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They Ain't Making Any More of It:
Agricultural Land Use, Conservation,
Conflicts, Development and Energy

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USDA-ERS
Washington, DC

Overview

- Introduction
- Land Conservation/Smart Growth
- Conservation Easements
- Creamery Dispute in Maryland
- Wind Farm Dispute in Virginia
- Conclusions

The National Outlook

- Exurban counties are the fastest growing places in America
- Between 2000 and 2030 the Nation's population will grow 30% (120 million new people)
- Over the next 30 years, 40 million new housing units will be built

NIMBYs and Other Creatures

- Not In My Back Yard (NIMBY)
- Citizens Against Virtually Everything (CAVE)
- Build Absolutely Nothing Anywhere Near Anything (BANANA)
- Not On Planet Earth (NOPE)
- Not In My Term Of Office (NIMTOO)

What is Agriculture?

- Production of food and fiber for our country?
- “Aesthetic agriculture” (Kershen (2008))?
- Wind turbines?
- Processing?
- Biodiesel?



What is farmland protection?

- What are we protecting?
- What are we protecting it from?
- Citizens appear to only want certain types of agriculture
- Are we really just trying to prevent development?



Farmland Protection

- Maintain the economic viability of farming
- Distribute the costs fairly; and,
- Involve all levels of government (Libby)



Traditional Farmland Protection Tools

- Focus on LAND, not FARM
- Use value assessment
- Ag and forestal districts
- PDRs
- TDRs
- Conservation easements



They do NOT work!

Smart Growth?

- Not “Slow Growth”, “Responsible Growth”, “No Growth”, “Pro Growth”
- We cannot control the amount or rate of development



What can we do?

- Control where (on a small scale) development will occur
- Control what the development will look like (within limits)



Two Pillars of Smart Growth

- Discourage development on resource lands
- Encourage development in appropriate areas (the next county over is the wrong answer)



Comprehensive Plan

- Required in Virginia and several other states
- Centerpiece of all state growth management programs
- Other tools should implement the comprehensive plan and further its goals



Four “suites” of tools to conserve land

- Land conservation
- Economic development strategies (working lands)
- Education
- Accommodation and design of development



Land Conservation

- Agricultural Zoning
- Purchase of Development Rights
- Transfer of Development Rights
- Use-Value Assessment
- Agricultural and Forestal Districts
- Conservation Lease Agreements



Agricultural Zoning

- Large- lot
- Low density
- Sliding scale
- Destroys best farmland at a rapid rate



Agricultural Zoning

- Often does not allow marketing, agri-tourism (Branan, 2006)
- Should allow flexibility for producers
- What is agriculture?

Purchase of Development Rights

- Local government purchase of conservation easements
- Mid-Atlantic and New England are leaders
- Need funding



Land Use Assessment and Taxation Program

- Assesses agricultural, horticultural, open space and forestal land at use value
- Taxes are deferred
- Roll-back taxes
- Minimal qualifications hurt program



Agricultural and Forest Conservation District Program

- Agreements whereby landowners restrict land in exchanged for benefits
- Assures use value assessment, regardless of whether county has program
- Limitations on condemnation



Economic Development Strategies

- Director of Agriculture Development
- Agriculture Industry Advisory Council
- Review of Zoning Ordinances
 - Ordinances often inhibit agritourism, etc.



Education

- Support of local agriculture education programs
- FFA, 4-H and other youth programs
- Virginia Cooperative Extension
- Target newcomers to rural areas, local government officials- Virginia Cooperative Extension project



Accommodation and Design of Development

- Cluster Development
- Transfer of Development Rights
- Planned Unit Developments
- Urban Service Areas
- Incentive Zoning



Cluster Development

- Groups homes on one part of parcel
- Remainder of parcel in open space- maybe agriculture?
- High growth counties must adopt cluster ordinance applicable to a minimum of 40% of the unimproved land contained in residential and agricultural zoning district classifications Virginia Code Ann. § 15.2-2286.1



Transfer of Development Rights Program

- Receiving area
- Sending area
- Creating a market in development rights
- Montgomery County, Maryland is the leader
- Very complex
- Does it promote agriculture?



Urban Service Areas/ Urban Growth Boundaries

- Land use and infrastructure coordination
- Virginia- new requirements mandating service areas in certain circumstances
- Need incentives
- Carrot/stick approach



Density Incentives

- Increasing densities in exchange for concessions from developers



Conservation Easements

- Voluntary agreement to limit residential development on property
- State statutes enable easements

Conservation Easements Tax Incentives

- Federal Income Tax Deduction (enhanced)
- Federal Estate Tax
- State Income Tax Deduction
- State Income Tax Credit (about 12 states)
- Local Real Property Tax

Conservation Easements Tax Credits in Virginia

Tax Year	#Parcels	#Acres	Tax Credits
2000-01	218	30,159	\$ 46,146,310
2002	221	34,391	\$ 62,025,307
2003	139	28,059	\$ 75,358,707
2004	236	49,235	\$ 140,444,145
2005	277	55,914	\$ 155,281,875
2006	441	92,075	\$ 241,727,998
2007	252	59,000?	\$ 100,000,000 (met 5/17/08)

Conservation Easements and Land Use Planning

- Only eight states link conservation easements and land use planning- Massachusetts, Michigan, Missouri, Montana, Nebraska, New Jersey, Tennessee and Virginia
- The link varies widely, in type and strength
- Massachusetts and Virginia have strongest statutory language or requirements

Conservation Easements and Perpetuity

- Easements must be perpetual to receive tax benefits, but “term easements” allowed in most states
- Legislative history of federal tax laws indicate that Congress intended that perpetual easements be used only if the easement protects “unique or otherwise significant land areas or structures”

Conservation Easements and Perpetuity (Cont'd)

- Will the land be appropriate for conservation in 50 years? 100 years?
- What will agriculture be in 50 years?
- Effect of global climate change- changing boundaries of species habitat; rising water levels; etc.
- Land use planning is dynamic, while perpetual easements are very difficult to change

Conservation Easements Smart Growth or Sprawl?

- Do not affect rate or amount of development
- Cannot build on that parcel, but development will go across the street or down the road
- Easements appear to be used for exclusionary purposes
- Only impact spatial arrangement of development
- IT DEPENDS!

Conservation Easements

Do We Get What We Pay For?

- Pay (in tax benefits or dollars) based on DEVELOPMENT value! The more appropriate for DEVELOPMENT, the more we pay! Contrary to good land use planning
- How does development value relate to conservation value?
- No cost/benefit analysis

Conservation Easements and Working Lands

- Preventing development on the land is not enough
- Agriculture or forestry must be economically viable
- Does not make a better farm manager
- Does not increase profits
- Should NOT donate or sell to pay operating expenses!

Land Conservation and Growth

- Land use tools do NOT affect the rate or amount of growth
- We are merely moving development around- down the road or across the street
- When we choose which land we protect, we, by default, choose the land we will develop
- Are we making the right choices?



What Works? Smart Growth

- Discourage development on resource lands
- ENCOURAGE development on land appropriate for development (the next county over is NOT the correct answer)



What Works? Accommodating Growth

- Key are the form and location of development
- Must **PRIORTIZE** conservation goals



What Works?

Promoting the Industry of Agriculture

- Need to increase income, decrease expenses
- Land use tools do not
 - make the manager better
 - deal with weather
 - reduce risk (may increase risk)
- Target aid towards farms we WANT to see stay in business AND that fit a rational land use plan



What works?

Term easements

- Conservation easements limited to a number of years
- At the end of the time period, decision can be made as to whether to renew
- Allows flexibility
- Cost may be prohibitive
- CREP, CRP, WHIP, etc.



What works?

“Smart Payments”

- Based on green payments
- Made to farms that fit into local/regional smart growth plans
- Community benefits
- Addresses income issue
- Avoids subsidy problems
- Will taxpayers like them?
- (if so, call them green payments)



Creamery Dispute in Maryland

- Fourth generation dairy farmer plans to operate a creamery and dairy store on the farm in Baltimore County, Maryland
- Operation is certified organic
- Zoning designates the area as “rural conservation area”
- Conservation easement on the property
- Neighbors object to the creamery and dairy store

Creamery Dispute in Maryland

- County has proposed ordinance amendment to specifically allow creameries in rural conservation areas on the land is not enough
- Neighborhood group has fought the proposal at every step
- Land trust has allowed creamery, with conditions
- Farmer has spent \$100,000 in attorneys fees

Wind Farm in Highland County, Virginia

- Highland County is least densely populated county east of the Mississippi
- High percentage of absentee land ownership- weekend farms, etc.
- County is economically depressed
- Windfarm proposal draws intense opposition, much of it from the absentee landowners

Wind Farm in Highland County, Virginia

- Virginia process goes through State Corporation Commission
- County ordinance did not address wind farms
- Process has lasted approximately six years
- Wind farm now approved, but economy has prevented development
- Attorney for landowner estimates that cost of merely responding to NIMBY opposition at \$1 million

Wind Farm Myths and Realities

- Most objections raised by opponents lack merit
- Bird kills: Audubon Society supports wind farms (cats kill more birds than wind turbines)
- Bats: legitimate concerns about bat kills, but technology is developing
- Concerns seem to come down to aesthetics

Conclusions

- What is the goal? Cannot achieve a goal unless you define it
- What is agriculture (what do we want to protect)?
- Growth v. sprawl
- Growth v. agriculture
- Only accommodating and designing development **CONSERVES** land!!!



Conclusions (Cont'd)

- NIMBY solutions will not work
- Must address the economics of agriculture
- Target the benefits
- Semantics matter





The Day Before Armageddon...

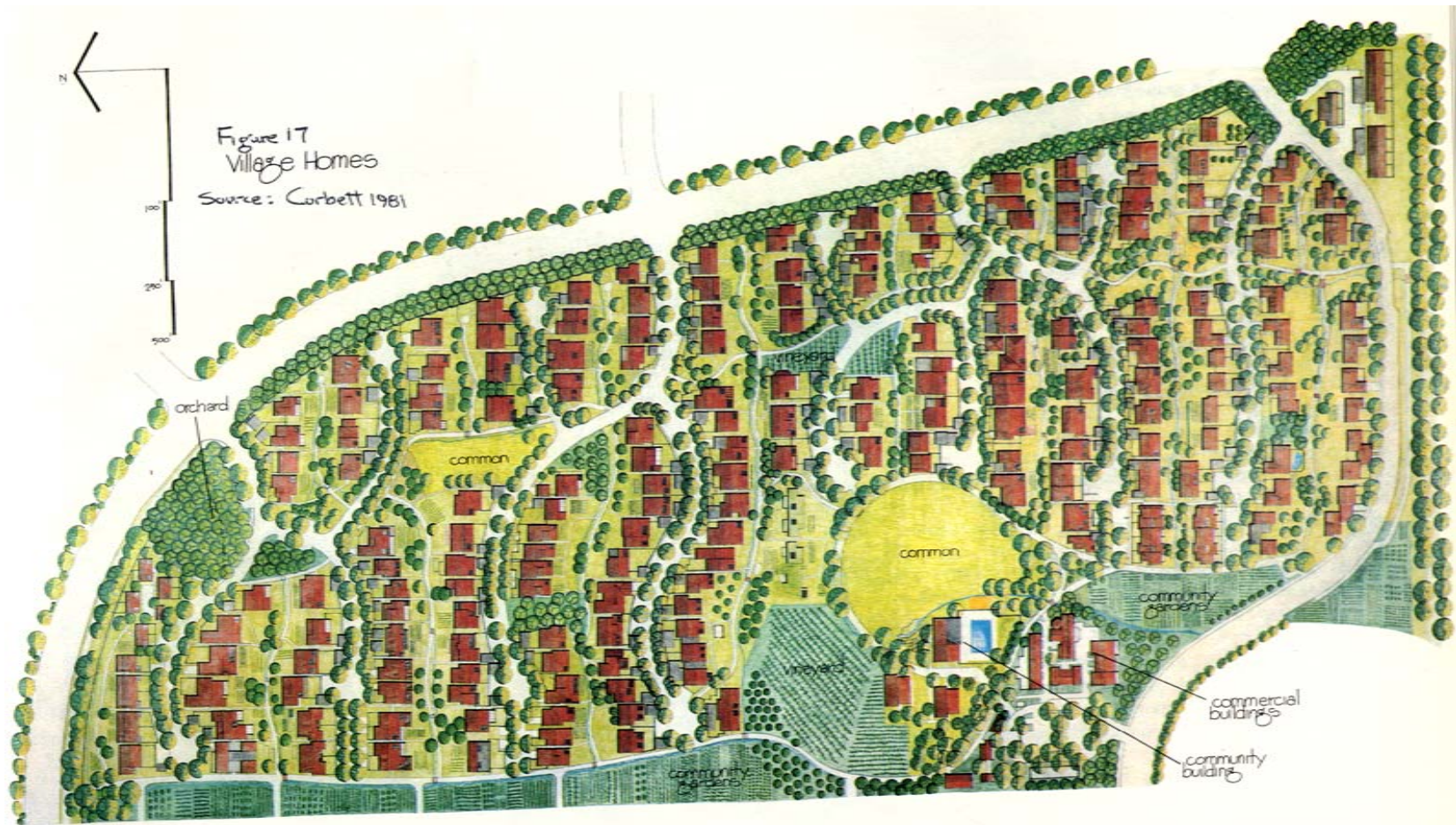
Regardless of how many
conservation easements we have
or how much downzoning we do...

There will be the same number of people, occupying the same amount of land...



And the same amount of open space...





We are just determining the spatial arrangement of growth and open space...

Are we making the right choices?



No one has any idea!

