

# Where the Grass is Greener

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Gov. Tim Kaine is trying to protect thousands of Virginia's green acres. But a system that favors developers and local officials over the rights of property owners is getting in the way. Eric Archer loves his land. He loves his grapevines and the pecan trees he's tended since they were just ankle-high. He

loves his house, a one-story, brick-and-stone cottage his father built with his own hands. He loves every inch of the fields and forest that he, at 71 years old, finally paid off last spring. Yet even as he takes full ownership of the ground beneath him, he's seen his property rights eroding at the hands of his elected officials.

"I've wandered this land since I was 3 years old," Archer says. "I can find my way around in the pitch-black night."

Beyond his property line, however, in the southernmost tip of Chesterfield County, the area is becoming unrecognizable.

"This was a farming county," Archer says. "It's amazing how much is gone." He smooths out a worn map of the area of his father's original purchase. The sepia paper is labeled in neat cursive and dated 1916.

"Across the creek was a 180-acre farm," he says. "That'll be houses soon. There's a 203-acre dairy farm up the road that's set to be 300 houses." He taps the paper. "This was a farm. This was a farm. This was a farm."

Archer looks up and points across his driveway to an open field. "The boy that owns that now I guess he's waiting till it's worth a million dollars."

Farm owners have the right to sell their land to developers. Archer gets that. What he doesn't get is what happened to his right to keep his own land green.

In an effort to protect his property from future development, Archer has run up against a system that undermines state conservation tools and prioritizes the desires of developers over Virginia's family farmers. The situation has landowners across the Richmond region wondering when it became OK for their elected officials to make off with their property rights.

Open spaces aren't just fading from old maps. U.S. Department of Agriculture

statistics show that the Richmond region -- including the counties of Chesterfield, Henrico, Hanover, Goochland, New Kent and Powhatan -- is losing its fields and forests faster than anywhere else in Virginia. More than an acre of green space disappears each hour. That's the equivalent of an area the size of Maymont being converted to a subdivision every four days.

"We're using too much land," says Bob Lee, executive director of the Virginia Outdoors Foundation. "At the current rate of land conversion, more land will be lost in the next 40 years than in all the years since Jamestown."

We lived here 50 years before we saw our first turkey," says Archer, gazing across his field. Today they're regular visitors, crowding onto his property as surrounding farmland disappears. Across the region, development and urban sprawl has driven wildlife, including deer, bear and coyote, into developed areas.

The land rush has also driven up property taxes. In 2006 Chesterfield County assessed Archer's 41 acres at \$96,000. This year his assessment topped \$154,000, a leap that leaves Archer stumped. "If someone's got enough money to spend \$300,000 on a house down the way," he says, "what's that got to do with me?"

Archer and his wife had always planned to pass their land to their children, but the recent trends made them worry. "I'd like to preserve this land," he says. "But by the time [our children] retire, the taxes'll be so high they'll have to sell it."

So when Archer read an article in Progressive Farmer magazine about conservation easements, the idea resonated. Here was a way to protect his land long after he was gone: "I figured if I put down an easement, then [my kids] won't be tempted."

Easement is a legal term for a right to use a piece of property. People who work in land conservation like to explain easements by talking about sticks. Buying land, they say, is like buying a bundle of sticks. Each stick is a right. The property rights that come with a land purchase depend on local laws, but generally include the right to build a house and limit who can enter the property. For larger parcels, they may include the right to subdivide property and change how it will be used -- for example, from a farm to a suburban cul-de-sac.

One way that states encourage the preservation of open space is by allowing property owners to relinquish some of the "sticks," or rights, to their property. Every conservation easement is different, but most forfeit the right to subdivide land. The agreement is legally binding and perpetual. The land remains private. It can be inherited, sold or donated, but the conservation easement and its restrictions endure through every transfer.

To encourage this form of voluntary conservation, the government has created tax incentives, including a federal charity-gift deduction, federal estate-tax exemptions and state tax credits (the nation's best, according to Lee). In addition, by lowering property values, easements can lower taxes paid by the owner.

Before they can tap into these benefits, however, landowners need to find a nonprofit or government agency willing to serve as a land trustee and hold their easements. In Virginia the vast majority of conservation easements -- roughly 80 percent, or

500,000 acres -- are held by the Virginia Outdoors Foundation. "It's the largest public land trust in the nation," foundation easement specialist Philip Reed says.

That's a lot of responsibility, which includes ensuring that land use restrictions are followed and, when necessary, defending easements in court. Legal challenges are rare, but in 2003 the Virginia Outdoors Foundation had to fight an attempt by current owners to subdivide an 81-acre parcel in Chesterfield. It had been protected by an easement since 1976, when then-owner Mary Moody Northen relinquished the development rights. The foundation won that battle and the land remains as Moody wanted: green.

Such victories bolster the faith of easement supporters, including Gov. Tim Kaine, who touts voluntary easements as Virginia's best tool for land conservation. "There's not much we do in public office that can't be undone or changed, but conservation easements are forever," Kaine told a gathering of farmers and landowners at a forum in South Boston in December.

At the start of his term Kaine committed to preserving 400,000 acres of open space in Virginia by 2010. Halfway to his deadline, the Department of Conservation and Recreation reports that 250,000 acres have been saved. Some of that land was bought for public parks, but the vast majority is private property -- land that Virginians decided to, in part, give away.

At the heart of the conservation easement program is the belief that pieces of land are not interchangeable; that each piece of land offers unique value in its unique location. When Virginians put an easement on their property, it isn't because they want to save some land; they want to save that land.

As state Deputy Secretary of Natural Resources Nikki Rovner told those attending the South Boston forum, "There are three reasons why Virginians get conservation easements: Because they love their land. Because they love their land. Because they love their land."

But easements work only if property owners can find a willing land trust, a task some local governments are making more difficult every day.

Lynn Wilson lives on 312 acres along the Chickahominy River. Her husband grew up on the property. Her brother-in-law's family lives next door. Her own sister is down the lane. They are all, to use Wilson's word, "unified" in their decision to get a conservation easement on the land. It's plenty large enough, includes productive forestry lands, contains wetlands, is in the Chesapeake Bay Watershed (like all counties in the Richmond region) and occasionally turns up shards of Powhatan pottery that has archaeology teams scurrying for a grant.

Wilson has every reason to expect the Virginia Outdoors Foundation to accept her family's application for a conservation easement.

That is, if Henrico County doesn't scuttle the deal.

As outreach coordinator for the nonprofit Capital Region Land Conservancy, Wilson spent her days teaching landowners about conservation easements and connecting them with likely holders of those easements. She's the person Eric Archer, of

Chesterfield, called when he decided to preserve his land.

"When a landowner calls," Wilson says, "the first thing a prospective holder would do, regardless of the size of the property, is take the address and look at the [locality's] comprehensive plan." That's because the code of Virginia requires any conservation easement to be compatible with that plan.

"That's a state law that everybody has to abide by," says Reed, of the outdoors foundation. "Basically, if the county does not support an easement, we can't accept it." "Your land is not as much yours as you think it is," Wilson says. "I've lived on this farm for 25 years and I've been asleep at the wheel. Before I accepted this job, I never paid attention to the county planning."

So, despite her expertise and her own plans for her family's land, Wilson received a shock when she made a trip to the library to do some research for a local farmer interested in an easement. She wanted to find out what the county had proposed for eastern Henrico's Varina District in Henrico's 2026 Comprehensive Plan.

"Of course one of the first things I did was look at my own property," Wilson says. "I zoomed in and there's this road running through my farm. I had to leave the library. I couldn't breathe. That was my wake-up call."

Wilson knew, better than anyone, that if that draft version of the plan were voted into law, her family would lose the opportunity to get an easement and protect their land. "No easement holder would knowingly take land that's slated for development on the county's land use plan," Wilson says. So as localities erase farms and forests on paper through their land use plans, they eliminate the state's most cost-effective tool for preserving open space.

Because the state requires land-use plans to be updated at least every five years, at any time some part of the region is engaged changing its plan. Hanover wrapped up one last year. Chesterfield's getting ready. Henrico is neck deep.

At a recent open house in an elementary school gym, a few dozen Varina residents mill around easels and map books doing exactly what Wilson had done: looking up their own homes to see what the future holds.

Bill Gallmeyer was there, flipping through a desk-sized map. Gallmeyer and his son Steve farm strawberries and pumpkins on 94 acres in Henrico's Varina District (their pumpkin patch made national news in 2006 when President George Bush surprised them with a visit). Standing in the corner of the gym, Gallmeyer finds his Berry Patch. It's in a peach-colored swath that designates rural residential prime agricultural. That's good news, he says. But the edge of suburban residential is shifting closer. Between 1990 and 2006 Henrico County lost 16 percent of its residual farms and forests -- what the county calls "vacant land."

The 2026 plan further reduces designated open space, although the county's planners have yet to determine by how much. And every time the suburban designation shifts eastward, it disqualifies more land from protection.

Bill's been farming in Varina all his life, so he's had a ringside seat for the paving-over of much of Henrico's fertile ground.

"I can ride down the road and point to developments with big houses and say, "We

used to farm that and we used to farm that," he says. "Varina District was the last open space in the county. Now it's closing, and it's sad to see."

When a friend in King William County got a conservation easement, Bill proposed the idea to his family. His wife worried about the significant devaluation of their property, because land that's blocked from development has a lower market value. For example, an 81-acre tract in the heart of Chesterfield County has a conservation easement. Its appraised value is roughly \$35,000. If it were free to be developed, that figure would jump to \$7 million. The property taxes paid to the county would also jump.

In the end, however, the Gallmeyers agreed on the plan. Bill contacted the Virginia Outdoors Foundation. And that's when the dream died. Though their land satisfied multiple requirements, the foundation denied the application. The Gallmeyers' 94 acres is divided into two parcels, both of which were deemed too small.

In April the Virginia Outdoors Foundation published an "interim protocol" detailing new selection criteria designed to "best support the Governor's goal."

While the agency has long prioritized larger tracts of land, it had regularly accepted smaller acreage. A third of its easements held in the Richmond region are less than 100 acres, and the agency's selection guidelines claim "no minimum size for properties considered for easements in either rural areas or urban and urbanizing areas."

But following Kaine's announcement of his goal to preserve 400,000 acres by 2010, the foundation found itself racing to get that number on the books. With six easement specialists covering the entire state and with a limited budget (only a last-minute amendment to the state budget spared the foundation a half-million dollar cut this spring), the agency can only do so much. "If we can devote the same effort to save thousands of acres elsewhere," Reed says, "we need to do that."

In other words, the foundation must choose its easements carefully. So while smaller parcels might be considered if they offer extraordinary conservation value -- they are an endangered species habitat or share a border with a state park, for example -- 100 acres has become the cutoff. After 2010, that limit may drop again. But between now and then changes to land use plans may have made hundreds, even thousands, of local acres ineligible.

As an easement specialist for the Virginia Outdoors Foundation, Reed is responsible for 25 counties, including Richmond's nearest neighbors. The sun-faded map on his dashboard speaks to hours on the road, and he recognizes farms and forests the way most people know houses on their block.

On his way to the Smith family farm in Hanover, he raps a knuckle on the driver's side window. "They're considering an easement." He points to swells of green out of the passenger side. "Sod farm. I'd like to get an easement on that." Most of the land in Hanover is exactly what the foundation's looking for: large tracts of productive agricultural land, with historic resources, scenic value and habitat.

A half-mile before the Smith farm comes into view, the landscape is broken by 100



acres of raw red clay. A sign on the road announces Longview Estates, houses starting at \$480,000. It seems houses are Hanover's newest crop.

"We're surrounded," says Retta Smith, matriarch of the family. Three generations have gathered on her hilltop lawn to discuss the conservation easement that, with Reed's help, now protects their farms.

Developers love farmland. It drains well, doesn't need clearing and -- until the next development comes -- offers homeowners the sweeping views they crave. So farmers across the region are used to receiving phone calls from developers, Reed says. But they don't bother calling the Smiths, whose 1,300 combined acres are useless as suburban land.

It was Retta's husband, Robert Smith Sr., who first pursued an easement to protect their land. "All he thought about was keeping houses out," Retta says. He died in the spring, but he lived to see all of his land and his sons' land legally protected from being converted to subdivision -- forever.

There are lots of qualitative values to green space: habitat, beauty and what Kaine calls "soul restoration." There are quantitative benefits as well. Some are obvious. Combined, farming and forestry are the commonwealth's No. 1 industry. The lure of the state's historic and natural resources make tourism the No. 2 industry.

Some benefits are hidden. Local farms save on transportation and pollution-related costs; forests save in health and environmental cleanup costs by purifying water and air. Other benefits are counterintuitive. Statistics show open land generates income for counties, while subdivisions drain the coffers.

"If you don't have the development, you don't need to provide all the services," says Jim Donati, who represents the Varina District on the Henrico Board of Supervisors. "If you put houses on, say, a 500-acre field," Donati says, "you have to build a new school for that and hire more police officers and maybe build a new fire station." Add in water and sewer service, and the county ends up losing money, spending \$1.16 per \$1 of income.

"Residential development does not pay for itself," Wilson says.

A field of berries doesn't need to be educated. Cows do not commit crimes. So for every tax dollar paid by owners of open space, the county spends 35 cents in services, according to a 2004 study by the National Recreation and Parks Association. When fields are plowed under for development, that income is lost.

This math hits home with elected officials just across the line from Henrico, where Hanover's conservation easements are embraced as a tool for fiscal conservatism.

"Hanover eats them up because they save money," Reed says.

Saving taxpayers' money is one reason the county's new land use plan earmarks more than a third of the county's 300,000 acres as a rural conservation district designated to remain green space "for the foreseeable future," says John Hodges, Hanover's deputy county administrator -- "maybe permanently."

"My background is in planning and the right to develop land is a community decision," Hodges says. "We think growth should be managed so it doesn't conflict with conservation. Conservation needs to come first."

"People want this," he continues. "They want to preserve our rural heritage." At public hearings on the new plan, the only opposition to the conservation district was "that it should go further," Hodges says, "that we haven't set aside enough."

Henrico County residents seem to feel the same. "I've never had anybody come up to me and say I'm happy they put that new subdivision up," says Ray Jernigan, chairman of the Henrico County Planning Commission.

In 2005 the county conducted a survey in which 82 percent of respondents said they "support further restricting or managing new development in rural areas." This value is reflected in county planning documents' frequent references to "preserving rural character," but concrete steps to preserve green space are hard to find, and county officials speak of suburban sprawl as a natural and unavoidable process.

"It would be great not to see any of it develop out here," Henrico's Donati says, "but that's not the real world."

Jernigan is equally pragmatic: "The law says people have a right to develop their property." Of course, the law limits that right through zoning and permitting and land-use plans. And when asked about the limits Henrico's proposed plan would put on property owners' right to get conservation easements, Jernigan voices surprise. "So if it shows SR1 [suburban residential 1], you can't put it in conservation?" he asks. "I've never heard that. I'd like to find out about that."

Donati, a self-proclaimed "property-rights guy," suggests that the problem can be remedied by retroactive amendments to the comprehensive plan on a case-by-case basis. He cites examples of exemptions the Board of Supervisors passed to allow high-density development in parts of Henrico where it conflicted with the comprehensive plan.

Such a gesture of support from the county would satisfy the law, Reed and Wilson agree. And some counties have amended comprehensive plans to accommodate easements, though it's a lengthy process requiring two public hearings. Neither Henrico nor Chesterfield has ever made such an exception for an easement.

Chesterfield's track record in land preservation has done little to secure the confidence of rural residents such as Eric Archer. "The county conserving land is a joke," he says.

This reputation stems in part from state Sen. John Watkins' high-profile attempt to overturn the conservation easement on the Mary Moody Northen property; an effort that has been unsuccessful to date.

But Watkins does not just oppose the easement on Mary Moody Northen's family farm. He disagrees with Virginia's conservation easement program as a whole.

"We have got what some people would call one of the best conservation easement programs in the country," Watkins says. "I would say it's the most liberal."

Specifically, Watkins condemns conservation easements as "a tax-avoidance scheme" and an infringement on property rights. "If this generation made that choice, fine," he says. "But we shouldn't be making that choice for the next generation."

"If you develop land, you're tying it up forever too," Reed counters.

But add Watkins' opposition to the new parcel-size limits and Chesterfield's expanding development, and the Virginia Outdoors Foundation is happy to look for land elsewhere. "We really don't even mess in Chesterfield anymore," Reed says. "We don't need another Mary Moody issue."

Indeed, the foundation recently denied an easement to owners of 119 acres at Courthouse and Hull streets, a donation that would have been the third-largest conservation easement in the county.

Yet as Chesterfield readies to tackle its own comprehensive plan, there's evidence of a new attitude toward the county's remaining open space.

"In Chesterfield they've had major changes in their board," Wilson says. "And they're expressing greater interest in preservation and open space."

Archer's heard the talk. "What's her name? Marlene Durfee? They say she's trying to control growth."

Durfee's been on the Chesterfield Board of Supervisors for only six months, but the priority she places on balancing growth with preservation has sent ripples of hope throughout the county's rural enclaves.

"I understand the concern for property rights" Durfee says, "but counties have the authority to determine land use. We need to concentrate our attention on conservation."

Landowners and developers are watching to see how that attention plays out in the upcoming land-use update.

For now, Archer will keep planting grain for the deer and turkey and keep hoping policies change before the last of the county becomes city. "We don't need to cover every inch," he says. "We need to have a little space for wildlife and the ecosystem and the whole ball of wax."

On their farm in eastern Henrico, the Gallmeyers will continue to tend their pumpkins and berries, continue to watch subdivisions approach, continue to hope the Virginia Outdoors Foundation will change its mind about an easement before changes to Henrico's land-use plan push that dream out of reach. "People take agriculture for granted," Bill Gallmeyer says. People have forgotten where their food comes from, he explains. "Well," says Bill, "build all your farmland into houses and when you get hungry you can eat your house."

And up in Hanover, Retta Smith and her sons and grandson will milk their cows and reap their grain, knowing that no matter how far the sprawl reaches, the foundation guards the easement on their farms. "How can you call it a sacrifice," Smith asks, "if you're saving your land?"

She squints out over the hillside where a warm wind sifts the heavy-headed grain. Then she clucks her tongue at the approaching subdivisions. "They've got dollar signs in their eyes." **S**

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