TAKING PRIVATE LAND FOR PRIVATE INTERESTS

THE AGENDA AND POLICIES OF THE AMERICAN FARMLAND TRUST

James D. Riggle and Jonathan Tolman

INTRODUCTION

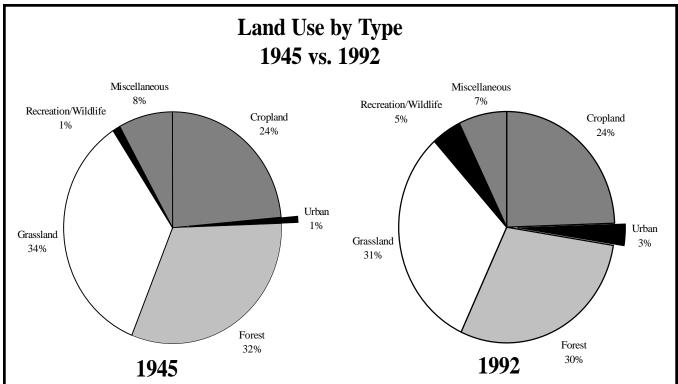
In her 1998 inaugural address, New Jersey Governor Christie Todd Whitman outlined her plan to preserve one million acres of farmland and open space in the state of New Jersey. Governor Whitman's plan attacks the perceived problem of urban sprawl and the loss of agricultural land to housing and development. Governor Whitman is not alone. Maryland Governor Parris Glendening has touted his "smart growth" plan as a way of limiting suburban sprawl in his state. Glendening's plan would create a state-wide zoning system designed to limit where development could occur. Ohio Governor, George Voinovich, established by state executive order the "Ohio Farmland Protection Policy" complete with an "Office of Farmland Preservation." All these policy prescriptions are designed to address the same mythical problem -- the loss of farmland.

Concerns over growth and development are not new. Many environmental organizations, for example, have long advocated stringent land-use controls to protect wildlife habitat and preserve wetlands. However, as illustrated above, such proposals have recently been receiving renewed attention for a different reason, the preservation of farmland. Chief among the proponents of new land-use regulations to address this purported problem is the American Farmland Trust.

The American Farmland Trust (AFT), a tax-exempt Washington, D.C.-based, organization is proposing land-use controls to stop the loss of farmland. The AFT claims that the economy and government are paralyzed and in imminent danger. According to the AFT, the loss of farmland threatens the food supply and will harm the economy. In addition, this threat is so urgent that the need for action is immediate. "The moment cries out for a new reconciliation," exclaims AFT's chairman, former U.S. Environmental Protection Agency (EPA) Administrator William K. Reilly, in an announcement of one of his group's plans.¹

All these policy prescriptions are designed to address the same mythical problem -- the loss of farmland.

American Farmland Trust "Competition for Land: A New Policy Initiative of American Farmland Trust," http://www.farmland.org/farmland/files/cfl/comp4land.html, April 1997, p.1.



Source: "Agricultural Resources and Environmental Indicators, 1996-1997," United States Department of Agricultural Handbook Number 712, July 1997, p. 3.

There is little evidence that urbanization or other land-use trends threaten to consume America's farmland.

The AFT's primary concern is the increase in urban development on what was once agricultural land over the past several decades. The AFT claims that the development is caused by population growth and "spreading out," and that it threatens the agriculture economy and the disruption of local governments. "The land, fruitful and ever abiding . . . is quietly vanishing," declared AFT president Ralph Grossi in 1994.²

IS CHANGING LAND USE A THREAT?

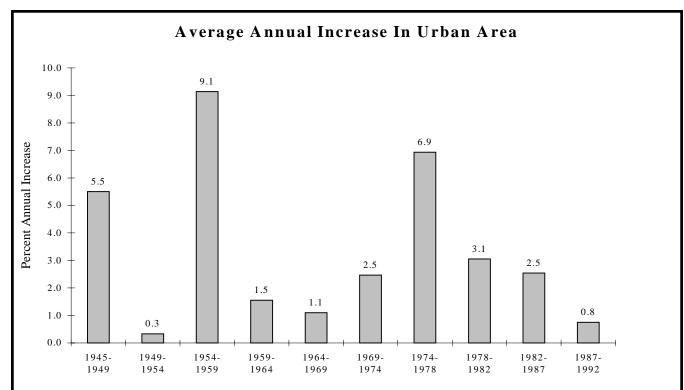
Despite the AFT's claims, there is little evidence that urbanization or other land-use trends threaten to consume America's farmland. Despite changing land-use patterns, the percentage of American land used as cropland in the most recent available survey is the same as it was in 1945. (See chart page 2.) Then and now, 24 percent of America's land is cropland. Additional data challenging the AFT's claims of diminishing cropland is presented in the accompanying charts on the following pages. This data from official government sources, shows that the threat of vanishing farmland is a myth.

Similarly, there is no explosion in the amount of land converted to urban uses. A recent study of urban conversion rates found that the rates of

² "The Campaign for America's Farmland," (Washington, DC: American Farmland Trust, Spring 1994), p.1.

conversion were virtually identical for the decades of the 1960s and 1970s, and then dropped by 50 percent during the 1980s when approximately 725,000 acres of farmland were developed per year. Moreover, far from being a nationwide phenomenon, the study identified only 139 out of more than 3,000 counties as "fast-growth" areas.³ Since the late 1970s the average annual increase in urbanization has consistently declined and is now less than one percent. (See figure on page 3.)

Curiously, the AFT maintains there is a farmland crisis in spite of these statistics. In 1994, Edward Thompson, an AFT vice-president, proclaimed that "the nation is losing more than a million acres of farmland every year." At the same time Grossi, AFT's president, claimed, "We are losing our farmland—more than two million acres each year..." Within a few months Grossi was claiming the rate of farmland conversion was 1.4 million acres annually. By 1996, Patrick F. Noonan, former AFT chairman, found that the



Source: "Agricultural Resources and Environmental Indicators, 1996-1997," United States Department of Agricultural Handbook Number 712, July 1997, p. 3.

³ Marlow Vesterby and Kenneth S. Krupa, "Effects of Urban Land Conversion on Agriculture," in *Urbanization and Development Effects on the Use of Natural Resources*, (Starkville, MS: Southern Rural Development Center, Mississippi State, July 1993), p. 90.

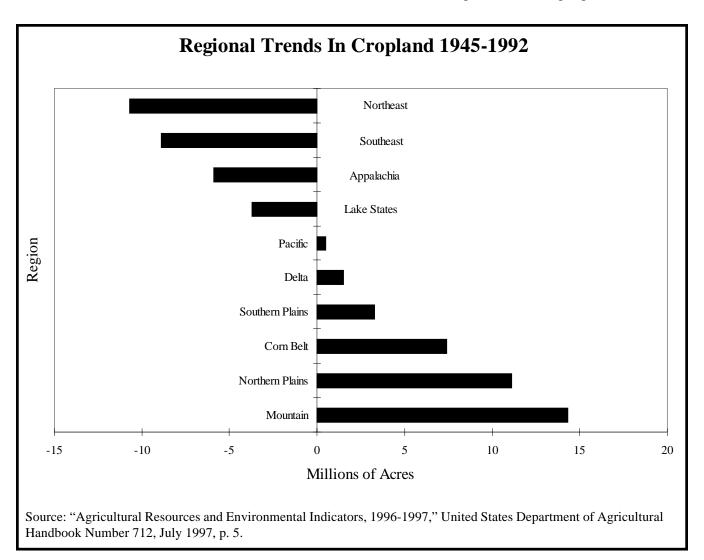
⁴ "Preserving Farmland: The American Farmland Trust and Its Partners," in *Land Conservation Through Public/Private Partnerships*, Eve Endicott, ed., (Island Press, 1994), p.44.

⁵ The Campaign for America's Farmland, op. cit., p.1.

⁶ Carole Sugarman, "Old MacDonald Had a Subdivision," *The Washington Post*, September 21, 1994., p. E8.

problem had worsened again and that the conversion figure was back up to "about 2 million acres annually," citing the American Farmland Trust as his source.⁷ This alleged sudden upsurge in land conversion conveniently coincided with debates over the 1996 farm bill.

Ultimately, the issue of how many acres of farmland are being converted is secondary to the question of whether or not this poses an actual problem. The "problem" has been addressed emphatically by the U.S. Department of Agriculture (USDA): "loss of farmland poses no threat to U.S. food and fiber production," USDA analysts concluded in 1994.8 Moreover, rather than being a cause for national concern, farmland conversion is heavily concentrated in fewer than 5 percent of the nation's counties. In fact, USDA statistics show that in the greatest farming regions of the U.S.,



⁷ Henry L. Diamond and Patrick F. Noonan, *Land Use in America*, (Island Press, 1996), p. 68.

⁸ Marlow Vesterby, Ralph E. Heimlich, and Kenneth E. Krupa, "Urbanization of Rural Land in the United States," *USDA*, *Economic Research Service*, *Agricultural Economic Report 673*, March 1994. (emphasis in original).

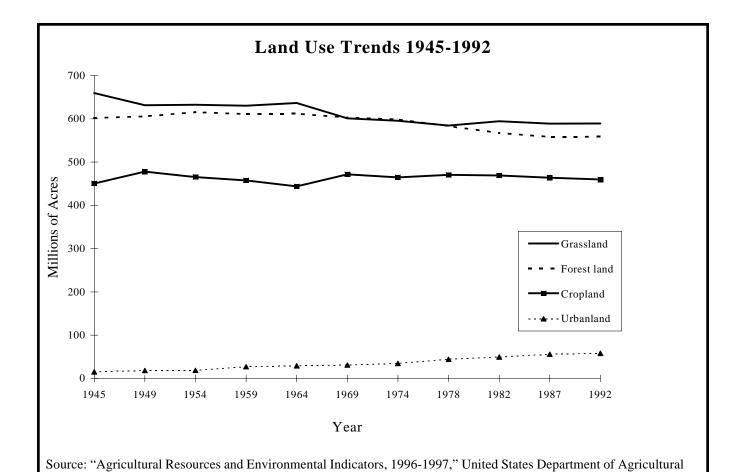
such as the corn belt and the plains states, the amount of cropland has increased over the last fifty years. (See figure page 4.)

Overall, USDA surveys of land-use of the last 50 years show that cropland, urbanland, forest land and grassland uses has been quite constant (see chart this page.)

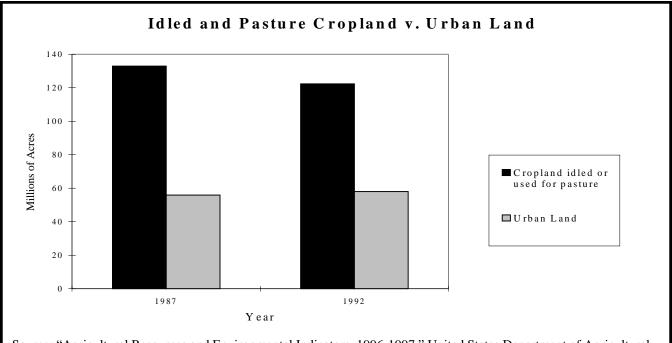
THE URBAN LAND-USE DYNAMIC

Hard evidence compiled by the U.S. Bureau of the Census also clearly supports the USDA's findings that there is sufficient land available for agriculture, and that there is no threat to the nation's food producing capacity. First, the price of land and farm buildings should be a key indicator of value and availability. If there were, in fact, any emerging scarcity of land—or indeed any serious competition for it—farmland prices would be expected to rise. Instead, the opposite is true. In 1982, the average price per acre of land in farms was \$784. By 1987, the price per-acre, adjusted for inflation, had fallen to \$627 per-acre. Despite some modest subsequent recovery, the per-

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Handbook Number 712, July 1997, p. 3.



Source: "Agricultural Resources and Environmental Indicators, 1996-1997," United States Department of Agricultural Handbook Number 712, July 1997, p. 3.

acre price of land in farms in 1992, \$727, was still lower than it had been a decade earlier.⁹

Data collected on the change in the amount of cropland in the U.S. over the last 70 years, further corroborates the USDA analysis. In 1925, the U.S. Bureau of the Census reported that there were slightly more than 390 million total acres of cropland in the nation; almost all of it, more than 344 million acres, were harvested. ¹⁰ In 1992 there were more than 460 million total cropland acres, but only 314 million acres were harvested. 11 (Note: not all land designated as cropland is harvested, some is used for fallow or pasture in addition to the portion of planted cropland that fails.) Thus there was 15 percent more cropland available in 1992 than in 1925, but the demand for food and other agricultural products was met by harvesting 10 percent fewer acres. Moreover, the federal government in 1992 was renting about 40 million acres of cropland out of production—at a cost of more than \$1 billion per year—to support commodity prices. These types of programs which were instituted in the mid-1980s show that more land is being idled by the federal government than the total amount of land in the U.S. devoted to urban uses. (See chart page six.)

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Despite the government's expenditures to support commodity prices, the cost of food continues to fall. The California Farm Bureau Federation

⁹ U.S. Bureau of the Census, 1992 Census of Agriculture—United States Data, Table 11, p. 20

¹⁰ U.S. Bureau of the Census, Statistical Abstract of the United States: 1925.

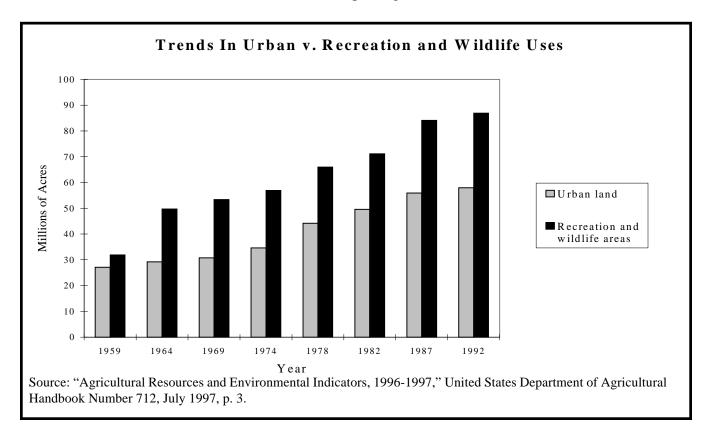
¹¹ U.S. Bureau of the Census, 1992 Census of Agriculture, p.1.

recently reported that the cost of a gallon of milk, a loaf of bread, a pound of butter, and a pound of ground beef was \$3.10 in 1947; today the same food costs only \$8.00, instead of the \$23.00 it would have cost had the price of food kept pace with inflation.¹²

In addition to idling large amounts of land the U.S.also been increasing the amount of land devoted to recreation and wildlife uses. The acreage dedicated to areas such as national parks and national wildlife refuges is significantly greater than the acreage dedicated to urban uses (see chart this page.)

Lastly, it should be stressed that land use in America is dynamic. It is always in a state of continuous change. There is no discrete thing called farmland. Instead agriculture is simply one among many potential land uses. Indeed, the amount of land devoted to cropland an any given year likely has more to do with the price of agricultural commodities on the world market than any pressure from urban encroachment. Fluctuations in world prices and the consequent fluctuations in cropland should be expected (see chart this page.) How a given plot of land is used is determined by economics and technology, and the choices—or the regulated options—of the people who own the land. For example, the woodlands that cover much of the New England states and along the Blue Ridge Mountains hide the ruins of thousands of abandoned farms that could not compete against the more

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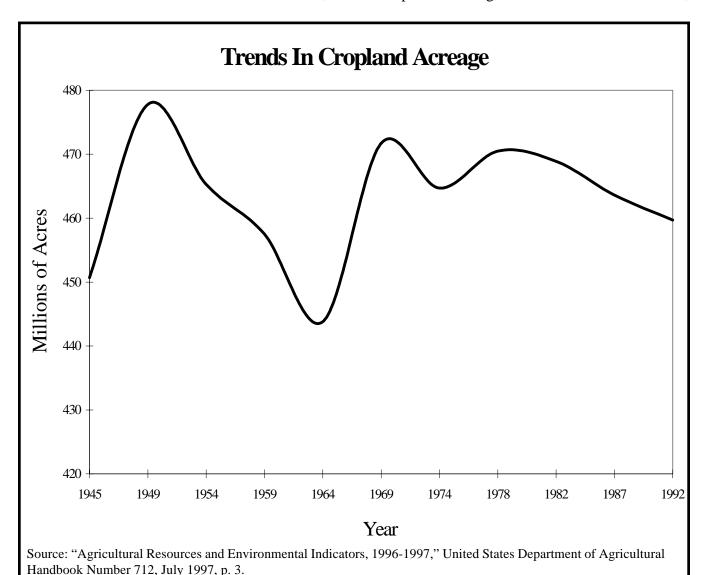


¹² American Farm Bureau Federation, http://www.fb.com/cafb/sece.html, August 1997.

productive lands of the Midwest and Great Plains. Should the economics of agriculture change these lands might once again become cropland, alleviating future shortages that might emerge.

THE TWENTY-YEAR AGENDA FOR NATIONAL LAND USE PLANNING

There maybe be no threat of vanishing farmland, but there is a threat of regulating it. The current chairman of the AFT is William Reilly, former administrator of the EPA, an original member of AFT's board of directors. As president of the Conservation Foundation he provided administrative support for the nascent AFT in the early 1980s. Reilly has long been an advocate of national land-use planning. In an article published 20 years ago, Reilly bemoaned the failure of the National Land Use Policy and Planning Assistance Act to pass Congress. Reilly was instrumental in developing that legislation, based on his idea, "first to help states manage their coastal resources better,



then to undertake a more comprehensive reform of their state planning and zoning enabling laws." Reilly even predicted that national land use controls would eventually be adopted, but not until arguments could be crafted to "suggest the national interest in certain land use decisions." ¹³

This agenda is being pursued by the AFT today. AFT vice president Edward Thompson argues that the scope of the threat to our "food-producing resources" is so great that "government must be an active participant. First ... it should use its police powers, through the exercise of planning and zoning, to regulate subdivision and thus stabilize rural land use," because "the process of negotiating with individual landowners is just too slow to be practical in the real world." In one of the most explicit expressions of the AFT's goals ever published Thompson said, "Only by permanently retiring the development rights to farmland can true conservation be achieved." ¹⁴

More recently the AFT has proposed a series of tools and techniques that state and local governments can use to protect farmland. Among the landuse controls that the AFT has proposed are growth management laws, agricultural protection zoning, cluster zoning and mitigation ordinances.

- Growth management laws are typically designed to control the timing and phasing of urban growth and determine the types of land use that will be permitted at the local and regional levels. These types of laws attempt to take a comprehensive approach to regulating not only the rate of development but the pattern and placement of development as well.
- Agricultural protection zoning is also a form of government land use control. Agricultural zoning ordinances designate areas where farming is to be the primary land use and discourage other land uses by limiting the activities that are permitted in agricultural zones. Agricultural zoning also typically restricts the density of residential development. Maximum densities range from one house per 20 acres in the eastern U.S. to one house per 640 acres in the western U.S. ¹⁶
- <u>Cluster zoning</u> requires that houses be grouped close together on small lots to protect open land. The portion of the parcel that is not developed is often restricted by a conservation easement.¹⁷

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¹³ William K. Reilly, "National Land Use Planning: A Legislative Agenda," *Journal of Soil and Water Conservation*, March-April 1977, pp. 76-79.

¹⁴ "Preserving Farmland: The American Farmland Trust and Its Partners," op. cit., pp. 44, 45.

¹⁵ American Farmland Trust, "The Farmland Protection Toolbox," http://farm.fic.niu.edu/fic-ta/tafs-fptool.html, December 1997.

¹⁶ Ibid.

¹⁷ Ibid.

• <u>Farmland mitigation</u> ordinances require owners to take on an additional burden to develope farmland. For example, in 1995, city officials in Davis, California, required developers to permanently protect on acre of farmland for every acre of agricultural land they converted to other uses.¹⁸

The AFT believes that now is the right time to proclaim the government's interest in the vast majority of the privately owned land in the U.S. Acting on Reilly's strategy, Thompson claims that economic instability, governmental paralysis, and social disintegration require the national government to begin "managing land" in the "public interest." His earlier work makes clear the means that the AFT intends to use and the ends they have in mind. Given that the facts indicate that land use issues are highly localized and that there are no problems related to the urbanization of land that require macro-policy solutions, exactly how and why does the group propose to take the property rights of working American landowners?

PROTECTING FAMILY FARMS?

Many of the AFT's actions to protect farmland, have little to do with family farms.

Many of AFT's arguments are based no only on an alleged threat to overall food production, but also on the need to protect family farms. For example, AFT's website claims that farmland protection is not an aesthetic issue to farmers, but rather an issue of the survival of family farms. However, many of the AFT's actions to protect farmland, have little to do with family farms.

For example, in September 1997, the Associated Press ran a story about a land deal involving DuPont Co., the AFT, and the Conservation Fund (a sort of tax-exempt bank and holding company created and controlled by the former AFT chairman Patrick F. Noonan).

Under the deal, the AFT would receive a conservation easement for about half of the farm. In essence, the AFT was being given the development right to 1,500 acres. The AFT's Grossi called the deal an "action by DuPont [that] is crucial to protecting this nation's best farmland."

In reality, two-thirds of the 3,300 acre Dupont farm were described as woodlands, swamps and "brushy hedgerows." While the article says that the easement restricting the use of the land allows only "agriculture and natural resource research, management and educational activities," it also notes that DuPont could continue to operate a conference center on the site and can build up to five homes on the property in the future. Thus, the DuPont Co. received a \$3 million tax deduction for creating five landed estates and

¹⁸ Ibid.

¹⁹ "Competition for Land," op. cit., p. 1.

operating a conference center on a site labeled as some of the "nation's best farmland."²⁰

In addition to the fact that the Dupont Co. can hardly be considered a family farm, the land is also not what most people would ever consider farmland. In 1956 the land was purchased by Remington Arms, the guns and ammo subsidiary of Dupont. For 40 years, the 3,300 acres was managed for wildlife as a hunting operation for the benefit corporate customers. Remington would often invite special guests on hunting junkets and put them up in the 290 year old brick manor house. Known back then as Remington Farms, it was an example of corporate opulence, not agrarian living. As *New York Times* outdoors writer Nelson Bryant documented:

That evening in front of the hunting lodge's big fireplace, I was content, a feeling intensified when Peggy Thompson, the farm's cook, remembered from a visit I had made there five or six years before that I liked wild duck roasted for only 12 minutes at 450 degrees.²¹

Even though Dupont sold the Remington Arms division in 1993 it kept the land and renamed it Chesapeake Farms, and still runs the farm as a hunting preserve for its corporate clients. By participating in the land deal AFT is doing little to help the survival of America's family farms. As another outdoors reporter pointed out in regards to the conservation easement:

All of which suggests that for the foreseeable future, the chance to hunt Chesapeake Farms will remain one of the premier gunning opportunities in the East. It makes you want to start a company that uses a bunch of Dupont products so you can get on the A-list.²²

Although there is nothing wrong with conserving private hunting preserves for corporate elites, it is a far cry from ensuring the nations food supply and an even farther cry from ensuring the survival of family farms.

ANTI-EGALITARIANS

The Dupont land deal is not the only example of the AFT's elitist sympathies. A couple of hundred miles away is another example of AFT-style land conservation, the Northern Piedmont, an area mostly in Virginia just

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²⁰ "Dupont Unit To Donate Easement: Development Risk Ends for Eastern Shore Farm," *The Washington Post*, September 13, 1997, p. E7.

²¹ Bryant Nelson, "Outdoors: Hunting Waterfowl with a Muzzlerloader," *The New York Times* 30 January 1984: C1.

²² Angus Phillips, "This Place Has the Best Deer Hunting Imaginable, but There's a Catch Release" *The Washington Post* 1 March 1998: D6.

east of the Appalacian mountains. In 1997, the AFT listed the Northern Piedmont as the second most endangered agricultural region in the country. According to the AFT, "America's best, most productive farmland is in DANGER from sprawling growth," and urged people to "Join AFT and help to save the land that feeds America."²³

Although there is little dispute that suburban development is encroaching on the Northern Piedmont, there is considerable dispute as to whether this has anything to do with farming. As one article on the topic questioned, "As suburbia sprawls ever close, Virginia's horsey set is under siege. Can new real estate laws preserve the Piedmont's pristine refuge of the very rich?"²⁴

Most of the landowners in the Piedmont didn't originally move there to raise crops. For all of the Piedmont's charm, it is mostly marginal farm land. Few if any of the residents are trying to preserve the land to grow food. According to one long time resident of Middleburg which is at the heart of the Piedmont, "It's the gentility that we are trying to preserve."

And as one writer recently pointed out:

It's the gentility that we are trying to preserve.

That gentility means no poor people, no blue collar people and no visible means of support. With no downtown, no nearby office park or airport (aside from the private jetport on Paul Mellon's 5,000 acre Rokeby estate), it's as if the money simply arrives, piped in somehow from another world. It's all rather like 18th century England, with inherited wealth, county families, squires, and servants. But Middleburgers are really artificial aristocrats, pretend barons and earls, and their lifestyle is more like something out of *Masterpiece Theatre* than Merry Olde England.²⁵

To protect their way of life from encroaching development, the preservationists created the Piedmont Environmental Council whose aim is to preserve a large area of the Piedmont. The mechanism for this preservation is the conservation easement, a device by which owners give up development rights in return for tax savings. Under present easement practices the most common size of an easement is 100 acres, though there are some 50 acre easements. This means that no portion smaller than 50 or 100 acres can be sold on the market.²⁶ With current real estate prices hovering at \$10,000 an acre this means that only the independently wealthy can afford to live in the

²³ American Farmland, "Trust Top 20 Threatened Areas," http://www.farmland.org/Farmland/files/foe/top.20.html, March 1997.

²⁴ Duncan Spener, "Middleburg's Middle-Class Problem," *Capital Style* December 1997: 58-63, 91-92.

²⁵ Ibid.

²⁶ Ibid.

Piedmont. Stopping suburban encroachment in the Piedmont is hardly protecting "family farms."

In another example, while attacking a Disney company proposal to build a theme park in Northern Piedmont, Grossi compared the area's agricultural importance to California's Central Valley, a truly incredible claim. However, the reporter covering the story saw through the rhetoric, noting that the AFT "gets much of its support from the Rockefeller family and the Richard King Mellon foundation." Coincidentally, Paul Mellon's landed estate is nearby in Northern Virginia.

Similar things are happening in other parts of the country. A recent *Washington Post* article was entitled "Real Estate Agents Mining Gold in West: Flood of Wealthy Purchasers Creates Bull Market." The story discusses how "the moneyed classes" have transformed the Rocky Mountain West into one of the fastest growing regions in the country by buying up farms and ranches, sometimes sight unseen off realtors' home pages on the World Wide Web. Moreover, "when pop culture focuses on the West, the demand soars even higher." The article also cites Stephen J. Small, a colleague and consultant to AFT's Thompson and "a Boston-based tax attorney and specialist in setting up conservation easements," saying that "the hot market in western real estate is the leading edge of a massive shift in land ownership that is coming throughout the United States." It is no coincidence, and should be no surprise, that one of the newest field offices of the AFT is right on the Front Range of the Rockies in Fort Collins, Colorado.

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THE NOTIONS OF "GIVINGS"

Thompson and Reilly are the principal intellects and architects behind the AFT's property-control strategy. Thompson, together with other key Washington, D.C. lobbyists, helped craft the notion of "givings" as a basis for justifying government takings of property rights on an unprecedented scale.

The "givings" concept is a novel approach, but it is unfounded and potentially dangerous to every U.S. citizen. "Givings" occur when government policies or programs increase the value of private property. For example, an interstate highway or a public park can add value to adjacent land indirectly, as a result of its principal purpose of transportation or recreation. A public sewer or water line adds value to land by design by permitting development to occur at much higher densities than would be allowable with private wells and septic systems. Boiled down to its essence their argument can be restated as, "because the government giveth, the government can also taketh away."

²⁷ "Competition for Land," op.cit., p. 2.

²⁸ "Real Estate Agents Mining Gold in the West: Flood of Wealthy Purchasers Creates Bull Market," *The Washington Post*, September 14, 1997, p. A3.

The AFT proposes to use these "givings" as a justification for government land-use controls, which typically result in regulatory takings. Part of this "Competition for Land" initiative is what Reilly calls a "public policy audit" to measure "how subsidies increase land values." Besides the fact that taxpayers have already payed for the benefits in the form of income, property and sales taxes, the "givings" argument is specious and dangerous for two reasons.

First, the Constitution speaks to the issue of takings and depriving individuals of liberty and property, but it says nothing about givings. But even more importantly the Constitution is based on the idea of free individuals granting legislative power to Congress. Individuals are guaranteed due process of law and compensation if the government deprives them of the use of their property or takes it, -- but they do not lose those rights if the government happens to take actions that increase the value of the property.

A critical distinction which must be made between givings and takings on the issue of what is being given or taken. In the case of givings what is being given is only an increased value. In the case of takings what is being taken is not necessarily the value, but the rights associated with the property. It is not a violation of the takings clause of the Constitution if a government action simply reduces the value of a piece of property, but leaves the property owners rights unaffected. For example, if the government decides to close a military base, the property values of merchants and commercial landowners near the base would likely fall, infact for many of them their entire livelyhood might be eliminated. This may be an unwanted outcome but that does not mean that the government has taken the nearby merchants' property or any of the rights associated with owning the property.

In its most basic terms the takings clause of the Constitution requires just compensation when the government takes some or all of the property rights of a landowner. The fact that when the government takes away all the property rights of a landowner it also has the effect of reducing the value of the land is incidental to the actual concept of taking.

Second, as the nation and the world move into a post-industrial, information and knowledge-based economy, the importance and value of intellectual property becomes more apparent every day. The logic that drives the "givings" argument could very easily extend to intellectual property. Any individual whose intellectual property value is enhanced by "subsidies" for public education or training could be regulated by the government under the logic of "givings."

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CONCLUSION

The U.S. is in no danger of running out of farmland. Although cropland patterns have shifted over the decades, the U.S. is currently producing more food on virtually the identical acreage of land as it was fifty years ago. In addition, major economic indicators suggest that there is little immediate threat to the food production capacity. Adjusted for inflation, real food prices are a fraction of what they were in previous decades. As the market for agricultural commodities is highly volatile, any shortage of food production capacity would likely be reflected in immediately higher prices, not only for commodities but also for agricultural land, equipment and supplies. As these prices have been stable or declining there is little reason to believe that American food production is somehow threatened.

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Current market forces are more than capable of ensuring that American agriculture meets domestic food producing needs. The core ideas of a market are that individuals enter and exit freely, and that they have freedom to choose what to do or not to do with their property. The proposals put up by the AFT are predicated on restrictive government actions to preclude free choices and hold down property values.

The final conclusion that can be drawn from analyzing the public policy proposals of the AFT is that its land preservation schemes are not only *not* market-oriented, they are coercive and deceptive. The AFT has claimed repeatedly that its land preservation policy proposals are voluntary and compensatory—and thereby "market-based" solutions. Ignoring for the moment the fact that there is no problem requiring national action, the AFT's proposals are the exact opposite of true market options. Ultimately, land use decisions should be left to landowner.

ABOUT THE AUTHOR

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