



Wisconsin
Farmland
Conservancy

Protecting the Character of the Rural Countryside

MENU OF LAND PROTECTION OPTIONS

The following is a list of alternative techniques which might be considered part of a package of options to encourage protection of important agricultural, natural, scenic and open land resources. In other areas of the U.S. which have effective open land protection programs, a mix of public, private and nonprofit tools are used to creatively address this issue. Experience has shown that where there is a choice of techniques which can be tailored to the specific circumstances of a family or landowner, their economic and conservation objectives, and the nature of development pressures, there is the greatest potential for success. The challenge is to define the appropriate package of tools to successfully protect special resource lands. These techniques vary widely in terms of their cost to the local jurisdiction, voluntary or regulatory nature, effectiveness, and the ability to permanently protect land.

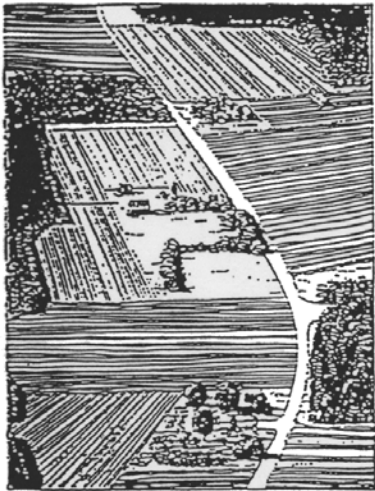


Figure 1. Rural Location Prior to Development, After Conventional Development and After Creative Development (Figure from Yaro, Arendt, Dodson, and Brabec, Center for Rural Massachusetts, 1988).

Changing Development Patterns

1. Limited or Protective Development

A property with high visual, agricultural or natural resource qualities may be developed in ways that protect the conservation values. This "protective" or limited development allows for the sensitive development of a portion of the property in exchange for the protection of the remainder. Usually the undeveloped portion is protected through a conservation easement (see below). The reserved development sites are located so as not to interfere with the agricultural operation, wildlife habitat, scenic or other resource values. The value of these limited development sites is enhanced by the permanent protection of lands adjacent to them. Limited development permits the landowner to protect the conservation values of a property while achieving economic objectives through the creation and sale of a few sensitively located, but very valuable residential lots.

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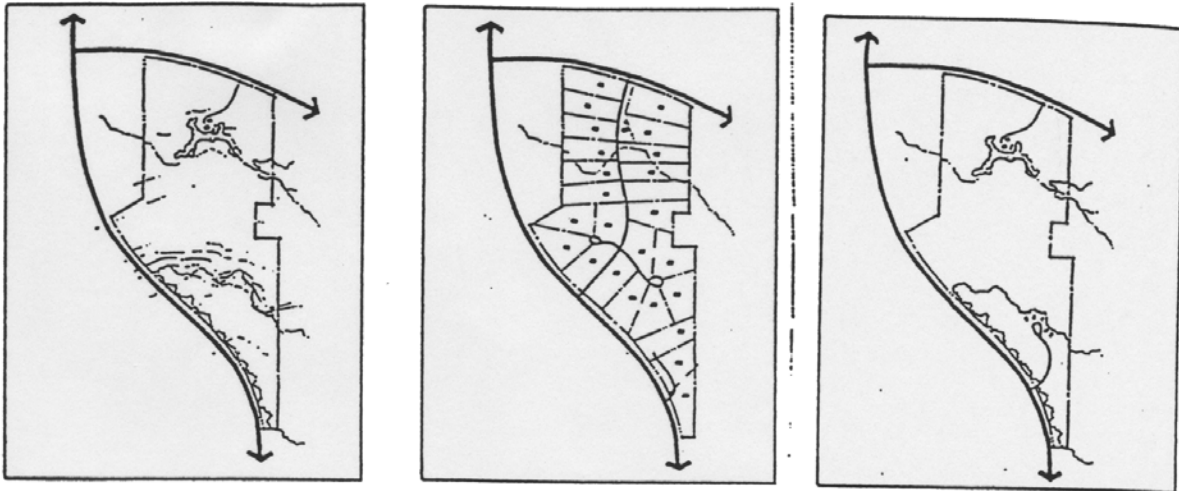


Figure 2. A 910-acre ranch before development, after conventional 35-acre subdivision, and after limited development.

2. Rural Cluster or Open Space Zone

Cluster development groups development on one or more portions of a site to permanently preserve other portions of the site. Instead of large lots, the cluster concept encourages small lots off of productive agricultural, scenic, or natural resource lands. Common open space is created which can be used for agricultural or recreational purposes. This concept can be combined with conservation easements to permanently protect the open land that is created by the clustering of development. Generally, a cluster ordinance requires that 60 to 80% of the site remain open and often a density bonus is utilized to encourage landowners to utilize this technique.

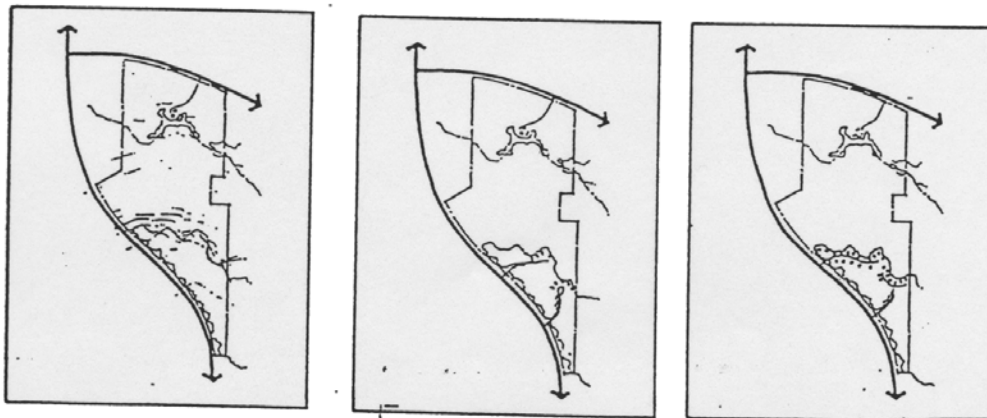


Figure 3. A 910-acre ranch before cluster development, with 9 clustered lots, and with 20 clustered lots.

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Voluntary Techniques

3. Conservation Easement

A conservation easement is a voluntary and permanent restriction limiting development of a property in order to protect conservation values. The easement can either be donated to a land trust or purchased by a governmental entity. The easement is a recorded restriction in the property deed and therefore applies to all subsequent owners. The conservation easement is a flexible instrument that can limit development as much as the landowner desires. A conservation easement is usually granted to a qualified non-profit land trust or government entity that has the responsibility of monitoring and enforcing the terms of the easement. A land trust is either a local organization, such as the Mountain Areas Land Trust or Mesa County Land Trust, or part of a national or statewide organization such as the Nature Conservancy. Except for the fact that the development rights have been limited by the terms of the easement, the landowner continues to own, use and manage the property. Since the donation of a conservation is treated as a charitable gift, the landowner is entitled to a charitable deduction on their income tax equal to the difference between the fair market value and the restricted value of the property. Since the easement reduces the value of the property, it can be an important tool in reducing estate tax liability for properties that have appreciated rapidly. With the conservation easement, the landowner retains full control over public access and management of the property.

4. Deed Restrictions/Covenants

If a landowner determines that a conservation easement is not an appropriate technique since the owner would prefer not to deal with government or a nonprofit organization, a deed restriction or mutual covenant may be more acceptable. Mutual covenants are made between adjacent landowners restricting the use or development of the properties. They are different from easements since they are enforced through other landowners, not a government or nonprofit organization. As a result, enforcement is optional and depends on adjacent landowners taking court action. In addition, they are not perpetual and do not provide charitable deduction against income taxes as do easements.

5. Conservation Buyer

A conservation buyer is a purchaser interested in acquiring a special property for enjoyment of the natural, agricultural and recreational qualities of the land. Such a buyer is not interested in development and will often donate a conservation easement to protect the land permanently and take advantage of potential income and estate tax benefits available as a result of restricting future development.

6. Technical Assistance Team

An alternative which has been tried by a number of jurisdictions and land trusts is the establishment of a technical assistance team to work with landowners to perform land planning, explore limited development options, and analyze legal, tax planning and ranching options to assist ranching families in considering a wide range of alternatives for protecting agricultural land.

7. Estate Planning

The combined impact of federal and state inheritance laws may require families owning large properties to sell their land just to pay estate taxes. These taxes can amount to 55% or more of the value of property and with the recent rapid rise in land values, may require sophisticated estate planning to minimize estate tax liability. Proper estate planning can reduce or eliminate estate taxes and keep the property in the family.

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8. Formation of Agricultural Districts

Agricultural districts are voluntarily formed where farmers and ranchers agree to keep their land in agriculture for a defined period of time, usually five to ten years, in return for additional property tax relief, protection from nuisance complaints, and limitations on the county's ability to extend roads, utilities, and special districts into the defined agricultural district.

Acquisition of Title or Development Rights

9. Cash Purchase

Cash purchase at the fair market value is generally the preferred option for most landowners selling property to public entities. While in many instances obtaining cash payment yields the greatest return to the landowner, capital gains and other taxes may significantly reduce net return and make other types of transactions more attractive.

10. Creative Land Purchase for Public Open Space

For lands which may be desirable for public acquisition and management, there are a variety of techniques for creatively interacting with private landowners which are discussed below. The management of public lands may require extensive public resources and these lands are removed from the tax rolls. Financing for public acquisition often comes from property tax, sales tax, or real estate transfer tax sources.

A. Donation or Gift

For certain landowners the charitable donation of land to a public entity or a non-profit land trust is attractive for tax, family and estate planning reasons.

B. Bargain Sale

A bargain sale is a combination gift and sale of a property to a governmental or nonprofit entity. The landowner receives the benefit of both cash income and a charitable gift deduction for the difference between the fair market value and the bargain price.

C. Donation with Reserved Life Estate

A landowner may wish to donate land to a public entity or land trust, but retain the use of all or a part of it during their lifetime or the lifetime of the immediate family.

D. Charitable Gift Annuity or Charitable Remainder Trust

A landowner may wish to donate a property to a governmental entity in return for an annuity or fixed payment to fund retirement instead of cash sale. Such an arrangement may have significant tax benefits for landowners who have held property for long periods and can be an effective estate planning tool.

E. Installment Purchase

An installment purchase is simply a purchase spread over a term of years to benefit both purchaser and seller. An interest rate is built into each installment payment and one of the benefits of selling to a public entity is that the interest may be tax exempt, further increasing the sellers return.

F. Lease-Option

A lease-option agreement permits the governmental entity to lease a property for a period of time with an option to purchase the property during or at the end of the term of the lease. Such an arrangement would permit the governmental entity to determine whether it is in the public's interest to acquire the property, assess

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management costs and provide additional time to assemble sufficient funds to complete the purchase.

G. Rolling Option

A rolling option is a series of options to buy portions of a property and thus extend the purchase over a period of years. Rolling options are frequently used by public entities that do not have sufficient funds for a fair market purchase, but can expect an annual appropriation for a portion of the sales price. Generally, the least attractive portion of the property is sold first so that there is incentive for the public entity to complete the full purchase once the rolling option period begins.

H. Right of First Refusal

Through a right of first refusal a landowner agrees to inform the public entity of their intention to sell a property to another party, but providing the public with the opportunity to match the best offer. A right of first refusal would not bind the public entity to acquire, but would give it the opportunity to purchase if desired.

I. Management Agreement

A management agreement identifies a plan according to which a property will be managed, either by a public entity or the landowner. It permits a landowner and the public entity to cooperate on managing a specific property to meet mutual objectives. While a management agreement does not provide permanent protection, it promotes cooperative stewardship of a property.

J. Bridge Financing/Land Trust

A number of land trusts, such as the Trust for Public Land, acquire lands for public entities and then resell to the public agency on terms that are beneficial to the public. Often a land trust can move quickly and creatively to acquire property, particularly where the owner must sell the property within a short time frame or the property is threatened with development.

K. GOCO Partnership.

The State of Colorado, Great Outdoors Colorado Trust Fund (GOCO) provides funding to communities to assist in protecting and acquiring open lands.

11. Land Exchange or Trade

Through what is referred to as a "1031 Exchange" a private landowner may exchange one property for another and postpone or avoid paying capital gains tax as a result. This can be an effective tool in two instances. First, public entities often have surplus lands that can be traded to a private land owner for more desirable open lands. Second, the public could acquire a parcel of land to be traded for a desirable open space parcel, thereby saving the private landowner capital gain tax which could lower the cost to the public. The tax consequences of land exchanges or trades can be very beneficial to private landowners. They are also beneficial for public entities since they can reduce the funds required for acquisition. Land trades may be time consuming and may involve a high level of complexity, but can be extremely beneficial for both parties.

12. Purchase of Development Rights (PDR)

This technique is utilized in many states and counties on the east and west coasts. A governmental entity could purchase the development rights to open land or agricultural land in order to keep it in ranching or undeveloped. Development rights would be sold on a voluntary basis. The value of those rights usually varies from 30% to 80% of the fair market value of the property. The landowner is able to obtain the equity or development value

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from the property, keep the land open or in productive agriculture, keep it in the family and pass it on to the next generation, and make needed capital investments with the proceeds. When development rights are purchased, the land is permanently restricted. PDR programs are often funded by a variety of taxes including property, sales, real estate transfer and special purpose taxes as well as through general obligation bonds.

16. Transfer of Development Rights (TDR)

TDR is similar to PDR in that the landowner receives compensation for the development value of the land. However, once the TDR program is established by governmental action, the system relies on the free market transfer of development rights from the open land to development areas as opposed to governmental acquisition with PDR. In order for TDR to work effectively, both "sending" and "receiving" areas need to be identified. The "sending" areas are the lands which are to be protected and the development rights from those areas can be sold to developers in identified "receiving" areas. The developers would be required to acquire development rights if they wanted to develop at greater densities than currently permitted. The transaction would take place between a willing buyer and seller so that the price for the development rights would be negotiated. Once the system is established, it can work effectively to redistribute development rights from open land to more urban areas. Establishing this system is extremely complex and may require a number of years for the community to work out all the bugs so that transfers work effectively. TDR is working in a number of counties and states around the country. This is a great concept, but it requires a significant effort to get it effectively implemented and tailored to local circumstances.

USDA FARMLAND PROTECTION PROGRAM

Fact Sheet - May 30, 1997

What is the FPP?

The Farmland Protection Program keeps prime farmland in agricultural use by assisting States, Tribes, or local entities in the purchase of conservation easements or development rights on prime, unique, or other productive farmland.

Through a cooperative agreement, the Natural Resources Conservation Service (NRCS) provides up to 50% of the purchase cost for easements of 30 years duration or longer on eligible farmland.

Eligible Farmland:

- . Contains prime, unique, or other productive farmland
- . Is privately owned and is part of a working farm
- . Has a pending offer for purchase of development rights or a conservation easement from a State, Tribe, or local farmland protection program
- . Has a conservation plan developed and approved by the local Land Conservation Committee

Who can participate?

State, Tribal, or local entities with a qualifying farmland protection program can participate. A qualifying program utilizes voluntary easements or other legal devices to protect prime farmland.

NRCS provides up to 50% of the purchase cost of the easement to the cooperating entity. The cooperating entity acquires, manages, and enforces the easement.

Application procedures:

The cooperating entity submits a proposal to the State NRCS Farmland Protection Program Manager. The proposal includes:

- . An overview of the State, Tribal, or local farmland protection program
- . The amount and source of funds available for easement acquisition
- . The parameters and their values used to set acquisition priorities
- . A list of information on pending offers including: parcel size, location, acres of prime farmland, easement cost and duration, development pressure, and established conservation practices

NRCS will evaluate and prioritize the proposals and prepare cooperative agreements for those selected for participation in the Farmland Protection Program.

For more information:

Check the Wisconsin internet home page: <http://www.wi.nrcs.usda.gov>, or contact the Wisconsin NRCS Farmland Protection Program Manager:

Carl Wacker, USDA, NRCS
6515 Watts Road, Suite 200
Madison, WI 53719-2726
voice: 608-264-5341 ext 146 FAX: 608-264-5483
internet: cwacker@wi.nrcs.usda.gov

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Understanding the Purchase and Transfer of Development Rights

Private Property Rights

The concept of the purchase or transfer of development rights is tied to private property rights. If you own land in the United States, what you own is a bundle of rights. These rights or "sticks in the bundle" include water rights, air rights, mineral rights, the right to sell the land, the right to develop it, the right to pass it on to heirs and the right to use the land in many different ways. A landowner can choose to separate individual property rights from the bundle, and he/she can sell, donate or otherwise encumber these rights. In addition, property rights may be limited by the government through its power of eminent domain, right to zone and use police power, and right to tax.

Selling Development Rights

With a Transfer or Purchase of Development Rights Program, a landowner is selling only his/her right to develop the land. The land remains private property, and the landowner retains all the other rights and responsibilities of land ownership. The amount paid for the development rights is based on the difference between the land's agricultural value and its market value (based on its development potential). Therefore, landowners are compensated for the development value of their land without having to sell the land for development.

Conservation Easement

When a landowner sells his/her development rights, a legal document known as a conservation easement is created to restrict (in perpetuity) the use of land to farming, open space or wildlife habitat.

Purchase of Development Rights (PDR)

Landowners voluntarily sell their development rights to a governmental agency or a land trust. A conservation easement is placed on the land thereby restricting land-use to farming or open space. PDR programs can be funded through bonds, dedicated tax revenues, real estate transfer taxes or a variety of other means.

Transfer of Development Rights (TDR)

Local governmental agencies establish sending areas and receiving areas. Landowners in the sending area sell their development rights to developers who use them in the receiving areas to build at higher densities than allowed under existing zoning laws. When a landowner sells his/her development rights to a developer, a conservation easement is placed on the land. Therefore, the land within the sending area is retained for agricultural use, and the land within the receiving area is developed. TDR programs work best when the receiving area is zoned for low density development so there is a desire to increase development densities in the receiving area. (See the back side of this sheet for a diagram explaining TDR)

How TDR Works: Conceptual Example

Government establishes a TDR program based on community goals to preserve a specific resource (e.g., farmland) and direct development to appropriate areas. The community plan designates a TDR "sending area" where agricultural preservation is desired and a "receiving area" where additional residential development is encouraged.

Landowner A, a farmer, would like to get additional economic return from his property. However, development opportunities are minimal under the plan and resulting zoning.

In exchange for the restrictions on his land, Landowner A is awarded development rights (TDRs) which he may sell. In this example, properties are awarded one TDR per 35 acres owned.

