tivated and the natural—each in its own place, each in its own way.

We have many long-time environmental management programs such as those for conserving soil and water, managing forests, and operating public parks; and we have numerous new ones such as those for setting standards for air and water pollution. All of them, the old and the new, are based on the will of the people as expressed in laws, public programs, private enterprise, and individual initiative.

"Pollution" has become a heavily used word since passage in the 1960's of specific Federal legislation dealing with air and water pollution and solid wastes.

We are in an era of new awareness of the environment and its meaning to people. This is as it should be.

We must know more about the planet on which we live. We must use our knowledge to draw upon and use its resources in ways that will not unnecessarily or irretrievably damage its underlying systems and functions.

WAYS TO REGULATE THE ESTHETICS OF OUR RURAL ENVIRONMENT

NATIONAL PUBLIC CONCERN for our environment is now a matter of record. As the population becomes more mobile, our interest in esthetics expands beyond the vicinity where we live and work. Consequently we now commonly speak of the national demand for such things as natural beauty, open space, and outdoor recreation. The esthetics of our rural areas is a significant national asset. Public action is necessary to preserve this asset on private as well as public land.

Traditionally the contribution of agriculture to society has been assessed mainly from the standpoint of production of food and fiber, and land has been considered simply as a factor of production. While the conservation movement and, more recently, concern for the environment have expanded the perspective, policymakers still have felt compelled to justify programs along traditional lines.

The role of agriculture as custodian of three-fifths of the Nation's landscape has received relatively little attention. The rural-urban distinction has perhaps fostered this neglect. However, we have tangible evidence that the distinction is breaking down. Legislation is being considered or has been passed in many of our most urban States to support the preservation of agriculture as a land use.

This support does not appear to be based simply on the future demand for land to produce food and fiber. At least one factor in explaining the response is a desire by many people for retaining agriculture as an amenity.

In many situations agriculture is compatible with demands for open space. In some situations it is a positive factor. For instance, along highways any single land use at some point becomes monotonous. Even forestry has been criticized where it has been used extensively, and a preference has been expressed for some variety including agriculture as a part of the pastoral setting.

While agriculture is generally esthetic and is compatible with certain open space objectives, we must recognize that there are conflicts. The qualities that have been attributed to agriculture in the past may change with time. At least two factors must be considered.

First, technological change has influenced agricultural practices so that

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many criticisms that were levied at other industries in an earlier era are now being directed at agriculture. Pollution is a good example. Concentrations of livestock tend to accentuate the problems of both air and water pollution.

The increasing use of pesticides and fertilizers to insure efficient crop production is also becoming more offensive to those concerned with the environment. Modern farm equipment and certain types of buildings do not have the same esthetic appeal that was associated with earlier farming practices. Traffic and noise are also identified with the technology of modern farming. Future changes in technology may further aggravate the problem.

Second, esthetics are based on individual tastes and values. In the past the population consisted of many individuals who were raised on farms. With this background they would naturally have tastes that are different from the population of today, which is largely of nonfarm origin. Will present and subsequent generations be as willing to accept what in many instances are necessary adverse effects of farming operations? Population mobility further increases the potential for these types of conflicts.

Present concern for our environment including esthetics is simply an extension of the trend which began as population pressures grew on our fixed land base. Over the years this has resulted in evolutionary redefinition of rights and duties with respect to private land use. The public interest in the way private land is used has become greater. Concurrently, there has also been a shift from almost exclusively local interest to more regional and national interest.

Government programs are designed to give expression to the public interest and are implemented through the powers of taxing and spending, eminent domain, and regulating land use. The focus of this chapter is on land use regulation and the implication of regulation for agriculture.

Open space in Maryland countryside. Pond adds beauty to setting, and serves practical purpose of conserving and storing water for farm use.

Since the Federal Government generally does not have the power to regulate land use directly, this device has not been tried to any significant degree in national programs affecting rural land utilization including agriculture. This may change, however, particularly as programs involve other levels of government in pursuing national objectives.

Recent legislation by Congress affecting certain areas administered by the Department of the Interior offers a good example. The areas include the Cape Cod National Sea-

Strip mining in Washington State, as in many other parts of U.S., has left ugly scar on countryside. Some abandoned mines are being adapted to landfill use and recreation.

shore, Fire Island National Seashore, Whiskeytown National Recreation Area, Indiana Dunes National Lakeshore, and certain rivers and adjacent lands that have been designated as part of the National Wild and Scenic River System.

The legislation provides that local zoning, a land use regulatory measure, which conforms to standards set by the Secretary of the Interior, may be applied in lieu of condemnation in order to achieve the desired national objectives. Since the land covered by acceptable zoning does not have to be purchased by the Government, costs of achieving the objectives in these areas is reduced. This approach may also be more desirable from the standpoint of individual landowners because the land remains in private ownership.

Looking to the future, we can anticipate an increase in national programs designed to preserve and protect the scenic and recreational values of our rural countryside. A variety of tools will be employed including land use regulations. We can expect that the regulations may apply to agricultural as well as non-agricultural rural land utilization.

Hawaii is the only State that has extensive land use regulation at the State level. The State Land Use Commission in Hawaii is charged with classifying all land in the State into four major land use districts: urban, rural, agricultural, and conservation.

Lands having the highest capacity for cultivation are, to the extent possible, placed in the agricultural district. Counties are responsible for administering regulations of the State Land Use Commission in agriculturally zoned areas. To give support to the regulatory approach, land may be "dedicated" by the owner to an agricultural use; an act which entitles the owner to have the land assessed at a value solely based on that use.

The 1969 session of the Oregon legislature passed an act which gives the Governor the authority to plan and zone all lands in the State not subject to a comprehensive land use plan and zoning ordinance by the end of 1971.

While authority to regulate land use generally rests with State governments in our system, the authority has traditionally been delegated by States to local governments. The delegation is typically made by enabling acts for zoning and subdivision control. The decision to exercise the authority under the legislation is almost always at the option of the local government.

In every State there is some legislative authority for regulating land use in unincorporated or rural areas. The unit of government authorized to regulate and the scope of authority vary significantly from State to State.

Early zoning enabling legislation was typically designed for municipalities and attempted to deal with urban problems such as excessively high population density. As legislative changes have been made to permit regulation of land use in rural areas, stated objectives of such legislation have tended to change.

Illustrations of these changed objectives include preservation of historic and scenic attractions, conservation of natural resources, and fostering of agriculture and industry. The enabling legislation in 21 States expressly provides for establishment of agricultural zoning districts by local governments in rural areas.

Emphasis in exclusive agricultural districts is on the prohibition of uses that are incompatible with agriculture. By eliminating nonfarm uses the potential for land use conflicts is minimized and there is less need for regulating the permitted agricultural and agriculturally related uses. In addition such districts can provide large tracts of contiguous land as open space.

The agricultural zoning district most widely used by local governments is the cumulative rather than the exclusive type. Almost any land use is permitted in cumulative agricultural zoning districts. The cumulative agricultural zone actually is a residual zone, and is relatively ineffective in dealing with many land use problems.

In over 20 States agriculture is currently exempt from zoning regulations. For some States the exemption applies only to agriculture on tracts above a certain minimum lot size.

While a variety of objectives are set forth in zoning enabling legislation, it is apparent that the effect of many types of zoning regulations is visual. Since the origin of zoning, courts have been increasingly tolerant of land use restrictions which may, to a great degree, have been directed at improving the appearance of communities. However, general court acceptance of regulations which are designed only for esthetics remains doubtful.

In many cases where esthetics is an issue the courts will strive to find a legitimate reason other than esthetics to uphold a zoning ordinance. In such cases esthetics may be justified as a secondary purpose. Frequently the courts will find a relationship between esthetics and preservation of property values, the latter being a frequently specified objective in zoning enabling acts.

In determining whether a land use regulation is reasonable, and therefore constitutional, the courts generally attempt to balance the public interest against the private interest. During the balancing process, esthetics will often be weighed along with other factors.

There are limits on how far we can go in placing burdens on individuals under the regulatory power for the benefit of society as a whole. Beyond the point of reasonable regulation our system dictates that society must pay for the benefit.

Issues that have developed regarding land use regulation and esthetics, generally, are relevant to the regulation of agricultural land utilization. In most land use regulations, including those that apply to agriculture, esthetic considerations enter through other stated objectives such as promoting orderly land development and exercising control over incompatible land uses. Greater restriction is placed on uses that are offensive to adjacent property owners.

How far the regulatory power could or should be used in controlling agricultural land utilization to improve esthetics is difficult to answer. At least two settings should be considered separately.

RURAL-URBAN FRINGE

The first setting is the rural-urban fringe. A desire to preserve agricultural land on the rural-urban fringe, as was suggested earlier, is not based generally on the need for land to produce food and fiber except where certain agricultural land is a unique resource. The public interest in this setting is generally in preserving open space and avoiding urban sprawl.

Purchase of land by a local government for open space in rural-urban fringe areas is extremely expensive. Agriculture is one of the few uses of privately owned land which can pro-

vide both a return to the owner and benefit the public as open space.

Since the public is receiving a benefit it is reasonable to expect that certain burdens must also be accepted. It would be senseless as well as illegal to zone land for agriculture on the one hand and at the same time place such restrictions on land use that the owner could not profitably operate. It would be just as unreasonable to expect that the public should suffer the adverse effects of all possible agricultural practices.

Land use conflicts in rural-urban fringe areas should be anticipated, and corrective measures taken to minimize the conflicts through the design of local zoning ordinances. Various types of agriculture should be considered from the standpoint of positive and negative effects on the community interest. The effect of changing technology should be appraised.

In selecting the agricultural use to be permitted, attention must be given to the effect that any restriction on use will have upon the owner. Exclusive agricultural districts should be considered as a way of minimizing conflicts in areas where agriculture is to be retained.

A failure to realistically consider these various factors prior to adopting the ordinance will lead to difficulties later on if the ordinance is challenged in court. While certain adverse effects of agricultural land use can clearly be regulated under a number of enabling acts, there are limits. This would be particularly true if regulations tended to be directed primarily at esthetics and were at the same time especially burdensome to thc landowner.

The second setting is in rural areas. A suggestion that private land use in rural areas should be regulated to preserve esthetic values primarily for urban people calls for a somewhat different analysis.

Since zoning has been used almost exclusively as a tool of local land use planning, the rationale for it has developed in that context. Courts have usually looked more favorably upon regulations that benefit land at the same time its use is being restricted. In many instances the arguments are related to the objectivc of preserving local property values.

Effective planning in this developing area can preserve open spaces for improved environment.

Should the restrictions be designed primarily to benefit those outside the locality, the traditional framework for analysis is more difficult to apply. As a practical matter, such a hypothetical situation would not likely exist so long as the zoning authority remains with county and municipal governments.

If, however, zoning authority was to be exercised by some higher unit of government, new issues might arise. It seems reasonable to expect that certain minimum standards should be met with all land use. Land use regulations for control of billboards and junkyards are examples of esthetic regulations that have received fairly wide support.

As restrictions tend to become more burdensome on the individual owner and at the same time are directed more toward providing a public benefit, they are less likely to be considered reasonable. For instance, architectural controls, which are becoming increasingly important in urban land use regulation, would be difficult to justify if they were being applied in rural areas primarily to benefit a non-resident urban public.

To supplement the regulatory approach, such devices as tax incentives, grants, purchase of easements, purchase and lease-back, and compensative regulation could be used to improve the esthetics of rural areas.

To sum up, today there is genuine concern by both the rural and urban public about environmental quality including esthetics. As the population increases, the Nation becomes more concerned about open space, natural beauty, and outdoor recreation. As the population becomes more mobile the community of interest in how land is used expands across the boundaries of towns and counties to the States and to the Nation. Agriculture is generally considered by urban as well as rural people to contribute positively to the Nation's landscape.

With increased social interaction and changing technology, the potential for land use conflicts increases. Governmental programs must be designed to minimize the conflicts and give positive expression to the public interest in how private land is used.

The power to regulate land use has a role in implementing programs by all levels of government. But since we are a nation which cherishes private ownership in land, there are limits to what can be achieved with this approach.

Regulation of land use for esthetics involves one of the major issues of our time—establishing a proper division between the public interest and private property rights. The problem is one of balancing the benefits and burdens in establishing reasonable regulations.

We can anticipate that courts will be increasingly tolerant of regulations that are related to esthetics. At the same time there may be a need to develop supplemental programs to provide compensation through devices like tax incentives, grants, easements, user fees, and compensative regulation in situations where the objective sought goes beyond the scope of reasonable regulation.

LIVING HISTORIC FARMS TELL IT LIKE IT WAS

ALL OVER AMERICA remnants of our agricultural past survive, unused and largely unappreciated, but potentially of great educational value. Although most Americans no longer farm, they still retain an interest in agriculture. Farmers and nonfarmers alike seem eager to learn about our agrarian past.

Few educational methods can show the amazing progress in the pro-