

# THE FURROW

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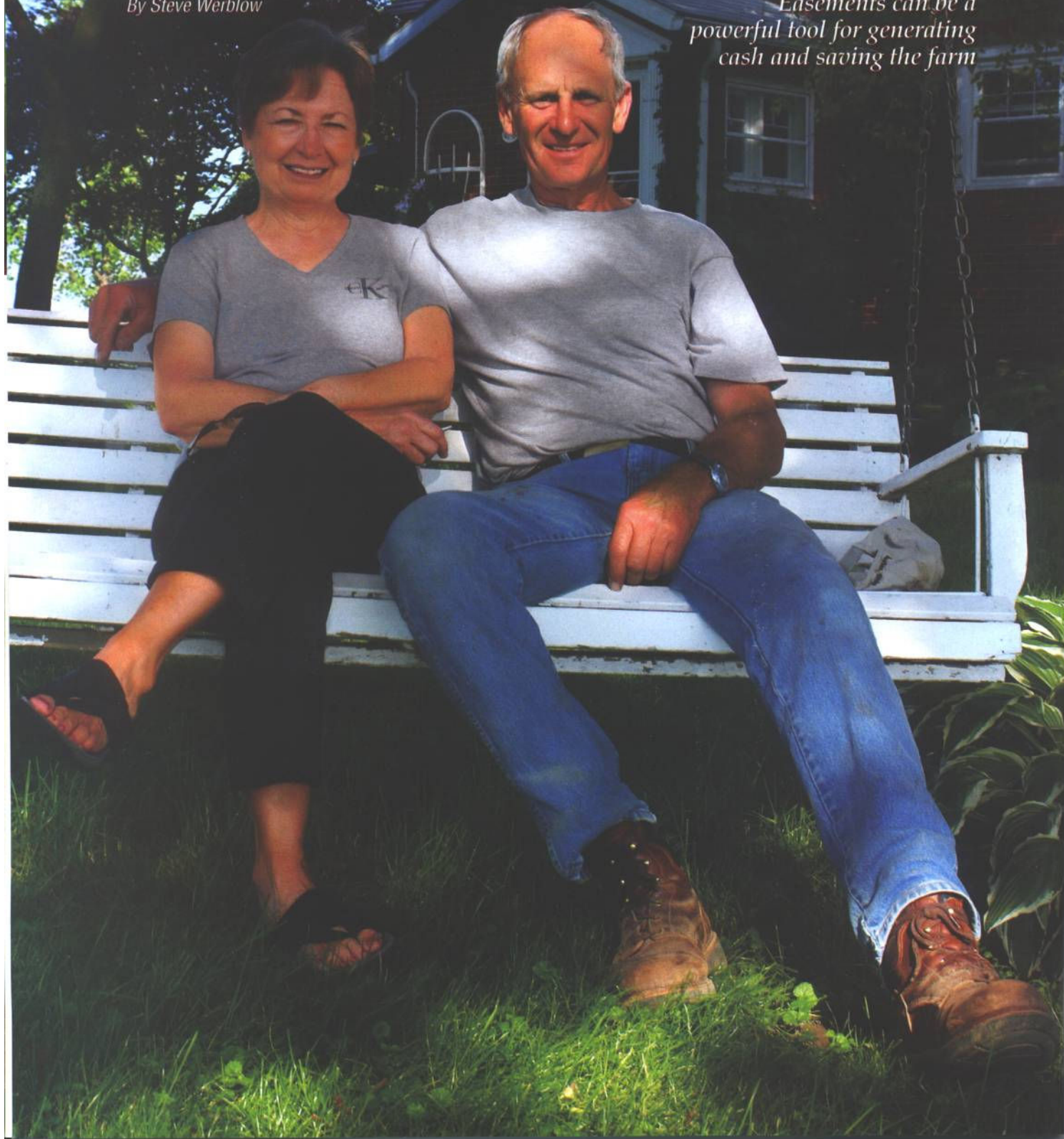
## LIVING ON EASEMENT STREET

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# Living on easement street

By Steve Werblow

*Easements can be a powerful tool for generating cash and saving the farm*



To some, the idea of signing a conservation easement in perpetuity—forever—sounds like volunteering for a life sentence. But for many farmers and ranchers, selling their development rights is a strategy that can help them keep their farms together in the face of climbing tax bills, development pressure, and the challenges of succession planning.

Every landowner owns a bundle of rights. Conservation easements transfer some of those rights to someone else. For instance, Fred and Phyllis Cannon still own their 133-acre farm near Shreve, Ohio. They still run their cattle. They can even build another house on the property. But the easement they transferred to the Killbuck Land Trust says the land may be sold, but never divided—and it must always be used for farming.

**A mission.** Twelve years of service as a county commissioner sold Fred Cannon on the importance of protecting farmland from development.

“What really drove me was the fact that so many farms were being sold off in five-acre lots, which I think is a terrible mistake,” he says.

In New York’s Catskill Mountains, dairyman Tom Hutson and his father spent years assembling 357 acres of prime farmland around DeLancey, N.Y.—an effort that sometimes put them toe-to-toe with local developers.

Today, cabins and ranchettes cover the landscape, boosting prices and making it virtually impossible for local farmers to expand or new ones to enter the area. Hutson has no qualms about locking 339 acres of the best ground in ag through an easement.

“If someone hands you money to not do something that really shouldn’t be done anyway, it’s a no-brainer,” says Hutson, who was honored as Steward of the Land by American Farmland Trust last year. “This ground was meant to be farmed.”

It can be a sound business decision, too, a way to retire debt or generate important operating capital by selling development rights that conservation-minded growers like Hutson weren’t going to exercise anyway.

Hutson’s easement, bought by the Watershed Agricultural Council with funds from New York City, USDA, and other sources, was worth about half of the value of his land. “Mother and I got rid of our mortgages and I felt, ‘hey, I can keep farming,’” he says.

**Public value.** Most conservation easements don’t confer a public right-of-way, but they preserve land with what Congress calls “a significant public benefit”—open space, habitat, scenery, or historic value.

The process of selling an easement is a lot like the process of selling land.

The parcel must be surveyed and appraised. The landowner and the

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buyer of the easement—whether it’s a local land trust, a conservation group like Ducks Unlimited or American Farmland Trust, or a government agency like the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, or a state government—negotiate the terms of the easement, defining what the landowner can and can’t do on the property.

Then the land is appraised again to determine how much of its value is diminished by the easement. That figure averages about 30% nationwide, according to Steven Bick and Harry L. Haney, Jr. in “The Landowner’s Guide to Conservation Easements.”

Using the appraisal of the easement’s value as a starting point, the landowner and the prospective easement holder then negotiate a price. Most agreements involve a donation by the landowner of part of the value of the easement, a sum that can be deducted from federal taxes and, in some states, from state taxes too.

In Fred and Phyllis Cannon’s case, the market value of their land was \$689,000. Retiring the development rights of the property cut the value of the land to \$371,000. The state of Ohio and USDA came up with \$172,000, and the Cannons donated the rest.

**Tax break.** Last August, Congress revised the tax incentive for conservation easements, sweetening the pot for many farmers. The old law limited the deduction for donating a conservation easement to 30% of adjusted gross income and only allowed the deduction



►Far left: Fred and Phyllis Cannon took a write-off and cash in exchange for an easement that will keep their Ohio farm in agriculture forever.

►Left: This subdivision is a nightmare for many farmers, squeezing agriculture out of the path of development and paving over prime farmland.



►**Above:** Krista Magaw of the Tecumseh Land Trust in Yellow Springs, Ohio, seeks easements for contiguous farms to maintain economically viable blocks of protected farmland. ►**Right:** An easement on Albert Straus' farm launched his creamery, but good management is still a must.



to be amortized for five years. Under the new rules, farmers and ranchers who make at least half of their income from agriculture can deduct up to 100% of their income, and they can spread the deduction out over 15 years. The new U.S. tax break, part of the Pension Reform Act, is currently only applicable for easements donated in 2006 and 2007. However, the Land Trust Alliance and other conservation groups are lobbying to extend the law.

**C**anadian farmers and ranchers can deduct up to 100% of their adjusted gross income for up to five years if the easement they donated qualifies for the government's EcoGift program, says Dave Walker, executive director of the Canadian Land Trust Alliance. Reduced tax benefits are available for other donations.

Donations are often a required part of an easement deal. Krista Magaw, executive director of the Tecumseh Land Trust in Yellow Springs, Ohio, says the average agreement in her area includes a 60% donation. Many of her landowners are bidding for state easement funds, so larger donations make

their applications more attractive in a highly competitive market. "If the money were available, I think we'd have about 200 landowners willing to immediately sign up," she says.

**Good advice.** The best advice for any landowner considering a conservation easement is to find qualified advisors for every step of the way.

"Not every lawyer gets it," notes Cathy McNeil, a rancher whose operation near Monte Vista, Colo. is covered by five easements. The Land Trust Alliance is also training rural appraisers on the fine points of evaluating easements, as there are often few "comps" in an area to help gauge value.

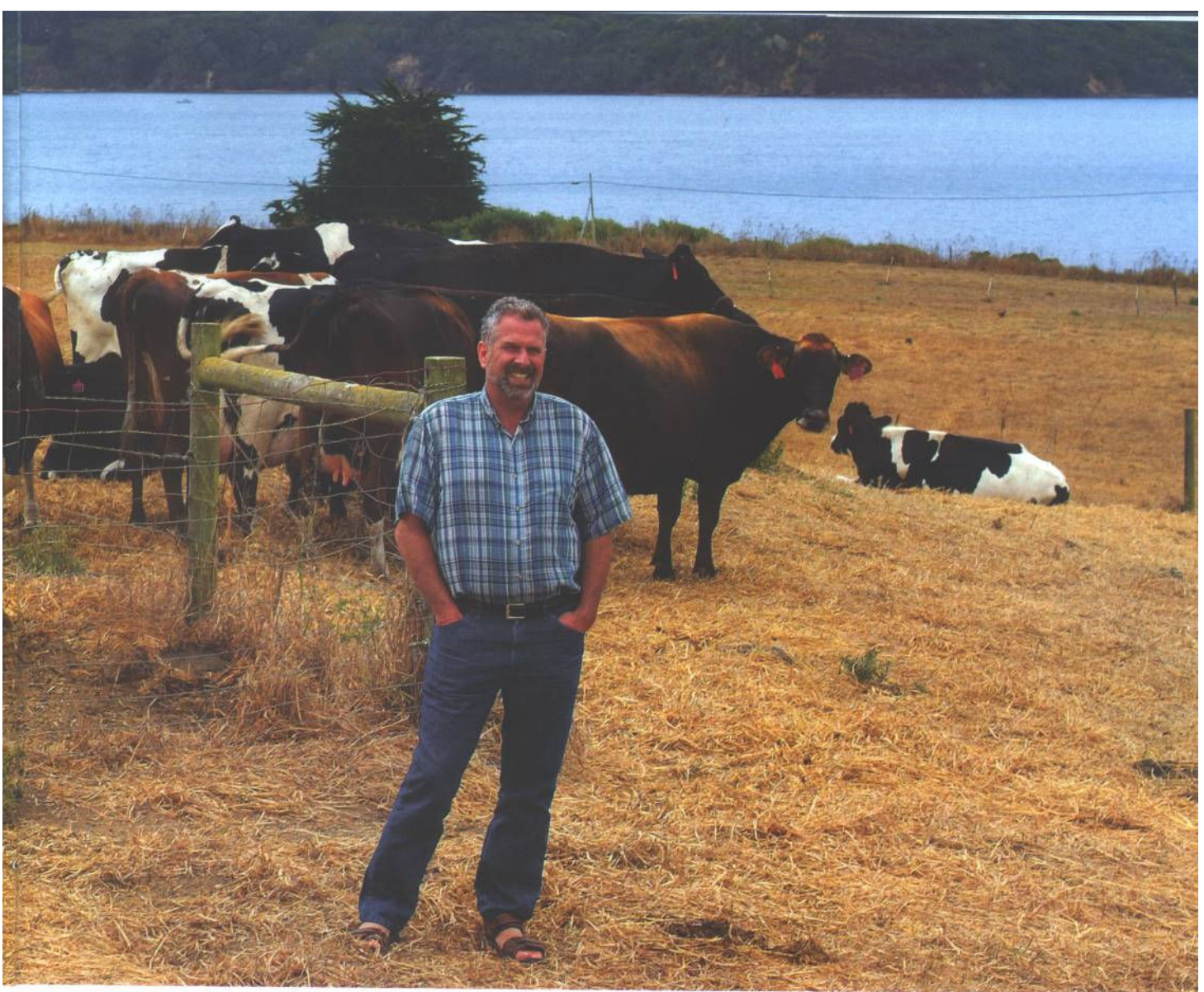
American Farmland Trust offers some free technical advice by phone and on its [www.farmland.org/resources/fic/default.asp](http://www.farmland.org/resources/fic/default.asp) Web site; the Land Trust Alliance can point landowners to land trusts via [www.lta.org/findlandtrust](http://www.lta.org/findlandtrust).

With more than 1,600 land trusts in the U.S. and another 150 or more in Canada—plus government agencies—it's not hard to find a group eager to make conservation easements happen. Many land trusts act as brokers, matching landowners with funding sources to midwife easement deals.

Entering a perpetual relationship with an easement holder is a lot like getting married, so court carefully and look for someone compatible—preferably one that understands ag.

"Every land trust and funding entity has a different perspective and a different set of values, so it's important to look at each one and see what fits your needs," says McNeil.

It's also important to clearly define parcels that shouldn't be restricted by easements. The McNeils kept two 40-acre home sites and a 55-acre parcel at a highway intersection out of their



easements. In New York, Hutson held onto the development rights on several parcels, including the home place, a plot next to his brother's house, and a lot in the path of local development.

**Next generation.** One of the big fears among landowners selling an easement is the impact on their heirs.

Albert Straus inherited some of the first farmland covered by conservation easements in the U.S. He says his parents' efforts to protect the family dairy near Marshall, Calif. saved the farm. "We were able to inherit the land and the business," Straus says.

Instead of saddling their children with estate taxes that would have forced them to sell off part of the farm, the elder Strauses were able to bequeath their land and herd, along with capital that launched a thriving organic creamery as well as ventures for the off-farm siblings.

►**Right:** This rolling land is appraised according to its agricultural potential, not its development value, a relief for the next generation to farm it.

Meanwhile, living with the easement hasn't been a hardship, says Straus. "Marin Area Land Trust has been very low-key and non-invasive," he notes. "Getting county permits has been much more problematic."

Easements are a huge commitment—but they can be win-win deals. "They're a great tool," says Ducks Unlimited's Jim Ringelman in Bismarck, N.D. "You keep land in private ownership, you protect things that ought to be protected, and you get some equity out of your land without having to do something like plow it up."

Adds Ohio's Fred Cannon, "People say, 'once you sign, it's all over.' Well, once you sell the land for development, it's all over too." ■

