

CONSERVATION EASEMENTS

One Family's Solution

There is no simple solution to the disposition of a family property you have come to cherish. Any decision you make has to be tailored to your goals and beliefs—after a great deal of careful deliberation. **BY LOUIS IRION**

We are fortunate to be the owners and stewards of over 400 acres of woodland and farmland in northern Pennsylvania, and we take both roles very seriously. I don't really know how my interest in working and owning land manifested itself, but it has been one of my goals for as long as I can remember.

My grandparents had a working farm in Berks County, Pennsylvania, and their farmland ran up and into the Blue Mountains, with the Appalachian Trail meandering along the ridges right beyond their farm. My father was a furniture maker and restorer, and that type of work was in greater demand in metropolitan areas, and my mother, who grew up on the farm, was an artist and teacher who was attracted to the cultural opportunities closer to Philadelphia, so I grew up living in a small town not far from the city. The trips back to visit my grandparents and the different life they lived, as well as the vast areas of open land with those mysterious mountains lurking just beyond, held a real fascination for a "city kid,"



Wanda and Louis Irion (above) placed their treasured property in conservation land trust.

PHOTOS BY WANDA IRION

as all the local farmers referred to us. The farm was sold when I was still a youngster so I never got the chance to live and work there, but the experiences I had there definitely left me wanting more. I met a young lady with similar interests, and we have grown older together pursuing this dream.

After college I worked with my father in his furniture store and woodworking shop, where we made furniture when we had time. I had two goals then—to become a furniture maker and make fine 18th-century furniture, and to live a more self-sufficient lifestyle in a rural area. When my father closed his business and moved to Delaware, I opened my own shop with living quarters above in a nearby town. A decade later with the business firmly established, we moved to a small homestead we built in western Chester County. Eventually we moved our shop to Lancaster County and bought another farm. As the business grew, I became involved in producing a lot of the lumber we used in the furniture making operation, buying logs and having them sawn, then drying and processing the wood.

I became so involved in the lumber end that in 1995 we sold the shop to my employees, moved our family to northern Pennsylvania, and started a lumber business with my wife selling specialty hardwood lumber to other small shops and the general public. The point of this short history of our lives is to understand the path that brought us to the place we are today.

Protecting Special Places

The desire to protect our land surfaced when we acquired the second property, a 76-acre piece with open fields and upland woods along the Octararo Creek, the dividing line between Lancaster and Chester Counties. The farm was in a rapidly growing area and

bordered the creek at the top of a reservoir surrounded by hundreds of acres of protected watershed. It had wetlands, fields, and good upland stands of hemlocks and hardwoods as well as beavers, otters, and all types of waterfowl, ospreys, and bald eagles nesting nearby, wild turkey in the woods, and a tremendous variety of wildlife.

So even before we had any intention of ever moving again, we wrestled with the issue of how we could best protect this property from future development, which was already radically altering all of southeastern Pennsylvania. We talked with professionals about our options, but never really hit on a solution until we met some folks socially who worked at the Natural Lands Trust in Media, Pennsylvania. The end result of a lot of study and research—and yes, a bit of trepidation—was that we put a conservation easement on the majority of the property to ensure it would remain undeveloped.

We sold this property, bought another farm in northern Pennsylvania, and moved there to start our new business. As other properties became available, we purchased more farmland and woodland on either side. Although this area is one of the least threatened by development in the state, fragmentation and parcelization are a real issue, so over the last few years we have put large portions of these properties in conservation agreements with the North Central Pennsylvania Conservancy, the land trust group most active in our area. There is no simple solution to

the protection of your land, but without some type of secure plan in place that addresses the issue for the long term, one's property is at the mercy of your heirs and their lawyers and the new owners of that land. We have placed our properties incrementally in three separate conservation agreements over a five-year period to be sure that we are comfortable with the end result.

The Conservation Process

Entering into a conservation easement is not an easy decision. If the property hadn't been so special as a wildlife habitat, we might not have ventured down that road. These agreements can



Stickering lumber at the lumber facility on a pleasant autumn day.

involve the courts and various governments, and governments have a reputation for being difficult to deal with most of the time. As a matter of fact, we have spent a lifetime quietly trying to earn our keep and remain out of its clutches. One reason for selling our woodworking business was the difficulty in dealing with the various revenue and regulatory agencies, not so much for what they were trying to accomplish, but the manner in which they went about it. Here we were on the frontlines every day working hard and living by our wits, providing jobs and paying taxes, and instead of trying

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to help us, we were treated like villains, always guilty until proven innocent, and ever more conscious that we were one lawsuit or big fine from being out of business and losing everything we had worked so hard for, often for situations we couldn't control.

Ultimately we voted with our feet, ending our involvement in the custom furniture business, and started a very small lumber enterprise that we intend to keep that way. So, we are not big fans of government, but in all fairness, there are some times when they do a decent and necessary job, like preserving and protecting many of our natural areas for everyone to enjoy. Living in an area that was absolutely nuked for its timber in the late 19th century and then abandoned, it's obvious our lands need some long-term protection from exploitation—historically difficult for individuals to do.

A conservation agreement is best described as a legal document that protects a designated area of property from any future development. The easement is typically held by an independent land trust that is the designated guardian of the land, the easement is perpetual, and it transfers with the deed. The part I like best about these agreements is that you are typically working with a local land trust of your choosing, and they are the buffer between the landowner and the government. The land trust holds the easement, they inspect the property—usually once a year with advance notice—and if there are problems or disagreements, they are the ones you deal with. However, if the trusts don't do their job, they are the ones that have to answer to the government, and anyone trying to break the easement has to answer

to the government as well, so the land is protected and you theoretically have no direct government involvement. It is also in the best interests of these land trusts to tread lightly and not become overbearing, as a negative reputation definitely affects their ability to attract new members and donors. We liked this arrangement, and it was a huge factor in our decision.

These conservation agreements

Like so many aging landowners, we have children who love their family home but don't really interact with the property the way we do.



A skid of ash logs coming out of the woods.

are designed by the land trust and the landowners together, based on the nature of the property and how it is used now and for the future. There is no set formula, and the landowners have a surprising amount of input into the creation of the trust. We are in the lumber business and have the right to manage and harvest our woods, and we can cut up to 5,000 board feet of timber per year and can remove any dead or damaged timber without a forestry plan. We work with a local forester from the Pennsylvania Department of Conservation and Natural Resources for the overall management of our woodlands, and have done a number of small clearcuts and timber stand improvements with their supervision to try to increase the quality and productivity of our woods. Most types of

agriculture and agricultural buildings are allowed within the conserved areas, with restrictions only on size to eliminate factory-type farming. Basically, nothing has changed in the way we conduct our lives on our property. It still remains private property with permission necessary for others to use—we work it, take care of it, pay the taxes, and enjoy it as we always had before.

Some Practical Details

One of the things we did to ensure that we and future owners would be happy with this perpetual arrangement was to leave part of our property out of the conservation easement so that we can have an area where we can conduct our lives separate from any interaction with the land trust. We have a business on our property, so we exempted our

home, outbuildings, and our business property, plus some extra wiggle room, from the easement. We also want to control development, especially with the idea of protecting the core of the properties for wildlife habitat and timber, but not at the expense of future generations of humans, possibly even members of our own family, so we excluded enough land on our property for extra home sites, situated to minimize their impact on the wild areas.

In designing our conservancy we also allowed for some division of the conserved area in case our land had to be subdivided in the future. To a limited extent, part of the conservancy can go with different house sites, but all the protected areas are still restricted by the terms of the agreement. You can choose to designate building lots

within a conservation easement, but the conservancy then has jurisdiction over them. There are complications and restrictions like not being able to run a business from the site, house size, and other issues no landowner should have to deal with regarding their personal living space.

The first agreement went well, so when we bought land in northern Pennsylvania, we decided to continue the process. Now, there is a lot more open land in this part of the state, and a lot of state forests and game lands, but we still believed that a conservation agreement was necessary for its protection and also for its impact on inheritance and estate taxes. Our property will be assessed at a considerably lower value because of the conservation easement, and as the price of land continues to escalate over time, we hope this lower valuation will protect our heirs from being forced to sell the property just to pay the inheritance taxes. This is a really serious issue for anyone owning some acreage, whether they are actively making a living from it or simply have it as an investment or for recreation, and the problem often isn't apparent until it is too late to do anything about it. It is probably one of the biggest reasons for subdividing land into smaller parcels and for development, as this typically brings the highest dollar for the land, and if you are selling to raise money to pay taxes, it pretty much has to go to the highest bidder. The estate taxes are often due within a year after the owner has passed away, meaning that you may have to sell some property in a down market just to meet your estate tax obligations—and no, you can't wait until conditions improve.

Another reason to help to pre-determine the fate of your property is that unresolved property issues are the source of a tremendous amount of family conflict. This is an issue that should be clearly resolved while the present

owners are around to arbitrate, for group decisions regarding your property could seriously compromise family harmony. It is the responsibility of the giver to see that their gift is just that, a positive event for all the recipients.

In many cases the landowners may be compensated for granting an easement, either by a direct sale of the development rights or by making the easement a charitable contribution, which enables you to take a tax deduction on your income. This second type only works if you are paying enough tax to earn a deduction. Landowners who are on a fixed income or have marginal income don't really benefit from the charitable deduction, as it comes off your income tax, so it is important to do your homework.

What's the Downside?

It is also prudent to look at the downside of conservation agreements. Certainly it is important to set up the document correctly, as it is pretty much irreversible, which is good if you want your land to stay that way, and bad if you want to change your mind. As I mentioned earlier, you gain more control of your property by leaving a portion of it out of the conservancy, so that you and future owners don't find your hands tied by the easement. A conservation easement even on a portion of the



The Irions' sauna, built by Wanda with help from her children Adele and Aubrey from material found on the property.



property can potentially lower the value of your property, so it may be harder to sell, and you may have to lower the price a bit. You don't really give up control of your land, but the land trust holding your easement does have the right to come onto your property to inspect the property and to enforce the easement. Since we aren't planning to exploit the property, this isn't a big issue for us, but this is an area of concern—an unreasonable and petty land manager could definitely complicate your life. We feel reasonably protected with the latitude we built into our conservancies between the design of the document, leaving a portion of the properties out of the easement, and with the positive relationship we have with our land trust. Many people considering conservancies worry about how it will affect the sale of their property, but in the case of our first easement, the purchasers had the same mindset that we had, and the easement did not affect the sale price.

Lessons Learned

One important thing we learned is that doing nothing is pretty much the worst thing you can do, and whatever you decide to do should be clearly defined and legally documented, for the sake of your land and your heirs. We have heard many horror stories of everything from forced land sales to pay the estate taxes to the final wishes of the owners being totally disregarded by squabbling or disrespecting heirs and their lawyers, or even trustees who blatantly disregard their client's last wishes.

Like so many aging landowners, we have children who love their family home but don't really interact with the property the way we do, so this is something we still have to sort out, but I know that we have enough resources to be able to take care of our land and our children, and that our land is very much a part of our family and deserves similar consideration. It

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means a lot to both of us to have gotten to a place where we can do something like this. We want to share the story of our journey so the reader understands that we worked hard for this land and thus do not want to make a foolish decision, but we have always felt more like stewards than owners of the properties, more grateful than entitled. We harvest resources from our land and accept that as the price of living, but if this is accomplished in a respectful and sustainable way, it should minimize the impact and exploitation. Long after we are gone, the land should continue to evolve in a natural way, and we hope our legacy to future generations is to



ONE IMPORTANT THING

we learned is that doing nothing is pretty much the worst thing you can do.



A 3- to 4-acre clearcut completed in 2006.

help preserve it for the entire natural world to enjoy as we have, from humans all the way to the bottom of the food chain. We made the decision to go with the conservation easement, held by a land trust and backed by the government, as the best chance to accomplish this goal. Only time will tell if this was the right decision, but we are betting that the land trusts are up to the challenge. ■

Louis Irion lives with his wife, Wanda, in northern Pennsylvania where they have a business together cutting and selling specialty hardwoods.

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