

allowed to subtract up to half of your Adjusted Gross Income from this "pot" of money. For instance if you earn \$50,000 a year, you can reduce that number by 50 percent and you will have used up \$25,000 from your pot of \$300,000. You can spread this out over 16 years until your "pot" is used up. It works for both your federal and state income taxes.

Now...if you are truly a farmer, you need to listen to this because it applies only to the 2006 and 2007 tax years. "If you are a farmer who can show that you derive 50 percent or more of your income from farming activities...if you

things, makes sure that the provisions of these easements are obeyed, not just by you but by future owners of your land. There is some initial cost: the lawyer to work out the particulars of the deed and a qualified appraiser to determine the easement value. On our sample 100-acre tract, that number would be, for an uncomplicated deed of easement, several thousand dollars. But Moore says you'll make it back in tax incentives. There are also estate tax benefits to donating easements, and on the local level, land in conservation easement automatically qualifies for Land Use Taxation. There are also such things as CREP

"That's fine, but he's not getting 100 percent behind funding the agencies and mechanisms to actually make that happen."

Currently, the PEC is working with about two dozen potential donors in Orange County. Contrary to popular belief, not all of these folks are rolling in dough. The Virginia Outdoors Foundation has a fund "to help lower income people pay expenses, and they also use it to actually buy easements." This is for folks who are land rich and cash poor. And you know who you are; you just received your local real estate tax bill!

Sometimes Moore encounters landowners who say they have no intention of subdividing and developing their land; so why go through this exercise? To them he responds, "You're not protecting the land against you; you're protecting the land against someone who'll own it after you. The only way you're going to insure that something bad doesn't happen to the land is for you to make the decision." Where it gets tough is working out how to take care of your heirs. If you've given up subdivision rights, you can't very well carve off parcels for your kids.

Moore also says an easement is more effective than a zoning ordinance to control growth. "The breakdown is between what the Comprehensive Plan recommends and what the zoning ordinance actually allows. You can't effectively protect the rural area over time by permitting a house to be constructed on any two acre parcel that anyone wishes to plat. What the easements are is de facto zoning. It's zoning by fiat, and it's permanent and zoning regulations are anything but. They are subject to the whim of elected officials."

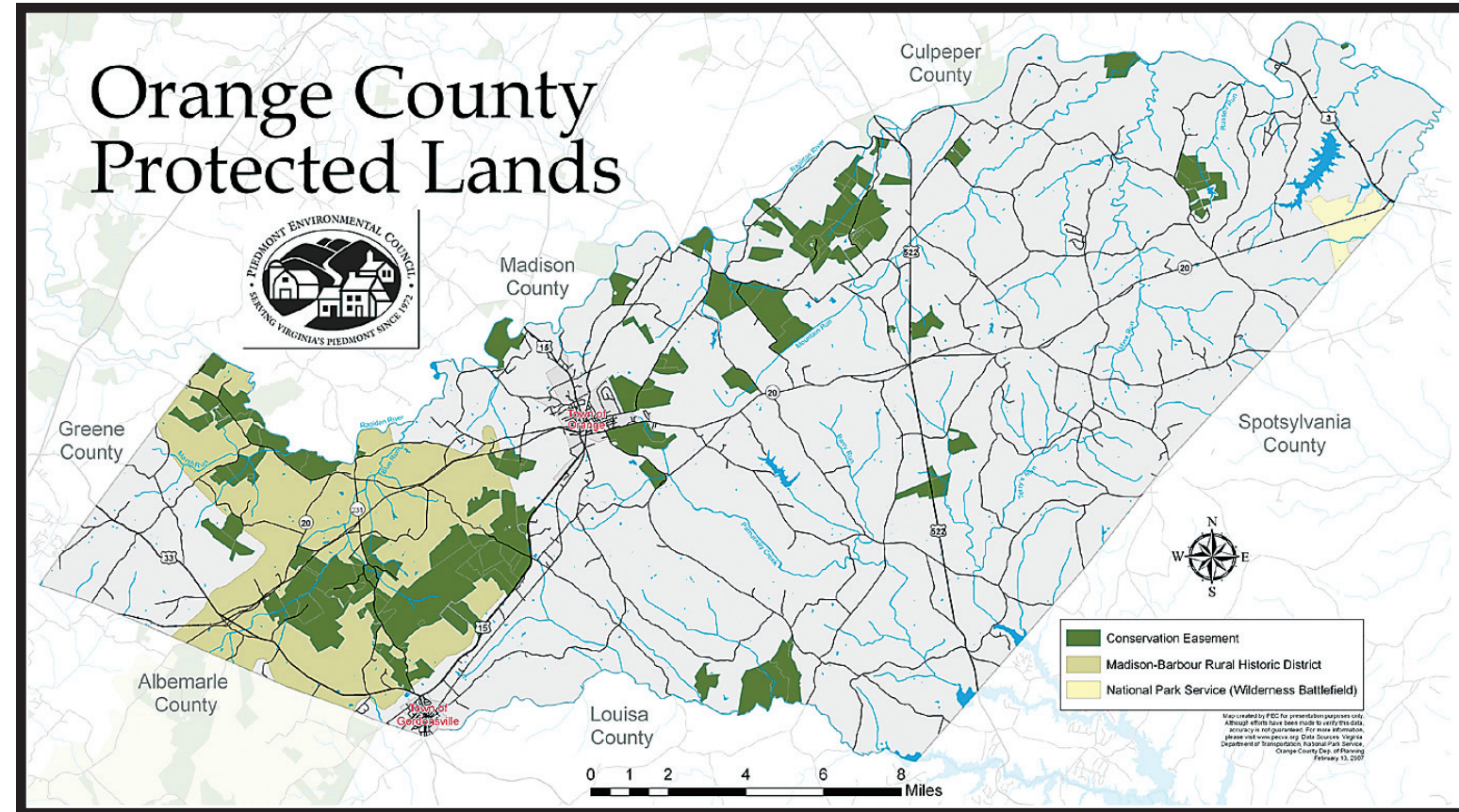
So why should Mr. Average Orange County Citizen with his single-family dwelling on a two-acre parcel of land

care? What do easements have to do with him? "Easements are helping keep Orange County's open spaces open," points out Moore. "Easements are actually good for county taxes, because every time a farm is developed into a subdivision and a young family moves in...the real estate taxes that that house generates don't cover the cost of providing public services to that house."

He looks at the Orange County easement map...patches of green that will stay that way forever. He ticks off the benefits. "Easements are good for everybody. Property that's adjacent to protected property, when it's appraised, has a higher value.

They protect open space; they protect resources. Contiguous large blocks of easements... you start seeing benefits in water quality. They help ground water seep into the ground. They help protect the quality of surface waters. The more subdivisions you have the more surface waters go down the gutter to the Chesapeake Bay."

A hundred years from now, no one alive will remember who you are...unless of course, you did the right thing by your land and water.



About 22,000 acres (dark green) of Orange County is in conservation easement, representing a tenth of the county's land mass. Much of it is in the Madison-Barbour Rural Historic District (light green), and most of Orange County's easements follow the best soils, roughly west of Rt. 15 from Gordonsville to Orange and north of Rt. 20 from Orange to Unionville. Map courtesy of the Piedmont Environmental Council

qualify, you can deduct 100 percent of your income," says Moore. "If you're a farmer and you're anywhere near retirement, you need to donate an easement on your property and make it as restrictive as possible so it will be as valuable as possible."

But wait, there's more. Because of the Virginia Land Preservation Tax Credit program, you can subtract 40 percent of the easement's value from the bottom line of your Virginia income tax bill...that's the bottom line! So, 40 percent of \$300,000 is \$120,000 that you can use over 11 years (no more than \$100,000 per year) to subtract from the taxes you owe the state. In fact you can sell these tax credits at a discount.

A deed of easement is negotiated and recorded in the deed book at the courthouse. And once that's done, it is in effect...forever. The PEC, which helps potential donors with the process recommends you hire a lawyer, "to be sure you're not doing something you'd be sorry for later on."

Most easements in this area are donated to the Virginia Outdoors Foundation, a state agency, that among other

easements and BMP tax credits. Easements are not a slam dunk, however. "Particularly in the last five years, as the tax incentives have gotten very lucrative for donating easements, the IRS and the state taxing organizations have gotten a lot more particular about the easements themselves actually protecting conservation values that have a definable public purpose," cautions Moore. "The public essentially is paying you to protect your land in perpetuity. And what the keepers of the tax regulations want to be sure is that the easements that they are accepting and essentially paying for through these tax incentives are what they say they are."

Twenty years ago Moore says, "about a third of easement donors never even bothered to take advantage of the tax incentives." It was enough that they had fulfilled their role as a caretaker of their land in perpetuity.

Just recently, Governor Tim Kaine announced a statewide goal of an additional 400,000 acres in conservation easements. "He's going to rely on the generosity of the citizens of the Commonwealth to give up some value on their land by donating easements," observes Moore.

Saving the Land,



Looking upstream at a Conservation Reserve Enhancement Program (CREP) riparian buffer belonging to R.T. Whitman just on the outskirts of Orange. Although existing rental contracts will be honored, it is highly unlikely the program will be renewed after this year.

Contributed photo

the Water and the Bay

Land ownership & property rights

An editorial by Phil Audibert

If there ever was a "hot button" issue in Orange County it is how our land is used, protected and developed. This pro-growth versus no-growth, large lot landowners versus small, conservationists versus developers goes back at least to the 1970s if not earlier. Virtually every public hearing involving land use issues, from the Annandale rezoning to the new and old Comprehensive Plans, from the recent zoning ordinance revision to the "Company X" controversy of 30+ years ago, has boiled down to what rights do we as landowners have, be it a two-acre lot or a 2,000-acre estate.

But if we look at the results of the last two board of supervisors elections; if we are to

believe the countywide survey conducted by the planning commission prior to the revision of the Comprehensive Plan; if we are to heed what the majority of speakers had to say during the two and half years it took to revise that document; if we are to implement the number one goal in that document, then most, but not all of us, want this county to remain rural.

That goal reads, and I quote, "to shield the rural character of the county from the undesirable effects of uncontrolled growth."

For the record, Orange County is the 44th fastest growing county in the entire United States! It grew almost 5 percent between July 1, 2004 and July 1, 2005. In 2002, 284 building permits were issued in Orange County; in 2005, that number almost tripled to 744 building permits. Orange County grew 22 percent in the 10-year period between 1992 and 2002. In that same time frame, the state grew 13.4 percent and the nation 12.3 percent respectively. Like it or not folks, that is rapid if not uncontrolled growth.

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Is it necessary to reiterate that the developers, poised on our borders, have no interest in the long-term welfare of Orange County. To them, we are a profit center, nothing more. If you sell land to a developer, you'll make some money, but they'll make more. When they're done with us, they will move on. Many don't even hire local labor, local contractors, or buy from local suppliers.

Do we need to point out again that residential development does not pay for itself in schools, services, or infrastructure; that unbridled growth only increases taxes? Are we doomed to fall into the chasm that has already swallowed up Loudoun, Spotsylvania and now even parts of Culpeper?

Last May, the Orange County Board of Supervisors adopted the revised Comprehensive Plan after an exhaustive and thoroughly democratic process. A dedicated planning commission patiently listened to hours of public input before rewriting a document that reflects that input. That document says the growth rate in Orange County should be 2 percent.

The problem is the Comprehensive Plan has no teeth. It cannot enforce; it can only recommend. Where the rubber meets the road is the zoning ordinance, and lo and behold at the public hearing two weeks ago on a revised zoning ordinance that would indeed limit growth to 2 percent, most of the speakers said it would unfairly infringe upon our property rights. All of a sudden, the "Number One Goal" was not as important as a "Man's Home is his Castle."

One might say you can't have it both ways. It's understandable the revised zoning ordinance raised such a ruckus. The average Orange County citizen is not a millionaire living in a mansion on a huge estate; the average Orange County citizen is living on a modest income in a single-family dwelling on two to 10 acres of land. That house and tract are the biggest assets he has, especially since this recent reassessment. And now you're telling him he can only subdivide his land once in four years?

There seems to be a disconnect here. Most, but not all, of the citizens speaking at the zoning ordinance public hearing probably DO want to preserve Orange County's rural character. And, with a few exceptions, they DON'T want out-of-county developers to run roughshod over us. They just want to keep the right to sell off a few parcels of their land in case of an emergency, or to raise cash for retirement, or to put a son or daughter through college.

There's another disconnect; this hypothetical Mr. Average Orange County Citizen is living on land zoned agriculture, when there's nothing agricultural about it. All along, the ag zone has been the catch-all. It is defined by what it is not, not what it is. Could we possibly create a new zone, a zone that would more accurately reflect how our land is used? How does "low-density, small-acreage, single-family dwelling" sound? Then the large lots, the estates, the open spaces, the farms could truly be agricultural-conservation...with an emphasis on conservation.

What follows is something of a guide to the myriad of government programs and policies designed to help us save the land, save the water, and save the Chesapeake Bay. But first a fundamental attitude shift has to take place in the very way we look at land ownership. We are not owners; we are stewards...for our lifetime. Sure we can sell it, split it up, timber it, build on it, farm it, and bequeath it. But the sooner we realize that we are caretakers who will be judged by future generations on how good a job we did during our lifetime, the better.

CREP, BMP, TMDL: So Many Acronyms, So Little Time

Think about it; the only reason we are alive today is because the sun shines on a thin layer of topsoil, and every now and then, it rains. That is the primary reason we, and all living things, survive on this planet.

We can't do much about the sun and the rain, but we can do something about the land and the water that is flowing through it.

Take a drive along Orange County's rural roads. Have you noticed those scruffy patches of grass and scrub cedar bordering stream beds with the tell tale light green plastic sapling tubes? Usually a fence marks the boundaries of these overgrown areas.

What you are witnessing is probably a CREP...stands for Conservation Reserve Enhancement Program...a federal program that helps pay landowners for part of the cost of building those fences and planting those saplings in their plastic protectors. It also pays the landowners rent for 10 or 15 years on the acreage that is taken out of agricultural production.

The idea here is to create what's known as riparian buffers...swaths of land on both sides of waterways that act as nature's filters, slowing soil erosion and keeping fertilizer and animal waste out of the stream. There's a nice one just outside the town limits of Orange, visible from the Rapidan Road. Go take a look at it, because after this year, you will most likely not see any new CREPs created. That's because at the end of this year, the current farm bill expires. And although existing contracts will be honored, it is doubtful CREP will be renewed.

Greg Wichelns is the manager of the Culpeper Soil and Water Conservation District, an area that includes Rappahannock, Culpeper, Madison, Greene, and Orange Counties. "CREP is at risk because there are other drivers right now for the farm bill, such as corn to oil, energy policy. That's a big driver in the farm bill and another is world trade. Neither one of them will have a whole lot to do with riparian buffers."

So if you are a landowner, and you have a stream running through your property, and you are currently using your land for grazing or crops, or maybe it's wetland, this is your last chance to sign up. After this year, "no new applications will be taken."

CREP is a federal program. BMP is state. It stands for Best Management Practices. Conservation specialist, Spencer Yager was born and raised on a family dairy farm in Somerset. He says this cost-share program can help a farmer pay for 46 "practices"...such as "fencing, troughs, planting the trees or the shrubs and the grasses in the buffer. In turn they'll also cost share on the water system you need, any crossings you need to cross the creek back and forth, spring developments, troughs, wells; it can even come out of a pond." Although he cautions, "We're not going to pay for a Cadillac when a Ford will work." He and Wichelns acknowledge that money is out there.

In fact, with CREP, "there is no limit," adds Wichelns. "You walk in with eligible land...you're in. With the state BMP program there is a finite amount of money they give us every year, \$670,000 for this district...and our goal would be to get rid of that money." Wichelns adds if you play your cards right and take advantage of a full variety of incentives you may be able to whittle your share of the cost to close to zero.

And there's more: EQUIP, stands for Environmental Quality Incentives Program and WHIP, the Wildlife Habitat Improvement Program, "the only program that you can be eligible for outside of ag land," points out Wichelns. "If you don't have any ag land, but you've got land, you could get funding potentially anyway." And its not just all government money; there's private money too: Ducks Unlimited, Trout Unlimited, the Wild Turkey Federation to name just a few.



Greg Wichelns (foreground) and Conservation Specialist, Spencer Yager look over a livestock exclusion fence at a riparian buffer established with the help of the state's Best Management Practices (BMP) program.

Photo by Phil Audibert



A before and after picture of a livestock stream crossing on the William Nixon farm. Note the erosion to stream banks in the "before" picture, above, and in the "after" picture, below, how the stream ford has been improved by gravel and fencing.

Contributed photos



So why is all this money available? The simple answer is to save the Chesapeake Bay. The complicated answer takes us back to the dust bowl days of the 1930s, when the federal government set up programs and agencies to keep the land from washing into the sea. The only problem was the programs came from bureaucrats in Washington, DC.

"There's a lot of parts of this country that don't give a damn what D.C. thinks," astutely observes Wichelns. "If you're from D.C., they're walking away. And that was true then and true today. So, they created this conservation district law that gave the states the power...to allow conservation districts to be formed." Most importantly, Wichelns adds, is that each conservation district is controlled by "locally-elected citizens to provide local guidance for resource planning because the local people know what'll work here...they understand the local sociology and the federal government does not."

Orange County's two board members on the five-county conservation district are longtime farmers and conservationists Sam Neale and Robert Bradford. They, with their fellow board members, study applications for these cost-share programs and award them according to need. That need has changed focus from saving the soil in the 1930s to saving the bay today.

Greg Wichelns identifies the three bad guys: nitrogen, phosphorus, and sediment. "Typically in the spring a lot of farmers and a lot of homeowners are laying down a lot of fertilizer," he prefaces. These nutrients go down storm drains, water channels, streams and rivers and land in the Chesapeake Bay where they spark algae growth. "Well, the nutrients get all gobbled up and it's summer, late summer, the algae can't sustain that growth. It dies. The decomposition steals the oxygen."

The algae and the sediment also shade out and smother desirable aquatic plants. "You get a lot of the submerged aquatic vegetation, the sunlight's been cut off to that, so a lot of habitat for some of your economic drivers like oysters and crabs, some of the habitat starts disappearing." And so, with this combination of oxygen and habitat depletion "all kinds of things can die," particularly the all-important bottom of the food chain. "That's why the Chesapeake Bay is listed as an impaired water body now."

Never mind that more than half of this pollution is coming from suburban lawns, parking lots, subdivision rooftops, urban streets, highways and golf courses; it's just politically easier to offer voluntary clean up programs with incentives to farmers.

So, let's go upstream...up the Rappahannock, up the Rapidan, up, let's say, Mine Run to a fictitious farm that has not created riparian buffers, has not taken advantage of CREP or BMP. Let's say it's a beef cattle farm that grows its own corn right up to the stream bank. A hard rain after the farmer fertilizes his field is going to wash all three bad guys into the waterway. In the pasture, beef cows are standing in the stream, eroding its banks, drinking, peeing and pooping...adding harmful bacteria to the pollution soup.

Enter another acronym: TMDL...stands for Total Maximum Daily Load, a thick document that is written for individual streams that are polluted beyond what's considered an acceptable daily load. Guess what? Orange County has four such waterways now: Mine Run, Mountain Run, Pamunkey Creek, and another Mountain Run near Gordonsville. Four more waterways will soon be added: Marsh Run, Blue Run, Cedar Run and certain sections of the Rapidan River itself. "They're impaired water bodies," says Wichelns, "they're on the list." In all of them, bacteria is the culprit, mostly spawned by livestock manure.

You may be surprised to learn that government scientists have made quite a study of manure. They can pull a water sample and tell you how much waste is coming not just from cows, but wildlife, people, pets even. Not much can be done about wildlife manure; as Greg Wichelns sarcastically terms it, "Migrating geese, every time they go honk, it goes out the other end too...but you can do something about cows."

So let's say our hypothetical cattle farmer on Mine Run takes advantage of these various programs. He fences the cattle out of the stream. He installs water troughs fed by spring, well, stream, or pond. He plants warm season grasses and trees in this 100-foot wide filtration swath, that serendipitously creates wildlife habitat. Eventually the trees grow and shade the stream, and the water quality improves. "There's nothing that cleans streams better than the fall influx of leaves," says Wichelns. "It is just the basic primary food for an aquatic system." Besides, he adds, "cooler water holds more oxygen than warm water."

Easements, putting your land where your heart is

If you, as a large lot landowner, 50 acres or more, are serious about keeping Orange rural; if you truly want to protect your land you might consider putting it in conservation easement.

There are some folks in this county who consider "easement" to be a dirty word and the Piedmont Environmental Council a bunch of tree-hugging millionaires. But the truth of the matter is that this organization has helped responsible land stewards protect in perpetuity 276,000 acres of land stretching from Albemarle to Clarke counties.

The first easement in Orange County was conveyed in 1985 by Sandra and former planning commission chairman Bill Speiden...Hampstead Farm. Today, about 22,000 acres of Orange County is in conservation easement, about one-tenth of its land mass. It is no coincidence that most of the easements in this county follow the path of the best soils, along the Southwest Mountains and the Rapidan River from Eheart to the Route 522 bridge.

John Moore of the PEC's Orange office likens land ownership to a bundle of rights. Essentially when you donate an easement, you are giving up some of those rights, specifically, the right to subdivide and the right to build more structures. In return, the easement donor reaps tax benefits.

"People talk about private property rights; I think the highest expression of private property rights is

the donation of a conservation easement on your land. You as the current landowner, and none of us is anything more than a temporary steward of the land...you have the right to donate a conservation easement on your property and if you feel strongly about the conservation values of your land, and you want to see the comprehensive plan actually implemented on your property, you can and you should donate an easement on it which will permanently, irrespective of any future zoning, limit the amount of development to whatever the easement permits."

Here's how it works: Hypothetically, let's take a 100-acre parcel that you want to put in easement. To keep the math simple, the property as it stands now is worth maybe a million bucks. But if you give up the rights to subdivide it and build more houses on it, it might only be worth say...\$700,000. The easement value, the value of what you the landowner are giving up, is \$300,000.

This is the figure that applies to your taxes. The IRS looks upon easements as charitable donations. You are



John Moore of the Piedmont Environmental Council.

Photo by Phil Audibert