



Techniques for Preserving Open Space

The following is a summary of some of the more commonly used open space preservation techniques arranged according to ownership options with comments as to their effectiveness and acceptability.

OWNERSHIP OPTIONS FOR GOVERNMENT AND NONPROFITS

1. Fee Simple

- Outright purchase of full title to land
- Owner has full control
- Allows for permanent protection and full public access
- Can be costly, removes land from tax rolls, ownership includes liability and maintenance

2. Fee Simple/Leaseback

- Purchase of full title.
- Leaseback to previous owner or other subject to restrictions.
- Liability and management can be assigned to lessee.
- Land must have some leaseback value i.e. fan-farmland.
- Might not provide public access, but is a form of land banking since restricted use is allowed now.

3. Purchase Of Development Rights or Conservation Easements

- Less expensive than fee simple purchase
- Landowner retains ownership and property remains on tax rolls yet on a lower rate because of restricted use
- As ownership changes restrictions on land use remain
- Potential tax benefits if land is sold at less than appraised value and is considered a donation
- Restricted use may lower resale value

4. Lease

- Short or long term rental of land. Low cost for use of land
- Landowner receives income and retains control of property
- Affords only limited control - does not assure pen-permanent protection

NONPROFIT PURCHASE AND OWNERSHIP ENTITY OPTIONS

1. Nonprofit Acquires Land And Conveys It To Public Agency Or A Land Trust

- Nonprofit can enter the real estate market more easily than government and hold land until a public agency is able to purchase or local land trust is able to finance acquisition
2. Nonprofit Acquires Land And Manages It
 - Nature Conservancy and local land trusts have a strong record of doing this in South Carolina
 - Land can be expensive to manage, usually ask for an endowment
 3. Nonprofit Acquires Land Then Sells Or Leases It With Restrictive Easements Or Covenants
 - Acquisition is financed by resale or lease
 - Resale at less than market value, because of restrictions, makes land affordable for a buyer such as a farmer
 4. Nonprofit Acquires Land Then Sells It So Money Can Be Used To Preserve Other Parcels
 - Land trusts are beginning to see this as a viable option

TRANSFER OF TITLE OPTIONS

1. Fair Market Value Sale
 - Land is sold at a price equal to its value at highest and best use
 - Highest sale income to seller - most expensive to buyer
2. Bargain Sale
 - Land sold at less than fair market value - part donation/part sale,
 - Tax benefits to seller as difference between fair market and sale price is considered a charitable contribution and seller pays smaller capital gains tax
 - Allows landowner some return on the land
3. Outright Donation
 - Donation of all or partial interest
 - Allows permanent protection, no public cost, tax benefits to donor since property's fair market value is considered a charitable contribution
 - Receiving agency must be willing and capable of managing the land
4. Donation Upon Death Of Owner
 - By Devise - Donor receives no tax benefits
 - Date of acquisition uncertain with either option #4 or #5
5. Donation With Lifetime Use
 - Reserved Life Estate - donor receives tax benefits
 - Date of acquisition uncertain with either option #4 or #5
6. Land Exchange
 - Public agencies or nonprofits exchange developable land for land with high conservation value held privately
 - Lands must be of equal value

7. Eminent Domain
 - Right of Government to take private property for public purpose - must pay just compensation.
 - Last resort - can lead to costly litigation.
8. Tax Foreclosure
 - Government acquires land by tax payment default
 - Land so acquired may not be suitable for public open space but could be sold to provide funds to buy other parcels

LAND USE REGULATION AND PLANS

1. Inland/Wetlands
 - Little if any building in wetland soils
2. Zoning
 - Large lot zoning
 - Net buildable area
 - Soil based zoning
 - Cluster
 - Floating zones
 - Preservation overlay zones
 - Transfer of Development Rights
3. Subdivision Regulations
 - Open Space Dedication
 - Payment In Lieu of Dedication
4. Land Use Planning (Backbone of any preservation program)
 - Must have a detailed plan of what lands should be developed and which preserved.
 - Basis for growth management.
 - Planning Commission charged with preparing and updating.
 - Local Comprehensive Plan including areas designated for open space preservation.
 - Public must have input and review and all municipal agencies should buy into plan.
 - The plan places the local government in the driver's seat regarding future growth and sends out a clear message as to what residents want to see preserved.

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