BIG GREEN | *A House in the Woods*

Nonprofit Sells Scenic Acreage to Allies at a Loss

BIG GREEN, *From A1*

installation of septic facilities, construction of foot trails and related excavating, filling and bulldozing. It permits outside benches, tables, chairs, gazebos, birdbaths and screened tents.

It allows cutting firewood for personal use and, on a particular portion of the property, it authorizes tree cutting, hillside terracing, gardening and lawn planting, all to provide the owners with "enjoyment of views." It approves construction of a dock on an ocean cove.

What it does not require: public access.

Dougherty said the restrictions did not affect his plans for the property.

"We got exactly what we would have gotten anyway," Dougherty said. "We just wanted a home there."

Federal tax rules do not allow charitable deductions for ordinary payments made to purchase property. Tax specialists consulted by The Washington Post said that in some Conservancy land deals the deductions appeared questionable. The Conservancy supplied a written opinion by a tax expert who disagrees.

An Internal Revenue Service ruling defines a charitable donation this way: "A voluntary transfer of money or property that is made with no expectation of procuring a commensurate financial benefit in return." If the expected benefits are "sufficiently substantial to provide a quid pro quo for it, no deduction . . . is allowable," the ruling states.

Whatever the tax implications, it clearly remains a source of concern. One Conservancy trustee who benefited from such tax breaks described the transactions as "not illegal," yet was reluctant to discuss details because he said he wanted to avoid alerting the IRS.

The trustee, Philip Reed Jr. of New Jersey, explained: "I don't want to attract any attention to this in any way."

A Creative Mechanism

The Arlington-based Nature Conservancy, the world's richest environmental group, is best known for buying wilderness and holding the tracts in perpetuity, to insulate wildlife from development. Even though the organization's resources are vast—its assets total $3.3 billion—its officials realized some time ago that the charity's money could never protect as much land as they wished.

So as the Conservancy grew it looked for ways to leverage its resources. Eventually, it latched on to a creative mechanism for controlling growth: It encouraged property owners to place easements—permanent restrictions limiting development—on their land. IRS rules allow the landowners to take tax breaks for the reduction in the land's value caused by the easements.

Less well known is an increasingly common variation on that practice, through which the Conservancy helps what it calls "conservation buyers" obtain undeveloped parcels. Under this arrangement, the Conservancy purchases the property, attaches the restricting easement itself and then resells the land to an individual at a steep discount. The Conservancy stresses that all properties are sold for values that can be "justified by reasonable appraisals."

The Conservancy promotes the deals as a way to preserve wilderness by limiting construction. Several buyers told The Post that the restrictions did not affect their land use, because they had no plans to bulldoze the property and erect tract housing. Conservancy officials regularly try to tailor such easements to an individual buyer's desires.

A Conservancy brochure seeks to reassure buyers that a conservation easement does not take away all their property rights. "When people own land, they own rights that go with the property," the brochure states. "The right to graze cattle, erect a home, subdivide, extract minerals or hunt on the property are some examples of these rights. . . . Easements often allow continued grazing, fencing, irrigation, hunting and other traditional land uses."

In a written response to questions, Conservancy officials acknowledged that it was "true that many of our conservation buyers have been trustees," and that the charity is proud of each transaction. The statement emphasized that Conservancy state trustees have no formal legal or fiduciary authority at the organization. That power resides in the national Board of Governors.

The Conservancy said that conservation buyer deals amount to a fraction of their overall land transactions on behalf of preservation: 186 out of 12,000 deals since 1990.

"The goal in every case is [to] find a suitable buyer, whether that person is a Conservancy trustee or not," the statement said. It also stressed that charitable gifts to the Conservancy were "not legally tied" to the transactions, an assertion that appears at odds with statements by some participants in the deals.

The Conservancy declined to supply a complete list of its conservation buyers, saying that would violate their privacy. The Post identified a handful of buyers willing to discuss their savings.

Each said protecting land from development, including construction of what they described as cheap and unattractive homes, was a prime motivation. The buyers also said that tax breaks and a chance to develop their own house in the wilderness sweetened the deals.

New York: Shelter Island Sanctuary

In the Shelter Island case, Dougherty, a retired Manhattan lawyer, said he coveted the plot next to the lush Mashomack Preserve as a potential home site. He also wanted to protect the land, located two hours from New York, from overdevelopment. But he said the owners would not let it go.

At a party, Dougherty lamented this fact to a Conservancy official, who offered to help.

"They said, 'We will buy it from the [owners] and resell it to you,' " Dougherty recalled.

The Conservancy bought the tract for $2.1 million, then transferred it the Doughertys for $1.6 million less.

BY J. MICHAEL DOMBROSKI—NEWSDAY

A preserve on Shelter Island, N.Y., where buyer bought land for $500,000 and donated $1.6 million to Conservancy.

At closing, Dougherty said he and his wife made a donation to the Conservancy of more than $1 million. Over the next 15 months, they contributed an additional $600,000.

"They are basically one transaction," Dougherty said of the donation and the purchase payments. "We made them whole."

Dougherty had committed to the gift before the Conservancy agreed to buy the land.

"I signed a pledge for the $1.6 million," he said, without which the deal would not have gone forward. "They weren't going to obligate themselves if I wasn't obligated."

The transaction was approved by his attorney and provided him with substantial tax write-offs, he said. To date, the IRS has not objected. The easement restricting development also reduced the land's assessed value, slashing his property tax bill.

Dougherty said his goal was preservation and he suspects he will never build there. He quickly added, however: "I have a right to; it would be a nice house."

"It's great for us because we can, one day, if we want, have a house next to this beautiful preserve."

Kentucky: A Bucolic Horse Farm

A few years ago, Lisa Estridge was looking for a farm in Kentucky horse country. Her father, Philip Reed Jr., who is a Conservancy state trustee in New Jersey, suggested that she enlist the group's help.

Estridge was captivated by a bucolic 350-acre Kentucky River tract. She persuaded the Conservancy to buy the land and resell her a portion adjacent to a Conservancy preserve.

In April 2000, Estridge said, the Conservancy purchased the tract, paying about $367,500 for 146 acres. The Conservancy added an easement, records show, which allowed construction of two houses and development of a horse farm, but otherwise prohibited industrial development. The Conservancy resold the plot to her father seven weeks later for $252,500.

At the closing, Reed recalled in an interview, he signed a letter of intent to make a charitable contribution. A month later, Reed said, he made a tax-deductible donation to the Conservancy for the difference between the two amounts—an amount he remembered as $132,300. (Conservancy officials report slightly differing figures, calculating the group's original purchase price as $335,800 and Reed's donation as $113,200.) By designating the check as a donation, instead of part of the purchase price, Reed said he could deduct the amount of the gift, offsetting income taxed at 39 percent. In effect, he said, "the federal government is buying part of the land for you."

Reed structured the purchase and the donation into two payments so that, he explained, "you don't get into an argument with the IRS."

"You don't want to put it in there as part of the actual purchase contract," Reed said of the contribution. "What you do is sign a letter of intent to make the donation. . . . The IRS cannot argue with fact; there's nothing you can do about it."

His daughter used similar wording, explaining that the IRS could challenge an appraiser's estimate of the reduction in the land's value. By instead writing a check, Estridge said, "They can't debate that you have given a charitable organization $125,000. You did."

She stressed that the cash donation was required.

"They wouldn't sell it to you for a lower price," Estridge explained. "That was just a strategy" to generate a tax break.

When told some tax experts questioned that strategy, Reed balked at explaining further and described the topic as a "minefield."

"I don't want the IRS to think they've suddenly got something they can use," Reed said. "I don't want to attract any attention to this in any way."

He described the transaction as "not illegal" and preferable to the more common—and widely accepted—arrangement under which a landowner donates an easement. Under that system, the owner values the lost development rights and deducts that amount from taxes.

"Generally, the buyer puts too much value on it" for tax purposes, Reed said, citing his experience as a Conservancy trustee. "Land donators almost always try to value their land at more than the [true] value.

"This is a business," he said. "We sort of wince and look away at some of the values buyers put on these transactions. We're not the IRS."

Reed eventually transferred part of the farm's acreage to his daughter, who built a six-bedroom house and created a 20-stall horse barn. Cattle also graze there. The easement has not affected her land use, she said. In fact, Estridge said she and her father might have bought the tract and used it in the same way even without the Conservancy's involvement—and without the gift from U.S. taxpayers.

"I wanted this land," Estridge stressed.

The easement authorizes construction of two houses, outbuildings, garages, toolsheds, a barn, fences, driveways, paths, septic systems, underground pipes, overhead wires, swimming pools and tennis courts. It permits commercial farming, hay cutting and cattle grazing. The land may also be subdivided for sale to two buyers.

"There aren't big restrictions," she acknowledged. "I wouldn't have agreed to the easement if it would have changed my plans."

The easement continues to save her money: She said the county assessor values her 146 acres and the new six-bedroom house at $150,000. "It was so low I laughed," she said.

Estridge said that, before she and the Conservancy stepped in, former owner Lawrence Morton planned to crowd the farm with mobile homes. In an interview, however, Morton said that it would have been too expensive to construct roads and water lines, so the land probably would have ended up much as it will now: large houses on 50-acre lots.

Morton said he concocted a story about towing in double-wide mobile homes in a successful ploy to prod a Conservancy purchase.

"That really shook them," Morton recalled with a chuckle. "They don't like double-wides."

COURTESY OF LISA ESTRIDGE

In Kentucky, Lisa Estridge constructed a six-bedroom house on land she and her father were able to acquire through the Conservancy. The IRS, she says, "can't debate that you have given a charitable organization $125,000."

Kentucky: A House in the Country

In a Conservancy deal on a 50-acre plot near Estridge's land, the link between the contribution and the land purchase was more direct.

"There was a contractual obligation to make the donation," explained the buyer, Ken Brooks. "We showed up at the closing with the money to make the donation. It was all tied into the contract—it had to be done."

Brooks first saw a "For Sale" sign on the tract while hiking with his wife, Vicki, at the neighboring preserve. Ken Brooks called the seller, who warned him the Conservancy was interested, too; Brooks interpreted the warning as an attempt to spark a bidding war.

"He would have sold to me at a higher price," Brooks said. "Little did he know I was a member of the Conservancy."

Brooks called James R. Aldrich, a Conservancy vice president and the group's Kentucky state director. Aldrich responded, "Let us buy it," Brooks recalled.

"If I would keep out of the road, part of the quid pro quo was they would sell it to me," he said. That deal, he added, "was never really made available to other people," a contention that the Conservancy now disputes.

By coordinating with the Conservancy, Brooks said, he avoided paying a premium to persuade the seller to carve off a portion of the larger, 350-acre tract he was offering.

"The savings really are in TNC's ability to buy large amounts of acreage and then subdividing it," Brooks said, referring to the Nature Conservancy. "That probably saved me as much as 25 percent."

Brooks said he paid the Conservancy about $120,000 for his land, with roughly a quarter of the payment as a tax-deductible contribution. "I had a $30,000 donation, more or less, to a charity," he explained. The land came with restrictions on commercial uses.

Aldrich said in an interview that the Conservancy asks buyers to sign what he described as a "charitable donation pledge." Asked if the pledge is legally enforceable, Aldridge responded, "It should be."

If a buyer reneged on an agreement, he said, it "would be terrible."

The Conservancy has resold land to about 10 buyers in Kentucky in recent years, he said, stressing that only one was a state trustee. A Conservancy spokeswoman later confirmed that another of those parcels was sold to an employee of the Kentucky chapter, a sale examined for conflicts and approved by Conservancy attorneys.

Each buyer gave the nonprofit a tax-deductible gift that Aldrich described as "all legal and ethical." His chapter shops for buyers through word of mouth among Conservancy members and through notices in a widely circulated Conservancy newsletter, he said.

"People say, 'I'd like to have a place in the country,' " Aldrich said. "Having the flexibility to build a cabin or residence is one of the things that makes it attractive."

Michigan: A Family Compound

In Michigan, former Conservancy state trustee Jerry Jung says the organization bought 185 acres on Lake Huron, paying $1.7 million. The Conservancy added an easement restricting development and resold the land to him in December for $1.1 million, plus a $650,000 charitable donation, he said.

Jung estimated his overall, after-tax savings on the deal at $300,000. Yet the easement did not alter his plans, either. Jung said he acquired the wooded getaway as a "family compound" that he can pass on to his children.

"There is a house on the property, and I am able to rebuild it under the easement," Jung said. "This is quite exciting; I have my own private bay and 4,000 feet of golden, sandy beach."

Jung said the donation was his idea and was made shortly before closing on the property with the Conservancy. "From a technical point of view, they are unrelated," he said of the transactions.

The Conservancy is pursuing other such deals in Michigan.

It is seeking a buyer for a 1,500-acre tract valued at $1.6 million. The land includes several thousand feet fronting a glacial lake. It features cedar swamps, beaver ponds, rare species and spectacular views of Lake Superior from atop a 750-foot mountain.

Nearby, the Conservancy is marketing a $1.5 million parcel of 635 acres bordering a mile-long lake. The easement will permit home construction but offer no "access to the public," a real estate Web site listing states.

"Listen! What you can't hear is wonderful," the listing says. "Advance the work of the Conservancy and at the same time enhance your enlightened self-interest by owning this property for your personal, exclusive use."

Staff researchers Alice Crites and Lucy Shackelford contributed to this report.

About This Series

SUNDAY

Inside the Nature Conservancy

The Nature Conservancy of Arlington, the world's largest environmental nonprofit organization, promises to preserve precious places. It has a million members, 2 million acres and billions of dollars in assets. During the last two decades, the Conservancy has aligned closely with corporations. In addition to land conservation, it pursued drilling, logging and development. Its approach has led to strange bedfellows.

MONDAY

When Conservation and Business Fail to Mix

Mobil Oil gave the Nature Conservancy one of the group's largest corporate donations, a patch of prairie that encompassed the last native breeding ground of the most endangered bird in North America. The Conservancy wanted to turn the site into a national model of environmentally compatible drilling. But the results illustrate how the organization's philosophy and pursuit of profit can put its core mission at risk.

TODAY

A House in the Woods

Time and again, the Nature Conservancy has bought pristine land and resold it at a loss to a supporter. The sales, part of a program to limit development, allow "conservation buyers" to build houses on environmentally sensitive sites and take huge tax breaks. In those deals, "preserved" land can include a sprawling home with a swimming pool.

washingtonpost.com

Documents used in preparing this series, including Conservancy memos, marketing plans, science reports, property records, loan documents, land easements, tax returns and court files, will be posted daily at *www.washingtonpost.com*. Post staff writer Joe Stephens will answer questions about this series today at 2 p.m. at *www.washingtonpost.com/liveonline*. Conservancy communications director James R. Petterson will be online to answer questions at 3 p.m.