

BETTING *the Farm*

Preservation programs pay farmers to forgo development

BY JESSIE ROMERO

The eastern half of Loudoun County, in northern Virginia, is home to some of the fastest-growing suburbs in the United States, their streets crowded with cars shuttling residents from subdivision to office tower to shopping center. But just miles to the west, the pavement gives way to rolling countryside dotted with vineyards, horse stables, and Christmas tree farms — and residents who fear the encroachment of those suburbs.



In Loudoun County, Va. — as in much of the Northeast and mid-Atlantic — fields give way to subdivisions.

PHOTOGRAPHY: ALLAN KUZMOWSKI

It's a tension that has become common in many areas of the country over the past several decades, as farmland is increasingly converted into strip malls and single-family homes. In response, many states and localities, especially in the Northeast and mid-Atlantic, have adopted farmland preservation programs to protect rural areas. One of the most popular and effective tools to preserve farmland is a "purchase of development rights," or PDR, program, wherein a landowner sells the development rights to their property. At first glance, PDR programs are a win-win — but the costs and benefits to communities and to farmers aren't always clear-cut.

Why Save Farmland?

Although the decline in agricultural employment began in the early 1900s, farmland wasn't converted for development on a large scale until the 1970s, when the expanding interstate highway system and the completion of beltways around many cities enabled people to move farther and farther away from the city center. Since the early 1980s, more than 24 million acres of agricultural land — an area nearly the size of Virginia — have been converted for development.

Many conservationists and local officials believe that slowing this conversion is crucial for both the economy and the environment. According to Virginia's Office of Farmland Preservation, for example, agriculture contributed \$80 billion to the state's economy in 2006; it contributes \$1 trillion per year to the national economy, according to the conservation group American Farmland Trust (AFT). At the same time, farmland requires considerably fewer municipal resources, such as fire protection and schools, than developed land. Numerous "cost of community services" studies have concluded that agricultural land generates more in tax revenue than it uses in services. Studies in Maryland, Virginia, and North Carolina, for example, have found that agricultural areas consume about 50 cents in services per dollar of tax revenue, compared with residential development, which consumes about \$1.21 per dollar of revenue.

Developers also are likely to target the same land that's best suited to crops. "The best land for agricultural use is land that's well drained, that has good topsoil and a level slope, that doesn't have a lot of rocks. But those attributes also make that land really easy to develop," says Bob Wagner, senior policy and program adviser at AFT. "So we're not competing over marginal lands, we're competing over the most efficient places to grow food." And once that farmland is developed, "it's game over," Wagner says. "Even if we decided to start tearing down houses and pulling out septic tanks, we've so altered the topsoil and the terrain that you no longer have prime farmland."

Of course, the United States isn't in any immediate danger of running out of food, notes Gordon Groover, an agricultural economist at Virginia Tech. "With the level of efficiency within the agricultural sector now, that's not as big a concern to society as it was at one time." Many of the arguments for saving farmland are less about preserving

agricultural operations per se than about preserving rural amenities such as scenic views, recreational opportunities, wildlife habitats, and environmental benefits such as erosion and flooding control. That's especially true in more densely populated states, where the public may value such amenities as much as, if not more than, actual agricultural operations.

Selling the Rights

State and local governments can employ a variety of tools to encourage agriculture and discourage development, including zoning restrictions, preferential tax treatment, or subsidy programs. Many states and localities also have enacted PDR programs, in which the owner of an agricultural property places a permanent deed restriction, known as an agricultural easement, on the land. The easement prohibits any nonagricultural use of the land, such as industrial or residential development. The owner can continue to live and work on the land, and can sell it or will it to heirs, but future owners also are prohibited from future development. In exchange for the development rights, the owner is compensated for the fair market value of the land, which is based on the difference between what it could be sold for on the open market with no deed restrictions and what it's worth as farmland.

PDR programs were developed as a more market-friendly alternative to traditional conservation tools; unlike zoning regulations, for example, a PDR program is voluntary and does not deprive the landowner of the full economic value of the land. (An agricultural zoning restriction reduces the land's market value without compensating the landowner; in essence, farmers bear the costs of the benefits that accrue to the community as a whole.) Advocates of PDR programs also note that they provide farmers with working capital to keep their farms operating and decrease the property taxes since removing the development potential lowers the property's market value. The lower property value also makes it easier to pass farmland on to the next generation by lowering the potential estate tax.

That isn't necessarily a great deal for the next generation, though, which might find it more difficult to make a living as the economics of farming change. "As efficiencies improve and the requirements to be a viable farm increase, land that was profitable when the easement was placed on it might age out of its ability to be profitable," Groover says. In addition, if easement programs aren't part of a comprehensive planning effort, there is the potential for a "checkerboard" of preserved and developed land, which can make it difficult for farmers to access the services they need or lead to conflict with neighbors who don't want to share the roads with slow-moving tractors.

"We're surrounded by development," says Wade Butler, who owns Butler's Orchard in Germantown, Md., with his brother and sister. Butler's parents started farming in 1950, just a few years before the construction of what is now I-270 a few miles to the west of their land connected Germantown to Washington, D.C. Today, their farm abuts one of the

region's busiest suburbs. "Some of the services have certainly left the area. And agriculture has a certain amount of noise and dust and odors, which becomes more of a concern as we get more neighbors."

At the federal level, agricultural easement programs are supported by the Natural Resources Conservation Service (NRCS) within the U.S. Department of Agriculture. The NRCS provides funding and technical assistance to state and local governments, Indian tribes, and nongovernmental organizations to help them purchase development rights. These funds were first appropriated through the 1996 farm bill; about \$1.2 billion was allocated nationwide between 1996 and 2012.

States operate PDR programs by purchasing the development rights themselves, offering matching funds to localities, or both. Maryland and Massachusetts were the first states to start purchasing development rights, in 1977. Today, 28 states operate PDR programs, but not all of them are fully funded, particularly since the 2007-2009 recession. The programs are most prevalent in the Northeast and mid-Atlantic and on the West Coast, where the population is most concentrated and where there has been the most exurban growth. Although some Midwestern states do have PDR programs, the relatively large amount of tillable land in that region has historically made preservation a less pressing issue, Wagner says. In many states, there are also nonprofit organizations that purchase agricultural easements, either alone or in cooperation with the state or local government.

As of January 2013, states had spent \$3.6 billion (not including any federal or nonprofit funding) to purchase the development rights on 2.3 million acres of farmland. Maryland ranks third in the country in terms of both dollars spent, \$672 million, and acres protected, 361,000. New Jersey has spent the most, nearly \$1 billion, while Colorado has protected the most acres, 590,000. Elsewhere in the Fifth District, Virginia, North Carolina, and South Carolina have spent an average of \$11 million each to protect about 12,500 acres of farmland in each state. West Virginia has purchased the rights to 2,800 acres at a cost of \$1.7 million.

Rocks vs. Hammers

In real estate, land value is determined according to a concept known as "highest and best use," defined as the most probable use of land or improved property that is legally permissible, physically possible, financially feasible, and which results in maximum profitability. According to this definition, agriculture is unlikely to be the highest and best use: Farm production expenses average more than \$100,000 annually, yet fewer than one-quarter of the farms in the United States gross more than \$50,000 per year, according to USDA data. Certainly, the market would seem to value development over agriculture; in Charles County, Md., for example, farmland sells for about \$5,000 per acre if it's going to be used for crops and up to \$200,000 per acre if it's sold to a developer for homes or businesses.

Farmland preservation efforts, however, are based on the idea that there is a failure in the market for agricultural land.

This failure stems from the presence of positive externalities — benefits such as the aesthetic value of open space or the stability of a rural community's economy — that aren't reflected in the price of that land. In other words, the highest or most profitable use of the land is not the same as the "best" use. In theory, when such a market failure exists, the government can play a role to correct it, in this case by compensating farmers for the development rights to their land.

But is there actually a market failure? While there might be real benefits to preserving farmland, there is room for debate about how large they are and how they should be weighed against valid competing interests.

Advocates of farmland preservation, for example, point to the many environmental benefits of preserving farmland. But it's also the case that there can be environmental costs. Agricultural runoff — water contaminated with fertilizer and pesticides, among other pollutants — is the number-one source of nitrogen and phosphorous in the Chesapeake Bay, which create algae blooms and dead zones that kill fish. Agricultural runoff is also the leading source of pollution in rivers and lakes, according to the Environmental Protection Agency.

Another major rationale for preserving farmland is to halt urban sprawl. But sprawl isn't necessarily a concern in some states that have enacted easement programs. Two of the stated goals of West Virginia's Voluntary Farmland Protection Act (VFPA), enacted in 2000, for example, are to "control the urban expansion which is consuming the agricultural land, topsoil and woodland of the state" and to "curb the spread of urban blight and deterioration." But eight of the 19 counties with operational VFPA programs have no connection to any metropolitan area (having a population of 50,000 or more), or even to a micropolitan area (having a population of 10,000 to 50,000), according to research by Odd Stalebrink of Penn State Harrisburg and Samuel Wilkinson of West Virginia University. And none of the counties in West Virginia with a population density high enough to be considered an urban area by the Census Bureau has established a VFPA board; the closest is Berkeley County, with 324 persons per square mile, still far from the 1,000 persons per square mile required for urban area status. Stalebrink and Wilkinson conclude that "based on measures of sprawl ... the VFPA appears to be directed at solving a problem that does not exist."

In many areas, there also might be a conflict between the need for affordable housing and the desire to preserve farmland. All else equal, development restrictions could lead to higher costs for housing and might also encourage higher-end housing than would otherwise be built. It's a conflict illustrated at the extremes by Hawaii, which prides itself on its agricultural heritage and the beauty of its views, yet also has a shortage of affordable housing: A single person can earn nearly \$55,000 per year and still qualify for housing assistance, and the state has the highest homelessness rate in the country. Despite the lack of housing supply, however, it took a decade to win approval for a 3,500-home development on the island of Oahu; it required the Honolulu

City Council to convert around 600 acres of land from an agricultural district to an urban district. Approval was finally granted at the end of 2013. (Hawaii has strict agricultural zoning but has not yet implemented a PDR program.)

Even farmers themselves aren't always fans of the programs. Changes in circumstances can dramatically alter the calculation a landowner originally made 20 or 30 years ago. In Charles County, Md., for example, farmers are advocating for the passage of a bill that would allow landowners who have sold their development rights to the state to devote up to 5 acres of their land to generating wind or solar power. Some conservation groups are opposed to the bill, but farmers argue that the additional income they could earn from leasing their land to energy companies is essential to keeping their farms operating.

In Howard County, Md., members of the Mullinix family have sought to terminate four easements they signed in the 1980s. Maryland's law includes a clause allowing landowners who signed an easement before 2004 to apply for termination after 25 years if they can prove that farming the land is no longer profitable or feasible. The Mullinixes were the first landowners in Maryland history to make such an application, but there are about 1,600 other easements signed before 2004 that are eligible. The family argued it could no longer make a living through farming, in part because its land was now surrounded by suburban development, and it needed to be able to pursue other business opportunities prohibited by the easement. (The family tried renting space to a landscaping business but was threatened with a \$50,000 fine.) The Maryland Agricultural Land Preservation Foundation has not yet ruled on their application, but the Howard County Council recommended that it be denied.

Farmland preservation supporters note that just because one family can't profitably farm, that doesn't mean the land is agriculturally unviable and should be turned into a subdivision. "One family might think farming is a dead end," says Wagner. "But someone new coming onto that farm might think about community-supported agriculture, or a vineyard, or agritourism. There is all this new blood and new ideas." According to this view, a farmer struggling to make a living on protected property could always sell the land to someone else to farm, although that may be easier said than done.

READINGS

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The Butler family started growing peaches in Montgomery County, Md., in 1950. Today the family farm is surrounded by development. "We're very happy here," says Wade Butler, "but if it ever gets to the point where taxes get too high or traffic gets too bad, it's nice to have some options."

That's why the Butlers have been reluctant to place an easement on their land. "If we give up all the rights and it's nothing but farmland, I don't think there would be a whole lot of takers for 280 acres in the middle of Montgomery County," says Wade Butler. "We're very happy here, but if it ever gets to the point where taxes get too high or traffic gets too bad, it's nice to have some options."

Ultimately, the value and efficacy of a PDR program, or any farmland preservation program, depend on the particular circumstances of the surrounding community and the particular needs of the farmer. A community interested in preserving scenic views might be unhappy with the noisy and dirty reality of an active farming operation, and the children of a farmer who decided to place an easement on the land might wish they'd been left with more options. While Groover believes that, on the whole, farmland preservation provides net benefits to society, communities must think carefully about whether a PDR program is the best preservation method. "A rock can be used as a hammer," he says. "But it's not always the best tool." **EF**

PHOTOGRAPHY: COURTESY OF BUTLER'S ORCHARD

Stalebrink, Odd J., and Samuel E. Wilkinson. "Farmland Preservation Programs in West Virginia: A Preliminary Inquiry into the Merits of Purchase Development Rights." Paper presented at the 46th Annual Meeting of the Southern Regional Science Association, Charleston, S.C., March 29-31, 2007.