

**LIMITED DEVELOPMENT:  
DEVELOPMENT WITH AN EYE ON PRESERVATION**

by  
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**ABSTRACT**

Limited development as it is now practiced first appeared some twenty five years ago. Since that time, it has become more than a technique to finance the preservation of open space. The land use ethic embodied in limited development speaks to a growing public awareness of the need to balance conservation and development.

Many communities throughout New England experienced a dramatic loss of open space between the early 1970's and the onset of the current market downturn a few years ago. During that period of time, limited development was successfully used to preserve many parcels of prime resource land, both large and small, throughout New England. However, much of its past success has been attributed to a rising real estate market which has recently fallen on hard times.

This thesis examines limited development in Massachusetts by looking at two case studies, one begun in 1976, the other in 1986. Following the case studies is an evaluation of limited development's performance under current market conditions, and some opinions regarding its future viability, based on interviews with experts in the field. Finally, this thesis concludes that the future utility of limited development depends on greater cooperation between conservation groups, developers, property owners, and select government agencies.

Thesis Supervisor: Michael Wheeler

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## **CHAPTER I: INTRODUCTION**

The preservation of public open space is an urban, suburban, and rural concern. This concern is evident wherever conservation and development interests are at odds. Bitter and prolonged disputes over development proposals are increasingly common occurrences across the United States. Some of the most hard-fought battles revolve around proposals that would either destroy or forever change what had heretofore been open space.

In the absence of well-conceived growth management plans, many cities and towns across the country are struggling to find new ways to preserve important open spaces. Whether the open space is a scenic vista, an historic site, a farm, or habitat for wildlife and plants, its full value cannot be measured in dollars and cents. Open space provides many of the amenities that make a community a desirable place to live. Accompanying its loss is a sense that community character and quality of life are changing, often for the worse. This loss is part of the hidden cost of development. This cost is often underestimated or misunderstood by cities and towns who neglect to take action on preserving important open spaces.

Even for those who understand these hidden costs of development, the price of conservation may be too high. In hot local real estate markets, land speculation can drive the price of even one small parcel beyond the public's collective ability to pay for its preservation. To make matters worse, state and federal funds for open space preservation have declined in recent years just as the need for those funds has been growing. The question becomes one of "Who will pay for the public good of protecting open spaces?"

In recent years, some conservationists and developers have decided that cooperation can in some cases yield better results than confrontation. A good example of this is **limited development**, in which land with conservation value is only partially developed. The development of one portion of the land is carried out to finance the permanent conservation of the remainder.<sup>1</sup> In an ideal project, the profits from the limited development would finance 100% of the costs involved in protecting and maintaining the conservation land. There is tremendous appeal in the idea that market forces that make land conservation necessary can also make it possible.<sup>2</sup> However, projects are rarely completely self-supporting and they usually require added subsidies to make them work.

As the idea of limited development grows and becomes more widely understood, the land use principles involved in it are being adopted in a wide variety of contexts. This thesis will look at a small sample of projects to illustrate several forms limited development can take. The cases were chosen to provide some sense of how limited development has fared under past market conditions, how it is affected by the current downturn, and how strategies for future projects reflect both earlier precedents and emerging new ideas. Although case studies will all be drawn from Massachusetts, some of the lessons learned may be sufficiently general so as to be of value in other areas where similar events are occurring.

### Growth Versus No-Growth?

Growth is inevitable. The issue that has sometimes divided communities-growth versus no

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<sup>1</sup>"Limited Development- A Limited Solution?", Report:Program on Public Open Space Partnerships, Fall 1988, p.2.

<sup>2</sup> William D. Tuttle, "Limited Development as a Tool for Agricultural Preservation in Massachusetts," Master's Thesis M.I.T. 1988, p.1.

growth-is irrelevant. The question is how we intelligently prepare and plan so that growth achieves what people seek.<sup>3</sup>

Today in many parts of New England, communities reluctantly recognize that efforts to slow the pace of growth in the 1970's and 80's were only marginally successful. Many communities have been thoroughly transformed despite their efforts to control growth through local initiatives.<sup>4</sup>

Until the recent market downturn, development pressures led many towns to implement a variety of measures to control growth and stop the loss of "community character." Some, through the process of down-zoning, required larger lot sizes for home construction. This action had the intended effect of reducing the number of buildable lots on the market, but also raised the entrance barriers to the community increasing the cost of purchasing buildable lots.

Down-zoning, however, was not the solution that many towns hoped it would be. By raising the price of buildable lots, the cost of housing shot up. In many communities, home prices climbed beyond the reach of all but a few first-time buyers. Children of community residents have been priced out of the market, along with average people who work in town, but cannot afford to live there.

In addition, the mandatory larger lot sizes consumed available open land much more quickly than the original zoning had. Large lot zoning is often adopted even in semi-rural and rural areas in the mistaken belief that if new homes are spread further apart, the open, rural character

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<sup>3</sup> Bob Graham, former Florida Governor, quoted at Lincoln Institute Seminar "Building Better Communities: Conservation & Development in the Gulf Coast States," 18 November 1988.

<sup>4</sup> "Limited Development- A Limited Solution?", p. 2.

will be retained. Unfortunately, this method often produces the opposite result, with remaining open land being subdivided at an even faster rate.<sup>5</sup> "The chief villain is not the developer but the by-laws," one Massachusetts planner observes. "People haven't visualized the implication of the zoning document they have implemented."<sup>6</sup> Communities then become alarmed when the very action designed to slow growth and the loss of open space seems to spur it on at an even greater pace.

The loss of open space through increased development is an urban problem as well. In many cities, parks and plazas represent the only public open spaces. While they rarely disappear through development, they are often adversely affected by what goes on around them. As William Whyte so eloquently observed, some cities have traded away "the most basic of amenities- sun and light."<sup>7</sup> For example, some urban open spaces have been thrown into perpetual shadow by the construction of tall buildings. Whyte's view is one shared by many who live or work in the city. "The losses are palpable. One of the sights that should never be is Paley Park in the dark in midafternoon. Even at the summer solstice, when the big buildings are in full sun, Paley is so dark the lights on the waterwall are turned on."<sup>8</sup>

Though they share similar concerns, there has yet to be a link established between urban open space advocates and their suburban and rural counterparts. This issue was the subject of a keynote address given by William H. Whyte at the June

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<sup>5</sup> Randall G. Arendt, "Farmland & Open Space Protection", Center for Rural Massachusetts, U.Mass./ Amherst.

<sup>6</sup> Randall G. Arendt, quoted from "Center helps towns, developers to preserve local character," Daily Hampshire Gazette, 8 Sept.1987, p.26.

<sup>7</sup> William H. Whyte, City: Rediscovering the Center, (New York:Doubleday 1988), p.251.

<sup>8</sup> Ibid., p. 252.



1990 annual convention of land trusts in Villanova, Pennsylvania.

### Conservation by Communities

Beyond zoning controls, communities have become more aggressive about identifying and gaining control of land with special conservation value. Traditionally, communities gained control of land through direct purchase, and more recently, through the purchase of development rights. In the case of a straight land sale, the town buys land either through an annual budget appropriation to a conservation fund, or through a bond issue financed by general property tax revenue.<sup>9</sup> With the purchase of development rights, the town buys from a landowner his or her legal rights to develop their land, without actually taking title to the land. The sale of an easement decreases the assessed value of a piece of land, thereby reducing the landowner's property taxes. The landowner's deed is restricted so that any subsequent owners of the land are similarly prohibited from developing it.

Yet throughout the Northeast, and particularly in Massachusetts, these traditional means of preserving open space are becoming more and more inadequate. Part of this is due to the extraordinary escalation of real estate prices up until the late 1980's. At the same time that land prices were increasing, tax revenue growth was leveling off. In Massachusetts, Prop 2 1/2 was enacted to limit the growth of local property taxes. This had a negative effect on community's ability to finance open space protection programs.<sup>10</sup>

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<sup>9</sup> Kelly McClintok, "Land & Housing Banks: Status Report as of July 1988," ELM Education Fund, 11 July, 1988, p. 2.

<sup>10</sup> Ibid., p. 2.

In the search for new ways to fund the preservation of open space, some communities have adopted Land Banks funded through taxes levied on the transfer of real estate. The revenues from the transfer taxes are destined for a dedicated fund which is used for open space acquisition and maintenance, and in some cases, the creation of affordable housing.<sup>11</sup> In Massachusetts, Nantucket(1983) and Martha's Vineyard(1985) have both established Land Banks to help fund conservation efforts. Many other communities are lobbying for a similar transfer tax, however, organized opposition from real estate and business interests is widespread. Opponents argue that a tax on real estate transfers would limit growth and increase local property taxes. In addition, such a tax creates a situation where a small group of people- those buying and selling real estate- must finance a public benefit enjoyed by the entire community.<sup>12</sup>

The public's willingness to finance the protection of open space is always affected by their perception of the public benefits involved. For example, if a proposal is made to purchase a piece of land because it is vital to protect the town's water supply, public support will most likely be broad. If in turn the proposal is made to purchase a meadow for its scenic conservation value, support is liable to be less broadly based. Of course, individuals who own property abutting the meadow will be in favor of the proposal, knowing that it will add value to their property. The fact is that the benefits of a public good like protected open space often accrue unequally to different members of the community. As a practical matter, this doesn't making the "selling" of open space protection any easier.

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<sup>11</sup> Ibid., p. 1.

<sup>12</sup> Ibid., p. 4.

## Non-governmental Initiatives to Save Open Space

Private efforts to preserve open space in New England go back nearly a century. In 1891, The Trustees of Reservations was founded in Massachusetts. It was the first volunteer organization in the world established for the sole purpose of protecting land for the public good.<sup>13</sup> This organization was the model on which the modern land trust movement was founded.

Land trusts are non-profit conservation groups, most often locally-based and quite frequently staffed by volunteers. They identify and acquire land of conservation value through gifts or direct purchase. Through the use of conservation and scenic easements, they place permanent restrictions on the land they acquire so that it can never be developed. In many cases, the land remains open to the public for general recreation.

As discussed earlier, "development rights" can be sold without giving up title to a piece of land. Land trusts frequently use this approach when outright purchase of the land is either not feasible or unnecessary. Securing an easement on the land which prevents future development is usually less expensive than purchasing the land outright, so it is a technique that land trusts favor.

## The Origins of Limited Development

Land trusts are known for their creativity in structuring deals to preserve open land. However, sometimes the cost of preserving a given parcel requires exceptional efforts on the land trust's part. Such was the case with the Wheeler Farm

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<sup>13</sup> Gordon Abbott, Jr., "Land Trusts: Innovations on an Old New England Idea," *New England Landscape*, Volume One(1989), p. 15.

in Lincoln Massachusetts, one of the earliest and now best known examples of limited development.

In 1966, eight Lincoln residents formed a non-profit land trust to acquire and develop Wheeler Farm in a way that would generate only enough net value to offset the purchase costs.<sup>14</sup> In bidding for the Farm, they were competing head to head with a developer whose plans called for 33 home lots spread over the Farm's entire 108 acres. Favoring the land sensitive intentions of its fellow citizens, the Wheeler family sold their land to the newly formed local land trust.<sup>15</sup> The trust sold the two farmhouses and barns along with their respective pastures, which were protected from future development through deed restrictions. In addition, they sold 10 home lots subject to an approved plan that included 56 acres of open space donated to the Lincoln Land Conservation Trust.<sup>16</sup> The Wheeler Farm project demonstrated that through limited development, a locally based non-profit land trust could preserve significant amounts of open space.

In the two decades since the Wheeler Farm project, limited development (also known as compromise, protective, restricted, or negotiated development) has become a well-established tool for land conservation. It has been used in urban, suburban, and rural settings across the United States. Its principal practitioners have been non-profit land trusts and community based organizations. Additionally, some for-profit private developers have engaged in limited development, often with goals and strategies similar to, but distinct from those of non-profit organizations.

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<sup>14</sup> Robert A. Lemire, "Limited Development: An Overview of an Innovative Land Protection Technique," Exchange, Fall 1988, p.4.

<sup>15</sup> Robert A. Lemire, Creative Land Development, (Boston: Houghton Mifflin Company, 1979), p.62.

<sup>16</sup> Lemire, Exchange article, p. 4.

Although limited development has shown itself to be a workable tool for land conservation, its use by land trusts has been questioned by their own membership and the general public. One nagging question is whether it is appropriate for land trusts to engage in the sale and development of land for profit, even if that profit is used for open space preservation. Given that most trusts have a stated goal of protecting, conserving, and enhancing environmentally significant lands, this question will continue to be hotly debated.

In addition, limited development is a risky proposition for land trusts, who often find themselves understaffed and under-skilled for the work they've taken on. Most veterans of limited development projects will admit they they are far and away the most resource-intensive undertakings a land trust can possibly engage in.<sup>17</sup> Aside from the often substantial financial risks incurred, land trusts find the risk of damaging their reputation to be one of the primary impediments to limited development. For these and other reasons, many land trusts view limited development as the last resort when considering options to preserve a parcel of land.

#### New Opportunities for Public/Private Cooperation

With the awareness of the many risks inherent in limited development, more local governments, non-profit land trusts and community based organizations are looking to minimize their risk by involving private developers in the projects at an early stage. As one expert in the field of limited development advises, "find qualified help to assist in the transaction, do the land planning, get the permits, and then

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<sup>17</sup> The opinion of many experts in the field, including Marty Zeller of the Vermont Land Trust who made this point during a Limited Development workshop at a June 1990 land trust convention in Villanova, PA.

let the developers do the projects."<sup>18</sup> Given the historic mistrust of developers by conservation groups, this is a significant turn of events, one which has been assisted by the public's growing demands for responsible treatment of the environment.

Developer's willingness to design a project around environmental concerns may be less a matter of choice than necessity. Private developers for limited development projects are often selected through an RFP process initiated by a land trust.<sup>19</sup> In order to be selected, a developer must submit an environmentally sensitive plan. A good track record demonstrating sensitivity to environmental issues is also helpful in achieving designated developer status.

Land trusts can usually attract developers to proposed limited development projects without difficulty. More often than not, the very fact that the trust is trying to preserve the land means that it has good to excellent development potential. If that alone is not sufficient to entice developers, trusts can perform a variety of other tasks that help to reduce risks and carrying costs for the developer. In some cases, they can carry the land until the building permits are approved. Often, the trust's charitable status and rapport with the community can help mollify objections to a new development project and boost a developer's public image.<sup>20</sup>

Despite some encouraging recent examples of cooperation involving land trusts and private developers, many open space advocates caution that limited development should still be

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<sup>18</sup> Douglas T. Horne, quoted in "Limited Development-A Limited Solution?," p.2.

<sup>19</sup> RFP is an acronym for "request for proposal."

<sup>20</sup> John Malamut, "Compromise Development: Bridging the Gap Between Development and Preservation," Urban Land, March 1987, p. 5.

considered only as a last alternative. Care must be taken so that "the technique doesn't become a Trojan Horse for the random development of farm and conservation lands."<sup>21</sup> Private developers, while enthused about the possibilities, recognize that cooperative limited development projects often require more work than conventional subdivisions, yet offer nothing extra in terms of profit.

#### The Impacts of Limited Development on Design & Planning:

In that one of the most important goals of limited development is to preserve the existing landscape, the design of these projects is crucial to their success. Quite often local zoning requirements represent formidable barriers to creating successful limited developments. In such cases, it is up to the project's developer to convince local officials that revising or waiving selected requirements will result in a better outcome for the community as a whole. Success in this effort will depend to a large degree on the soundness of the developer's plan, and the community's commitment to preserving open space.

It is interesting to note that the hallmarks of a good limited development project are becoming more and more a part of the mainstream strategies employed by local planning boards. In many parts of the Northeast, it is becoming more and more common for new residential developments to contain a significant parcel of open space. Many communities where large-lot zoning prevailed a few years ago are now allowing cluster developments where developers have agreed to preserve part of the site for open space.

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<sup>21</sup> Harry Dodson, from "Innovative Responses to Development Regulations", a Lincoln Institute of Land Policy seminar in Sept. 1988.

The model of limited development pioneered by land trusts and conservation-minded individuals has been adopted and extended by other kinds of proponents. For example, numerous projects have been carried out by landowners with the help of private consultants or conservation advisors. While these projects resemble many of those conducted by land trusts, the important difference is that the landowner makes all the final decisions. Some conservation advisors expect to see more landowners adopting this approach in the future. In some cases, it is estate tax burdens that will make some development of family land necessary. Aside from tax matters, the social ethic today does not favor the preservation of family lands. As one conservation advisor observed, "People are no longer tied to one place...the bonds have been broken."<sup>22</sup>

These developments indicate that communities everywhere are trying to find new ways to accommodate growth, yet at the same time preserve open space and local landscapes of special importance. How well limited development performs as a tool to this end is the subject of this thesis.

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<sup>22</sup> Telephone interview with Bill Sellers, 18 July, 1990.



## CHAPTER II :

### PURPOSE & ORGANIZATION of THESIS

Though it has been practiced for more than a quarter of a century, surprisingly little has been written about limited development. Perhaps this fact helps to explain why few people know what limited development is, much less understand its strengths and weaknesses. I am particularly dismayed that many of my colleagues in the real estate business are unfamiliar with limited development. If limited development is to be more widely practiced, it must first be better understood by developers, landowners, planners, and citizens interested in balancing new development with the preservation of important open spaces. Land trusts and other conservation organizations generally understand limited development quite well, although many of them have yet to decide how they can practice it without compromising their mission.

Achieving that wider understanding of limited development will require more documentation of important projects and subsequent analysis of both quantitative and qualitative issues. A good example was William Tuttle's study of the financial viability of limited development as a tool for agricultural preservation.<sup>1</sup> Although I do not fully agree with his conclusions, his methodology and rigor represent the kind of in-depth analysis that the subject deserves.

The purpose of this thesis is to take a qualitative look at limited development and consider both its past performance and its viability going forward. Times have changed since the Wheeler Farm project in 1966, but limited development is still with us. What is different about the way projects are

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<sup>1</sup> William D. Tuttle, "Limited Development as a Tool for Agricultural Preservation in Massachusetts," M.I.T. Masters Thesis, Feb. 1988.

structured today? What precedents have past projects established? Does the performance of limited development in the past foreshadow its future utility? What effect has the recent market downturn had upon its current and future viability?

These are the overarching questions which this thesis will address. They are the kind of questions that are likely to stimulate debate, which is the purpose of this thesis. Where a consensus of opinion exists, I will endeavor to reveal it. Where such a consensus does not exist, I will present a sample of viewpoints from various experts in the field of limited development. My plan is to identify some of the important unresolved issues surrounding limited development. By so doing, my hope is that this thesis will encourage the kind of discussion among conservationists, developers, planners, and concerned citizens that could lead to greater cooperation, understanding, and ultimately, more development that compliments the natural environment.

### **RESEARCH DESIGN**

This thesis will examine limited development by way of three case studies. Time constraints dictate that the number of cases be small. However, even a couple of well-chosen cases can highlight most of the important issues raised by limited development.

I have selected cases from Massachusetts in order to maximize time spent researching the cases and minimize time spent traveling to other states. Though there will be aspects to each study which are peculiar to Massachusetts, the general issues surrounding these cases are common to limited development projects in other parts of the country.

In order to impart some sense as to how limited development has changed over the past two decades, the cases have been selected to illustrate how projects differed with respect to the conditions under which they were conceived. Time and changing economic, political, and social conditions are the "longitudinal" variables that run through each of the cases.

Chapter III tells the story of Pilot Hill Farm, a limited development project that took place in 1976 on the island of Martha's Vineyard. This case illustrates how, under certain conditions, limited development can cover all the costs associated with preserving a large parcel of prime open space.<sup>2</sup>

Chapter IV describes how the Watertown Dairy in Wayland was preserved through the efforts of the Sudbury Valley Trustees and a host of private and public partners. Though this case begins in 1981, limited development does not officially enter the picture until early 1988 when a private developer was brought into the project.

Chapter V was to have been a case study of a current limited development project caught squarely by the recent market downturn.<sup>3</sup> Having discovered no suitable case that fit my criteria, Chapter V has been reconfigured to present a more wide-ranging picture of current market conditions and their impact on the present and future viability of limited development.

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<sup>2</sup> In the case of Pilot Hill Farm, the project actually generated a \$10,000 loss to the Vineyard Open Land Foundation, which could have been eradicated by the sale of one final lot which was added to the protected open space.

<sup>3</sup> Although the Watertown Dairy case could be construed as a project caught by the market downturn, the viability of that project as a whole was not greatly affected by the recent market downturn. Only the position of the private developer was jeopardized.

Finally, Chapter VI highlights the issues I found most provocative about these cases. I offer my own conclusions about the viability of limited development in the coming years, as well as some recommendations that could enhance the way future projects impact both the physical and social environments.

### CHAPTER III: PILOT HILL FARM <sup>1</sup>

In the early 1970's, Martha's Vineyard, a small island off the coast of Massachusetts, was beginning to see the kind of growth which had transformed other resort areas in the Northeast during the 1950's and 60's. The shorelines of New Jersey, Connecticut, Rhode Island, and Cape Cod had all undergone intensive development and lost much of their original character. As part of a multi-fronted effort to head off similar development on the Vineyard, a non-profit trust was formed in 1970 which became known as the Vineyard Open Land Foundation(VOLF).

Among the trustees of VOLF were many well-known and outspoken public figures. Edward J. Logue, who had directed extensive urban renewal projects in Boston and New Haven, and Jerome B. Wiesner, president of MIT and science adviser to several U.S. presidents, were both proponents and original trustees of VOLF. In the face of mounting development pressures, the main concern of the trust's founders was the preservation of the rural, open character of Martha's Vineyard .

In many ways VOLF resembled the Rural Land Foundation (RLF) of Lincoln, Massachusetts, which was founded in 1966. Like RLF, VOLF could buy and sell land, or hold it for conservation purposes. As charitable non-profit trusts, both groups could accept contributions tax free, as well as providing significant tax benefits for charitable contributions. Both organizations intended to offer an alternative to haphazard development by 1)carrying out

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<sup>1</sup> This case study is based on personal and phone interviews with Robert and Patty Kendall, Mark G. Racicot, Carol L. Magee, and Myron C. Thomas, conducted between July 5 and July 23,1990. VOLF's files on the PHF project were used in compiling and verifying biographical and historical information.

limited development projects, 2) advising landowners and developers how to conduct environmentally responsible development, and 3) working with individuals and other organizations to promote sound conservation and development planning.

The technique of limited development, tested by RLF in its 1966 Wheeler Farm project<sup>2</sup>, was adapted by VOLF in 1973 when the Sweetened Water Farm project was carried out in Edgartown, Massachusetts. This project involved 67 acres of land, 32 of which were permanently preserved as open space. Fifteen home sites were created, 5 of which were set aside for sale at below-market prices for island residents of moderate income. The sale of the 15 lots covered the cost of acquiring and preserving the 32 acres in perpetuity, proving the viability of limited development on the Vineyard. The success of Sweetened Water helped to pave the way for VOLF's largest limited development project, Pilot Hill Farm.

#### ACQUISITION & FINANCING:

In 1975, James Howell, a Vineyard real estate broker, contacted VOLF concerning the imminent sale of a large parcel of land in the island town of Tisbury. The 182 acre tract was part of the estate of the late Columbus Iselin, a founder and second director of the Woods Hole Oceanographic Institution. The property, purchased for \$30,000 during the Great Depression, had an estimated value of \$850,000. This estimate, however, was based on subdividing it into 50,000 square foot lots, which was allowed under Tisbury zoning at the time. Fortunately for VOLF, the heirs of the estate were opposed to the full development of their land. In return for VOLF's promise to develop the parcel at a density of roughly

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<sup>2</sup> For an account of the Wheeler Farm project, see Robert A. Lemire's article entitled "Limited Development: An Overview of an Innovative Land Protection Technique, Exchange, Vol. 7, No. 4, Fall 1988. Or see Robert A. Lemire's book entitled "Creative Land Development: Bridge to the Future."

one lot for every seven acres, the Iselin heirs agreed to sell the parcel at the reduced price of \$550,000. The final purchase and sale agreement was signed on July 6, 1976.

By agreeing to a bargain sale, the heirs chose to forego some \$300,000 in potential gross income. Yet by doing so, they gained more than the comfort of knowing that the land would be treated with respect. In addition they were able to write-off the difference between the \$850,000 assessed value and the \$550,000 sales price as a charitable donation, since VOLF was a non-profit, tax exempt organization. Considering their sizeable estate tax liability, the charitable deduction helped greatly to offset the foregone revenues that a maximum density development would have generated.

The bargain sale negotiated by VOLF was a vital ingredient in the viability of the project. The density of the proposal that VOLF put forth was about one fifth of what was permitted as-of-right with 50,000 square foot zoning. Instead of the 135 building lots legally permitted, they would have only 28. While potential revenue from lot sales had been greatly reduced, so had infrastructure and site improvement costs. Still, the revenue from lot sales had to cover not only the purchase price of the property, but site improvements, and legal, staff, and interest costs that the project would incur.

As with the Wheeler Farm project carried out by RLF, VOLF was able to obtain some bank loans by securing personal guarantees from concerned individuals. This practice, known as "contingent liability", allowed VOLF to borrow over \$100,000 for the Pilot Hill Farm project. The liability of the guarantors was contingent upon VOLF's success in meeting its obligations under the purchase and sales agreement. If VOLF defaulted, the guarantors were obligated to contribute cash up to the full amount of the guarantee they issued.

The heirs had agreed to a purchase money mortgage which eliminated the need for VOLF to come up with the full purchase price at closing. Instead, VOLF would give them a partial payment up front and additional payments each time a lot was sold. This arrangement saved VOLF substantial amounts of interest, since interest rates at the time were running anywhere from 18% to 20%. Still, VOLF had borrowed over \$100,000 against the personal guarantees at prevailing rates of 20%. The interest on this loan had a negative impact on the financial performance of the entire project, as the loan remained outstanding for well over a year as lots were being sold.

THE DEVELOPMENT PLAN:

Tom Counter, VOLF's executive director, and Rob Kendall, project manager for Pilot Hill Farm, had to design a plan that would satisfy the Iselin heirs, VOLF's board of directors, the Tisbury planning board, and a regional planning board known as the Martha's Vineyard Commission. After running this gauntlet of approvals, they needed to emerge with a project that they could sell as quickly as possible to minimize carrying costs.

The plan that was finally put forth and approved was one that owed much to a thorough understanding of the land. The more Kendall and Counter walked the land, the clearer it became to them where the house lots should be situated. Since they were laying out lots at a density of only one site for every seven acres, they had great flexibility in developing a plan that fit the lay of the land. Not only could they site the house lots to give each owner privacy, they could place them so as to preserve the character and continuity of the landscape. Some of the principles employed in the design came from a book called "Looking at the Vineyard", written primarily by Kevin Lynch, an MIT professor of planning and VOLF trustee.



VOLF's final plan (see Exhibit 3-1) included 27 building lots, 5 of which were designated as "Youth Lots" to be sold to young island residents of moderate income. The project would be served by a single entrance which led to a winding, unpaved road. A continuous greenbelt ran through the center of the property, from the entrance at Lambert's Cove Road to 1,350 feet of ocean frontage on Vineyard Sound. Totalling 80 acres, the greenbelt with its pastures, meadows, and brook would be permanently protected by conservation easements. It was this plan that the Iselin heirs endorsed.

The same ingenuity inherent in the project concept carried over into its implementation, helping to keep site improvement costs to a minimum. Though the planning board initially resisted the idea, the road that served the project was kept narrow and unpaved. The gravel, sand, and hardener used on the road were extracted from a pit on the site. As trees were cleared for the road, the stumps were buried on site to keep disposal costs down. VOLF further contained costs by working closely with contractors whom it hired on an hourly basis. Through careful planning and considerable contributions of sweat equity, VOLF was able to save money on site improvements while at the same time preserve the natural character of the landscape.

Each house site was restricted by fixed building envelopes, dictating which part of the lot could be built on. Restrictive easements were placed on the areas outside the prescribed building envelopes to ensure that each lot maintained its intended buffer from adjacent homes and conservation land. In some cases, building envelopes were drawn in a deliberately unconventional fashion. For instance, lots with ocean views were laid out so that the homes built on them would not be visible from just offshore. This maintained the natural appearance of the shoreline, but

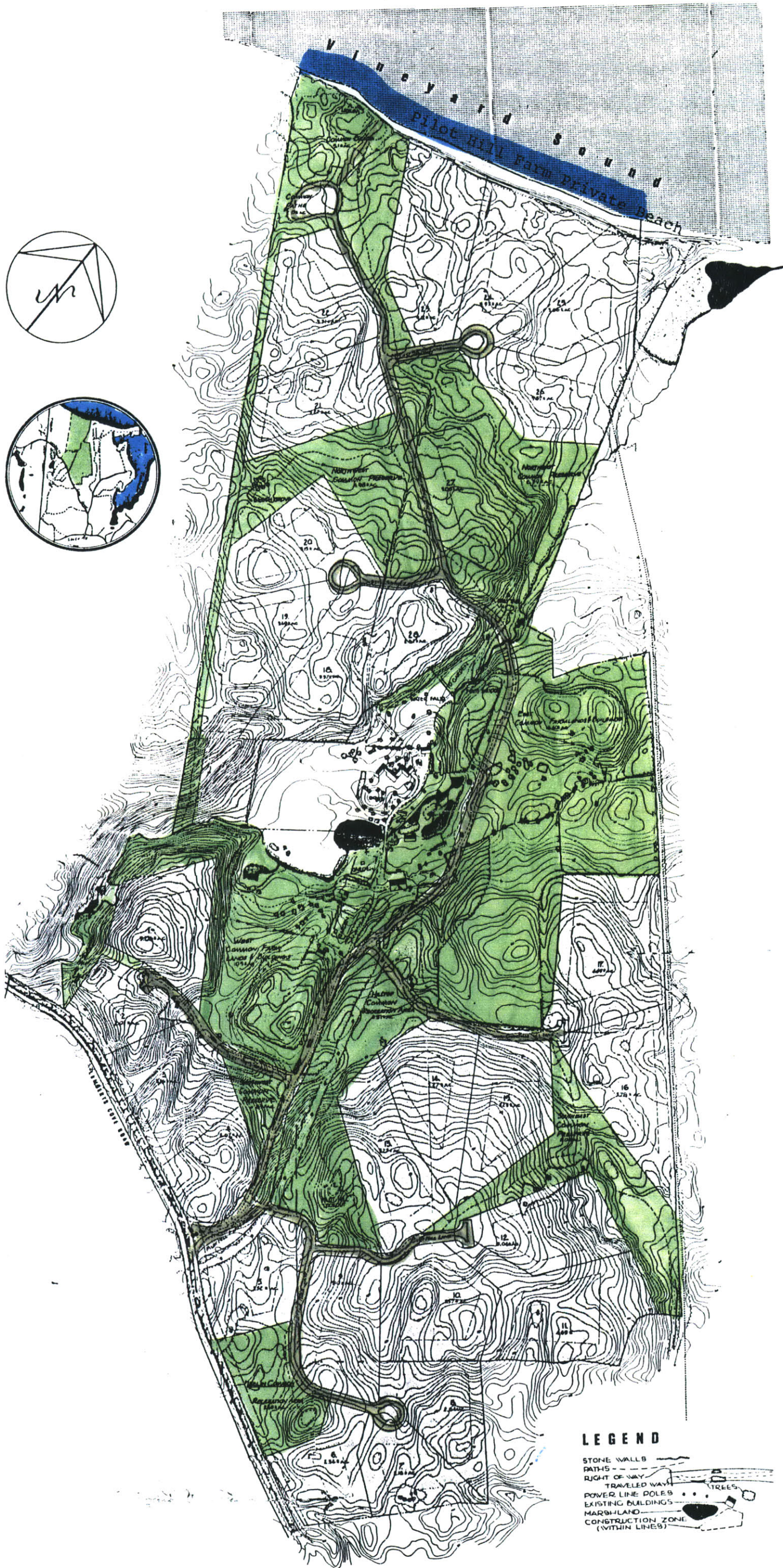


Exhibit 3-1: **PILOT HILL FARM** SCALE 1" = 100'

compromised the potential ocean view. Some would argue that it also compromised the potential price of these lots.

While some profit may have been sacrificed by these and other restrictions, it was never the intention of VOLF to maximize its profit from lot sales. Their goal was to develop an environmentally and aesthetically appropriate alternative to the proposals put forth by profit-oriented developers. It is possible that restrictions such as the setbacks from the shoreline added value to the project in the long run because they helped to make Pilot Hill Farm different from run-of-the-mill developments sprouting up all over the Vineyard.<sup>3</sup>

#### SELLING THE CONCEPT:

Even in the mid 1970's, Tisbury differed from other towns on the Vineyard in that it had very few large tracts of undeveloped land left. The members of the planning board were all volunteers from the community, and like their counterparts in other island towns, wary of the increasing pace of development occurring on the Vineyard. Just a few years earlier, the Martha's Vineyard Commission(MVC) had been established to coordinate economic and development planning on the island. The MVC had the authority to review the Pilot Hill Farm proposal since it was considered a development of regional impact.

VOLF developed nearly 20 different plans before it settled on one that maximized the amount of preserved land yet still worked economically. When the VOLF's proposal was compared to what *could have* been built as-of-right, there was little question as to which development was more desirable. Aside

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<sup>3</sup> To date, no one has statistically determined if properties at PHF have enjoyed greater appreciation than comparable properties elsewhere on the island. Part of the problem inherent in conducting such a comparison would be locating property that is truly comparable to PHF.

from some very minor revisions, VOLF's proposal was quickly endorsed by the Tisbury planning board. The MVC also endorsed the proposal in short order, partly due to the fact that the height and setback restrictions in VOLF's proposal were more stringent than those in the MVC's own guidelines. With the plan<sup>4</sup> approved by the town, the MVC, and the Iselin heirs, VOLF began to develop the site and market the buildable lots(see Exhibits 3-2 and 3-3).

Prior to the Pilot Hill Farm project, marketing expertise was not a priority of VOLF. However, with a project the size of PHF and the necessity of selling the lots as quickly as possible, the need for greater marketing ability was evident. Rob Kendall was brought on as project manager of PHF as much for his marketing expertise as his skill in land planning. At the time the project came to market, the local and national economy was less than robust. Nevertheless, the unique character of the PHF project, coupled with skillful marketing, enabled VOLF to pre-sell more than 60% of the market rate lots before the subdivision was even approved. By the deadline of December 1, 1986, there were 41 applicants for the 5 available Youth Lots. The entire project sold out in a little over a year's time. Though 28 lots had been slated for sale, one lot was withheld and added to the open space protecting Smith Brook, which runs through the property.

Once the common open space was protected by conservation easements, VOLF had to decide who would hold the easement and make sure that it was properly enforced. In order to fulfill this function, to oversee the residents compliance with established building guidelines, and to manage the general upkeep of common property, the Pilot Hill Farm Association

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<sup>4</sup> Final development plan is explained on page 5, with accompanying site plan, Exhibit 1.



*Michael Zide*

# *Some Land Consumed*

# *Some Forever Open*

Your purchase of property planned by the Vineyard Open Land Foundation helps create permanent open space. For information on viewing building sites call 693-3280.

Exhibit 3-2



*Michael Zide*

# **UNBUILDABLE LAND**

*The development rights have been removed.*

The cost of this removal is paid for by purchasers of select building sites within Pilot Hill Farm. There are a few sites left.

**For information, contact Vineyard Land Use II Inc.  
West Tisbury, Mass. 02575 693-3280**

Exhibit 3-3

was established. The Association collected annual assessments from all the owners at PHF and used those funds for the maintenance of all common areas and capital improvements. In addition, some of the funds were to be used to keep the preserved farm land in active use. Whatever subsidies were necessary to achieve that end would be drawn from the annual assessments.

Pilot Hill Farm Since 1977:

When VOLF had sold the last remaining lot and tallied up its costs on the project, it determined that it had lost on the order of \$10,000.<sup>5</sup> The \$10,000 loss could have been eradicated by the sale of the 28th lot, or by charging more for the waterfront lots. Just the same, the final financial outcome of PHF did not discourage VOLF or its supporters. Measured against the credibility and respect that the project garnered for them, the \$10,000 loss was considered by most an excellent investment.

One might judge the value of that investment by the attention PHF and VOLF's other limited development projects have received. Since PHF, VOLF has received inquiries about the project from nearby towns in Massachusetts, assorted locations around the U.S., and even faraway places like the little Caribbean island of St. Bart. Planners, developers, land trusts, and even nosy graduate students want to know how limited development has worked to keep Martha's Vineyard special.

The Tisbury planning board has cited the example of PHF to developers intent on maximizing the density of their projects. There is evidence to suggest that since the time of PHF, it has become increasingly difficult to get a maximum

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<sup>5</sup> Total project costs included \$550,000 purchase price of PHF, overhead costs for VOLF's design, development, and marketing of the project, legal fees, site improvement costs, insurance, and interest payments.

density proposal approved in Tisbury. The present zoning by-laws reflect the influence of PHF and other limited developments that have occurred on the island in the past decade. The land use approach illustrated by the design and approval of the PHF anticipated the growing flexibility of zoning control in Tisbury and other Massachusetts towns.

Support for PHF has been evident in the neighborhood surrounding the development. Two of the abutters on the northeast side of the property have placed conservation easements on the portion of their lands adjacent to PHF. In conjunction with the protected land at PHF, these new easements form a network of nearly 200 acres of privately protected conservation land.

Unlike more recent VOLF projects and most limited development projects carried out in the last decade, the 80 acres of protected open space at Pilot Hill Farm is not open to the public. Residents do tolerate the use of the trails by hikers and horseback riders, and it is likely they will continue to do so as long as they are not overrun with trespassers.

In one respect, the protection of this land has been a private initiative, proposed and carried out by the efforts of individuals dedicated to preserving the rural character of the Vineyard. At the same time, there is a public subsidy in the form of tax abatements, both federal and local. U.S. taxpayers underwrite the tax deduction granted for the Iselins' bargain sale of the land by waiving some estate taxes. Local taxpayers forfeit some tax revenues by allowing the preserved open space to be taxed at a lower rate than residential property. By the same token, one could argue that had the 135 unit condo complex been built, Tisbury would



have sustained higher social costs, such as a much larger drain on town services.<sup>6</sup>

On the local level, the escalation of real estate values since 1976 has been dramatic. On regret that some of the creators of PHF have is that no resale restrictions were placed on the Youth Lots. The lots were sold with a homestead mortgage which could be "lived off" if the purchaser maintained residence on the property for 10 years. The purpose of this arrangement was to discourage speculation, however, with the 10 year requirement satisfied, these now prosperous islanders are free to sell their property and pocket substantial gains. Consequently, VOLF lost substantial sweat equity, and something else that has always been a rarity on Martha's Vineyard: affordable home sites.

In 1976 when the Iselin property was purchased, people marvelled that a property bought for \$30,000 in the Depression could sell for \$550,000 some 40 years later. Though the property had appreciated substantially in those 40 years, it was no match for the next 10 years. In 1986, one of the lots at PHF (with house) sold for \$628,000, or \$100,000 more than the purchase price of the entire Iselin property in 1976.

#### Parting Thoughts:

Before moving onto the next case, it is worth noting that the PHF project was, at least in some respects, a product of another era. For example, if the Iselin property had come on the market after the Tax Reform Act of 1986, the heirs would

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<sup>6</sup> The cost/benefit analysis comparing the 135 unit complex originally proposed and VOLF's approved plan has, to the best of my knowledge, never been done. It is often the case that proposals with fewer, more expensive homes are chosen over proposals with more numerous, less expensive homes. The former almost always represents a better deal to a town's existing taxpayers.

have been asked to forego much more potential revenue in a similarly drafted bargain sale. For one thing, there was a drastic increase in land prices between 1976 and 1986. In addition, the federal tax benefits for the donation of appreciated property had been reduced. Lot sales would have produced much more income for VOLF, but probably not enough to have offset the increase in value and diminished tax benefits. Under a scenario such as this, added subsidies or higher density limited development might have been necessary, albeit less desirable ways to "save the farm."

## CHAPTER IV: THE WATERTOWN DAIRY \*

### POISED FOR A BUILDING BOOM:

In 1981, the town of Wayland in eastern Massachusetts was still a predominantly rural suburb of Boston. Still, there was evidence that the traditionally rural character of Wayland was undergoing changes through an upswing in local real estate development. The so-called "Massachusetts Miracle" was under way, and with it came a wave of development welcomed by some, challenged by others.

Wayland was a prime location for residential development to occur. Much of the town retained the look and feel of an earlier time, with its scenic country lanes and wide open spaces. In addition, its location made it a convenient place to live for people who worked along nearby Rt. 128, and for those who commuted into Boston via the Massachusetts Turnpike. It was, to some, the best of both worlds, with the charm of a traditional New England village yet ready access to the economic and cultural vitality of New England's largest city.

Wayland's Conservation Commission and the Sudbury Valley Trustees (SVT), a local non-profit land trust, were well aware of their town's attractiveness to developers. For years, they had been identifying and trying to protect environmentally and historically important sites within the town. Their biggest challenge came in the form of a 1981 announcement that the Watertown Dairy, comprising some 275 acres, was going to be auctioned off to the highest bidder.

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\* This case study is based on both personal and telephone interviews with Whitney A. Beals, Frank Stewart, Richard A. Lavoie, Leslie Luchonok, Rachel Freed, and Jim Alicotta, conducted between July 5 and July 23, 1990.

Excitement over the impending sale was not confined to those interested in preserving the Dairy. A host of real estate developers and land speculators were in attendance at the auction. As it turned out, the highest bidder for the Dairy was the Farmers Home Administration(FmHA), which was acting to protect its investment in the property (their bid was \$1,934,277). FmHA had a second mortgage on the Dairy, having granted the now bankrupt farmer a \$400,000 loan a few years before.

While developers eyed the Dairy for its development potential, conservationists and local residents saw good reasons for its preservation. For many years the Dairy had been one of the most productive farms in the area. Local conservation advocates, the Massachusetts Department of Food and Agriculture(DFA), and the Department of Environmental Management all felt that the Dairy should remain in active agricultural use. Among other reasons given for its preservation were:

- The Dairy site was a key unprotected parcel in the Bay Circuit greenbelt, a circular conservation corridor around Boston that had been in the works for three quarters of a century.
- The site comprised a major unprotected portion of Great Meadows National Wildlife Refuge.
- The site was an excellent location for a new well, needed by the town of Wayland.
- Most of the Dairy property had been on the Wayland Conservation Commission's maps for 20 years.
- Because of evidence of 8,000 year old encampments found on the property, it was eligible for listing on the National Register of Historic Places as an archaeological district.

Those who stood opposed to the residential development of the Dairy knew they had to act quickly. Soon after FmHA purchased the property, it decided to subdivide it and sell

it off to recoup the government's investment. FmHA was obligated to sell the property for highest and best use, which in this case meant housing. Under the existing zoning, a maximum density subdivision would have contained nearly 100 homes. FmHA received numerous offers, among them a \$650,000 bid from Sudbury Valley Trustees(SVT). Before any offers could be accepted, the Conservation Law Foundation challenged FmHA's right to sell the Dairy for development. Citing environmental concerns and federal laws which supported those concerns, FmHA withdrew the Dairy from the market and embarked on a lengthy environmental assessment. Before the assessment was completed and the matter resolved, the former owner of the farm sued FmHA, claiming his constitutional rights to property ownership had been denied. Litigation kept the Dairy in limbo for another three years. The final trial date was set for June 1986.

Just a few days before the trial was to begin, SVT's executive director met with FmHA and the former Dairy owner who had brought the suit. SVT offered to buy out both parties in a cash settlement that would eliminate the need to go to trial. With each party in agreement, they went before the federal magistrate with their proposed solution. Their plan was approved, and SVT was given three years to close on the Watertown Dairy. It was a victory, but the real battle had just begun. Somehow, SVT had to raise the \$1,800,000 it had offered for the property as well as an estimated \$200,000 in acquisition costs.

#### SVT's PLAN UNFOLDS:

From the beginning, SVT had a one basic objective underlying their efforts. According to Whitney Beals, SVT's project manager for the Dairy project, "our goal was to maximize the number of acres saved and minimize the number of acres

affected."<sup>2</sup> In order to meet that objective, SVT's first step was to ascertain which federal, state, and local agencies were willing to put their money where their mouth was. As it turned out, four governmental agencies pledged their financial support to the project.

The Massachusetts Department of Food and Agriculture was interested in preserving the Dairy as farm land, and to that end, they pledged to contribute \$300,000 at the time of closing. The money would come from the state's APR program (Agricultural Preservation Restriction). In return, roughly 90 acres would be dedicated to farming in perpetuity through the forfeiture of development rights.

The Massachusetts Department of Environmental Management (DEM) became involved largely because of its dual mandate to protect natural resources and to provide recreation. The Dairy was rich from a natural resources perspective with prime farm land, wetlands, and extensive wildlife habitat. In addition, its potential recreation value was judged to be excellent, and its location within the Bay Circuit corridor made it all the more appealing. Had it not been for this last factor, DEM would most likely not have become involved. Its principal focus had always been the creation, enlargement, and maintenance of state parks and forests. Nevertheless, DEM pledged \$200,000 to help fund SVT's purchase. In return, the state would receive trail easements on nearly 100 acres of the property, guaranteeing public access in perpetuity.

The town of Wayland saw several opportunities in the property. The Dairy had been slated for preservation 20 years earlier by the town Conservation Commission, who had

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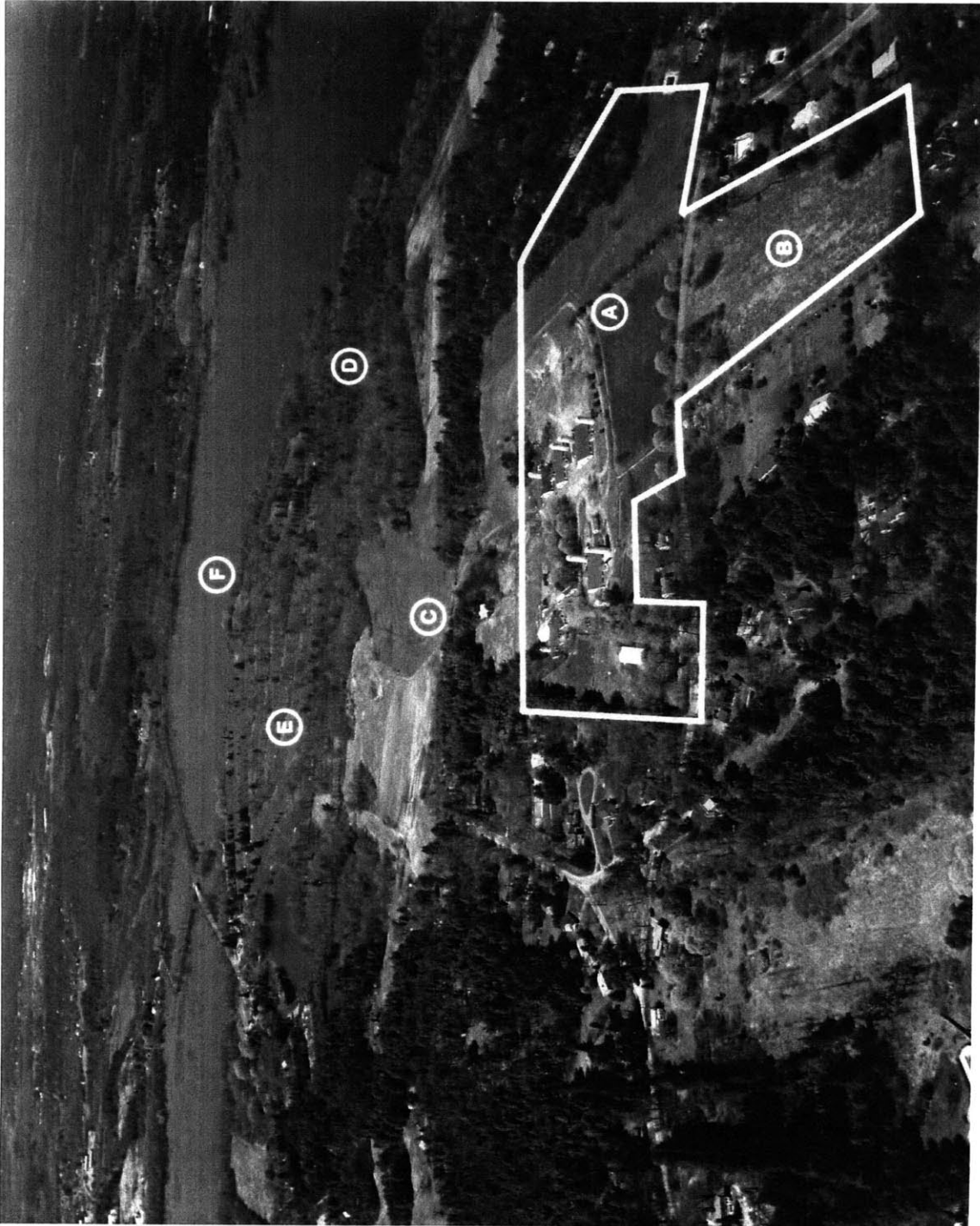
<sup>2</sup> Frank Mauran, quoting SVT Associate Director Whitney Beals in "Compromise Saves Wayland Farm," The Boston Globe, 9 September 1989.

yet to take any action to protect the property. In addition to protecting the natural resources of the property, it wanted guaranteed public access for recreation purposes. Aside from the Conservation Commission, the Wayland Water Department needed to complete the acquisition of the minimum acreage required for installation of a new well. The total contribution promised by the town of Wayland amounted to \$286,000. In return, Wayland would gain a new well and the underlying fee interest in 90 acres of conservation land subject to the APR and DEM's trail easements. A special town meeting held in November, 1981, approved the expenditure of \$260,000 by the Conservation Commission at the height of the concern generated by FmHA's proposed sale to the highest bidder.

Public support for the preservation of the Dairy began to grow in the town of Wayland. The property was part of the scenic heart of town, an old familiar sight from bucolic country roads as well as from the Sudbury River. In the final analysis, the public's political and financial support was one of the most important reasons for the project's success.

The U.S. Fish and Wildlife Service(USFWS) also was interested in SVT's efforts. Of the Dairy's 275 acres, it wanted control of roughly 140 acres within the authorized boundaries of the Great Meadows National Wildlife Refuge. The agreement reached with SVT required USFWS to kick in \$82,200 to purchase in fee simple 143 acres, including over 1.2 miles of river shoreline, as a permanent addition to the refuge (see Exhibit 4-1:Aerial photo of property).

For its part, SVT would raise all the money it could through private donations. An SVT board member had pledged \$300,000 in foundation support to cover SVT's costs if the project should fail. Getting from June 1986 to closing in June 1989



Parcels A&B: Northland Investment Parcel C: Town of Wayland  
Parcel D: U.S.Fish & Wildlife Parcel E: Wayland Country Club  
"F" : Sudbury River

Exhibit 4-1



meant more than raising a large sum of money. The project would demand the full-time attention of SVT's staff. There would be engineering and legal costs, though no one knew how much. Though SVT had carried out numerous acquisitions in the past, nothing approached the size and complexity of the Dairy project.

SVT knew they could never raise enough from private donations to close the funding gap by June of 1989. There would have to be another major partner in order to pull the project off. Unless an individual willing to purchase significant acreage to continue farming could be found, the only logical partner that could make the needed contribution was a private developer. SVT executive director Allen Morgan realized early on that this project required some degree of limited development. The approval not required development rights that came with the Moore road frontage made the adjacent land too expensive for preservation. This was the same conclusion that the town of Wayland had come to when it decided not to appropriate funds for the Moore Road frontage in 1981. Morgan's decision to pursue limited development did not find unanimous favor with his Board of Directors. However, his determination to see the Dairy preserved overcame the opinion of some SVT constituents that any development, no matter how limited, was a violation of their mission. Morgan's philosophy was "half a loaf is better than none."<sup>3</sup>

Having made this decision, SVT had to decide both how much and which part of the Dairy would be developed.\* In the summer of 1986, that question was difficult to answer. There were unforeseeable costs they might incur before June of

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<sup>3</sup> Personal interview with SVT Associate Director Whitney Beals, 10 July, 1990.

\* The decision to pursue limited development did not affect the other agencies decision to participate in the project. A Cooperative Management Agreement was drawn up by DEM, DFA, Mass. Historic Commission, and the Wayland Conservation Commission.

1989. Though they had local, state, and federal commitments for nearly \$870,000, no one knew how much of that money would actually be available at the time of closing. In addition, the value of the Dairy property was appreciating rapidly, due to a robust Massachusetts economy. The danger in selling too soon was that with raw land appreciating in value about 20% annually, they could lose substantial revenue that a later sale could yield. It would be nearly a year and a half before a developer was chosen and the sale price for the development parcel determined.

#### KEEPING THE LAWYERS BUSY:

In March 1987, FmHA and SVT signed a purchase and sale agreement.<sup>4</sup> Fortunately for SVT, they had required FmHA to conduct a "21E assessment" of the Dairy before signing the P&S. The purpose of the assessment was to determine whether there was any hazardous waste sites on the property. Under Massachusetts law, anyone who has ever owned a hazardous waste site is potentially liable for both its cleanup and any damages alleged to have resulted from it.<sup>5</sup> Two dump sites were found on the property, one of which contained potentially hazardous medical and industrial by-products. The site was found to contain approximately 8,000 cubic yards of wastes and 4,000 cubic yards of intermingled soil used as cover. Ultimately, lawyers hammered out a four-party cleanup agreement between SVT, FmHA, the Massachusetts Department of Environmental Quality Engineering (DEQE), and the private corporation whose industrial rubber wastes had been illegally dumped at the site.<sup>5</sup> Although SVT was able to cut the cleanup costs by about \$500,000 by getting the town of Wayland to

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<sup>3</sup> Whitney A. Beals and Allen H. Morgan, "Toxic Waste: An Expensive Hazard to Land Trusts," Exchange, Vol. 8, No. 3, Summer 1989, p. 14.

<sup>4</sup> Ibid., p. 13.

<sup>5</sup> SVT decided that without its voluntary participation in the cleanup of the dump site, the effort to acquire the Dairy would not succeed by the June 30, 1989 deadline. Of the materials deposited in the Wayland landfill, 99% of the volume was solid waste and not hazardous material.

accept most of the waste in the town landfill, the cleanup and related legal expenses cost SVT over \$100,000.

Over the three year period from June of 1986 to June 1989, SVT was sued three times by parties who wanted part or all of the Dairy property. SVT prevailed in court in all three cases, but the legal expenses incurred drove their out of pocket expenses well beyond their original projections.

LIMITING THE DEVELOPMENT:

In December of 1987, SVT invited Northland Investment Corp., a Newton development firm, to bid on 28.5 acres of the Dairy property.<sup>6</sup> Northland's residential division had always focused on environmentally sensitive land use, and had even deeded away portions of past developments to towns for conservation or recreation uses. It was Northland's track record that convinced SVT that Northland could be trusted to carry out an appropriate limited development on the property.

The parcels chosen for development lay along Moore Road. Because of their road frontage, these 28.5 acres could be developed without incurring the risk of a lengthy approvals process with the town of Wayland. It had been determined in 1981 that this frontage was the most appropriate location for residential development. In its appropriation to purchase 90 acres of the Dairy, the town of Wayland had determined that given the market value of the 28 acre parcel, the high cost of its preservation would be hard to justify to the taxpayers.

Both Northland and SVT knew the potential revenues from the parcel could be higher if they filed and were given permission for a subdivision. At the time, a development with up to 24 lots was feasible. However, approval of such a

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<sup>6</sup> Globe article, 9 September 1989.

plan was far from certain. Even if it were approved, it would greatly change the appearance of the property, something neither SVT or Northland wanted to do. For SVT, membership and community support depended on maintaining a minimum density development approach. Having chosen Northland as the right firm for this approach, they set about the process of negotiating a price for the parcel.

The process was complicated by a variety of restrictions that would be placed on Northland's parcel. The general goal of these controls was to permanently maintain the existing rural character of the site and to establish the future homeowner's rights and responsibilities regarding their property. In the spring of 1988, Northland and SVT signed a purchase and sales agreement for \$1,500,000. The agreement called for SVT to assign their right to purchase the 28.5 acre parcel to Northland at the closing in June 1989. As with most complex sales agreements, there were certain contingencies built into the agreement. Of greatest concern to SVT was the cleanup of the dump site, which had to be completed before closing in order for Northland's purchase to go through. Despite the obstacles that lay ahead, SVT was pleased. Northland's offer represented roughly 70% of the projected total cost of preserving the Dairy.

Northland's final site plan (Exhibit 4-2) calls for the creation of 6 lots ranging in size from 3 to 6 acres. Each lot has specified "building envelopes" that dictate where homes can legally be built. The location and configuration of the envelopes was determined by the size and natural features of each lot. The future home sites are located away from Moore Road so as to preserve the view from the road. Each home site is designed to relate not to other home sites, but to its own open space. Natural features of the landscape buffer each lot, lending them an added degree of privacy while minimizing the visual impact of the future homes on the



Public Access Easement (see  
to rail fence

House is higher than  
the way back edge  
and takes advantage  
of the view to the  
southwest

5. 1 View  
2.4 ACRES

View

4.  
5.0 ACRES

View

Large meadow creates  
foreground for house

3.  
3.1 ACRES

'Country Lane' passes  
thru gate of rail fence

6.  
5.6 ACRES

← Conservation  
Land

View

House has  
uninterrupted  
view of Conservation  
Land thru an opening  
in the tree line

2.  
6.2 ACRES

Pond is  
surrounded by  
mature willows

View

House, Net is sited  
to take advantage  
of views and solar  
exposure

Pool

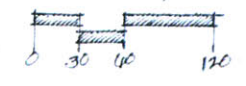
Tennis  
Court

1.  
5.1 ACRES

Existing  
House

# The Pasture at Sedge Meadows

Wauland, Massachusetts



Offered by  
Northland  
Residential Group  
Newton, Massachusetts

Architects, Landscape Architects  
Matarazzo Design  
Concord, New Hampshire

Exhibit 4-2

landscape.

In order to guarantee that the land outside each envelope would retain its existing character, a series of covenants were established. These covenants are in the form of a conservation restriction, given to and enforceable by the town. This land, comprising 79% of the acreage Northland purchased, can not be built on nor can its character be altered in any substantive fashion. While restricted in their use of these buffer zones, future residents will be fully responsible for their maintenance as set forth in a separate declaration of covenants and restrictions. While consistent with the project's conservation goals, these covenants added considerable difficulty to Northland's task of marketing the lots.

In order to make sure that the homes built were compatible with the rural character they were trying to preserve, a Design Review Committee would be established. Its function would be to review plans for both structures and landscaping proposed for the 6 building lots. Guidelines were established and the Committee has the power to reject plans that don't comply. The design guidelines suggest traditional New England architectural styles which would blend most readily with the rural landscape. Homes can be thoroughly modern inside as long as they meet these exterior appearance guidelines.

#### Coming to Closure:

Local support for the Watertown Dairy project was achieved by proactive community involvement on the part of SVT. In order to keep the community aware of their progress, SVT published a newsletter entitled the "Dairy Diary", written by neighborhood volunteers. They organized a number of committees to provide local input to the project. Anyone interested could become involved with land use (limited

development) planning, public relations, fund raising, archaeology, or steering committees. SVT also kept the town government abreast of progress. Beginning in January 1989, the town selectman began receiving updates on a weekly basis from project director Whitney Beals.

In late 1987, SVT redoubled the fund raising effort. Individual donations ranged in size from \$2 to \$12,000. In addition, two large donations, a corporate challenge grant of \$50,000 and a foundation grant of \$100,000 helped greatly in the campaign. SVT raised a total of nearly \$300,000 in private contributions to help keep pace with project costs.

In June of 1986, SVT estimated the project would cost them no more than \$200,000 in expenses. But due to the cost of the dump cleanup and the lawsuits filed against them, expenses had exceeded those estimates. With the June 1989 deadline fast approaching and in the absence of expected state funds, SVT had to mortgage their headquarters in order to raise the cash needed to close (see Table 4-1 for summary Pro Forma).

Just four weeks away from the three year time limit imposed by the original agreement, SVT closed on the Watertown Dairy. As it turned out, the effort led by SVT saved much more than Morgan's "half a loaf." 90% of the Watertown Dairy was preserved in perpetuity. On July 16, 1989, a party was held to celebrate the success of the three year effort to preserve the farm. A landmark commemorating the site as the Sedge Meadows Reservation was unveiled.

It had been a long journey, one begun long before June 1986 when SVT brought together FmHA and the bankrupt Dairy owner. Some say SVT's efforts to save the farm had begun back in 1953 when founder Allen Morgan had first spoken to the farmer about protecting his land from development. Though it took

**June 1986**

Purchase Price: \$1,800,000  
Projected Expenses: \$ 200,000  
Total Estimated Costs: \$2,000,000  
 =====

Funding      % Projected      Acreage  
Commitment    Total Costs    Acquired

|                            |                  |       |     |
|----------------------------|------------------|-------|-----|
| Dept.of Food & Agriculture | \$ 300,000       | 15%   | 86* |
| Dept.Environmental Mgmt.   | \$ 200,000       | 10%   | 86^ |
| Town of Wayland            | \$ 286,000       | 14.3% | 90. |
| Northland Investment Corp. | not yet involved |       | 28  |
| U.S.Fish & Wildlife        | \$ 82,200        | 4.1%  | 143 |
| SVT fund raising           | \$ 200,000       | 10%   | 8   |

**TOTALS:** \$1,068,200  
 Shortfall:\$ 931,800

- \* Agricultural Preservation Restriction (APR)
- ^ Trail Easements
- Subject to DEM's trail easements and DFA's APR

**June 1989**

Purchase Price: \$1,800,000  
Actual Expenses Incurred: \$2,100,000+(estimated)  
Estimated Costs to Completion : \$2,200,000

Funding      % Projected      Acreage  
Commitment    Total Costs    Acquired

|                            |              |       |     |
|----------------------------|--------------|-------|-----|
| Dept.of Food & Agriculture | \$ 300,000   | 13.6% | 86* |
| Dept.Environmental Mgmt.   | \$ 200,000   | 9%    | 86^ |
| Town of Wayland            | \$ 286,000   | 13%   | 90. |
| Northland Investment Corp. | \$1,510,000# | 68.2% | 28  |
| U.S.Fish & Wildlife        | \$ 82,200    | 3.7%  | 143 |
| SVT (through fund raising) | \$ 280,000   | 12.7% | 8   |

**TOTALS:** \$2,658,200  
 Projected surplus:\$ 458,200

- \* Agricultural Preservation Restriction (APR)
- ^ Trail Easements
- Subject to DEM's trail easements and DFA's APR
- # Commitment made with Spring 1988 signing of P&S agreement

**Table 4-1**



more than three decades, Morgan's vision had become a reality.

Conclusions:

Recently the Watertown Dairy project has received recognition and praise from conservation groups, the media, and a variety of politicians. Some see the project as a model for the future, yet others caution that every conservation effort is unique, and requires careful examination of every available option.

Despite the difficulties they encountered, SVT was fortunate in several respects. They were able to lock in the sale to Northland near the top of the market. Since the agreement of sale was signed by SVT and Northland, the New England real estate market has suffered a major downturn. Land values have dropped considerably, and real estate sales are slow.

SVT was also fortunate to have had a willing seller such as FmHA. FmHA's ability to be flexible was due in part to disagreement at the federal level as to how foreclosed farm property should be handled. On the one hand, FmHA's mandate was to protect the government's investment and sell for "highest and best use." At the same time, the Secretary of Agriculture had issued a decree giving the highest priority to the preservation of existing farmland. FmHA's District Director took advantage of this gray area to structure the deal in a way that would enhance SVT's chance for success.

SVT was also fortunate in being able to draw on several sources for their uncertain public funds. Since the project did not hang on the timely delivery of any one promised subsidy, SVT was able to carry out the purchase, even though they did mortgage their former headquarters. While the participation of a number of public partners may have worked

well in this case, it is one option that is available only when a particular piece of real estate is located where various public benefits coincide or overlap.<sup>6</sup>

If all the money promised to them comes in as planned, SVT stands to generate a surplus on the Dairy project. Given the extraordinary risks they incurred, the project director feels they have earned it. Any money coming in which exceeds their expenses for the project will be used as seed capital and as a revolving fund for future projects. In the current soft market, SVT and other conservation groups are looking for ways to tie up targeted properties at reduced prices. SVT is currently involved in several potential acquisitions that could involve limited development.

For Northland, the financial outcome of its involvement is not yet known. The ultimate profit or loss will be determined by the rate at which the lots are absorbed, and the prices for which they sell. In any event, Northland won't be forced to "fire sale" the property like numerous other local developers whose now face foreclosures. Northland anticipates selling some of the lots at reduced prices to retire the project debt, and hopes it can do so and still "bank" a couple of lots until the market recovers.

Northland's Senior Vice President Frank Stewart is optimistic about future limited development projects, despite the uncertain outcome of the "Pasture at Sedge Meadows" (Northland's name for the Watertown Dairy project). He acknowledges that the project was more complicated and expensive than anticipated. The more parties a project involves, the higher the expenses will be for documentation, attorney's fees, and overhead. Still, Northland is committed

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<sup>6</sup> Whitney Beals, editorial remarks on margin of 1st draft, 19 July, 1989.

to sensitive land use and its potential role in future public/private projects such as this. As Stewart recently observed, "The profit margins are thin with this kind of project. You have to value the land to want to do them."

## **CHAPTER V: LIMITED DEVELOPMENT IN A DOWN MARKET**

When I established the research design and case selection criteria for this thesis, I assumed that finding a current case in the pre-development stage would not be a problem. Although I contacted many non-profit and for-profit organizations that have done limited development in the past, I was unable to locate a current case that satisfied the criteria I had originally established. Only one of the individuals and organizations I contacted is actively involved in trying to structure a land acquisition that could involve limited development. Others are acting in an advisory capacity to landowners, developing plans that could some day involve limited development. All of these projects were in the very preliminary planning stage and thus inappropriate for this thesis.

In hindsight, I attribute my naivete to my belief that limited development is inherently different from conventional development and somehow more immune to a weak real estate market. I still believe, in some special cases, that limited development products can sell better in a down market. However, current market conditions that have curtailed conventional development have virtually put a halt to any new limited development projects in this region.

Facing a reality somewhat different than I had anticipated, I abandoned the idea of conducting a specific case study of a current limited development project. Instead, this discovery has brought me full circle to one of the questions I put forth in my original thesis proposal, which is "how does limited development perform under adverse market conditions?" Instead of the case study I had originally planned, I will approach this question as it applies to 1) selling lots or homes within limited developments when adverse market

conditions exist, and 2) strategies for implementing new limited development projects under current market conditions.

In order to address these and other related questions, I have conducted interviews with a variety of individuals previously active in limited developments projects, or who were outspoken with regard to its viability as a land conservation tool.\* Though two case studies in the earlier chapters were drawn from Massachusetts, I have "widened the lens" here. The New England sample should more broadly reflect how market condition responses may vary from one region to another. Though there is general agreement that the real estate market throughout New England is soft, the degree to which asset values have been affected varies considerably from one location to the next. If my current hypothesis is correct, the potential performance of limited development in each location will be determined largely by overall market conditions, but also by the nature of the project, its financial structure, and the sector of the market it has been targeted toward.

There are a number of ways of looking at limited development in the context of a soft market. The organization I have chosen begins with an examination of current market conditions affecting both limited and conventional development. Next, a look at selling existing limited developments in a soft market follows. Finally, the viability of initiating new limited development projects under current market conditions will be explored. As a framework for this final section, I will consider the viability question from the perspective of five independent parties who comprise the universe of actors in limited development productions. These are 1)landowners, 2)non-

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profit land conservation organizations, 3)private real estate developers, 4)government agencies, and 5)the general public.

#### A "Cooling-Off" or a Meltdown?:

A variety of reasons are commonly given for the recent downturn in the New England real estate economy: overbuilding during the boom years of the 1980's; spiraling prices that shut many potential home-buyers out of the market; the tightening of credit in the wake of the S&L crisis; and above all, the weakening of the overall regional economy. Though people may dispute the causes of the current situation, few would argue that the real estate business is in serious trouble. Property foreclosure sales which were rare in the mid-80's are now quite routine. Recently, the Boston Sunday Globe has contained page after page of notices advertising the auction of foreclosed properties.

Trouble in the real estate business is by no means a new phenomenon; most industry insiders and investors recognize it as a cyclical business. What is most disturbing to many about the current market is that its prospects for recovery are very uncertain. Few doubt that it will recover, yet no one can answer when with any degree of certainty at the present time.

#### Limited Development on Hold:

Given the current market conditions, the viability of any kind of real estate development, limited or conventional, is questionable. One common explanation for not going forward with new projects touted by many of the individuals I interviewed is that limited development, like conventional development, performs best in a rising market.<sup>1</sup> In a rising market, the steady appreciation of raw land increases the

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<sup>1</sup> Telephone interviews with Harry Dodson, Phil Herr, and Gordon Abbott. June and July, 1990.

spread between its acquisition cost and the revenue derived from its sale as improved building lots.<sup>2</sup> The bigger the spread between the acquisition cost of the land and its disposition price, the bigger the potential profit. In the case of limited development, this potential for greater profit is redirected toward the preservation of the maximum amount of land in an undeveloped state. In a soft market, like the current one, the spread between acquisition and disposition price tends to be very small. Consequently, limited development tends to be much more risky. Indeed, some observers are concerned that asset values could fall even lower, thereby increasing the probability that a project will lose money.

One of the characteristics of the current market situation is an oversupply of inventory which increases the time it takes to sell property. Optimistic forecasts project that New England has a 5 to 6 month oversupply, while more conservative outlooks predict an excess for 18 to 24 months<sup>3</sup> The added costs of holding land for extended periods of time in a soft market can significantly increase the chances for a project's financial failure. As one observer noted, the market downturn makes acquisition easier, but increases the difficulty of selling.<sup>4</sup>

While some contend that acquisition is easier in the current market and there are bargains to be had on undeveloped land, others say that many landowners maintain unrealistically high expectations about the value of their land.<sup>5</sup> It should be noted that the parcels of land targeted for preservation

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<sup>2</sup> Some observers contend that the value of appreciation is greatly reduced by carrying costs in an active market. See William Tuttle, "Limited Development as a Tool for Agricultural Preservation," Masters Thesis M.I.T. Feb. 1988, p. 169.

<sup>3</sup> Northland Residential News, Winter/Spring 1990, p. 1.

<sup>4</sup> Telephone interview with Dick Perkins of Landvest, 4 June, 1990.

<sup>5</sup> Telephone interview with Harry Dodson, 11 June, 1990.

through limited development are usually exceptional in some respect. Some observers contend that it is natural for these exceptional parcels to hold their value better than less desirable parcels. This is not to say that all land targeted for preservation is ideally suited for development, but in suburban and resort areas where the majority of limited development projects have taken place, this is often the case. In the final analysis, a developer's perception of a parcel's value depends largely on their expectations about the future. As Professor of Urban Planning Phil Herr notes, "No one knows what the value of land will be in a few years...In a flat market, people's expectations of value always seem high, but whether this is true depends on what happens in the future."<sup>6</sup>

In addition to the uncertain direction of the market, oversupply of inventory, and land prices many perceive as unrealistic, an additional challenge faces those considering any kind of development right nows: financing. In the wake of the Savings & Loan crisis, New England banks have been subject to intense scrutiny by federal regulators. Though the Federal Reserve has repeatedly dismissed charges that a "credit crunch" is afflicting the regional economy, many developers are finding it difficult to secure loans. Where loans are available for land acquisition or construction, the terms offered are becoming increasingly austere. In most cases, lenders are requiring more equity participation on the part of the borrower, as well as cross-collateralization and personal guarantees as security for the loan.<sup>7</sup> Non-recourse loans for land acquisition or construction may be a thing of the past.

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<sup>6</sup> Telephone interview with Phil Herr, 17 July , 1990.

<sup>7</sup> Personal interview with Frank Stewart of Northland Investment Corp., 12 July, 1990.



Taken together, these current market conditions represent formidable obstacles to implementing a successful limited development project at the present time. And while conditions don't favor new development, they do in some respects bode well for land conservation groups who are now looking to buy targeted parcels of land at reduced prices. "Now is a great time for conservation organizations to buy land...if you are well-capitalized."<sup>8</sup> As one conservation advisor put it, "We needed this cooling-off period", adding that appreciation of land prices in recent years was "outrageous."<sup>9</sup> Many agree that it will be at least several years before land prices turn around in the Northeast. There is a perceived window of opportunity for the acquisition of prime land at a reduced rate. According to one source, competition for that land will be limited since the number of buyers is shrinking.<sup>10</sup> Many development firms are facing a liquidity crisis, and are being forced to sell land at a loss. Few have the access to capital or the desire to buy land at the present time. As a result, the potential buyers for land with good conservation and development value will in the near term be limited to the well-capitalized development firms, private conservation organizations, and government agencies.

#### Selling Limited Development in a Soft Market:

There is a lot of residential real estate for sale in New England these days. Normally, the more supply exceeds demand, the more prices fall. Though there have been noticeable price reductions in some segments of the regional real estate market, there has been no widespread "correction" with regard to the price of single family homes. The most significant price reductions have occurred in the condo

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<sup>8</sup> Telephone interview with Wesley Ward, 11 June, 1990.

<sup>9</sup> Telephone interview with Michael G. Clarke, 17 July, 1990.

<sup>10</sup> Personal interview with Frank Stewart of Northland Investment Corp., 12 July, 1990.

market where some properties are been sold at or slightly above replacement cost. For some, this strategy has been of use in selling generic products, particularly in the lower and middle segments of the market.

However, this is not a useful or appropriate strategy for most limited development projects. First, they have the advantage of being different from most conventional developments. If limited developments are skillfully planned and executed, they have an inherent edge since there are rarely similar products on the market to compete with them. "There are people out there who appreciate what this is and take the time to understand how this is different from traditional development."<sup>11</sup> In a soft market, however, getting the buyer's attention in the first place can be difficult. In this respect, limited developments often have a built-in advantage. "One thing we have as far as the sales of these projects that other, that is *traditional* development doesn't have, is the publicity generated by saving an important piece of land...".<sup>12</sup>

It is difficult to quantify the performance of limited versus conventional development under any market conditions, as it is a little like comparing apples and oranges, since they are very different in certain respects. Most limited developments have produced rather high-end, upscale products that, as a class of real estate, often tend to perform better in a weak market.<sup>13</sup> Several experts I spoke to agreed that even the best limited developments are not recession-proof, but the more buyers perceive them as unique, the more likely they are to outperform conventional development. "Most buyers love to think that they've bought something that is so

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<sup>11</sup> Telephone interview with Andrew L. Johnson, 17 July, 1990.

<sup>12</sup> Telephone interview with Marty Zeller, 9 July, 1990.

<sup>13</sup> Telephone interview with Michael G. Clarke, 17 July, 1990.

scarce that only a handful of people will have that opportunity."<sup>14</sup>

In many cases, even in soft markets, the right buyer will pay a premium for that opportunity.

#### Making Limited Development Work in a Weak Market:

##### The Landowner:

Land value is determined by highest and best permissible use, which is most commonly defined as the development option which yields the highest economic return. Many of the people I interviewed agree that an important precondition of a successful limited development project is a landowner who is willing to forego some portion of the maximum economic return on his or her property. The more willing they are to do this, the greater are the chances that limited development alone can cover the cost of acquiring the property.

Unfortunately, there are many landowners who do not know of the many financially sound alternatives to full, conventional development of their land. Many of the experts I spoke to think that more landowners would be willing to limit development of their land if they understood the many benefits available for doing so. Even after the Tax Reform Act of 1986, there can still be sizeable tax benefits for bargain sales or the granting of conservation easements. By combining these benefits with limited development, landowners are often able to achieve a variety of goals. They can generate income for their retirement, limit property taxes for their heirs, and guarantee that portions of their land will remain undeveloped for generations to come.

Many experts anticipate a trend towards landowners conducting limited development with conservation groups as advisors.

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<sup>14</sup> Ibid.

This approach can give the landowner the maximum amount of control over their property, as they make the final decisions regarding its development. Plans may be custom designed to maximize tax benefits and land conservation. Some land trusts and private conservation advisors can perform a wide array of services for landowners, saving them the trouble and added expense of hiring a number of individual specialists.

To some property owners, particularly those who want to avoid full development of family land, this option is preferable to working with a private developer. Though there are conservation-minded private development firms, they sometimes lack the expertise in tax matters and conservation techniques which many conservation advisors have. In addition, private developers are often working against the common notion that they are out to destroy the environment. It is difficult for even the most respectable firms to gain the trust of landowners who fear they will be taken advantage of.

Whether a landowner is selling land outright or developing it with the assistance of an advisor, the owner's role in enhancing the viability of limited development is crucial. In the final analysis, a "willing seller" can be the difference that makes limited development work in a soft market. As one experienced advisor noted, "Market conditions are not as important when you have a close relationship with a landowner."<sup>15</sup> Others who have worked intimately with landowners to preserve land in conjunction with limited development agree. "The ideal situation is working with the landowner, doing all the planning, and then finding the right developer."<sup>16</sup>

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<sup>15</sup> Telephone interview with Andrew L. Johnson, 17 July, 1990.

<sup>16</sup> Telephone interview with H. William Sellers, 19 July, 1990.

### Non-Profit Conservation Organizations:

Though some non-profit conservation organizations shun limited development, many others have recognized it as an important land conservation tool which cannot be overlooked. With the current lull in development, conservation groups have a window of opportunity to acquire sites they've targeted for preservation. If this opportunity is to be grasped, organizations will have to act quickly before the market recovers and prices begin to rise.

While limited development alone may not provide the needed subsidy to fund important acquisitions, it is one tool in an array of techniques that is pushing out the artificial boundaries on what gets developed and what gets preserved.<sup>17</sup> There are a number of local land trusts that have done projects and got into serious financial difficulty. Commonly, this is caused by a lack of in-house planning and development expertise. In order to enhance their probability of success, organizations should take a hard look at what they can do well, and find qualified outside assistance for the rest. Some experts predict that more non-profits will undertake limited development projects as they acquire the staff and expertise to conduct them with confidence.

The local non-profit conservation group can serve as a mediator between sellers and developers, a role the Brandywine Conservancy in Pennsylvania has assumed on a number of occasions. "We often act as the owner's advisor, draft the agreement of sale, and help them select the right developer."<sup>18</sup> This strategy allows non-profits to achieve significant conservation goals without assuming the risks inherent in development. The non-profit can offer certain

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<sup>17</sup> Johnson interview, 17 July, 1990.

<sup>18</sup> Sellers interview, 19 July, 1990.

benefits to private developers such as helping with the approvals process, garnering local support for the project, and providing positive public relations that can help with marketing efforts. As a private organization with essentially public purposes, a non-profit can function as an effective vehicle for communication among various interest groups.<sup>19</sup> If local non-profit organizations perform these and other tasks in an efficient and thorough manner, they can attract the interest of private developers, even under less than optimal market conditions.

#### Private Development Firms:

The cost of obtaining approvals is a major concern to developers. Even with an "as-of-right" proposal that conforms to existing zoning, a project can be held up for months or even years in a variety of ways. A respected Boston-area developer recently remarked that the name of the game in real estate used to be *location, location, location*, whereas nowadays the name of the game is *approvals, approvals, approvals*.<sup>20</sup> Accordingly, development firms are looking for ways to ease the approvals process and thereby reduce their cost of doing business.

One way this objective could be achieved is for private developers to carry out limited development with non-profit conservation organizations. Northland's Frank Stewart says the advantage of this approach has to do with the resistance to change, which is particularly strong in New England. "We all want to keep the status quo in our own backyard." Particularly with high visibility cases like the Watertown Dairy, "it helps to have a team approach."<sup>21</sup> Given that a non-profit's credibility is on the line by supporting

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<sup>19</sup> "Limited Development & The Trust for Public Land"

<sup>20</sup> David Vickery, talk given at the M.I.T. Center for Real Estate Development, April 1990.

<sup>21</sup> Stewart interview, 12 July, 1990.

development, developers should not expect too much in the way of endorsements. In the case of the Watertown Dairy project, the non-profit (SVT) introduced the developer (Northland) to SVT's Board of Directors and the community, but as Frank Stewart recalls, "we had to sell ourselves." SVT gave Northland a cautious blessing, but "left it up to the public to decide if we were to be trusted."<sup>22</sup>

Private firms considering limited development in conjunction with a non-profit should realize that it has certain disadvantages when compared to a more conventional approach. Multi-party agreements common to this type of project require more time to negotiate, resulting in higher legal fees. Generally, the more parties involved, the greater the documentation requirements will be. The complexity of the Watertown Dairy project was reflected by the seventy separate documents that Northland signed at the closing. Despite these complications, Northland plans to do similar projects in the future. However, budgets for future projects will contain bigger allowances for legal fees and contingencies.

#### Government's Role:

To date, most limited development projects have occurred in suburban or resort areas where conservation interests are both concentrated and organized. Many private efforts have come about because of local government's inability or unwillingness to take the lead in the preservation of open space. Rather than undertaking coherent open space planning, many communities are apt to enact some kind of growth controls to make development more difficult. It is a "no-win position," according to Northland's Frank Stewart. The planning board that spends all its time regulating can't be engaged in meaningful reassessment and long-term planning.<sup>23</sup>

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

Reactive growth management by-laws often fall short of their intended goals, merely lengthening the approvals process and thereby the developer's costs.

It is no wonder that towns usually prefer limited development over higher density conventional proposals. Well-planned limited developments offer a variety of benefits for which the town pays nothing. In addition to protected open space, they usually help to preserve community character through careful architectural and landscape design. When compared to maximum density proposals, limited developments usually represent a better tax deal for the community. Fewer and more expensive homes often means higher tax revenue and less demand for services.<sup>24</sup>

Perhaps the difficulty in trying to codify regulations that would encourage limited development is the difficulty of drafting a workable set of guidelines. As one veteran of many limited development projects noted, "Conditions are never the same in two deals...you are dealing with concept, not replication."<sup>25</sup> This fact makes it hard for planning boards to draft flexible guidelines, particularly since they have to worry about some developers taking advantage of those guidelines. Some planners have suggested that towns adopt two sets of standards, one for conventional and one for limited development.<sup>26</sup> The idea behind this is that most limited development projects don't warrant the heavy infrastructure requirements of standard subdivisions. The

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<sup>24</sup> It should be noted few towns will ever admit to a preference for exclusive, high-end development, although their by-laws may encourage such "exclusionary zoning." Some contend this practice contributes greatly to the affordable housing crisis in New England. Another issue worth considering is the effect of conservation easements on tax revenues, since conservation land is (almost) always taxed at a lower rate than residentially zoned land. Conducting the tax benefit analysis alluded to above becomes more difficult when this fact is considered.

<sup>25</sup> Telephone interview with Gordon Abbott, 18 July, 1990.

<sup>26</sup> Clarke interview, 17 July, 1990.



cost of meeting those requirements can often make limited development infeasible.

Another approach suggested by some planners is for towns to adopt flexible development standards for small projects with dedicated open space. As one with experience in flexible zoning, Philip Herr recalls that "in a number of communities we have advocated flexible development standards (in developments of) up to 6 or 8 lots, because the damage potential is pretty small."<sup>27</sup> One way of structuring these flexible standards is to drop the requirement for a special permit proceeding and adopt as-of-right guidelines for development proposals designed around protected open space. Herr and others acknowledge that giving as-of-right status to larger projects of this kind could be very dangerous, noting that chances are some developers would take advantage of such status to enhance their profit margins.

Towns can encourage the preservation of open space by becoming more proactive and less reactive. In the town of Lincoln, Massachusetts, open space planning has resulted in the preservation of "more than 2,000 acres of open space, while accommodating as much growth as would have been permitted under the town's long-standing traditional zoning provisions."<sup>28</sup> Lincoln has secured large amounts of open space by endorsing creative means such as limited development.

With the current lull in development, now is the time for towns to reassess and do some long-term planning. Spending the time to design ways to encourage and accommodate limited development could be time well spent.

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<sup>27</sup> Herr interview, 18 July, 1990.

<sup>28</sup> Bob Narus, "Evolutionary Growth Management in Lincoln, Massachusetts," Urban Land, January 1990, p. 16.

### The General Public:

The public plays an important role in the shape that development takes in every community. This is especially true in the case of limited development where the financial support of the community is often as important as their political support.

Local support for limited development is often found where people list open space as one of the most important ingredients in their community's character. Many projects, going back to the 1966 Wheeler Farm case in Lincoln, Massachusetts, have succeeded because of personal guarantees provided by neighbors and concerned citizens. Many local land trusts, such as the Brandywine Conservancy(BC) in Chadds Ford, Pennsylvania, rely on the generosity of local investors to make projects work. "If a (proposed project) personally affects someone, and they have the chance to be a hero in their own backyard, all the better," says Bill Sellers, BC's director.<sup>29</sup>

The public can lend a proposed limited development needed political support by attending public hearings and planning meetings in order to voice their support. "People can create the right political atmosphere to get these things approved," confirms a respected Massachusetts conservationist.<sup>30</sup> The collective will to create that atmosphere is what many towns lack, and what they must somehow acquire if they are to preserve their open spaces.

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<sup>29</sup> Sellers interview, 19 July, 1990.

<sup>30</sup> Telephone interview with Gordon Abbott, Jr., 18 July, 1990.

## **CHAPTER VI : CONCLUSIONS**

I have concluded that limited development may still be a viable technique for the preservation of open space in the 1990's. Important preservation efforts will be increasingly reliant on private initiatives as government dollars for open space acquisition continue to decline. Once the market has recovered from its present doldrums, appreciation of land with above normal scenic or recreation value *could* once again outpace the general rate of inflation. In addition, the anti-tax sentiment in many states will reduce the likelihood of budget appropriations or bond issues for open space acquisition.

Even where the public has displayed a general unwillingness to pay for open space preservation through tax dollars, the practice will continue, albeit indirectly. The availability of both federal and local tax deductions for bargain sales and the granting of easements is not likely to disappear in the foreseeable future. I for one would not like to see them go, however, there should always be a direct link between public tax subsidies and corresponding public benefits. In other words, limited development projects which take advantage of tax breaks for charitable donations should always have publicly accessible open space.

Some of those I talked to believe that many large parcels of land that have been held intact for generations will be offered for sale during the next decade. Quite often these parcels are located within or nearby heavily developed communities with inadequate open space. Limited development has the potential to preserve some of them from full development, and still provide needed high quality public open space.

In some cases, limited development will not be the best alternative. Every available option should be considered in each case, and their relative costs and benefits weighed. Aside from the preservation of important parcels, the question of how each

individual parcel relates to a larger network of open spaces must be addressed on both the local and regional level.

The Buyer and the Seller:

The most fundamental determinant of a parcel's destiny will continue to be what transpires between buyer and seller. There are regulatory means to encourage environmentally responsible land use, but they cannot reverse the consequences of an onerous sales agreement. Extraordinary skill and creativity are required to carry out good limited development on land that is sold for maximum market value. The best limited development efforts I have seen stem from a meeting of the minds at the point of sale. It is here that flexibility, creativity, and concern for the land can combine to make land use plans that allow development to occur side by side with exceptional conservation achievements.

The cases presented here illustrate the constructive role land trusts can play as conservation intermediaries. For example, the actions of the Sudbury Valley Trustees were critical in the preservation of the Watertown Dairy. They took great care to find a conscientious developer to insure that the limited development would be compatible with the rural setting they were trying to preserve. By assigning their right to purchase the Moore Road frontage directly to Northland, they avoided the risks of taking title to the property. In the process, they enhanced their image as conservationists and set a precedent for future public/private ventures.

Land trusts must have a clear understanding of their role in limited development projects. That role depends on the level of development expertise they possess, but more importantly on their goals as an organization. If they are successful with a few projects there is always the chance that limited development can become their raison´ d'être. While some think this would be a good thing, I feel trusts are often better suited to an advisory role. They can orchestrate projects without going at risk for the

development. They can guide development without putting their credibility on the line by playing developer. What is most important is that they maintain the respect and trust of landowners who look to them to provide an array of responsible land planning options.

Planning Dimension:

One interesting aspect of both Pilot Hill Farm and the Watertown Dairy project was the large building lots that the final plans called for. To some, this may seem like a contradiction, considering that the goal of limited development is to maximize the amount of acreage left undeveloped. Yet in both cases, the area outside the building envelopes, while belonging legally to the homeowners, was carefully protected from any future development. My feeling is that if people are willing to pay for land they can't build on, then lot size is of little importance.

From my research, I see the art of planning limited development as a two stage process. The first stage is finding a balanced and appropriate development plan that works for the parcel. The inventive use of building envelopes, buffer zones, and other devices is evidence that good limited development plans are more art than science. Most parcels of land worthy of preservation have more than one special attribute, so it is important to be clear about what you are trying to save. For instance, an artist might value a given parcel for its scenic vistas above all else. An agricultural specialist may see only its value as farm land. A sportsman will want to maximize its recreational potential. A real estate developer will see it yet another way. Each of these individuals, if asked how they would develop the parcel, would most likely present different plans. The challenge lies in determining whether or not these different plans can be merged into one, or if they are mutually exclusive. In the Watertown Dairy case, multiple views of the property's potential were merged to create a balanced plan that served a variety of purposes. This opportunity to widen

the distribution of benefits will not be present in every case, but where it is, it should certainly be grasped.

Yet, achieving balance at the parcel level does not guarantee a coherent open space network at the local or regional level. We can create nice green sanctuaries here and there but if they don't connect in some larger way, we haven't achieved balance beyond the parcel's borders. By so doing, we often distribute the public benefits of open space quite unequally. The second stage of planning limited development is to consider how it can be used to help achieve long range community goals for open space acquisition. Greater cooperation between land trusts, conservation commissions, and local/regional planning authorities could lead to the preservation of important open spaces through limited development. Cultivating a relationship with property owners before they decide to sell is a strategy that has worked for land trusts and can work for towns as well.

#### Social Dimensions:

There are two criticisms leveled against limited development that have yet to be resolved. One is that because limited development involves placing easements on buildable land, it drives up the cost of remaining land in a community. This in turn exacerbates any existing shortages of local affordable housing. The example often used to bolster this argument is that most limited development projects cater to the high-end, upscale buyer, which many see as further proof that limited development is an elitist phenomena.

The argument that conservation easements drive up land prices is hard to dispute, yet I question whether the land targeted and protected by easements should ever have been counted as buildable land in the first place. As Randall Arendt says, "It's a fact that every square foot in Western Massachusetts that is not in a

floodplain or wetlands is zoned for development."<sup>1</sup> Surely, some of this land would be better suited for conservation purposes. However, we are not prepared to pay the price for its preservation.

Much of the problem revolves around seemingly hollow support for affordable housing. Towns may publicly bemoan its absence while upholding zoning by-laws that make providing affordable housing virtually impossible. If more towns would allow clustered or attached housing, they would see more affordable housing springing up. Zoning revisions alone will not solve the problem, of course, and limited development alone rarely will provide the needed subsidies to create affordable housing. Nevertheless, it can help, as a recent case in Lincoln has shown.<sup>2</sup>

The other criticism frequently heard is that limited development is practiced in suburban, rural, and resort areas, but almost never in an urban context. Land trusts with their roots in rural land conservation may be fundamentally unsuited for the task of urban open space preservation. The technique of limited development is also less effective in an urban environment. The high cost of land, rigid zoning constraints, and high maintenance costs all work against its effectiveness. But given that most of us live in, work in, or visit urban areas at some point in our lives, the creation and protection of urban open space should concern us all. Let us hope that William Whyte is right in observing that "The rediscovery of the (city) center seems to be a fairly universal phenomenon."<sup>3</sup> Part of that rediscovery should involve defining a new balance between development and open space preservation.

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<sup>1</sup> Randy Knox, "Center helps towns, developers to preserve local character," Daily Hampshire Gazette, 8 September, 1987.

<sup>2</sup> I refer to the Battle Road Farm project on Old Bedford Road. Also see the work of the Franklin Land Trust in Western Massachusetts and their book "Combining Affordable Housing with Land Conservation."

<sup>3</sup> William H. Whyte, City: Rediscovering the Center, (Doubleday: New York 1988), p. 2.

A Final Note:

As our world becomes more crowded, our errors become more costly. Sustaining our quality of life while allowing for growth and development is a challenge that becomes more important with each passing day. Limited development has the potential to be more than just a compromise between development and conservation. When properly planned and executed, it can often produce something better than total development or complete conservation.

As Thoreau once said, "In the long run men hit only what they aim at."<sup>4</sup> Unless we aim for a balanced solution, we will not achieve it. We should strive for a new partnership between conservation and development. Limited development has shown it to be a workable alliance.

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<sup>4</sup> Thoreau, Henry David. Walden.



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