

# **Saving Space** Conservation Easements Offer Alternative To Residential, Industrial Development

By Luanne Austin



**Gerald and Priscilla Rainey placed a conservation easement on their Timberville farm in order to preserve it for future generations.**

Allen Litten

Editor's Note: This the first in a two-part series.

Timberville

Gerald and Priscilla Rainey look out over their acres of bottom land with a deep satisfaction.

“It’s good, rich farmland, right on the road, with frontage,” said Gerald Rainey, with a sweep of his hand.

The couple, both in their 70s, used to raise sheep and crops on the land, located near Timberville. Now they rent it to other farmers.

The North Fork of the Shenandoah River flows a few hundred feet from the couple’s home, built in the 1870s. Outbuildings include a carriage house, ice house, creamery, smokehouse and wash house — all necessary for a working farm in the 19th century.

This is the way it’s been for more than 100 years, and this is the way it will stay. The Raineys know their land will never be developed, because they’ve put all 168 acres into a conservation easement.

A conservation easement is a recorded agreement in which a landowner agrees to give up some or all of his rights to develop or use the land for residential, commercial or industrial purposes, and grants to a land trust, government entity or other qualified holder the right to enforce that promise against the landowner and future owners of the land, said Lisa Hawkins, a Harrisonburg attorney who specializes in real estate. Easements allow landowners to preserve their land’s natural, historic and/or archaeological resources after they move or pass away. Properties are evaluated by land trust or state agency staff for their conservation

values, which may include the amount of acreage, whether it's a working family farm, stream frontage, open space, wildlife habitat, scenery, unique geological features and other criteria.

Putting land in a conservation easement is a winning proposition for everyone, proponents say.

"The tax benefits are substantial," said Gerald Rainey, a retired NASA rocket scientist.

The Raineys decided to protect their land from development after a commercial campground was nearly built on the 40 acres next door. They mounted a campaign to oppose it, were joined by 60 to 70 others, and defeated it. That experience made the Raineys realize they wanted their land to always be farmland.

They learned about conservation easements from the Valley Conservation Council, a non-profit land trust based in Staunton that promotes land use that sustains the farms, forests, open space and cultural heritage of the Shenandoah Valley.

#### Why Conservation?

The Shenandoah Valley has four of the top five agricultural counties in the state, said Bobby Whitescarver, Augusta County agent for the National Resources Conservation Service. The first is Rockingham, followed by Augusta, then Page, and in fifth place, Shenandoah.

A study released in 2002 called "Farming on the Edge" found that Virginia developed 105,000 acres of its highest quality farmland between 1992 and 1997. As a nation, the United States converted more than 6 million acres to other uses during the same period — an area approximately the size of Maryland, the study reported.

From 1992 to 1997, Rockingham County lost 1.6 percent of the farms and 2.4 percent of the acreage, while from 1997 to 2002, it lost 4 percent of the farms and 2.8 percent of the acreage, according to Joe Paxton, county administrator.

Farmland means much more than food, said Whitescarver.

"Well-managed farmland shelters wildlife, supplies scenic open space, and helps filter impurities from our air and water," according to the American Farmland Trust Web site. "These working lands keep our taxes down and maintain the legacy of our agricultural heritage."

But the county disputes that farmland is dwindling at an alarming rate, Paxton said. County supervisors are more concerned with sustaining the small farmer, which is a "top priority" in its comprehensive plan, said Paxton.

"One of the goals is to have 80 percent of residential growth in and around the towns and the city," said Paxton. "By this the board discourages scattered growth that will threaten agriculture."

Sometimes, preserving farmland also mean preserving history, such as Civil War battlefields. Although many landowners are not interested in selling their historical property or moving, they are interested in selling the development rights, said John Hutchinson, program manager for resource protection with the Shenandoah Valley Battlefields Foundation.

"History is one more layer of value," said Hutchinson. "When you preserve a battlefield, you also preserve the forests and rivers and streams on it, too."

Protecting water has become an important aspect of conservation easements.

“When you conserve land with trees, fields and wetlands, you’re also protecting your groundwater resources,” said Sarah Richardson, land conservation coordinator with the Virginia Department of Conservation and Recreation in Richmond.

Many landowners are including stream buffers in their deeds, said Faye Cooper, easement specialist with the Virginia Outdoors Foundation.

“We don’t require it, but landowners want to protect water quality,” she said.

#### Who Does It?

Virginia Outdoors Foundation (VOF) is a state agency that holds and enforces conservation easements. VOF focuses on preserving open space, Cooper said. That includes farmland, forests, wildlife habitat, waterways, wetlands and historic properties.

Last year the Shenandoah Valley had 10,000 acres enrolled in conservation easements through the VOF, said Cooper, who works out of the agency’s Valley office in Staunton.

“That’s one third of the easements in the state,” she said. “There’s been significant growth.”

The federal government has a Farm and Ranch Land Program and Purchase of Development Rights program, both designed to work dollar-for-dollar with state PDR programs, said Whitescarver. PDR programs buy easements from landowners.

Since Virginia offers tax credits for conservation easements but has no PDR program, the federal program has little effect here, he said.

“We only get about \$2 million for the whole state of Virginia,” Whitescarver said. “We can only help about five farms a year.”

Some counties in Virginia — Loudoun, Albemarle and James City — have implemented their own PDR programs as a way to slow rising costs. Virginia Beach began purchasing development rights many years ago, said Whitescarver.

“For every 1.5 cents they spend to conserve land, they save 46 cents in future costs,” said Whitescarver,” said Whitescarver. “It means they don’t have to build schools or roads or provide water for new neighborhoods.”

Augusta County this year began a PDR program. Kay Frye, a member of the Augusta County Board of Supervisors that represents the Middle River District, said the county has appropriated \$491,000 to purchase development rights on existing farms.

“It’s the only method I see for helping retiring farmers,” Frye said. “They can get the cash and keep their land.”

#### Retire In Style

Like the Rainey, many farmers are concerned about what happens to their land after they’re gone, said John Eckman, president of Staunton-based VCC.

“The aging of farmers is an issue,” he said.

Many farmers throughout their lives look to the sale of their land to provide for their retirement, said Hawkins.

“It’s their security blanket,” she said.

However, these days the people who have “ready money” for buying big tracts of farmland are not usually farmers, but developers, said Hawkins.

“If you want to develop your land, there’s an army of people who will help you,” Whitescarver said. “But if you want to protect your land, you have to find your own way.”

Thanks to the Valley Conservation Council, landowners in the Valley can learn about all the conservation tools available to them, Whitescarver said. Because of the tax benefits available from state and federal governments, conservation-minded landowners don’t have to choose between saving their land and making money on it.

“Farmers have just as much a right to sell development rights as to sell to developers,” said Whitescarver. “And there’s a significant financial incentive to do that.”

When Bob Canada decided to sell his 264-acre property in northern Augusta County, he really didn’t want it turned into a residential subdivision. The farm had been in his family for 300 years. But Canada, an engineer, lives in Lynchburg, and his grown children aren’t interested in moving to Augusta County either.

The farmer who had been renting Canada’s land suggested Canada put it into a conservation easement before selling it. So Canada contacted VOF. The most lengthy part of the process, said Canada, was the appraisal.

“The appraiser has to do two appraisals in one,” said Faye Cooper.

The land is appraised for its fair market value and its value with easement restrictions, she said. These values differ because the landowner is giving up development rights. Other restrictions, depending on the location, character and resources of the property, might include commercial or industrial uses, billboards or mining.

“The appraiser has to gather extensive data from sales on comparable lands that have recently sold,” Cooper said. “It is a rather involved process.”

Once the easement was complete, Canada was able to sell his property to his tenant farmer at a price the farmer could afford, less than what Canada would have been paid by developers. However, he was recompensed for that loss by the state tax credits and federal tax deductions.

“It’s a good deal for both of us,” said Canada. “And now it will stay a farm.”

The second part of this series will run Saturday, Aug. 20 and will discuss easements granted for historic property as well as Rockingham County’s perspective on conservation easements and their place in planning.

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