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UPFRONT 60

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PRESERVATION TACTICS

Conservation easements shield some sites Procedure keeps land untouched, in private hands

By Leslie Ellis, The Courier-Journal

With subdivisions popping up across Shelby County, David and Susan Neville decided they never wanted suburban sprawl to engulf their 181-acre farm near Cropper.

So they put a conservation easement on their farm -- a legal agreement that prohibits them or future owners from developing it -- two years ago.

"We wanted to make a statement," he said. "If we don't halt development, at least we can preserve some farmland. Developers will tell you, 'Why fight it? It's inevitable.' This is our little way to say, 'It's not inevitable.'"

The Nevilles are among a small but growing group of landowners in the counties surrounding Louisville who are choosing to preserve their land. They're also part of a larger national movement to keep land in farm production.

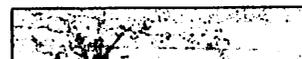
More than 1.4 million acres of farmland nationwide are protected with easements, almost a four-fold increase from the 290,000 acres preserved 10 years ago, according to the Land Trust Alliance in Washington, D.C.

David Neville said he likes to envision this scene: A hundred years from now, a family drives down their road and marvels at the pocket of growing crops and cattle grazing, and someone says:

"I forget their name, but we're glad they saved the farm for us."

The Nevilles are among four farmers in Shelby County who have joined a state-funded farmland-preservation program that essentially pays them not to develop their land. Some farmers also donate land.

In Oldham County and elsewhere, some landowners are using or considering conservation easements,



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most of them working with local and national preservation groups. One easement, on the 836-acre Ashbourne Farms on U.S. 42, is among the largest such easement in Kentucky.

But instead of being paid for the easement, they are donating the the development rights, which is the difference between the land's value before and after the easement is placed on it. Those donations can provide significant tax savings.

"There's been an enormous interest in conservation easements because the land stays in private ownership and on the tax rolls," said Martha Nudel, spokeswoman for the Land Trust Alliance.

Also, society is learning it can make giant strides in cleaning up the environment and saving endangered species, Nudel said. "But once open space is lost to development, we can't bring it back."

Or as Sally Brown said of her family's Ashbourne Farms: "I didn't want mine to have asphalt as the last crop."

The Brown farm is the first in Oldham County to be protected by a conservation easement.

"When you drive through the maze of billboards and fast-food restaurants in urban areas and come upon a green area," Brown said, "you realize how much every human being needs green land around them, to know what was here before."

Her family's farm -- daughter Ina Brown Bond has assumed ownership since the easement was put on it late last year -- is full of rolling fields and woods that are rich with deer, fox, raccoons and mallard ducks that come in the early fall. Harrods Creek winds along one edge.

Sally Brown and her late husband, W.L. Lyons Brown Sr. -- the former chairman of Brown-Forman Corp. -- began acquiring the land in the 1940s. The farm operation includes short horn cattle and corn, hay, soybean and tobacco crops.

Her decision to preserve the farm was triggered by her concern over development of a sprawling subdivision of nearly 500 homes just down the road. Developers also had started calling her about selling Ashbourne.

The easement, which is attached to the land, says it must be used for agricultural purposes, but it also allows for construction of three houses on the property that could be used for the children of any future owners.

The American Farmland Trust, a national farm preservation organization, will monitor the property to ensure future landowners abide by the terms.

Such easements reduce the market value of the land. But the lower value also means that any heirs would pay less in estate taxes. And the amount of the



"Every human being needs green land around them, to know what was here before."

- Sally Brown, who is preserving the farm.

easement can be deducted as a charitable donation on tax returns during the first five years, although the owner would need a high enough income to take full advantage of the deduction.

Irvin Abell, a retired Louisville attorney, is one of four Oldham County landowners who are putting easements on their land, a total of 829 acres.

He grew increasingly concerned as he watched construction spread in Oldham County. And then he read that Jefferson County was losing farmland at the rate of 1,500 acres a year.

Abell owns 425 acres off Greenhaven Lane in northern Oldham County near Westport. The easement will cover 375 acres that include woods and tillable land now leased to a farmer.

River Fields, a Louisville-based conservation group, will monitor the easement, the value of which has not been determined. Director Meme Runyon said her organization is talking with four other Oldham landowners considering easements on their land, which totals about 2,000 acres.

Robert W. Griffith, a Louisville attorney working with Abell and River Fields, said easements can place restrictions on all or just part of a property. They can be eliminated through the courts, but it's a long and difficult process.

The Nevilles and several other Shelby County farmers secured easements through Kentucky's Purchase of Conservation Easements Program, or PACE. It was created in 1994 by the General Assembly, but initially had no money and little public awareness. The first easement wasn't signed until 1998.

Its focus is to preserve prime farmland; a scoring system is used to choose properties, including such things as soil quality, agricultural productivity and distance to an urban area.

But PACE's impact in high-growth areas around Louisville will be limited, said Bill Burnette, a Department of Agriculture official who works with the program. To stretch its money, the program limits the maximum payment for an easement to \$1,000 an acre.

(The Shelby farmers who received payments were in areas where there's less development pressure and land prices are lower. In prime growth areas, however, land in Shelby County goes for as much as \$10,000 to \$15,000 an acre.)

PACE's impact also has been limited by the amount of money pumped into the program. For example, only \$2.3 million was available during the past four years. The General Assembly has given it \$800,000 for the next two years.

To date, PACE has bought easements on 11 farms totaling 2,198 acres; another 123 acres in two tracts have been donated. Five more easements totaling 2,128 are being processed, and 275 more acres are being donated.

There are still 86 applications on file, covering 15,000 acres in 31 counties.

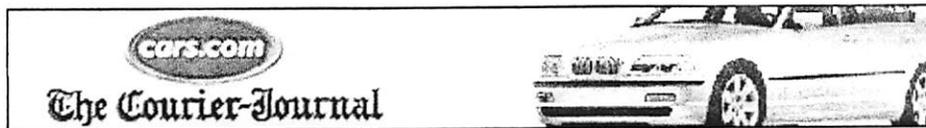
Some farmers are concerned about using government money to buy conservation easements, said Roger Nesbitt, director of media relations for the Kentucky Farm Bureau.

And there's concern about what will happen with the farms 30 and 40 years down the road, said Sam Crawford, the bureau's representative at PACE board meetings.

"Will it turn out to be something we can carry on," he said, "or will it be an oasis in the middle of development and make it difficult to farm?"

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