

# THE PRESERVATION TOOLBOX: Tools and Techniques for Preserving Open Space<sup>1</sup>

## PART 1: REGULATORY MEASURES

When planners talk about ‘tools’, they are referring to some type of regulation or policy adopted by the local government to achieve a specific objective. In other words, a city or county may state as a goal its desire to ‘protect water quality’. The regulatory ‘tool’ to achieve that goal might consist of a requirement for a vegetated buffer strip, or perhaps a prohibition on certain kinds of industrial activity within the watershed.

The preservation ‘toolbox’, therefore, will contain many specific measures - both regulatory ‘tools’ as well as voluntary, incentive-laden measures that encourage private initiative to protect open space resources. This section describes various regulatory techniques along with their strengths and weaknesses. Table 1 lists regulatory methods that protect resources or preserve open space. Succeeding sections will describe land acquisition methods and open space financing strategies.

**TABLE 1. REGULATIONS THAT PROTECT OPEN SPACE OR PRESERVE RESOURCES**

| REGULATION   | BENEFITS   | DRAWBACKS   |
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| <b>FEDERAL REGULATION</b>  |  |   |
| <p><b>Clean Water Act.</b> Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. Administered by the U.S. Army Corps of Engineers.</p> <p>Section 401 of the Clean Water Act delegates authority to the State of North Carolina to issue a 401 Water Quality Certification for all projects that require a Federal Permit (such as a Section 404 Permit). The 401 certification is verification by the NC Division of Water Quality that a given project will not degrade “waters of the State” or otherwise violates water quality standards.</p> | <ul style="list-style-type: none"> <li>▪ Regulations have slowed the rate of wetland conversion.</li> <li>▪ Ensures wetlands are identified during development planning.</li> <li>▪ Mitigation of wetlands, including restoration, creation, or replacement–in-kind of wetlands, presents opportunities to preserve open space.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Cumbersome and time-consuming regulatory process involving both a state and federal agency.</li> <li>▪ Mitigation of wetlands can be expensive.</li> </ul> |

| <b>COUNTY PROGRAM</b>   |   |  |
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| <p><b>Present Use Value Program.</b> Established to promote continuation of agricultural and forestry activities by assessing property based on its actual use. Wake County administers program.</p>  | <ul style="list-style-type: none"> <li>▪ Maintains land in agricultural and forestry use.</li> <li>▪ Reduces owner's property tax through actual use assessment.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Minimum acreage criteria and eligibility rules.</li> <li>▪ Used by speculators to “hold” land awaiting development.</li> <li>▪ Reduces local government tax revenue.</li> <li>▪ Questionable effectiveness in areas with high real estate prices and development pressure.</li> </ul> |
| <b>TOWN OF CARY REGULATIONS</b>   |   |  |
| <p><b>Flood Damage Prevention Ordinance.</b> UDO, Chapter 14, Part 2. <i>(Revisions pending.)</i></p> <p><b>Development in Flood Hazard Areas.</b> UDO, Chapter 5, Part 8. <i>(Revisions pending.)</i></p>  | <ul style="list-style-type: none"> <li>▪ Prohibits development within the 100-year floodplain.</li> <li>▪ Preserves floodplain functions including stormwater infiltration, wildlife habitat, and reducing downstream flooding.</li> </ul>                    | <ul style="list-style-type: none"> <li>▪ Floodplain area cannot be platted within individual lots.</li> <li>▪ Floodplain maps must be evaluated and updated periodically.</li> </ul>   |
| <p><b>Sedimentation and Erosion Control.</b> UDO, Chapter 14, Part 3. Erosion control plans required for all land-disturbing activities exceeding 12,000 square feet.</p>   | <ul style="list-style-type: none"> <li>▪ Best management practices and sediment control structures prevent excessive siltation of streams from construction site runoff.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Exemptions for farming, forestry, and disturbances under 12,000 square feet.</li> <li>▪ Requires close monitoring and enforcement.</li> </ul>   |
| <p><b>Riparian Buffer Rules.</b> UDO, Chapter 14, Part 6. Interim stream buffer ordinance requiring 100 foot riparian buffers on all perennial and intermittent streams shown on US Geological Survey topographic maps. Element of Town's Stormwater Program for Nitrogen Control (Neuse Stormwater Rules).</p> | <ul style="list-style-type: none"> <li>▪ Vegetated buffers reduce amount of pollutants entering creeks and streams, enhancing water quality.</li> <li>▪ Helps preserve forested habitat corridors.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Applies to new developments only.</li> <li>▪ No long-term monitoring or enforcement mechanism.</li> <li>▪ Some encroachments to buffer still permitted.</li> <li>▪ Homeowners associations may be unprepared to take long-term responsibility for buffer maintenance.</li> </ul>      |
| <p><b>Planned Unit Development.</b> UDO, Chapter 10, Part 5. PUDs allow the Town to plan for larger areas and to more effectively manage impacts of growth on town services and infrastructure.</p>   | <ul style="list-style-type: none"> <li>▪ Master planning of large tracts.</li> <li>▪ Open space can be integrated into overall design.</li> <li>▪ Allows innovation and flexibility in design and mixing of uses.</li> </ul>                                  | <ul style="list-style-type: none"> <li>▪ Results in large-scale landscape alteration.</li> <li>▪ Open space requirements limited from 5-15%.</li> <li>▪ Can be costly to develop master plan.</li> </ul>   |
| <p><b>Thoroughfare Corridor Buffer District.</b> UDO, Chapter 10, Part 1. Provides undisturbed vegetated and/or natural buffer along both sides of existing and planned controlled/limited access highways within the Town's planning jurisdiction.</p>   | <ul style="list-style-type: none"> <li>▪ Prohibits development within 100' buffer; requires existing vegetation to remain undisturbed.</li> <li>▪ Regulates building height and tree-lined views along interstates and controlled access highways.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Some disturbances allowed during construction for ingress, egress, and utility services.</li> <li>▪ Limited open space functions.</li> </ul>  |

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| <p><b>Reservoir Watershed Overlay District.</b> UDO, Chapter 10, Part 3. Meets provisions of State rules for protecting water supply watersheds.</p>   | <ul style="list-style-type: none"> <li>▪ Limits impervious surface in water supply watershed areas.</li> <li>▪ Requires stormwater controls if certain impervious surface percentages are exceeded.</li> <li>▪ Allows cluster development.</li> <li>▪ Provides some protection of water supply watersheds.</li> <li>▪ Prohibits some land uses that can harm water quality.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Water quality effectiveness is limited.</li> <li>▪ Restricts amount of development on a property.</li> </ul>   |
| <p><b>Mandatory Dedication of Open Space.</b> UDO, Chapter 15, Part 1. Developers are required to dedicate a portion of subdivided property (1/35 acre per dwelling unit) or pay fee for open space, greenway, or parkland.</p>  | <ul style="list-style-type: none"> <li>▪ Open space is protected, and recreation lands are acquired at little cost to the public.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Applies only to residential subdivision and PUD's.</li> <li>▪ Limited effectiveness in preserving large tracts or corridors.</li> </ul>  |
| <p><b>Cluster Development Option or Open Space Overlay District.</b> Cluster development is an option in the Reservoir Watershed Overlay District. Creation of an Open Space Overlay District, which would allow clustering as an option in residential districts, will be considered during the rewrite of the UDO.</p> | <ul style="list-style-type: none"> <li>▪ Allows for flexibility in design to protect natural resource areas located on the parcel.</li> <li>▪ Construction and infrastructure costs are reduced.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Voluntary</li> <li>▪ Only applicable within Reservoir Watershed Overlay District</li> <li>▪ Cluster option not utilized to date.</li> <li>▪ Protected lands are often scattered and non-contiguous.</li> <li>▪ Clustering is not a popular option among Triangle developers.</li> <li>▪ Long-term management of common open space may become problematic for homeowner association.</li> </ul> |
| <b>PROPOSED TOWN OF CARY REGULATION</b>  |  |   |
| <p><b>Regulation of Clear-cutting on Property.</b> UDO, Chapter 14, various sections. Requires zoning compliance certificate and landscape protection plan prior to any timbering operation within our zoning jurisdiction. Controls the extent of clear cutting on sites without approved development plans.</p>        | <ul style="list-style-type: none"> <li>▪ Helps protect native vegetation and habitat before, during, and after development occurs.</li> <li>▪ Reduces erosion and off-site sedimentation.</li> <li>▪ Reduces stormwater run-off levels.</li> <li>▪ Preserves natural buffers, which provide better protection of property values of adjacent development.</li> </ul>                   | <ul style="list-style-type: none"> <li>▪ Unpopular among some landowners.</li> <li>▪ Must be backed with rigorous monitoring and enforcement.</li> </ul>  |
| <b>OTHER REGULATORY TECHNIQUES FOR OPEN SPACE PRESERVATION</b>   |  |   |
| <p><b>Urban Growth Boundary.</b> Demarcation of the limit of urban infrastructure (water and sewer extensions). UGB usually identifies a 10-20 year 'land supply' of buildable land.</p>   | <ul style="list-style-type: none"> <li>▪ Limits sprawl and encourages more compact development.</li> <li>▪ Allows integration with a TDR program to preserve open space.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Requires strong regional cooperation.</li> <li>▪ Controversial; downzoning required outside of UGB.</li> <li>▪ Raises land and housing costs inside boundary.</li> <li>▪ Requires enabling legislation.</li> </ul>   |

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| <p><b>Large Lot Zoning.</b> Provides for large minimum lot sizes, such as five or ten acres per dwelling unit. Development is spread over a large area, reducing density.</p>  | <ul style="list-style-type: none"> <li>▪ Maintains low density and reduces impact on certain resources, such as water resources, in rural and forested areas.</li> <li>▪ Provides flexibility in building design and location to allow site protection.</li> </ul>                                    | <ul style="list-style-type: none"> <li>▪ A factor in suburban sprawl.</li> <li>▪ Open space incorporated within each private lot.</li> <li>▪ Resource areas may be scattered and noncontiguous, fragmenting forest cover and wildlife habitat.</li> <li>▪ Contributes to high real estate prices.</li> <li>▪ Zoning can be changed to allow in-fill development.</li> </ul> |
| <p><b>Performance Zoning.</b> Zoning categories are based on permissible impacts to natural or historic resources, instead of a list of permitted uses. Requires impact assessment of proposed development projects.</p>   | <ul style="list-style-type: none"> <li>▪ The local land use plan directs the location of development to resource-compatible areas.</li> <li>▪ Provides flexibility in types and designs of projects – many uses may be permitted in a single zone.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Effectiveness is based on knowledge of resources and the effects of impacts.</li> <li>▪ Requires a detailed land use plan and staff to administer the program.</li> </ul>  |
| <p><b>Bonus/Incentive Zoning.</b> Provides density bonuses; i.e., developers can build additional units in exchange for preserving designated resource lands. Technique usually applied to cluster developments and transfer of development rights programs.</p>   | <ul style="list-style-type: none"> <li>▪ Encourages sensitive site design to protect resources</li> <li>▪ Helps maintain open space and rural character, particularly for residential developments on the urban fringe.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Requires careful infrastructure planning to prevent sprawl and 'leapfrog' development</li> <li>▪ Dependence on wells and on-site septic systems in fringe areas</li> <li>▪ Conservation value limited if high number of units permitted.</li> </ul>  |
| <p><b>Conservation Overlay Zoning.</b> Additional or stricter development standards and criteria are established to protect particular features of an existing zone, such as historic districts, landscape features, scenic views, agricultural areas, or watersheds. Local Historic District designation is a commonly used form of overlay zoning.</p> | <ul style="list-style-type: none"> <li>▪ Standards and criteria are developed to meet needs of specific resources within the zoning district.</li> <li>▪ Effective in protecting specific resources from development pressures.</li> <li>▪ Used widely in NC to create historic districts.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Standards must be defined clearly to ensure that open space can be protected.</li> <li>▪ Zoning regulations can be changed.</li> <li>▪ Does not address resource preservation outside the zoning district.</li> <li>▪ Not often used for open space.</li> </ul>  |
| <p><b>Voluntary Agricultural Districts.</b> Special districts established to promote continuation of agricultural and forestry activities.</p>   | <ul style="list-style-type: none"> <li>▪ Maintains land in agricultural and forestry use.</li> <li>▪ Provides some protection from nuisance lawsuits against agricultural operations.</li> <li>▪ An existing program authorized by North Carolina statute.</li> </ul>                                 | <ul style="list-style-type: none"> <li>▪ Voluntary participation.</li> <li>▪ Minimum acreage criteria.</li> <li>▪ Does not provide long-term protection.</li> <li>▪ Most effective when several contiguous farms participate in areas with development pressure.</li> </ul>   |

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| <p><b>Purchase of Development Rights (PDR).</b> The owner's rights to develop a parcel of land are sold to the local government or to a land trust. Most PDR programs are voluntary and offer a viable financial option to interested landowners.</p>   | <ul style="list-style-type: none"> <li>▪ A proven technique for local communities with strong support to acquire lands for preservation.</li> <li>▪ Owners who sell development rights receive an income and continue to use their land while retaining all other rights.</li> <li>▪ Property taxes should be reduced.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Purchasing development rights can be expensive.</li> <li>▪ Rarely protects enough land to relieve development pressure on resource land.</li> <li>▪ Funding may not meet demand for easement purchases.</li> <li>▪ Voluntary program means some resource areas may be lost.</li> </ul>   |
| <p><b>Purchase of Timber Rights and Other Easements.</b> In addition to purchasing development rights, timber rights could also be purchased. Other 'customized' easements could be developed as needed depending upon the resource in question.</p>  | <ul style="list-style-type: none"> <li>▪ For protection of scenic viewshed or forested buffer.</li> <li>▪ Less expensive than fee-simple acquisition or PDR.</li> <li>▪ Provides desired income to owner while keeping resource intact</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Forestry management issues must be resolved.</li> <li>▪ Limited applicability for preserving open space.</li> </ul>  |
| <p><b>Local Historic Landmark Designation.</b> An effective means of protecting historic sites. For historic districts, constitutes a form of overlay zoning. Wake County Historic Preservation Commission reviews and approves changes to historic structures or landscapes.</p>   | <ul style="list-style-type: none"> <li>▪ Property tax deferral for individually-designated sites.</li> <li>▪ Strengthens property values.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Primarily a voluntary program</li> <li>▪ Designation over the objection of a property owner is allowed, but rarely done.</li> <li>▪ Requires adoption of County ordinance</li> </ul>   |
| <p><b>National Register of Historic Places Designation.</b> The National Register is the official list of buildings, structures, objects, sites, and districts deemed worthy of preservation. Listing of a site on the National Register of Historic Places is a prestigious honor, signifying the site has historical significance to the cultural heritage of the Nation.</p> | <ul style="list-style-type: none"> <li>▪ Provides significant rehabilitation tax credit opportunities.</li> <li>▪ Sites are afforded an environmental review of projects involving federal funds or licensing requirements that may have an adverse impact to the resource.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Does not prevent private landowner-initiated changes to site, including major alterations and demolition.</li> </ul>   |
| <p><b>Transfer of Development Rights (TDR).</b> The rights to develop one parcel of land are sold or transferred to another parcel of land to protect resources on the first, in exchange for increasing development density on the second. Programs are carefully designed with "sending" (protection) areas and "receiving" (development) areas clearly identified.</p>       | <ul style="list-style-type: none"> <li>▪ Potentially effective growth management tool.</li> <li>▪ Resources can be protected without huge capital expenditures.</li> <li>▪ Large tracts of protected land can be created in "sending" areas.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Complicated program to establish and administer.</li> <li>▪ High administrative overhead; requires professional staff assigned to program.</li> <li>▪ Landowner resistance to downzoning in "sending" or higher densities in "receiving" areas.</li> <li>▪ An unproven technique. Probably requires enabling legislation.</li> </ul> |

There are inherent disadvantages to preserving open space through regulatory mechanisms. First, regulations may not even apply until the development process begins. The adverse impacts of land clearing, road building and other development activities (including fragmenting of habitat and stream degradation) often result in a resource loss, essentially making ‘preservation through regulation’ an after-the-fact exercise. Another disadvantage is simply that regulations are subject to change. Just as a governing body can adopt stricter regulations, a future board could relax those same rules.

## PART 2: LAND ACQUISITION METHODS

Acquisition and management of resource lands can be combined with regulatory measures to broaden the effectiveness of a preservation program. If land regulation is temporal, then acquisition of open space is permanent. For preserving open spaces and their functions, acquisition is the strongest and surest means of protection.

Acquisition methods can be divided into two strategic categories: those methods where landowners retain ownership of the land and preserve a resource through an easement or other mutual agreement, and those methods involving a transfer of title from the owner to the conservation agency. (Note: *conservation agency* refers to a local government, land trust, or other preservation organization that holds easement or title on the land and is involved in its conservation management.)

**TABLE 2: OWNERSHIP RETENTION STRATEGIES**

Public funds for land acquisition and management are limited. However, there are several ways for a local government to meet many of its resource preservation goals without having to acquire land outright. Below are methods of preserving resource land while keeping it in private ownership.

| ACQUISITION METHOD   | BENEFITS   | DRAWBACKS  |
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| <p><b>Conservation Easement.</b> A legal agreement between a landowner and a qualified conservation organization or government agency to voluntarily restrict the use and development of the property. Easement grantee (ex. Town of Cary) would hold a partial interest or some specified right in a parcel of land. A conservation, historic preservation, open space, or scenic easement is designed to protect a specific sensitive natural, historic, or cultural resource. An easement may be in effect for a specified period of time but is usually perpetual.</p> | <ul style="list-style-type: none"> <li>▪ Can be effective in preserving open space if it meets mutual goals of landowner and agency.</li> <li>▪ Easement provisions are tailored to needs of landowner and site preservation goals.</li> <li>▪ Landowner retains ownership and use of the land.</li> <li>▪ Potential property, income, and estate tax benefits for donation or bargain sale of an easement.</li> <li>▪ Easements run with the land, despite changes in ownership.</li> <li>▪ Reduces costs for site protection when easements are acquired at less than fair market value for the protected area.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Baseline survey required to identify the extent of natural, historic, or cultural resources within the easement.</li> <li>▪ Less protection than outright acquisition.</li> <li>▪ Easement purchases may be costly. Terms must be carefully and clearly outlined.</li> <li>▪ Management intensive: easements must be monitored and enforced; grantee agency must work closely with landowners.</li> <li>▪ Easement grantee must possess technical expertise and financial wherewithal to monitor and enforce easement.</li> <li>▪ Easement restrictions may limit property resale opportunities. Tax benefits may not be sufficient motivation for landowner to donate or sell easement.</li> </ul> |

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| <p><b>Lease.</b> An agreement between agency and landowner to rent the land in order to protect and manage a sensitive resource.</p>   | <ul style="list-style-type: none"> <li>▪ Low cost approach to site protection.</li> <li>▪ Landowner receives income and retains control of property.</li> <li>▪ An alternative for preservation-minded landowners not ready to commit to sale of easement.</li> <li>▪ Restrictions can be included in the lease to direct the activities of the conservation agency on the land.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Short-term protection strategy.</li> <li>▪ Leases are not permanent.</li> </ul>   |
| <p><b>Management Agreement.</b> Agreement between landowner and conservation agency to manage property to achieve resource conservation goals.</p>   | <ul style="list-style-type: none"> <li>▪ Owner may be eligible for direct payments, cost-share assistance, or other technical assistance from the agency.</li> <li>▪ Management plan is developed based on owner's preservation aims.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Mutual agreement is more easily terminated than a lease.</li> <li>▪ Agreements are not permanent.</li> </ul>  |
| <p><b>Mutual Covenants.</b> Agreement between adjoining landowners to control future land uses through mutually agreed upon restrictions.</p>  | <ul style="list-style-type: none"> <li>▪ Permanent: covenants can be enforced by any of the landowners or future landowners of the involved properties.</li> <li>▪ Significant incentive to comply with restrictions, since all parties are aware of use controls.</li> <li>▪ Can reduce property taxes.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Loss in market value from mutual covenants does not qualify as a charitable deduction for income tax purposes.</li> </ul>   |
| <p><b>Limited Development Techniques.</b> Landowner prepares a conservation plan for the environmentally significant portions of the property, then develops a less-sensitive section to finance the plan and derive income.</p>                         | <ul style="list-style-type: none"> <li>▪ Encourages landowners to evaluate long-term preservation and economic goals for their property.</li> <li>▪ Presents attractive option to many landowners by providing income while meeting a preservation objective.</li> <li>▪ Tax advantages may be realized from recording an easement over the conservation land.</li> </ul>                   | <ul style="list-style-type: none"> <li>▪ Landowner relinquishes full development potential of property.</li> <li>▪ Requires close attention and hands-on involvement by conservation agency.</li> <li>▪ Difficulty in determining degree of environmental significance; some resources will be lost to development.</li> <li>▪ Public may misunderstand the resource protection component of the development project.</li> </ul> |
| <p><b>Technical Assistance Programs.</b> Landowners can participate in a number of federal, state, and county programs that restore or improve enhance the resource functions and values of their property, such as wetlands, wildlife habitat, etc.</p> | <ul style="list-style-type: none"> <li>▪ Technical and financial assistance is available for restoration projects.</li> <li>▪ Projects can provide social and economic benefits from the enhanced resource value of the property.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Limited in scope – primarily sought by landowners motivated to achieve a conservation goal.</li> <li>▪ Not a true acquisition or protection measure - land could still be sold and developed unless protected by another method.</li> </ul>   |

**TABLE 3: TITLE TRANSFER STRATEGIES**

Fee simple acquisition, or the outright purchase of land, offers the local government the most complete means of affecting control and preservation of the open space resource. It is the most common acquisition tool, and the least complicated – a straightforward transfer of title to land ownership. Fee simple acquisition can be accomplished through several different options, from purchase at full market value to outright donation of the parcel. Sometimes land is acquired through more complex agreements involving private individuals, non-profit organizations, and local governments. Local governments can

implement measures such as purchase with leaseback agreements, land exchanges, and eminent domain, or condemnation of land for public purposes. Eminent domain, however, is always the acquisition measure of last resort, and must be used with extreme care.

| ACQUISITION METHOD  | BENEFITS  | DRAWBACKS   |
|---|---|---|
| <b>SALE OPTIONS</b>   |   |   |
| <p><b>Fee Simple Acquisition.</b> Usually the sale of land at full market value. Ownership and responsibilities are transferred completely to the buyer.</p>                                    | <ul style="list-style-type: none"> <li>▪ The most straightforward acquisition method.</li> <li>▪ Provides agency with full control over future of property.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Most expensive.</li> <li>▪ Buyer assumes full responsibility for care and management of property.</li> <li>▪ Loss of revenue when land is removed from tax rolls.</li> <li>▪ Capital gains issues for seller.</li> </ul>                           |
| <p><b>Bargain Sale.</b> Land is purchased at less than fair market value. The difference between the bargain sale price and the land's fair market value becomes a donation.</p>                | <ul style="list-style-type: none"> <li>▪ Reduced acquisition costs.</li> <li>▪ Seller may qualify for tax benefits for charitable donation.</li> <li>▪ May offset capital gains.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Difficult and time-consuming to negotiate.</li> <li>▪ May still be costly to acquire land.</li> </ul>  |
| <p><b>Installment Sale.</b> A percentage of purchase price is deferred and paid over successive years.</p>  | <ul style="list-style-type: none"> <li>▪ Possible capital gains tax advantages for seller.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Complicates budgeting and financing of acquisitions.</li> </ul>  |
| <p><b>Right of First Refusal.</b> Agreement giving conservation agency the option to match an offer and acquire the property if the landowner is approached by another buyer.</p>               | <ul style="list-style-type: none"> <li>▪ Agency can gain extra time to acquire funds for purchase.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Resource may be lost if offer can't be matched by conservation agency.</li> <li>▪ Some landowners are unwilling to enter into this kind of binding agreement.</li> </ul>   |
| <p><b>Undivided Interest.</b> Several parties share ownership in a parcel of land, with each owner's interest extending over the entire parcel.</p>   | <ul style="list-style-type: none"> <li>▪ Changes to property cannot be made unless all owners agree.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Property management can be complicated.</li> </ul>   |
| <b>DONATION OPTIONS</b>   |   |   |
| <p><b>Outright Donation.</b> Owner grants full title and ownership to conservation agency.</p>  | <ul style="list-style-type: none"> <li>▪ Resources acquired at very low costs to the agency.</li> <li>▪ Agency may receive endowment for long-term land stewardship.</li> <li>▪ Donor may qualify for income tax deductions, estate tax relief, and property tax breaks.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Landowner loses potential income from sale of land.</li> <li>▪ Receiving agency must accept responsibility and long-term costs of land management.</li> <li>▪ Stewardship endowments may make donations cost prohibitive for landowner.</li> </ul> |
| <p><b>Donation via Bequest.</b> Land is donated to a conservation agency at the owner's death through a will.</p>   | <ul style="list-style-type: none"> <li>▪ Reduces estate taxes and may benefit heirs with reduced inheritance taxes.</li> <li>▪ Allows owner to retain full use and control over land while alive; ensure its protection after death.</li> </ul>                                     | <ul style="list-style-type: none"> <li>▪ No income tax deduction for donation of land through a will</li> <li>▪ Requires careful estate planning by the landowner.</li> </ul>   |
| <p><b>Donation with Reserved Life Estate.</b> Owner retains rights to use all or part of the donated land for his or her remaining lifetime and the lifetimes of designated family members.</p> | <ul style="list-style-type: none"> <li>▪ Allows owner to continue living on and using the property during his or her lifetime while ensuring the land's protection.</li> <li>▪ Allows designation of family members to remain on land.</li> </ul>                                   | <ul style="list-style-type: none"> <li>▪ Tax benefits may be limited; some types of open space may not qualify.</li> <li>▪ May delay transfer of title to the conservation agency for a long period of time.</li> </ul>   |

**AGREEMENTS AND OTHER OPTIONS**

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| <p><b>Nonprofit Acquisition and Conveyance to Public Agency.</b><br/>Nonprofit organization (such as land trust) buys a parcel of land and resells it to a local government or other public agency.</p>  | <ul style="list-style-type: none"> <li>▪ Nonprofits can often move more quickly to purchase and hold land until the public agency is able to buy it.</li> <li>▪ Could reduce acquisition costs for public agency.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Local government must be willing to purchase land and assume management responsibilities.</li> </ul>  |
| <p><b>Intergovernmental Partnership.</b><br/>Federal, state, and local agencies form joint partnerships to own and manage land.</p>  | <ul style="list-style-type: none"> <li>▪ Sharing the responsibilities and costs of acquisition and management can protect larger or more expensive properties.</li> <li>▪ Can foster regional cooperation to preserve open space.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Partners must agree on management strategies in order to reduce potential for conflict.</li> <li>▪ Agency budgets and acquisition criteria may restrict acquisitions.</li> <li>▪ Slower response time: acquisition opportunities may be lost due to agency procedures.</li> <li>▪ May remove land from tax base.</li> </ul> |
| <p><b>Joint Venture Partnership.</b><br/>Strategy used by public agencies and private organizations to accomplish projects serving mutual goals. For example, some government grant programs could be matched with both private contributions and public funds.</p>  | <ul style="list-style-type: none"> <li>▪ Partners share benefits, responsibilities, and costs of acquisition and management.</li> <li>▪ Creates a coalition of support for protecting diverse resources.</li> <li>▪ Brings diverse sources of knowledge and expertise to solve resource protection issues.</li> </ul> | <ul style="list-style-type: none"> <li>▪ More complicated property management and decision-making.</li> <li>▪ Conflicts in acquisition criteria and funding priorities must be resolved.</li> </ul>  |
| <p><b>Acquisition &amp; Saleback or Leaseback.</b> Agency or private organization acquires land, places protective restrictions or covenants on the land, then resells or leases land.</p>   | <ul style="list-style-type: none"> <li>▪ Proceeds from sale or lease can offset acquisition costs.</li> <li>▪ Land may be more attractive to buyer due to lower sale price resulting from restrictions.</li> <li>▪ Management responsibilities assumed by new owner or tenant.</li> </ul>                             | <ul style="list-style-type: none"> <li>▪ Complicated procedure.</li> <li>▪ Owner retains responsibility for the land but may have less control over the property.</li> <li>▪ Leases may not be suitable on some protected lands.</li> </ul>  |
| <p><b>Land Banking.</b> Land is purchased and reserved for later use or development. Land could be leased for immediate use (i.e. agriculture or athletic field) or held for eventual resale with restrictions. Local government functions as a land trust. Many programs are funded through real estate transfer taxes.</p> | <ul style="list-style-type: none"> <li>▪ Local government proactively identifies and purchases resource land.</li> <li>▪ Lowers future preservation costs by working as a defense against future increases in land prices, speculation, and inappropriate development.</li> </ul>                                     | <ul style="list-style-type: none"> <li>▪ Expensive. Requires large up-front expenditures.</li> <li>▪ Public agency must have staff to handle land trust functions of acquisition, management, lease, or resale.</li> <li>▪ Real estate transfer tax for land acquisition would require local enabling legislation.</li> </ul>  |
| <p><b>Land Exchange.</b> Land may be exchanged for another parcel that is more desirable for resource protection.</p>  | <ul style="list-style-type: none"> <li>▪ Lower acquisition costs.</li> <li>▪ Scattered properties can be exchanged for a single, larger parcel.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Complicated process; not widely known and rarely used.</li> <li>▪ Subject to IRS regulations.</li> <li>▪ Property owners must be willing to participate, and properties must be of equal value.</li> </ul>  |
| <p><b>Agency Transfer.</b> Government transfers excess land to another agency that can assume resource protection and management responsibilities.</p>   | <ul style="list-style-type: none"> <li>▪ Resource protection and management with little additional expenditures.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Excess property may not be suitable for resource protection.</li> <li>▪ Obtaining fair market value for the property may be agency's priority.</li> </ul>   |

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| <p><b>Eminent Domain.</b> Government uses authority to take private property for a public purpose, and pay the landowner fair market value. If the landowner is unwilling to sell, government can condemn the land, providing fair market value compensation.</p> | <ul style="list-style-type: none"> <li>▪ Can be used if other techniques are not working, or to resolve an emergency situation.</li> </ul> | <ul style="list-style-type: none"> <li>▪ An extreme measure; should only be used as a last resort.</li> <li>▪ Controversial: can alienate the public and owners who are unwilling to sell.</li> <li>▪ Potentially expensive.</li> </ul> |
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### **PART 3: FINANCIAL STRATEGIES FOR PROTECTING OPEN SPACE**

The Town of Cary has the advantage of a sound financial status and a supportive Town Council that allocated \$12.5 million for open space acquisition in the FY2001 budget. While this fund can be used to acquire the highest priority resource areas, it should also be used to leverage additional funds from county, state, and federal sources. Providing financial incentives for resource landowners should also be part of the preservation balance sheet. The most critical issue is determining the best methods of financing an ongoing land acquisition and management program.

Land in Cary is expensive. It will take a considerable commitment from Town citizens to fund an ongoing program for the acquisition of important resource areas and open spaces. The American public has spoken clearly in favor of open space acquisition. In 2000, the [Land Trust Alliance](#) recorded 209 local referenda across the country. One hundred and seventy-four of the initiatives (83%) were approved by voters, and committed over \$7.4 billion for the acquisition of open space, parks, and greenways. Funds will be raised through bonds, property tax increases, and sales tax allocations.

Funding through a bond issue is an accepted method of ensuring a steady source of funds for land acquisition. Wake County voters approved a \$15 million open space acquisition bond in November 2000.

Local governments can also make annual appropriations for land acquisition, as Cary has done. Wake County has appropriated \$500,000 in this year's (fiscal 2000-2001) budget for open space acquisition projects. Durham County has \$260,000 earmarked for open space in this year's budget. Orange County has created a 'Lands Legacy Fund', a 10-year, \$5 million program that provides funding of \$200,000 in the current fiscal year, \$400,000 next year, and \$500,000 in each of the remaining years. However, this pay-as-you-go method has the drawback of uncertainty from year-to-year, as it is subject to the vagaries of the annual budget approval process.

Local governments can levy special taxes to generate funds for land acquisition; however, such a move would require legislative approval from the NC General Assembly.

Other states use real estate transfer taxes, portions of lottery proceeds, cigarette taxes, cellular phone taxes, or increments of sales taxes to fund land acquisition. In North Carolina, however, none of these concepts seem feasible in the near future.

Local governments may dedicate a fraction of property taxes for land acquisition. This could require an increase in property taxes, which is always unpopular.

Local governments can also impose special fees to generate funds. Currently, Cary requires developers to pay a fee in lieu dedicating parkland. Revenues from this fee, which totaled \$270,345 for the FY2000, are earmarked for parkland and greenway acquisition.

Another option for local governments would be to provide preferential tax treatment for owners who preserve their land. This would also require legislative approval from the NC General Assembly, but could encourage landowners to donate conservation easements. For example, property owners who place

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\* [Voters Invest in Open Space](#), 2000 Referenda Results. Land Trust Alliance.

important resource lands in a conservation easement would receive a property tax credit of 50 or even 100%. Such programs are very successful in Maryland in preserving prime farmland.

## **FUNDING FROM FEDERAL SOURCES**

Federal funds for land acquisition are scarce, but may provide opportunities for the Town of Cary to leverage its open space fund. The *Land and Water Conservation Fund* is one of oldest federal land acquisition funds (signed into law in 1965), but it has never been fully funded by Congress. Currently, only \$865,000 is available to North Carolina, but pending legislation (The Conservation and Reinvestment Act of 1999, or CARA) would result in a LWCF windfall, with North Carolina scheduled to receive nearly \$17 million.

Another possible source is the [TEA-21 Enhancement Fund](#), which is allocated to states by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA21).

Transportation enhancements are activities that are designed to bolster the cultural, aesthetic, and environmental aspects of the transportation system. The enhancements program provides funding for a variety of non-traditional projects, ranging from the restoration of historic transportation facilities, to bike and pedestrian facilities, to landscaping and scenic easements, and water pollution mitigation from highway runoff. North Carolina recently awarded \$22 million to local communities. The Town of Cary received \$230,000 for greenway construction, and Wake County received \$271,460 to build 2.5 miles of the American Tobacco Trail.

There are several programs from the US Department of Agriculture that can help farmers and other landowners preserve open space and wildlife habitat. These are cost-share programs, in that the federal government will financially assist property owners who are motivated to protect their land and enhance its quality as a resource.

The *Conservation Reserve Program*, the *Wildlife Habitat Incentives Program*, and the *Environmental Quality Incentives Program* all provide financial incentives for landowners to develop and improve wildlife habitat and stream buffers for water quality. Information about these programs is available locally at the Wake County Soil and Water Conservation District Office and Farm Services Agency office.

Two other incentive-based programs for landowners are the *Forest Development Program*, funded by the State and administered through the NC Division of Forest Resources, and the *Forestry Incentives Program*, which is federally-funded. These programs are open to private landowner of forestland who are committed to improving the wildlife, timber, soil, water, aesthetic, or recreational resources on that land. This program assists landowners in developing resource management plans, encouraging them to become active in the planning and managing of their land.

## **FUNDING FROM STATE SOURCES**

There are limited opportunities to finance open space acquisitions through other public funds. To protect land along rivers and streams for water quality, the Town could seek acquisition funds from the North Carolina's [Clean Water Management Trust Fund](#). This is the State's largest source of acquisition funds. At the end of each fiscal year, 6.5% of the unreserved credit balance in North Carolina's General Fund (or a minimum of \$30 million) goes into the CWMTF. Through June, this fund had distributed \$18.5 million during the current year. The CWMTF provides outright grants that do not require local government matching funds. The [Parks and Recreation and Trust Fund](#) could provide an opportunity for acquisition of parkland. The State awarded \$1.9 million in grants in FY2000. Grants must be matched dollar-for-dollar by the local government.

## **FUNDING FROM WAKE COUNTY**

Wake County has aggressively pursued preservation of open space. They have developed the *Open Space Partnership Program* to collaborate with county municipalities in land acquisition and the

development of open space plans. Current funding for the program stands at \$880,000. A \$15 million open space bond was approved by Wake County voters on November 7. The Town of Cary has already benefited from the [Wake County Open Space Program](#). In July, Cary was awarded \$250,000 for the purchase of riparian buffers along White Oak Creek. The funds will be used to acquire conservation easements for approximately 200 acres of land along either side of White Oak Creek between NC55 and Green Level Church Road, a distance of 1.8 miles.

**TABLE 4: FINANCING STRATEGIES**

Protecting open space requires adequate and often continuing financial resources. There are many different methods and sources of funding for open space preservation. An effective acquisition program depends upon taking advantage of more than one strategy. The following [scenario](#) illustrates how a private landowner could benefit from several different preservation opportunities (see [Hypothetical Open Space Priority Site](#)).

| STRATEGY   | BENEFITS   | DRAWBACKS   |
|--|--|---|
| <p><b>Bond Issue.</b> Local government borrows money through the issuance of bonds, which are repaid with interest over a certain time period. Bond issues must be approved through a public referendum vote.</p>  | <ul style="list-style-type: none"> <li>▪ Large amounts of funds can become available within a relatively short (1 year or less) timeframe.</li> <li>▪ Acquisition costs are spread out over a long time period.</li> <li>▪ Commonly used financing tool.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Requires intensive political and public relations campaign.</li> <li>▪ Bond interest repayment costs included in the costs of acquisition.</li> <li>▪ Uses local government debt capacity; may conflict with other capital needs.</li> </ul>   |
| <p><b>General Fund Appropriation.</b> Local government allocates funds from the annual budget for land acquisition.</p>  | <ul style="list-style-type: none"> <li>▪ Earmarks funds for priority acquisitions.</li> <li>▪ Paying entire purchase price eliminates interest costs.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Subject to approval of annual budget – can become political issue.</li> <li>▪ Amounts may be too small to finance needed acquisitions.</li> <li>▪ Other programs may compete for same funds.</li> </ul>  |
| <p><b>Revolving Fund.</b> Creation of a pool of capital reserved for preservation and acquisition. Revolving fund programs encourage use of funds on revenue-generating projects that can reimburse the fund. Highly visible tool for preserving historic resources. Could be used for acquiring resource lands with eventual resale to conservation buyers.</p> | <ul style="list-style-type: none"> <li>▪ Replenishing fund can help lower acquisition costs.</li> <li>▪ Agency or nonprofit with a revolving fund can often respond quickly to acquire threatened properties.</li> <li>▪ Used successfully to protect threatened historic resources.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ May not provide full funding - recipient may be required to contribute financially.</li> <li>▪ Emphasis on revenue-generating projects may have limited use for protecting open space.</li> </ul>  |
| <p><b>Preferential Tax Assessment.</b> Provides financial incentive to owners of preserved land by assessing property at its conservation, rather than development value. Similar to the Present Use Value Program for agricultural land. May include a penalty requiring repayment of back taxes if property is converted to another use.</p>                   | <ul style="list-style-type: none"> <li>▪ Tax break for preserved open space may be cost-effective, since conservation land demands fewer local public services.</li> <li>▪ Voluntary incentive program may provide attractive financial option for landowners.</li> <li>▪ Penalty payments can be dedicated to a fund for acquiring resource lands.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Requires statewide legislative approval.</li> <li>▪ Owner participation is voluntary.</li> <li>▪ Ineffective as a permanent preservation measure.</li> <li>▪ Amount of tax savings may not outweigh sale income for development.</li> <li>▪ Reduces tax revenues, which may necessitate tax increase.</li> </ul> |

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| <p><b>Real Estate Transfer Tax.</b><br/>A percentage of the local tax on real estate transfers is allocated to a resource acquisition fund.</p>   | <ul style="list-style-type: none"> <li>▪ Funds are generated and used within the local community.</li> <li>▪ Sizeable funds can accumulate in fast-growing communities.</li> </ul>  | <ul style="list-style-type: none"> <li>▪ Fund amounts can fluctuate based on the real estate market.</li> <li>▪ Can increase real estate prices, thereby raising costs for land acquisitions.</li> <li>▪ Requires legislative approval; proposal would meet strong opposition from development and real estate lobby.</li> </ul>  |
| <p><b>Development Impact Fees.</b><br/>Impact Fees are intended to pay for a development's proposed impact on public infrastructure, Impact Fees are frequently assessed for roads, schools, parks, and fire protection. Raleigh and Durham assess an Open Space fee for residential construction.</p>  | <ul style="list-style-type: none"> <li>▪ Funds are generated and used within the local community.</li> <li>▪ Development activity directly contributes to open space acquisition funding.</li> </ul>                                  | <ul style="list-style-type: none"> <li>▪ Revenues generated cannot adequately compensate for loss of open space.</li> <li>▪ Requires legislative approval; proposal would meet strong opposition from development and real estate lobby.</li> </ul>   |
| <p><b>Other Taxes and Fees.</b> Funding for resource protection lands can come from a variety of sources. These may include state income tax return check-off, user fees, sales taxes, document recording stamp taxes, dedicated commodity taxes, gasoline, cigarette, and vending machine taxes. Fees, such as resource exploitation and specialty license plate fees, are also used to fund acquisition and historic preservation activities. In some states, lottery or gambling proceeds provide major funding for resource protection, conservation, and historic preservation activities.</p> | <ul style="list-style-type: none"> <li>▪ Relatively consistent funding source targeted specifically for acquisition and management of resource protection lands.</li> </ul>   | <ul style="list-style-type: none"> <li>▪ Intense competition for these funds; amounts may be inadequate to meet the need.</li> <li>▪ Establishing new taxes is politically unpopular.</li> <li>▪ Portion of funds needs to be allocated to managing the lands and resources that are acquired.</li> <li>▪ Legislative approval required for most proposals for new taxes and fees.</li> </ul> |
| <p><b>State and Federal Grants.</b><br/>Several state and federal programs provide grants to support local government or nonprofit acquisition of open space. <b>See list below.</b></p>  | <ul style="list-style-type: none"> <li>▪ Grants reduce acquisition costs to local communities and nonprofits.</li> <li>▪ Matching fund requirements encourage local involvement and commitment to the acquisition project.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Local governments and nonprofits may be required to match funds.</li> <li>▪ Competition for funding is intense – some worthwhile projects may be excluded.</li> <li>▪ Contributions to grant program from state or federal government may vary from year to year.</li> <li>▪ Grant management may increase administrative costs.</li> </ul>          |

## **Federal Grant Programs**

[Land and Water Conservation Fund](#)

[Transportation Equity Act for the 21st Century](#) (TEA21 Enhancement Funds)

[Conservation Reserve Program](#)

Continuous Conservation Reserve Program

Debt Cancellation Conservation Contract Program

[Environmental Quality Incentives Program \(EQIP\)](#)

[North American Wetlands Conservation Act](#)

[Partners for Fish and Wildlife](#)

[Wetlands Reserve Program](#)

[Wildlife Habitat Incentives Program](#)

## **State Grant Programs for Land Acquisition**

[Clean Water Management Trust Fund](#)

[Parks and Recreation Trust Fund](#)

[Farmland Preservation Trust Fund](#)

## **State Cost-Share Programs for Resource Protection**

[Agriculture Cost Share Program](#)

[Conservation Reserve Enhancement Program \(CREP\)](#)

[Forest Development Program](#)

[Forestry Incentives Program](#)

[Forest Stewardship Program](#)

## **State Incentive Program for Conservation Land Donations**

[North Carolina Conservation Tax Credit Program](#)

## **State Incentive Program for Preserving Historic Buildings**

[North Carolina Historic Preservation State Tax Credit Program](#)

## **County Program**

[Wake County Open Space Program](#)

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<sup>1</sup> Sources:

(1) *A Guide for North Carolina Landowners: Financial Incentives and Technical Assistance Programs Which Apply to Wetlands, Streams and Riparian Areas*, NC Wetlands Restoration Program, Division of Water Quality, Department of Environment and Natural Resources

(2) "Strategies for Protecting Archeological Sites on Private Lands", National Park Service website, URL: <http://tps.cr.nps.gov/pad/main.cfm>

(3) *Preservation Tools*. Chapter 4 of Washtenaw County (MI) Agricultural Lands and Open Space Preservation Plan Final Report, December 1997,

(4) *Land Preservation Notebook*, NCSU Department of Agricultural Economics.