

Chapter IX



Long-Term Protection for Freshwater Wetlands

Public ownership offers the surest method of long-term wetlands protection. This chapter describes options for acquisition by means of donation and purchase as well as public and private sources of funds.

WETLANDS PRESERVATION

Despite the different state and local opportunities for wetlands protection through regulation, their preservation is not assured. Deed restrictions or public ownership of wetlands provides the surest long-term protection.

Local government has two options for acquiring wetlands:

- purchasing wetlands or conservation easements; or
- receiving wetlands or conservation easement by donation.

COMMITMENT TO PRESERVATION MUST BE PART OF ACQUISITION AGREEMENT

Public ownership or control can be bolstered by a legal document articulating the public commitment and providing for on-going monitoring and protection.

In the case of land or easements held publicly, the local zoning ordinance can provide for on-going protection. It should require:

- periodic inspection of public land or easements by an organization designated by the governing body such as an environmental commission or a local land trust;
- annual written reports to the governing body on the inspection documenting any changes to the land;
- regular communication with owners and contact with new owners of property containing a public easement to identify any questions and to assure new owners understand the provisions of the conservation easement.

In the case of privately held wetlands, i.e. those held by individuals or by a homeowners' association in clustered developments, deed restrictions provide ongoing protection.

Model Language for Protecting Acquired Open Space Plainsboro Land Use Ordinance

Section 101.24.2

Land permanently set aside for agricultural, conservation, open space and/or recreational uses may either be offered for dedication to Plainsboro Township, deed-restricted to a nonprofit organization found acceptable to the Township Planning Board and/or protected by a homeowners' community association. Open space which is not accepted for public use by the Township Committee shall be protected by legal arrangements satisfactory to the Planning Board sufficient to assure its maintenance and preservation in perpetuity for its intended purpose. Covenants or other legal arrangements shall specify ownership of the open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory assessment provisions; guarantees that any homeowners' association formed to own and maintain open space will not be dissolved without the consent of the Planning Board; and any other specifications deemed necessary by the Planning Board. The open space left unbuilt upon after development shall be maintained in accordance with a land management plan prepared by the developer and accepted and approved by the Planning Board. The developer shall provide copies of deed covenants with prospective purchasers, or conservation easements with the township, describing land management practices to be followed by party or parties that are responsible for open space. Further subdivision of open space land, or its use for other than agriculture, conservation and recreation, shall be prohibited.

LOCAL PLANNING TOOLS AND DONATIONS

MASTER PLAN

Receiving donations of land or easements is more desirable than outright purchase. Local governments can use several techniques to encourage donation of wetland areas or of easements on wetland areas. An important first step for preservation at the local level is inclusion of wetlands in an open space, greenway, stream corridor, or conservation element of a municipal or county master plan. This establishes the official preservation goal, fulfills eligibility requirements for state loan and grant applications, and provides for possible tax benefits for donors.

SUBDIVISION AND SITE PLAN REVIEW

During local subdivision and site plan review, local government can encourage applicants to donate land or conservation easements on wetland areas designated in greenway, conservation, open space or stream corridor plans. A conceptual plan conference provides a good opportunity for discussion of this option. Such donations protect a critical natural resource and can provide a developer with tax savings. (See box.)

Experience in several towns shows that land-owners and developers are quite willing to give easements as long as they are aware of the town's open space policies at the outset of project planning.

Proper mapping of an easement is essential. Resolutions of approval should include requirements for surveying the easement using state plane coordinants (for easy translation into GIS) and permanent monuments to mark the easement boundary.

Tax Deduction Criteria

Under the Internal Revenue Service criteria, to qualify for a tax deduction, an easement donation must be made in perpetuity and must be given to a qualified organization such as a land trust or public agency, and must provide one of the following functions:

- public recreation and/or education;
- significant natural habitat;
- scenic enjoyment;
- contribution to local government policy;
- historic preservation.

PURCHASE

Local government, working on its own, with its environmental commission or with a land trust, can purchase areas of land or easements to protect wetlands.

As mentioned earlier, an important first step for preservation involves deciding what lands should be acquired, usually by including them in an open space, greenway, stream corridor, or conservation element of a municipal or county master plan. Another important planning option is designating lands as "reserved for public use" on the master plan or an Official Map, if one exists. (N.J.S.A. 40:55D-44)

RESERVING LAND FOR PUBLIC USE

This option creates an opportunity for a municipality to find the means to acquire land proposed for development. According to the Municipal Land Use Law (MLUL), if an Official Map designating land as "reserved for public use" is adopted when a development application is received, the developer must leave "reserved" acreage vacant in the site design. The municipality then has one year to arrange for acquisition of the reserved area. This option allows municipalities to take positive action toward protecting areas from encroachment.

METHODS OF PURCHASE

Funding is available to local governments from both public and private sources.

Public Sources. The *New Jersey Green Acres Program* for land acquisition offers matching grants and low-interest loans to municipal and county governments, and grants to tax-exempt non-profit organizations that qualify as "charitable conservancies". To encourage open space acquisition, Green Acres has established planning incentive grants. Governments that have a dedicated source of open space funding, and an approved open space or farmland preservation plan can apply for grants in a manner that is similar to a credit line. The parcels designated in the approved preservation plan are "pre-screened" so that local government does not have to start from scratch in the application process for each purchase.

"All acquisition projects submitted for funding consideration are expected to demonstrate conform-

ance with local, county, and state planning goals and should be part of an **on-going process to create a permanent land-water open space system with interrelated recreation areas, parks, and conservation areas.**"

— Green Trust Procedural Guide,
NJ. Dept. of Environmental Protection, 1987

Green Acres will also provide grants or loans for purchase of perpetual easements if the proposed acquisition is adjacent and beneficial to public land holdings.

Receipt of Green Acres funding places obligations on a municipality to insure that all its existing publicly owned open space is protected. Towns must list all open space on an inventory and cannot sell those areas for other purposes. In certain instances Green Acres will allow an exchange for land of equal environmental value.

Municipal and County Open Space Tax

Many New Jersey counties and municipalities have established dedicated open space taxes through public referendum. The revenues from a municipal open space tax can preserve open space directly, can help with debt service on funds that are borrowed to pay for open space, or can serve as matching grants with other sources. As of 2003, 20 of new Jersey's 21 counties and 208 of its 566 municipalities had voter-approved open space taxes. For more information, refer to *A Handbook for Public Financing of Open Space in New Jersey*, ANJEC, December 2001.

Private Assistance. Private foundations can help municipalities with open space acquisition, especially for the planning phase. A number of private, national and local foundations provide funding for conservation and preservation purposes.

Land trusts can assist local government in acquiring land or easements. Because of their private, non-profit, tax-exempt status, land trusts can also accept donations of land or easements, and offer donors potential tax benefits.

Land trusts are established to accomplish specific goals such as land conservation, farmland preservation, or habitat preservation. They can be local, state, or national in their scope of operation.

Working with land trusts offers local government many advantages. Land trusts do not have the same constraints as government, so can act more quickly to purchase land and can hold and manage it until a public agency is able to buy it. As private organizations, they can often work more coopera-

tively with landowners than government can. More options are available to private land trusts. For example, they can make use of the:

- limited development option, where part of a property can be developed in order to fund preservation of the remainder;
- double escrow transaction, where the land trust acts as an intermediary between a private seller and a government agency in a bargain sale (buying land below its market value). Land may be encumbered with a conservation easement during the transaction, and the trust has all its expenses covered by the profit it makes as "middle-man".

MUNICIPAL ACTION THAT CAN ENCOURAGE DONATION

Local government can provide information to the public about the benefits of donating land or easements. For example, under certain circumstances a landowner may obtain a tax deduction for estate and/or income tax purposes. Environmental commissions can refer property owners to land trusts for specific information concerning individual properties.

ENCOURAGING LANDOWNERS TO PROTECT AND HOLD WETLANDS

The New Jersey Conservation Restriction and Historic Preservation Act (N.J.S.A. 13:8B-1 to 9) and the Freshwater Wetlands Protection Act direct local tax assessors to take conservation easements and wetlands into account when they are valuing land. In November 1986 the New Jersey Superior Court affirmed that property encumbered by a perpetual easement that benefits the public should be assessed at a lower value. The court held that:

"The taxpayer, in giving up in perpetuity the right to do anything other than keep the property in its natural state, has seriously compromised the property's value as a marketable commodity. The adverse impact of such an encumbrance on market value must be taken into account in arriving at an assessed valuation." Village of Ridgewood and Borough of Midland Park v. The Bolger Foundation. Municipalities should encourage reassessment of properties with wetlands.

SPECIAL OPPORTUNITIES FOR AGRICULTURAL LANDS

Because many acres of wetlands have been lost due to conversion to agricultural use, opportunities for wetlands restoration on farms exist. The U. S. Department of Agriculture has established programs to provide technical and financial assistance to farmers to control soil erosion. Such controls can help protect wetlands from sedimentation and pesticide/fertilizer contamination.

The Wetland Reserve Program (WRP) is a voluntary program that provides technical and financial assistance to eligible landowners to restore, enhance, and protect wetlands. Landowners have the option of enrolling eligible lands through permanent easements or restoration cost-share agreements. Landowners can learn more about this program by contacting their local USDA Service Center, Listed in the phone book under U.S. Department of Agriculture. Information is also available on the web at www.nrcs.usda.gov/programs/farmland.

Conservation Reserve Enhancement Program (CREP) is an offspring of the Conservation Reserve Program (CRP), CREP is a voluntary program for agricultural landowners. Unique state and federal partnerships allow you to receive incentive payments for installing specific conservation practices. Through the CREP, farmers can receive annual rental payments and cost-share assistance to establish long-term, resource-conserving vegetative covers on eligible land.

Section 1318 of the Food Security Act offers assistance to farmers who have taken out loans from the Farmers Home Administration. Debt-burdened farmers can grant an easement for at least 50 years to conservation organizations or public agencies in return for debt reduction. The U. S. Fish and Wildlife Service is working with the FHA to take full advantage of this program to protect wetlands areas.

BENEFITS OF WETLANDS PRESERVATION

Wetlands preservation benefits both the public and the individual property owner. Property owners or developers who preserve wetlands:

- may enjoy tax benefits;
- complete projects more easily by avoiding some regulatory requirements;
- finish projects for lower costs; and,
- gain satisfaction for protecting a valuable natural resource.

The public gains a unique resource – special areas that shelter wildlife and endangered species, prevent flooding and protect water quality.

Local governments need to make a concerted effort to provide information about the benefits of wetlands preservation and the options for protection available to their boards and residents.

