Appendix C

CONSERVATION TOOLS AND STRATEGIES

Rights and Interests in Land that Can be Acquired

Right of Interest	Explanation	Advantages	Disadvantages
Fee Simple ownership	Full title to land and all rights associated with land.	Owner has full control of land. Allows for permanent protection and public access.	Can be costly. Usually removes land from tax base. Ownership responsibility includes liability and maintenance.
Conservation easement / development rights	A partial interest in property transferred to an appropriate non-profit or governmental entity either by gift or purchase. As ownership changes, the land remains subject to the easement restrictions.	Less expensive than fee simple. Landowner retains ownership and property remains on tax rolls, often at a lower rate because of restricted use. Easement may allow for some development. Potential income and estate tax benefits from donation.	Public access may not be required. Easement must be enforced. Restricted use may lower resale value.
Fee simple / leaseback	Purchase of full title and leaseback to previous owner or other, subject to restrictions.	Allows for comprehensive preservation program of land banking. Income through leaseback. Liability and management responsibilities assigned to lessee.	May not be public access. Land must be appropriate for leaseback (e.g., agricultural).
Lease	Short or long-term rental of land.	Low cost for use of land. Landowner receives income and retains control of property.	Does not provide equity and affords only limited control of property. Temporary.
Undivided interest	Ownership is split between different owners, with each fractional interest extending over the whole parcel. Each owner has equal rights to entire property.	Prevents one owner from acting without the consent of the others.	Several landowners can complicate property management issues, especially payment of taxes.

.Ways that Title Can Be Acquired

Technique	Explanation	Advantages	Disadvantages
Fair market value sale	Land is sold at its value at highest and best use.*	Highest sale income (cash inflow) to seller.	Can be expensive.
Bargain sale	Part donation / part sale—property is sold at less than fair market value.*	Tax benefits to seller since difference between fair market value and sale price is considered a charitable contribution. Smaller capital gains tax.	Seller must be willing to sell at less than fair market value. Can be expensive.
Outright donation	A donation by landowner of all interest in property.*	Allows for permanent protection without direct public expenditure. Tax benefits to seller since property's fair market value is considered to charitable contribution.	Ownership responsibility includes liability and maintenance.
Bequest	Landowner retains ownership until death.*	Management responsibility usually deferred until donor's death.	Date of acquisition is uncertain. Donor does not benefit from income tax deductions. Landowner can change will.
Donation with reserved life estate.	Landowner donates during lifetime but has lifetime use.	Landowner retains use but receives tax benefits from donation.	Date of acquisition is uncertain.
Land exchange	Exchange of developable land for land with high conservation value.	Low-cost technique if trade parcel is donated. Reduces capital gains tax for original owner of protected land.	Properties must be of comparable value. Complicated and time-consuming.
Eminent domain (government)	The right of the government to take private property for public purpose upon payment of just compensation.	Provides government with a tool to acquire desired properties if other acquisition techniques are not workable.	High acquisition costs. Can result in speculation on target properties. Potentially expensive and time-consuming litigation.
Tax foreclosure (government)	Government acquires land by tax payment default.	Limited expenditures. Land might not be appropriate for public open space, but can be sold to provide funds for open space acquisition.	Cumbersome process.

Technique	Explanation	Advantages	Disadvantages
Agency transfer	Certain government	Limited expenditures.	Surplus property

(government)	agencies may have surplus property inappropriate for their needs that could be transferred to a parks agency for park use.		available may not be appropriate for park use or the owning agency may want to sell to a private party to generate revenues.
Restricted auction (nonprofit)	Government restricts the future use of property to open space, then sells.	Property sold to highest bidder but restriction lowers price and competition.	It may be difficult for a nonprofit to convince government that a restriction will serve to benefit the general public. Can be expensive.

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*Conservation easements also can be acquired by these means.

Management and Ownership Options Following Purchase by Nonprofit Organization

Technique	Explanation	Advantages	Disadvantages
Conveyance to public agency	Nonprofit acquires and holds land until public agency is able	A nonprofit can enter the real estate market more easily than	Must have a public agency willing and able to buy within a

	to purchase.	government, and can often facilitate a sale when the government agency would be unable.	reasonable time frame.
Conveyance to another nonprofit	Nonprofit acquires and holds land until another nonprofit has been established or is able to finance acquisition.	Allows immediate acquisition even though acquiring group cannot or is not willing to hold property.	Requires existence or establishment of ultimate land holder that has solid support, funding and the ability to manage land.
Management by nonprofit	Nonprofit retains ownership and assumes management responsibilities.	Ownership remains within the community; local citizens can provide responsible care and management.	Land must fit criteria of acquiring organization. Organization must assume long-term management responsibility for the land.
Saleback or leaseback	Nonprofit purchases property, limits future development through restrictive easements or covenants, and resells or leases back part of all of property. May involve sub-division of property.	Acquisition is financed by resale or leaseback. Resale at less than fair market value (because of restrictions) makes land affordable for buyer. Sale can finance preservation of part of site.	Complex negotiations. A leaseback means the nonprofit retains responsibility for the land.

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Financing Option for Government

Financing Option	Explanation	Advantages	Disadvantages
General fund appropriation	Appropriation from general state or local government fund.	Avoids interest and debt service costs.	Budget allocations unpredictable. Might not provide sufficient funds, and competes with other programs.
Bond act	Borrowing money through issuance of bonds—a common	Allows for immediate purchase of open space. Distributes	Requires approval of general public. Can be expensive—

	way to provide funds for open space. Usually approved through local of statewide referendum.	cost of acquisition.	interest charges are tacked on to cost of project.
Land and Water Conservation Fund	Federal funds provided to local governments on a 50-50 matching basis for acquisition and development of outdoor recreation areas.	Cost of acquisition for local government is lowered by subsidy.	Depends on federal approval. Limited funds available.
State grant / low interest loans	State provide matching grants or low interest loans for municipalities to acquire open space.	Encourages localities to preserve open space by leveraging local funds. Donated lands may be used as a match.	Localities must compete for limited funds and be able to match state funds.
Real estate transfer tax	Acquisition funds obtained from a tax on property transfers. Percentage and amount exempted varies with locality.	Growth creates a substantial fund for open space acquisition. Enables local communities to generate their own funds for open space protection.	Places greater burden on new residents than on existing residents. Can inflate real estate values. Effective only in growth situations.
Land gains tax	Capital gains tax on sale or exchange of undeveloped land held for a short period of time. Tax rate varies depending on holding period.	Discourages speculative development. Has a regulatory and revenue impact.	Can inflate real estate values and slow market.
Payment in lieu of dedication	Local government requires developers to pay an impact fee to a municipal trust fund for open space acquisitions.	New construction pays for its impact on open space.	Acquisition funds depend on development. May be lack of accountability for funds. Legality of method depends on relationship of open space to new development.
Financing Option	Explanation	Advantages	Disadvantages
Special assessment district	Special tax district for area benefited by an open space project.	Users finance acquisition and management.	Increases taxes. Timely and costly to implement.
Tax return check off	On state income tax forms, a filer may appropriate a small amount of taxes owed toward revenues for natural lands acquisition.	Convenient and successful means of generating funds.	Vulnerable to competition from other worthwhile programs.
Other funds / taxes	Taxes on cigarettes, sales, gasoline, and	Income from fees and licenses pay for	Revenues from taxes can be diverted for

	natural resource exploitation; revenue from fees and licenses for boat, off-road, vehicle, and snowmobile use, park entry, hunting, etc.	resources.	other uses unless dedicated to open space. Fees create pressures for money to be spent on special interest uses.
Sale of transfer of tax default property	Sale of tax default property can provide a fund for open space acquisition. Also, if site meets criteria, it can be transferred to appropriate agency for park use.	Funds for acquisition are acquired with little cost to taxpayers.	Need to assure that sale proceeds are specially allocated to open space acquisition. Might not provide a significant income. Very political process.

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Financing Options for Nonprofits

Financing Option	Explanation	Advantages	Disadvantages
Loan from institutional lender	Conventional loan from bank or savings and loan.	Less time-consuming process than fundraising.	Long-term financial commitment for non-profit. Higher interest costs than owner financing. Mortgage lien.
Installment sale	Buyer pays for property over time.	If seller-financed, can lower taxes for seller. Buyer can negotiate better sale terms (lower interest rates).	Long-term financial commitment for non-profit. Mortgage lien.
Fundraising.	No- or low-interest loans	Community fundraising	A long, uncertain, and

	are acquired through program-related investments from foundations, non-standard investments from corporations, or charitable creditors (community members).	creates publicity and support.	time-consuming process.
Revolving fund / loans or grants	A public or private organization makes grants to localities or nonprofits for land acquisition based on a project's revenue-generating potential.	Encourages projects with revenue-generating potential.	Projects with low revenue-generating potential have lower priority.
Partial development / saleback or lease	Nonprofit purchases property, limits future development through restrictive covenants, and resells or leases back part or all of property.	Acquisition is financed by resale or leaseback. Sale can finance preservation of part of site.	Complex negotiations. If leaseback, nonprofit retains responsibility for land. Finding buyer for restricted property may be difficult, and land value will be lowered by restrictions.

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Government Financial Incentives for Conservation

Incentive	Explanation	Advantages	Disadvantages
Preferential assessment	Under state laws, agricultural and forest districts can be established to assess land as farmland or forestland rather than at its "highest and best use".	Promotes resource conservation and management. Especially benefits landowners in areas with development pressure. Tax base loss can be partially reclaimed through penalty tax on landowners who terminate enrollment.	Voluntary participation. Does not provide long-term protection. Minimum acreage for entry. Strength of program depends on penalty from withdrawals. Local government bears burden of reduced tax base.
Purchase of development rights (PDR)	Local or state government purchases development rights to	Landowner can derive income from selling development rights and	Can be costly, particularly in a community with high

	maintain land in farm use.	continue to own land. Lower property value should reduce property taxes.	real estate values.
Land conservation grants	State programs pay or otherwise enable landowners to preserve land, enhance wildlife, and provide public access.	Landowners derive revenues from preserving land without selling interests in land.	Preservation of land or provision of public access requires public expenditures.

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Regulatory Techniques – Growth Control

Technique	Explanation	Advantages	Disadvantages
Phased growth	Permits a limited amount of growth each year.	Effective as a comprehensive planning strategy.	There must be an equitable system to approve development. Future development pressures difficult to predict.
Moratorium	Legal postponement or delay of land development.	Useful as an interim measure during the formulation of a master development plan.	Provides only a temporary solution and can create a rush on land development prior to taking effect.
Transfer of development rights (TDR)	An owner of publicly designated land can sell development rights to other landowners whose property can support increased density.	Cost of preservation absorbed by property owner who purchases development rights.	Difficult to implement. Preservation and receiving areas must be identified.

Large lot zoning	Large minimum-lot sizes restrict the density of development.	An established land use control used as part of a comprehensive plan. Effective at maintaining low densities and protecting water resources, particularly in rural areas.	Since zoning is subject to change, not effective for permanent preservation. Can increase real estate values and infrastructure costs and can foster urban sprawl.
Performance zoning	A zone defined by a list of permitted impacts (based on natural resource data and design guidelines) as opposed to permitted uses.	Directs development to appropriate places based on a comprehensive, environmentally based plan. Can be implemented through cluster development.	Difficulties in implementation since environmental impacts can be hard to measure and criteria are hard to establish. Plan can be expensive to prepare.
Carrying capacity zoning	Based on the ability of an area to accommodate growth and development within the limits defined by existing infrastructure and natural resource capabilities. Often called Current Planning Capacity.	Zoning is based on an area's physical capacity to accommodate development. Can be implemented through cluster development.	Requires a comprehensive environmental inventory for implementation. Determining carrying capacity can be a difficult process, subject to differing opinions, quality-of-life assumptions, and changing technologies.

Technique	Explanation	Advantages	Disadvantages
Cluster zoning / planned unit development (PUD)	Maintains regular zoning's ratio of housing units to acreage but permits clustered development through undersized lots, thus allowing for open space preservation. A PUD provision allows clustering for a large, mixed-use development.	Flexibility in siting allows preservation of open space areas within development site. Can reduce construction and infrastructure costs.	Open space often preserved in small separate pieces, not necessarily linked to a comprehensive open space system. May increase processing time for development approval. Lack of infrastructure can inhibit use of technique.
Preservation overlay zoning	At discretion of municipality, overlay zones with development restrictions can be established to protect agricultural and natural areas, scenic views, and historic neighborhoods.	Special zones have regulations specific to the needs of a unique area and may be subject to mandatory clustering, performance standards, special permits, and site plan and architectural review.	Language in special district ordinance must be specific enough to avoid varying interpretations.
Exaction	As a condition of obtaining subdivision approval, local government requires developers to pay a fee or dedicate land to a municipal trust fund for open space. Also, states can require open space set-asides as part of environmental review.	New construction pays for its impact on open space.	Acquisition funds dependent on residential development. Commercial development often not subject to exaction fees. Difficult to calculate developer's fair share of costs.
Conservation density subdivisions	Permit developers an option of building roads to less expensive Specifications in exchange for permanent restrictions in the number of units built. Roads can be public or private.	Increases open space and reduce traffic. Discourages higher densities to pay for the higher cost of road building.	Requires enforcement of easements. Private roads limit public access and require homeowner association maintenance.

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This appendix is adapted from *Tools and Strategies: Protecting the Landscape and Shaping Growth*, 1990, the Regional Plan Association, New York.

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