

# Streamlines

A NEWSLETTER FOR NORTH CAROLINA WATER SUPPLY WATERSHED ADMINISTRATORS

Volume 1, Number 7

October 1996

## Preserving Open Space

We cannot ignore the direct and indirect values and benefits — to property owners, to society and to the ecosystem itself — of the natural lands we plan for development. From the potential for flooding and landslides, to the loss of natural habitats and wetlands, to pollution in drinking water, to the pure aesthetic effect of having open countryside for recreational enjoyment, it is apparent that not every piece of land in the community is best suited for urban uses. Some land has the greatest overall value to our communities as open space.

Although economic development is often one of the primary goals of local government, it is not without its costs. Open spaces that once filtered water pollutants, protected fisheries, harbored wildlife and provided public recreational and tourism amenities are often replaced with strip centers and subdivisions. The provision of public services for rapid, sprawling economic growth can't keep up with spiraling demand, so the public often ends up paying more in taxes. The good news is that some of the direct and indirect costs of growth **can** be balanced with the benefits of preserving key unspoiled natural landscapes within the community.

The techniques and resources presented in this edition of *Streamlines* are intended to help protect the community's water supply watershed (by implementing the buffer and clustering provisions in the watershed protection ordinance), and to assist in preserving other open spaces in the community. Coupled with environmentally sensitive design and proper placement and scale of land uses, and done within a broader comprehensive and regional planning perspective, preserving key open spaces can be the single most effective tool a local government can use to create a livable community with an enhanced high quality of life for its citizens.

There are many different techniques available for preserving open spaces. Some of these tools can be implemented by local governments, others are specific to land trusts or conservation organizations. Regardless of the method used, expert legal, fiscal, real estate and tax advice is often necessary. The following is intended to be a brief overview of the most common techniques currently in use.

### *Land Use Regulations*

Although not mandated in North Carolina, the use of comprehensive planning is the best overall tool a community can use to spell out a vision of its future. This vision should include a clear plan for identifying and preserving the most important natural, scenic and historic features of the area, coupled with a plan for encouraging compact (not sprawling) growth. Regulations (zoning, subdivision, watershed and open space preservation ordinances) should be enacted, consistent with the comprehensive plan, to implement a community's goals and policies.

Successful preservation regulations should contain the following items: 1) preservation overlay zones that regulate the scale and impact of the uses permitted, rather than the uses themselves; 2) basic densities that allow a fair return to the property owner without overburdening the landscape or the environment; 3) flexible performance criteria for siting structures, roads, driveways, and utilities; and 4) flexible subdivision regulations that require lots to be

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designed to fit with the topography, allow clustering, minimize ground disturbance, control erosion, and preserve sensitive areas with conservation easements.

Truly protective open space preservation and community land stewardship can only work within the context of a broader, resource-based land use planning effort. Stricter land use controls in rural areas must be complemented by a re-focusing on urban land use. There must be well-planned and adequately financed capital improvements within the urban growth areas of the community that allow for adequate types and densities of development resulting in well-designed, compact, efficient, and livable settlements with a range of housing and job opportunities.

### *Conservation Options*

The most critical requirement for conserving land is a willing owner with a plan for how he or she wants the land to be preserved and managed. Since land conservation is a

voluntary process, permanently protecting private land requires the owner(s) to carefully weigh their financial situation, personal desires, family/corporate needs and tax considerations. Many land owners want to preserve their land, but are unsure what to do when faced with estate (death) taxes or increasing property values, which can force the owner or their heirs to sell the land for development to pay these taxes. A number of flexible strategies for conserving private lands are available and can be tailored to fit unique situations, often with significant financial and tax incentives for the owners. The following descriptions provide a brief overview of some of these strategies.

#### **1. Conservation Easements**

Conservation easements are popular and widely used legally binding agreements between a landowner and a qualified private conservation organization or public agency. The donor commits to keeping the land in its natural condition for a set period of time or in perpetuity; and the conservation organization or public agency is granted the right to enforce the covenants of the easement and monitor its conditions. The donor may continue to live on and manage the land, sell it, or pass it on to heirs, but the easement remains in effect until its term ends. Easements are similar to protective covenants in that they contain a series of restrictions relating to permitted land uses; they protect all or a portion of the land but keep it in private ownership. Land use limitations and restrictions are tailored to meet the owner's needs and the particular conservation values and characteristics of the land. Easements work best for lands that do not require intensive management and where future uses by the owner are

**The Conservation Trust for North Carolina**, headquartered in Raleigh, acts as a clearing-house for land trusts throughout the state. Chuck Roe, Executive Director, can be reached at (919) 828-4199. He can direct you to the appropriate land trust for your community, assist you in matching a potential donor to a suitable land trust, give examples of local projects and how they worked, and provide further information on land preservation options.

compatible with preservation of its natural features. By donating an easement, the landowner may become eligible for substantial federal and state tax incentives. Easements may be an appropriate option for preserving open space lands and buffers adjacent to perennial waterways and reservoirs.

#### **2. Charitable Remainder Trust**

With this strategy, a donor and his/her beneficiaries reserve the right to continue to live on and use property during their lifetimes, but a designated conservation organization receives full title to and control of the property at the end of a specified time. The donor may be entitled to an income tax deduction if the property is a personal residence, farm or land having conservation value.

#### **3. Bequest and Living Trust**

Donors leave land to a conservation organization through their wills, retaining maximum flexibility during their lifetimes. Conservation plans for the property are carried out through a bequest or a living trust. The land is permanently protected, and the donor's taxable estate may be reduced.

#### **4. Gifts of Land**

Donation of land to a non-profit conservation organization or public agency ensures permanent manage-

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ment for conservation benefits and is the most direct way to protect the land. Gifts can result in substantial income tax deductions and credits.

### **5. Sale and Bargain Sale of Land**

The landowner sells a property or easement to a private land trust or public agency at less than full market value and donates the remaining value. The difference between fair market (appraised) value and the sale price is treated as a charitable contribution and can reduce capital gains taxes. This method makes land and easement purchases more affordable.

### **6. Limited Development**

A land trust acquires or controls parcels with special resources, establishing procedures for setting aside sensitive areas of the site for protection and management, and packaging the remaining site portions for sale as urban lots, thereby satisfying most, if not all, of the dollar interests of the landowners. This method is appropriate for use adjacent to perennial streams and reservoirs to ensure protection of water quality and in designing cluster developments as well.

### **7. Leasing Property**

Land is leased to a land trust or government agency experienced in land management. The owner's management responsibility is thereby reduced. Lease fees may or may not be involved.

### **8. Management Agreements**

Management agreements enable land trusts or a government agency to help plan for the care of important land resources. The land trust or public agency provides technical advice and assistance, and the landowner agrees to carry out the plan.

### **9. Deed Restrictions**

Deed restrictions are restrictive covenants guiding the future of a property which are placed in the deed when the land is transferred. The restrictions are like those for conservation easements, but future owners can agree to end the restrictions under certain conditions.

### **10. Mutual Covenants**

Many property owners agree voluntarily to impose restrictions on the uses of their lands. Restrictions are binding on current and future owners while the majority of the owners agree to enforce compliance.

### **11. Natural Heritage Program**

The N.C. NHP is a state registry of significant ecological, biological, zoological and geological natural areas. Landowners voluntarily pledge to protect the natural areas.

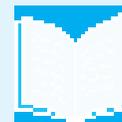
### *Conservation Organizations and Land Trusts*

National land conservation organizations such as The Nature Conservancy, in addition to local and regional land conservancies specific to North Carolina, are private, non-profit, charitable, tax-exempt corporations created to acquire and manage lands in the public interest. There are nineteen land trusts in North Carolina that focus on preserving lands with parkland, specific natural habitat, water protection, scenic and/or recreational value. Land trusts are run by knowledgeable conservation professionals, including realtors, lawyers, tax accountants, planners and wildlife specialists, who can establish trusting relationships with private land owners and provide expert guidance in the various conservation and tax credit options available at the state and fed-



## **Resources**

The following publications are highly recommended for those seeking additional information regarding open space preservation.



Conservation Trust for North Carolina. Conservation Easements - An Introduction for North Carolina Landowners. North Carolina Coastal Land Trust & World Wildlife Fund, 1993.

Conservation Trust for North Carolina. Conservation Options for North Carolina Landowners. Grass Roots Press, 1994.

Land Trust Alliance. Conservation Options - A Landowner's Guide. 1993.

Land Trust Alliance. The Conservation Easement Stewardship Guide - Designing, Monitoring and Enforcing Easements.

Malme, Jane. Preferential Property Tax Treatment of Land. Lincoln Institute of Land Policy, Working Papers, 1993.

Mantell, Michael A., S. Harper, L. Propost. Creating Successful Communities: A Guidebook to Growth Management Strategies. The Conservation Foundation and Island Press, 1990.

Yaro, Robert D., R.G. Arendt, H.L. Dodson, and E.A. Brabec. Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development. Lincoln Institute of Land Policy and Environmental Law Foundation, 1988.

eral level. These organizations usually have specific land preservation goals and requirements that may limit what lands they accept for preservation. It is important to note that many private land owners prefer the non-bureaucratic, hands-on, fast, flexible and personable attention of land trusts over public agencies.

It is not necessary for local governments to enter the land conservancy business in order to implement an open space preservation program. Local governments may concentrate on establishing preservation focus areas, making efforts to adopt preservation-oriented comprehensive plans, growth management plans

and land use ordinances, and working closely with conservation organizations to implement those plans. Land trusts can then focus specifically on what they do best — working with land owners to create the specific land preservation agreements and managing the long-term preservation of the lands.

### *C o n c l u s i o n*

Sprawling development patterns are eating up North Carolina's countryside at an increasing rate. Isolated, fragmented open space protection strategies are not adequate to meet

the growth management challenges presented by sprawl. It is up to local governments to work with land trusts to try new approaches such as greenway parks, metropolitan open space plans, and preservation overlay zones to point the way to better growth through more comprehensive efforts. Land acquisition programs need to be combined with better planning and stronger regulatory tools at the local level to yield a coordinated, resource-based vision of where development will occur — and where it will not.

Look for *Streamlines* on the World Wide Web at URL:  
[http://pluto.ehnr.state.nc.us/ws\\_home/](http://pluto.ehnr.state.nc.us/ws_home/)

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## What's Happening ?

**October 9/10, November 13/14, and December 11/12, 1996 – Water Quality Committee & EMC meetings  
- Raleigh, Archdale Bldg., 512 N. Salisbury St., Ground Floor Hearing Rm., Noon (WQC) / 9am (EMC).**

**October 5-9 – Water Environment Federation – 69th Annual Conference, Dallas, TX. WEF, 601 Wythe Street, Alexandria, VA 22314-1994. Tel: 1-800-666-0206.**

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