allow use rights ranging from 50 to 100 years for wasteland. Most wasteland contractors we interviewed had 50-year rights. Specific terms of 50 to 100 years are a significant improvement over the short and uncertain terms for arable land. We recommend, however, that wasteland contractors be given perpetual use rights. Over eighty percent of the farmers that we interviewed favored perpetual use rights.⁹¹

A 50 or 100-year term that is fully transferable and inheritable might *currently* provide sufficient security to induce farmers to make significant investments and induce banks to use the rights as collateral. This, however, will not be true forever. First, within approximately a decade, inheritances and other transfers will increase significantly. New land users will thus have a shorter lease than their predecessors. As the expiration date draws closer, farmers will have less incentive to make needed land improvements. Second, as the length of the remaining term diminishes, banks will be less willing to lend capital with the use rights as collateral.

Recommendation No. 7: Clearer and More Detailed Wasteland Contracts and Certificates

Luliang's system of documenting farmers' wasteland rights is the most sophisticated and most effective system for land rights in rural PRC.⁹² Our interviews in Luliang indicate the importance of the written land documents in motivating farmers to make land improvements.

No central government entity has designed or issued a standard wasteland contract form. We highly recommend that the

91. We did not consistently ask wasteland contractors in Luliang if they would prefer perpetual use rights to their wasteland. We did, however, ask 12 of the wasteland farmers in Luliang whether they would favor a policy of perpetual use rights to arable land; 10 of 12 responded favorably.

92. In our five rounds of fieldwork in the PRC, we found that most farmers do not have written land contracts.

Ministry of Agriculture's Department of Guidance to Rural Cooperative Economy design such a standard contract. Due to differing and unique conditions, it may be impossible to use a single inflexible contract in all counties across the PRC. All contracts throughout the country, however, should contain a description of the contracted wasteland, a detailed list of the rights and duties of both the collective owner and the wasteland contractor, the specific starting time and length of the use rights, payment terms or sharecropping arrangements, wasteland development requirements, consequences of not meeting the development requirements, rules on transferring use rights and land takings, penalties for contract violations, and land dispute resolution measures. A representative of the farm household contracting the wasteland and a representative of the landowner entity should sign the contract. In addition, the highest possible government entity should also sign and seal the contract.

Government issued land certificates should also accompany the land contracts. Such certificates would facilitate the creation of public land records.⁹³ Overall, clear and detailed land contracts and certificates will secure use rights to wasteland and minimize potential misunderstandings and disputes.

Recommendation No. 8: Clear Rules on Land Takings

Inadequacies of existing law and its lack of implementation methods have contributed to widespread, uncompensated takings of agricultural land by various government and collective entities. Although most of the illegal, uncompensated takings we witnessed involved arable land, there is evidence of at least one illegal and uncompensated taking of wasteland in Luliang.⁹⁴ Naturally, such takings make farmers insecure and unsure about their rights. Unless the government controls such takings, farmers will not have the land tenure security needed to promote wasteland develop-

93. See *infra* Recommendation No. 11.

94. A wasteland contractor in Jiaocheng County of Luliang told us that brigade officials uprooted trees on a portion of the land and subsequently sold the use rights to that portion of his land to a private business developer. This illiterate farmer, in a rare example of refusing to passively accept cadre misbehavior, filed a complaint with the CCP Secretary of the County. After spending considerable time and money, the farmer eventually regained the land. He did not, however, receive compensation for the uprooted trees.

ment. Thus, the Chinese government should improve and implement legal procedures in order to empower wasteland contractors and farmers with land rights. This would help balance the present overwhelming power of land "takers."

We also recommend that the PRC only allow compulsory takings for non-commercial public purposes such as roads or public schools. In cases where the shift from agricultural use has been lawfully approved, acquisitions for factories, brickyards, gasoline stations, or other enterprises, must proceed only after the individual farmer has negotiated the sale, agrees to the terms, and the owning entity approves the sale.

Rules limiting compulsory takings and requiring substantial compensation for the takings that do occur will serve two purposes. First, these rules will enhance farmers' security of tenure and consequently, motivate farmers to invest in agricultural improvements. Second, these rules will help protect the farmland and forest land developed from wasteland, thus strengthening the vital base of agricultural land upon which the PRC depends to feed its people.

Recommendation No. 9: Improved Mechanisms for Land Dispute Resolution.

The rights that government enactments or written contracts formally grant to farmers mean nothing if they cannot enforce these rights. Our fieldwork shows that farmers rarely perceive a possibility of redress when local officials violate their land rights. While several existing legal or mediation institutions are set up to handle individual land disputes,⁹⁵ we find that farmers do not use these existing institutions when local cadre violate their rights. Perhaps farmers fear that local cadre can control the dispute resolution process. We recommend that the State Council establish and widely publicize significant penalties for specific violations of wasteland contract rights by local cadre. Such penalties outlined in a State Council Directive would serve at least three purposes: (1) to deter local cadre from violating farm households' wasteland rights; (2) to provide tangible rules for dispute resolution institutions, such as mediation, arbitration, and adjudication

95. See DOCUMENT #22, *supra* note 48, at 16.

agencies; and (3) to inform farmers that the government will penalize local cadre for violating farmers' wasteland contract rights.

C. Facilitate Private Transfers of Wasteland Rights

The right to voluntarily transfer land is important for at least four reasons. First, transferability facilitates allocation of land into the hands of the most efficient user. British legal commentator William Blackstone stated: "[I]t was found that what became inconvenient or useless to one man, was highly convenient and useful to another Thus mutual convenience introduced commercial traffic, and the reciprocal transfer of property by sale" ⁹⁶ Second, a land user with the power to sell will adopt a longer planning horizon and will more likely make improvements to the land. For example, a farmer is more likely to terrace a waste slope that he contracts and turn it into a farmland if he knows he can capture some of the capitalized value of the terraced land's remaining net benefits after selling the land. Third, the right to transfer is a prerequisite for the power to mortgage. The power to create a mortgage, which is essentially a conditional promise to transfer, may enable a farmer with little capital to acquire land or obtain credit on favorable terms. Finally, the introduction of a land market will give land a value and create the conditions for an equitable and efficient land tax.

Luliang rules concerning the transfer of use rights are prudent and strike a reasonable balance between facilitating private transfers of wasteland rights and avoiding wasteland speculation. These rules allow farmers to transfer wasteland rights to others for a profit only after (1) holding the land for two years; and (2) improving and developing at least thirty percent of the land. We offer two recommendations to further facilitate private transfers of wasteland rights.

Recommendation No. 10: Land Transaction Regulations

The Land Management Law of the PRC provides that "[t]he right to use State-owned or collectively owned land may be assigned, pursuant to the law."⁹⁷ Further, the State Council shall

96. 2 WILLIAM BLACKSTONE, COMMENTARIES *9.

97. Land Management Law, *supra* note 79, art 2, translated in 2 CHINA L. FOREIGN

determine detailed measures for the transfer of land use rights in separate legislation.⁹⁸ The State Council has never promulgated such detailed regulations. We recommend that the State Council issue detailed regulations to govern rural land use transfers and also issue an accompanying uniform land use transfer document to guide parties who wish to transfer land use rights. The regulations and the standard transfer document should include provisions governing land description, how and under what conditions the transferor can take back the land, payment for land use, change of the land use purpose, quota and burden responsibility, public registration of transfers, and resolution of disputes. Based on the experiences of other countries, we have included a draft regulation on land transfers.⁹⁹ We have also included a draft uniform land use transfer document.¹⁰⁰ The land transfer document may be used to transfer part or all of the transferor's rights within the remaining contract period. Upon transfer, such regulations and a standard transfer document should provide greater security to both transferors and transferees. With established procedures and forms, farmers who wish to transfer land will have less need to rely only on relatives or friends as transferees. The procedures and forms will help provide the confidence currently sought in a trusted personal relationship. Also, parties engaged in a transfer of the entire contract rights may well desire to have established procedures and forms even in the context of a personal relationship of trust. Of course, the government should widely publicize and disseminate the regulations and the standard transfer document.

Recommendation No. 11: Establishing a Public Land Records System

Currently, some land use transfers are reported to the local collective entity, which also keeps copies of any land contracts or certificates,¹⁰¹ most transfers, however, are not publicly recorded. If

Bus. (CCH) ¶ 14,715(2) (June 25, 1986).

98. See *id.*, translated in 2 CHINA L. FOREIGN BUS. (CCH) ¶ 14,715(2) (June 25, 1986).

99. See *infra* Appendix 1.

100. See *infra* Appendix 2.

101. Although current rules require farmers to report land use transfers to the local collective entity, we have found that few farmers actually report transfers. See DOCUMENT #15, *supra* note 20, at 3.

written land use contracts, and perhaps land certificates, are to be issued to all farm households, copies of these certificates and contracts should be maintained and organized at the local level. This can provide the basis for a land registration system. The Rules for the Implementation of the Law of the People's Republic of China on Land Management specify that county level people's governments shall register collectively owned land."¹⁰² If an active land market is to develop, the PRC's rural areas will need a system of land registration. Land registration systems exist in all countries with efficient markets in land use rights. A land registration system will help provide greater security to those who hold land, facilitate land transactions, provide market information to land market participants, and provide tax and other information to local administrative bodies.

A system of land registration should include the following elements: (1) mapping of parcels to create a registry map; (2) creation of a register of use rights, organized on a parcel basis, summarizing all transactions and other transfers of rights affecting the parcel and showing the current holder of the use right; and (3) a parcel-based file system, indexed to the registry map, for deposit of copies of relevant documents, such as transfers, designation of heirs, and at some point in the future, mortgages. Most land registration systems in other countries provide that no transaction or other transfer of land use rights is fully effective until it has been registered. The costs associated with establishing a land registration system lie largely in the mapping. The level of accuracy affordable is a key threshold decision in planning such a system.

D. Providing Access to Credit

Farmers in Luliang, as elsewhere in the PRC, generally lack access to resources to finance their purchase of wasteland use rights and their development of the wasteland. We interviewed farmers who were unable to contract wasteland through the auction and all cited insufficient financial resources as the chief reason for their unsuccessful bids. Several other farmers expressed concern that even if they obtained wasteland they would be unable to

102. See Rules for the Implementation of the Law of the People's Republic of China on Land Management art. 4, *translated in* 2 CHINA L. FOREIGN BUS. (CCH) ¶ 14,717(4) (effective Feb. 1, 1991).

afford the substantial costs necessary to develop the wasteland. Even some farmers who contracted wasteland stated they were unable to fully develop the land because they lacked access to additional financial resources.

Recommendation No. 12: Establishing Mortgage Rules and Mechanisms

We recommend a mortgaging system using wasteland use rights as collateral to secure the purchase and development of wasteland. We believe banks may now be willing to take wasteland use rights as property guarantee for loans, because (1) use rights to wasteland are typically long term and secure; and (2) the new PRC Guaranty Law explicitly allows the mortgaging of wasteland use rights and contains needed legal rules to govern the process.¹⁰³

IV. CONCLUSION

The PRC has more than thirty million hectares of wasteland. The development of this huge resource provides great potential for meeting the increasing food demands of the PRC's growing population, alleviating poverty in poorer regions of the PRC, reducing soil erosion, and increasing forest coverage. Luliang's experience with auctions and sales of use rights to wasteland indicates that farmers are motivated to make long-term investments in land if they are given long and secure rights to the land. Luliang's experience is also a useful model for wasteland distribution and development. The PRC's policy designers would do well to study Luliang's experience and make certain refinements aimed at (1) increasing access to wasteland for all farmers, regardless of in-

103. The PRC Guaranty Law, which went into effect on October 1, 1995, explicitly allows rights to "four wastes" to be used as collateral for loans. Guaranty Law art. 34(1) (1995), reprinted in *Guaranty Law*, BBC SUMMARY WORLD BROADCASTS, July 24, 1995, available in LEXIS, News Library, Bbcwsb File. The Meitan County Land Systems Experiment in Guizhou Province preliminarily attempted to create a mortgage market by establishing a land bank, the Meitan Land Finance Company, for that purpose. The bank was constrained, however, because there were no legal provisions for foreclosure. As a result, the Land Finance Company could not make mortgage loans directly to peasant households, but was required to go through the administrative village. When we visited Meitan in 1993, only 20 out of approximately 200,000 households in the county, were able to use this mortgage right.

come; (2) providing secure use rights to wasteland; (3) facilitating transfers of wasteland rights; and (4) increasing access to credit for wasteland development. By doing so, the PRC could develop an effective national policy and legal infrastructure concerning wasteland distribution and development.

APPENDIX 1

DRAFT REGULATION

On Transfer of Use Rights to Collectively-Owned Land

1. This regulation shall be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify, and modernize the law governing transfers of use rights to collectively-owned land;

(2) to strengthen the long-term security and certainty of use rights to collectively-owned land;

(3) to promote voluntary transfers of use rights to collectively-owned land to more efficient users;

(4) to protect both transferors and transferees of use rights to collectively-owned land against practices that may cause unreasonable risk and loss to them;

(5) to safeguard the socialist public ownership of land; and

(6) to facilitate establishment and improvement of the socialist market economy.

2. This regulation shall apply to transfers by natural or legal persons of use rights to collectively-owned land, including transfers by sale of the contract right, lease, gift, inheritance or other methods of transfer by which the holder of use rights to collectively-owned land passes those rights to another natural or legal person.

3. Any natural or legal person who holds use rights to collectively-owned land can transfer those rights subject to these regulations.

4. Every right and duty described in this regulation shall be performed and enforced in good faith.

5. A transfer of use rights to collectively-owned land may be either compensated or uncompensated, depending on the decision of the transferor and transferee. In case of a compensated transfer, the amount of compensation for the transfer and the payment conditions shall be determined by agreement between transferor and transferee.

6. The term period for the transfer shall be determined by agreement between transferor and transferee; but the term period cannot be longer than the remaining term period of use rights held by the transferor. If the transferor holds the right to renew his use

rights to land for another term, he can transfer this right to the transferee.

7. The transfer of use rights to collectively-owned land shall be made by the use-right holder as the transferor to the transferee. If the transfer is for more than one year, the parties to the transfer shall record their agreement in a written Contract for the Transfer of Use Rights to Collectively-Owned Land. The required form of the Contract for the Transfer of Use Rights to Collectively-Owned Land is attached as Appendix 1 to this regulation.

8. Transfer of use rights to collectively-owned land held by a household shall require the written consent of the head of household and their spouse (if any). If the head of the household is a minor or is otherwise incapacitated, the written consent of the guardian is required. In such cases, the guardian may not be a party to the transaction.

9. The Contract for the Transfer of Use Rights to Collectively-Owned Land can be notarized in the notary office where the land is located, although notarization is not required for the contract to be valid. If seeking notarization, the transferor and transferee shall present the following documents at the notary office:

- a. Contract for the Transfer of Use Rights to Collectively-Owned Land signed by the transferor and transferee; and
- b. Document certifying the transferor's use rights to the collectively-owned land.

10. The transfer does not require the approval of the entity representing the collective land owner.

11. The transferor must provide two copies of the written Contract for the Transfer of Use Rights to Collectively-Owned Land to the entity representing the collective land owner. The entity representing the collective land owner shall file one copy of the Contract with the land administration office at the county level and shall retain the other copy.

12. The transferee may not change the use of the collectively-owned land from agricultural to non-agricultural unless the transferee obtains the necessary permission from the entity representing the collective owner and other permission required by the Land Administration Law.

13. If the transferor transfers all his contract rights, the transferee assumes all rights and duties of the transferor under the con-

tract and the transferor no longer holds those rights or is liable for the duties. The transferor will, however, continue to be liable for any debts related to his land use incurred before the transfer.

14. The transferor shall continue to pay the taxes, crop quota, and voluntary labor days associated with the use rights to the land unless the Contract for the Transfer of Use Rights to Collectively-Owned Land indicates otherwise or the transferor has transferred all of his contract rights.

15. If either party to a Contract for the Transfer of Use Rights to Collectively Owned Land violates the contract, the other party to the contract may seek redress at the local mediation or arbitration office or may file suit directly with the local branch of the county People's Court.

APPENDIX 2

(Appendix 1 to Regulation on Transfer of Use Rights to Collectively-Owned Land)

DRAFT

CONTRACT FOR THE TRANSFER OF USE RIGHTS
TO COLLECTIVELY-OWNED LAND

This contract shall be executed in four copies; one each for the transferor, the transferee,

the entity representing the collective owner, and the local office of the Land Administration Agency.

The Transferor, _____
(name of household or legal entity), represented by _____ agrees to transfer, and the Transferee, _____, represented by _____ agrees to transfer-in, on the following terms, the use rights to land described: as attached as follows:

_____, located in _____ (natural village, administrative village, township, county, prefecture, and province).

1. TRANSFEROR'S USE RIGHTS. The Transferor holds valid use rights to the land being transferred. Those use rights are reflected in _____ (name, date, and number of land use contract or other document), which states that the Transferors use rights are for _____ years, beginning on the _____ day of _____, 19____.

2. TERMS. This agreement is for transfer: for a term of _____ months/years beginning on the ___ day of _____, 19__; or of all of the transferor's rights to the land.

3. COMPENSATION. The transfer compensation is: a lump sum payment of _____; periodic cash payments (____ per month year crop season payable in advance on or before the _____ of each month year crop season); in-kind (_____
_____ per year crop season).

4. **SUBLETTING.** The Transferee can cannot assign or sublet their use rights to this land without the Transferor's written consent.

5. **BINDING ON HEIRS.** The provisions of this transfer shall be binding upon the heirs, successors, and representatives of both transferor and transferee, except as provided by written mutual agreement attached to this contract.

6. **PAYMENT OF TAXES, FEES, CROP QUOTA, AND COMPULSORY WORKDAYS.** Responsibility for payment of the various obligations associated with land is as follows:

	Transferor	Transferee	Other (specify)
Taxes and fees	percent	percent	
Quota	percent	percent	
Comp. Workdays	percent	percent	

7. **OPERATING EXPENSES.** The Transferee agrees to furnish all labor, machinery, and cash operating expenses associated with using the land.

The Transferee and Transferor agree to share the labor, machinery, and cash operating expenses as follows:

8. **LAND USE.** The land will be used for agricultural purposes only. Proper authorization has been obtained to use the land for non-agricultural purposes.

9. **MAINTENANCE.** If the land is to be used for agricultural purposes, the transferee agrees to keep the land and waterways in good repair, to prevent deterioration and erosion of the soil, not to erect permanent structures on the land without the consent of the transferor, and not to cut live trees use unless planted by the transferee.

10. **DISPUTE RESOLUTION.** Any differences between the parties as to their rights or obligations under this transfer that are not settled by mutual agreement after thorough discussion must be submitted for mediation or arbitration before either party files suit

in the local People's court.

Executed in four copies on the _____ day of _____,
_____.

(Transferor or representative) (Transferee or representative)

(Transferor's spouse)

(Transferee's spouse)

Notarization (optional):

