

4 Farmland and Open Space Preservation Tools

INTRODUCTION

The preservation tools described and analyzed in this chapter represent existing and potential strategies for the protection of farmland and open space within Washington County. This chapter is not an all-inclusive listing of tools, but an inventory that details each tool and provides meaningful examples. In addition, this chapter does not recommend any particular tool that may be considered by a community to preserve



farmland and open space and does not prioritize tools. The benefits and limitations of each tool have been compiled from a number of sources, including university research, other localities' experiences, practical knowledge, and reports by individuals who have made their own evaluations.

PLANNING

Planning refers to a process whereby community members come together to discuss how they want their communities to look, feel, and function in the future. The typical planning process includes taking inventory of the community's resources, setting goals and objectives, formulating a common vision for the future, setting recommendations and considering policies or measures to implement the plan. Based on the plan, communities establish various policies, programs, or ordinances that realize the communities' vision.

Comprehensive planning is a process that can be used to identify areas for farmland and open space protection as well as describe implementation tools that may be used to protect these resources. Since this process identifies areas for farmland and open space protection, it is often mistaken as a tool for preserving farmland and open space. The following sections describe several tools that can be implemented to achieve a community's vision of protecting farmland and open space.

FARMLAND AND OPEN SPACE PRESERVATION TOOLS

The following preservation tools are grouped into three categories:

1. Regulatory Based Tools – These tools control or define the activities or modifications that a landowner may conduct on his or her land, through the regulation of ordinances.
2. Incentive Based Tools – These tools support or encourage a specific activity or modification that a landowner may conduct on his or her land and although some of these tools may be incorporated into an ordinance, they are voluntary.
3. Economic Viability Tools – These tools focus on improving/enhancing the economic environment for the agricultural industry.

The tools in each of the groupings include a description of how they work along with relevant examples. Related ordinances and other supporting materials can be found in the appendix.



Included at the end of this chapter is Chart 8: Farmland and Open Space Preservation Tool Inventory. This chart summarizes the benefits and limitations of regulatory and incentive based tools. In addition, the chart identifies what level of government implements a tool, what level of government provides potential funding sources for a tool, if the tool is currently available in Washington County and whether a tool’s focus is farmland and/or open space preservation.

Regulatory Based Tools

Regulatory based tools may be used to protect farmland and open space including agricultural protection zoning, conservation subdivision development, incentive zoning, large lot zoning, overlay districts, sliding-scale zoning, and urban growth boundaries. These tools are implemented by local governments through adoption of a zoning, land division or other land use ordinance.

Agricultural Protection Zoning (Exclusive Agriculture Zoning)

Agricultural protection zoning is intended to preserve agriculture as a permanent land use. The most important characteristic of an agricultural protection zoning ordinance is the extent to which it limits the intrusion of new, nonagricultural uses (usually non-farm dwellings). Implementation of an agricultural protection zoning ordinance depends upon farmers and other rural residents to be open, agreeable, and supportive of a regulation that limits the amount of non-farming development permitted in the agricultural areas of the community. The quantity and density of non-farming development that is permitted under agricultural protection zoning depends upon the community, but the overriding premise of agricultural protection zoning is that a consensus be reached emphasizing farming as the primary land use. In Washington County, the Towns of Barton, Hartford, Kewaskum, Richfield, and Trenton and the Village of Germantown include Exclusive Agriculture Zoning in their zoning ordinances. (See Appendix A for Town of Kewaskum ordinance).

This tool helps maintain a sense of “rural character” by restricting non-farm-related development and requiring relatively large minimum parcel sizes (typically 35 acres). In addition, agricultural zoning benefits farmers by providing them protection from large-scale urban development whose residents might find their farming practices a nuisance.

Agricultural Protection Zoning	
Benefits	Limitations
<ul style="list-style-type: none"> • Helps prevent agricultural land from becoming fragmented by residential development • Clearly identifies agriculture as primary land use • Easily implemented by municipalities • Able to protect large areas of agricultural land 	<ul style="list-style-type: none"> • Does not permanently preserve agricultural land • Does not protect agricultural land from annexation

Conversely, this type of tool has its limitations. Agricultural zoning is effective, as long as agricultural land remains in an exclusive agricultural zoning district. Political beliefs may shift with changes in elected officials causing rezoning to a less restrictive district or removal of zoning that no longer protects agricultural land from development.

Conservation Subdivision Development (Cluster Zoning)

Conservation or cluster development is a development pattern for residential, commercial, industrial, or institutional uses, or a combination of these uses, in which buildings are grouped together rather than evenly spread over the land as in a conventional development. The intent of conservation development is to concentrate structures in those areas most suitable for building while preserving natural or cultural features¹. Residential conservation subdivisions cluster houses on smaller parcels of land while additional land that would have been allocated to individual lots is preserved as open space.

Conservation developments can keep land available for agricultural use, but generally the land is kept as open space. In a typical conservation subdivision, each homeowner has access to all of the open space areas, which may be permanently preserved by a conservation easement. To provide maximum protection of subdivision open space, the conservation easement should be assigned to organizations such as a homeowner’s association, a government agency, or a land trust.

This tool can achieve a variety of comprehensive planning objectives such as reducing the visual impacts of development, preserving rural character, natural features, environmentally sensitive lands, permanent open space or agricultural land, creating opportunities for nonpublic ownership of open space, and increasing the efficiency of infrastructure development².

Figure 1 illustrates how conservation/cluster zoning can accommodate development and conserve natural/open spaces. Although not commonly done in Southeastern Wisconsin to date, conservation subdivisions can also reserve areas for farming within the subdivision as shown in Figure 2³.

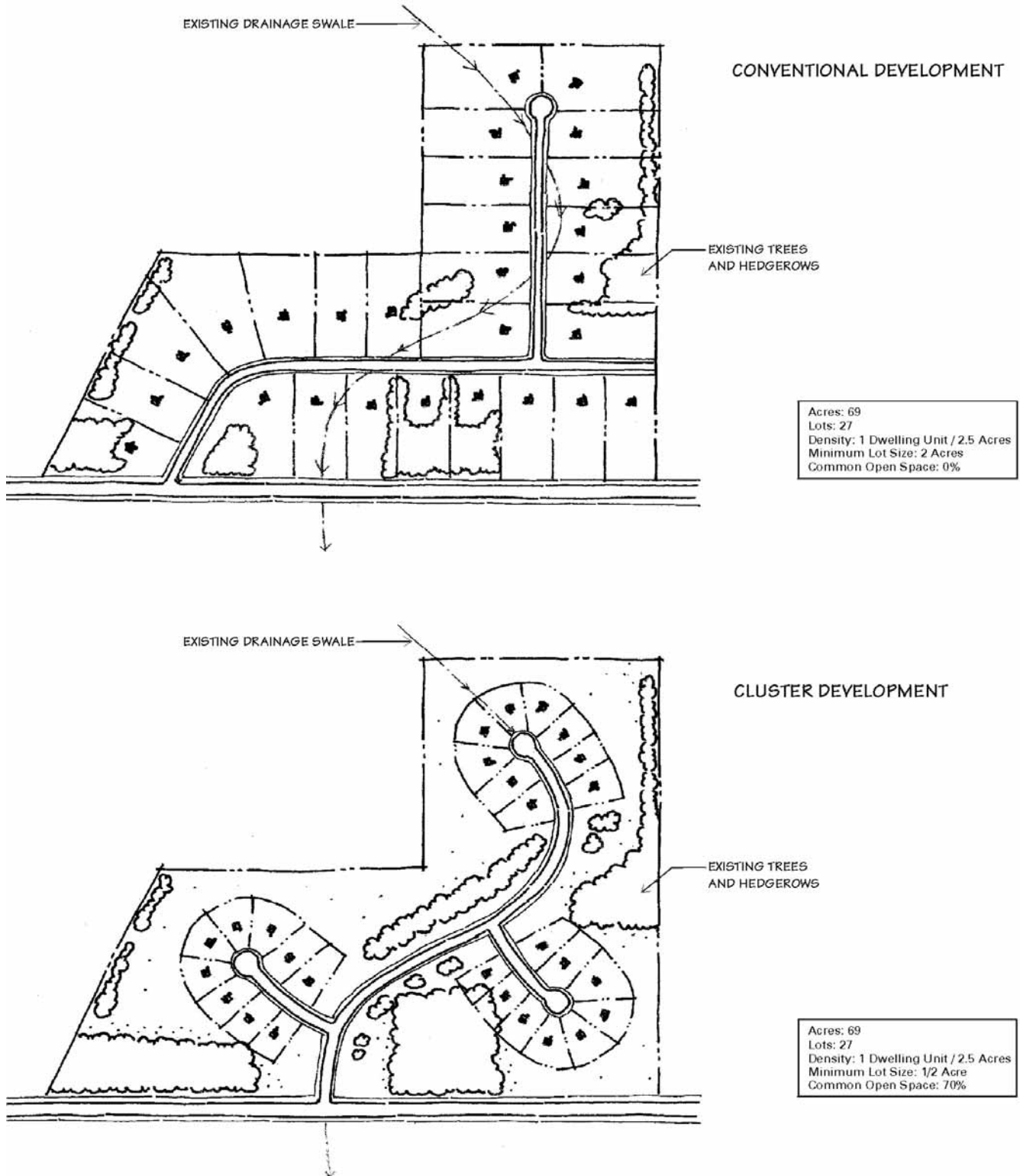


¹ Chapter 3 Montgomery County Open Space Plan

² *Rural Cluster Development Guide*, SEWRPC

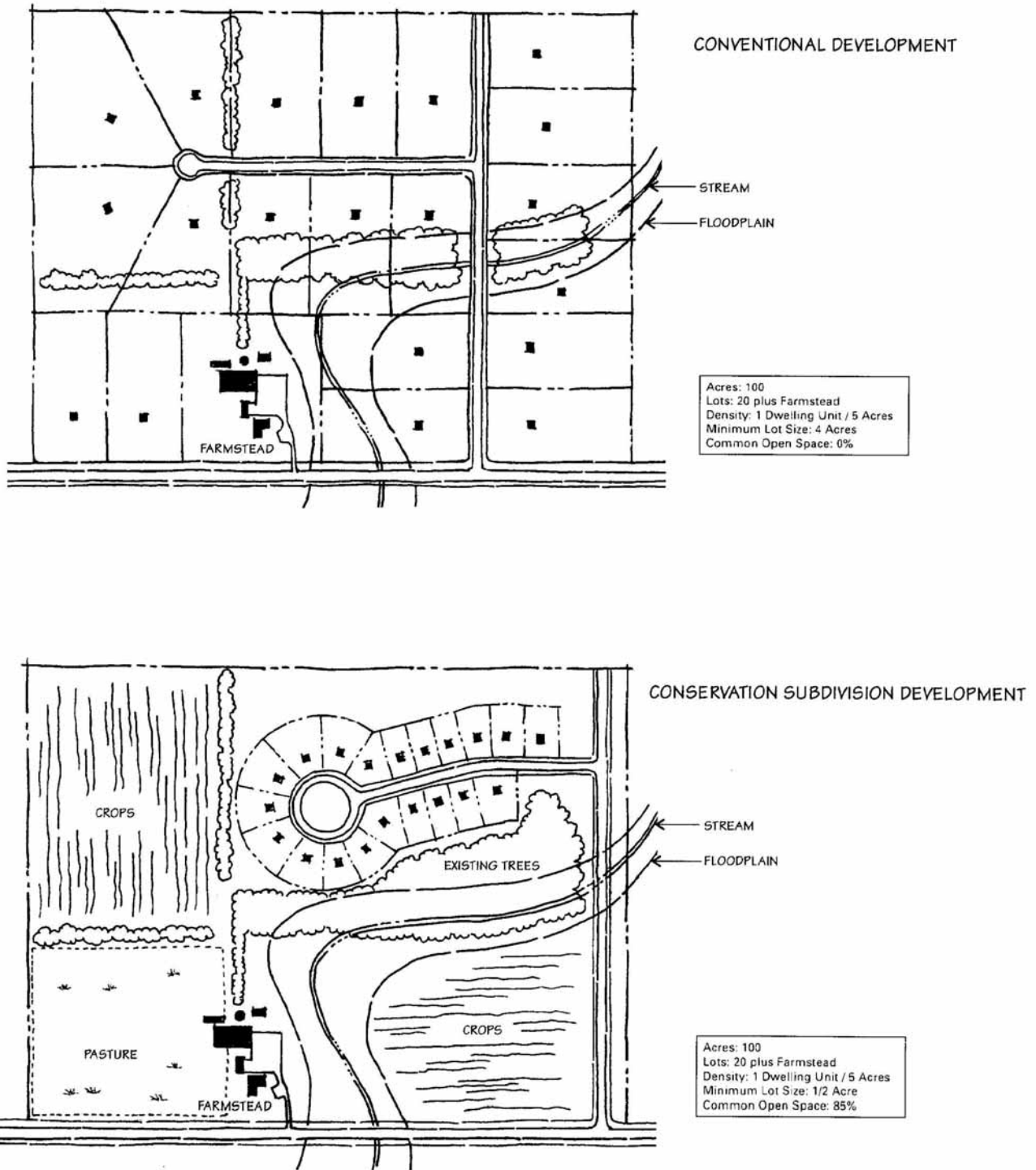
³ A Land Use Plan Implementation Strategy for the Rural Area of the Town of Caledonia, SEWRPC

Figure 1: Conventional Development vs. Cluster Development



Source: *Rural Cluster Development Guide*, SEWRPC

Figure 2: Preserving Farmland within Conservation Subdivision



Conservation subdivision development can help preserve farming activities.

Source: A Land Use Plan Implementation Strategy for the Rural Area of the Town of Caledonia, SEWRPC

It is important that when implementing a conservation/cluster ordinance that a community incorporate design principles for rural character preservation such as preserving open space adjacent to existing perimeter roadways, clustering houses, separating cluster groups and providing open space adjacent to each lot. If design principles are not taken into account, developments may look more like a conventional subdivision layout and will not likely achieve the goal of preserving rural character. The Town of Caledonia in Racine County provides a good example of a conservation subdivision ordinance (See Appendix B for Town of Caledonia ordinance). Conservation subdivisions can also be accommodated through a local zoning ordinance.

Example: A Conservation Development Preserving Farmland

An example of a conservation development preserving farmland is in the Town of Delafield in Waukesha County. A fourth generation dairy farmer, who owns a 300-acre farm, proposed a new 44-acre development creating a residential subdivision alongside his dairy farm. The proposed development, located to the north of his dairy farm, will consist of 10 one-acre residential lots with the remaining acreage preserved as open space, which the farmer plans on farming. A homeowner’s association will own the remaining open space and lease the open space to the farmer. If the farmer discontinues farming this land, the homeowner’s association will be unable to develop the land and must preserve the land as either farmland or open space.

This development was possible due to a Town ordinance allowing a farming operation to coexist with a residential development. This is the first time a developer took advantage of this ordinance, which was established six years earlier. According to the Town Chairman, Tom Oberhaus, this type of agri-residential development allows farmers to continue farming while mapping out their future retirement. Legal and real estate documents will be adjusted as necessary to identify the environment a homeowner should expect when living next to a dairy farm⁴.

Conservation Subdivision (Cluster Zoning)	
Benefits	Limitations
<ul style="list-style-type: none"> • Helps maintain a rural character of an area • Provides permanent open space protection for a community • Protects best natural resources of an area • Developers may experience greater profits by selling parcels next to open space • Reduces impact of development on watersheds • Less expensive to provide municipal public services to development depending on how clustering can be accomplished 	<ul style="list-style-type: none"> • Maintenance costs of created open space • Limited accessibility to low-income households • Protected land is typically owned by homeowners association – little to no public access • Improper implementation of tool may create conventional subdivisions • Minimum lot sizes may not be small enough to offset costs of land preservation • Limits, but does not stop residential development in agricultural areas

⁴ *Saving the Family Farm*, The Business Journal

Incentive Zoning (Density Bonus Incentives)

Local units of government may use density bonuses as part of their development review and/or subdivision approval process. This approach assumes that if specified criteria are met, then a proposed development would be approved with more use of a site (such as more dwelling units per acre) than would otherwise be permitted by the community. That is, greater development density would be allowed if certain conditions are met. These “density bonuses” are a form of incentive that a community can offer to a developer who does the kind of development that a community seeks. Thus, a local government can legally and equitably say to each developer: if you do what we would like in your development, then you can increase the amount of development and thereby pay for more of the improvements we request.

Density bonuses may be used to achieve a wide array of community objectives, such as preservation of agriculture land, open space, and view sheds, and conservation of wetlands, water bodies, forests, meadows and other natural features that the community values. A list of density bonus criteria is not a freestanding document, but would need to be incorporated into a community’s subdivision, zoning, or other development review regulations.

The Town of Caledonia in Racine County has a comprehensive conservation subdivision ordinance that includes density bonus language which provides a 20 percent maximum yield bonus for a development based on a list of specified standards (See Appendix B, Sec. 14-3-4, Town of Caledonia ordinance).

Incentive Zoning (Density Bonus Incentives)	
Benefits	Limitations
<ul style="list-style-type: none">• Allows for the protection of environmentally sensitive areas while providing development to occur on the property• Does not impose any direct costs on landowners and developers	<ul style="list-style-type: none">• Neighbors may oppose due to concerns of increased density of development• May not be mandatory tool; thus there is little assurance that desired project designs will be implemented by developers• Can be difficult for local officials to enforce unless bonus criteria are clearly spelled out in an ordinance or policy document

Example: Incentive Zoning (Density Bonus Incentives)

For example, the Town of Cedarburg in Ozaukee County has added terms to its zoning ordinance that allows builders to create more lots than normally allowed in a development based upon the developments design and layout. To qualify for bonus lot consideration, all open space must be contiguous and held in common. The maximum number of bonus lots the Plan Commission and Town Board may award is one lot per 25 acres of development with a maximum of four (4) bonus lots for any development⁶. There is no guarantee of bonus lots being granted, as the final discretion rests with the Plan Commission and Town Board at the time the proposal is reviewed.

⁶ Code of Ordinances, Town of Cedarburg, Wisconsin

Mitigation Ordinances and Policies

Farmland mitigation programs involve protecting farmland by providing equivalent farm acreage elsewhere when agricultural land is converted to other uses, or paying a fee when farmland is converted to other uses. One of the first farmland mitigation programs was enacted in the City of Davis, California in 1995 (See Appendix C for City of Davis ordinance). The City’s ordinance requires developers to permanently protect one acre of farmland for every acre of agricultural land they convert to other uses. Developers can place an agricultural conservation easement on farmland in another part of the city or pay a fee to satisfy mitigation.



King County, Washington, has a “no net loss of farmland” policy in its comprehensive plan. The policy prohibits removal of land from the agricultural production district (APD) unless an equal amount of agricultural land of the same or better quality, adjacent to the APD, is added. The City of Brentwood, California, has also implemented a farmland mitigation program. Their program requires that for every acre converted to urban land use, the developer is required to protect an acre of valuable soil in the same area with a perpetual conservation easement⁷. In lieu of providing an acre of conserved farmland, a developer may pay a mitigation fee that would be used to purchase easements on valuable farmland within Brentwood’s Agricultural Conservation Area (See Appendix D for City of Brentwood ordinance).

Mitigation Ordinances and Polices	
Benefits	Limitations
<ul style="list-style-type: none"> • Low cost for a local government to permanently protect agricultural land • Existing policies permanently protects land from development pressures 	<ul style="list-style-type: none"> • Sometime in the future there may not be enough remaining farmland to meet mitigation policies for future development • Requires staff resources to implement • Regulations and/or ordinances can change as demographics and political realities shift

Overlay Districts

An overlay district is used to establish alternative land development requirements within a specific area of a community that requires special attention, such as an environmentally sensitive area or rapidly developing highway corridor. The overlay, such as historic, conservation, or agriculture, is usually superimposed over conventional zoning districts. It consists of a physical area with mapped boundaries and an ordinance detailing requirements that are either added to, or in place of, those of the underlying regulations. Overlay districts specify requirements that take precedence over those of the underlying districts they cover. Overlays are frequently used to manage development in particular areas of a community.

⁷ City of Brentwood Agricultural Enterprise Program, Moore Iacofono Goltzman, Inc.

Overlay Districts	
Benefits	Limitations
<ul style="list-style-type: none"> • Help protect natural resources in desired areas in the community • Easily implemented • Recognizes land dedicated to agriculture or other specific use • Help protect large blocks of land 	<ul style="list-style-type: none"> • Additional zoning requirement • Not a permanent solution to protect land from development pressures • Sanctions for withdrawing from district may not be strong enough to discourage conversion out of a specific land use

Example: Overlay Districts

An example of a community utilizing overlay districts is the Town of Kewaskum in Washington County. The Town currently has three overlay districts, Lowland Conservancy Overlay District, Historic Preservation Overlay District, and Planned Unit Development Overlay District. The intent of the Lowland Conservancy Overlay is to preserve, protect, and enhance ponds, streams, and wetland areas⁸. Therefore, an applicant who proposes a use or structure within the district must present detailed plans and specifications to the Plan Commission who will evaluate them to determine if the proposal is not in conflict with the purpose of the overlay district (See Appendix E for Town of Kewaskum ordinance).

Sliding-Scale Zoning

Sliding-scale zoning is often used to protect rural character, critical resources, and agricultural land. The sliding-scale approach lowers the permissible density of development as the acreage of the lot being subdivided increases⁹. For example, a twenty acre lot under sliding-scale zoning could be subdivided into two lots, but a 100 acre tract may only be subdivided into four lots, and a 500 acre tract may only be divided into ten lots. In most cases, the permissible density under sliding-scale zoning is based on certain physical and ecological characteristics.

Typically, the permissible density is determined by the level of importance the community places on a zone to be protected (based on factors such as quality of the soil for farming, slope, distance to surface waters, presence of wetlands). The greater the importance of a zone, the more the density declines on a sliding-scale. The effectiveness of this technique depends on assigning the appropriate low density to areas of open space concern.

⁸ Zoning Ordinance Chapter 17 of the Municipal Code, Town of Kewaskum

⁹ Chapter 3: Open Space Planning, Montgomery County Open Space Plan

Example: Sliding-Scale Zoning

An example of how sliding-scale zoning can be implemented is in Montgomery County, Virginia. Sliding-Scale zoning is utilized only in their A-1 agricultural zoning district. In the A-1 agricultural district, the maximum number of lots one can create is determined by the amount of land in each parent parcel (See Figure 1). Each parcel in the county, which existed when the current zoning law was passed (12/13/99), is considered a parent parcel. If a landowner has up to 10.0 acres of land, one can subdivide that land into three lots. A lot must be at least one (1) acre in size. So, if your parent parcel is only 2.3 acres, you will only be able to create two lots.

Figure 4: Permissible Density

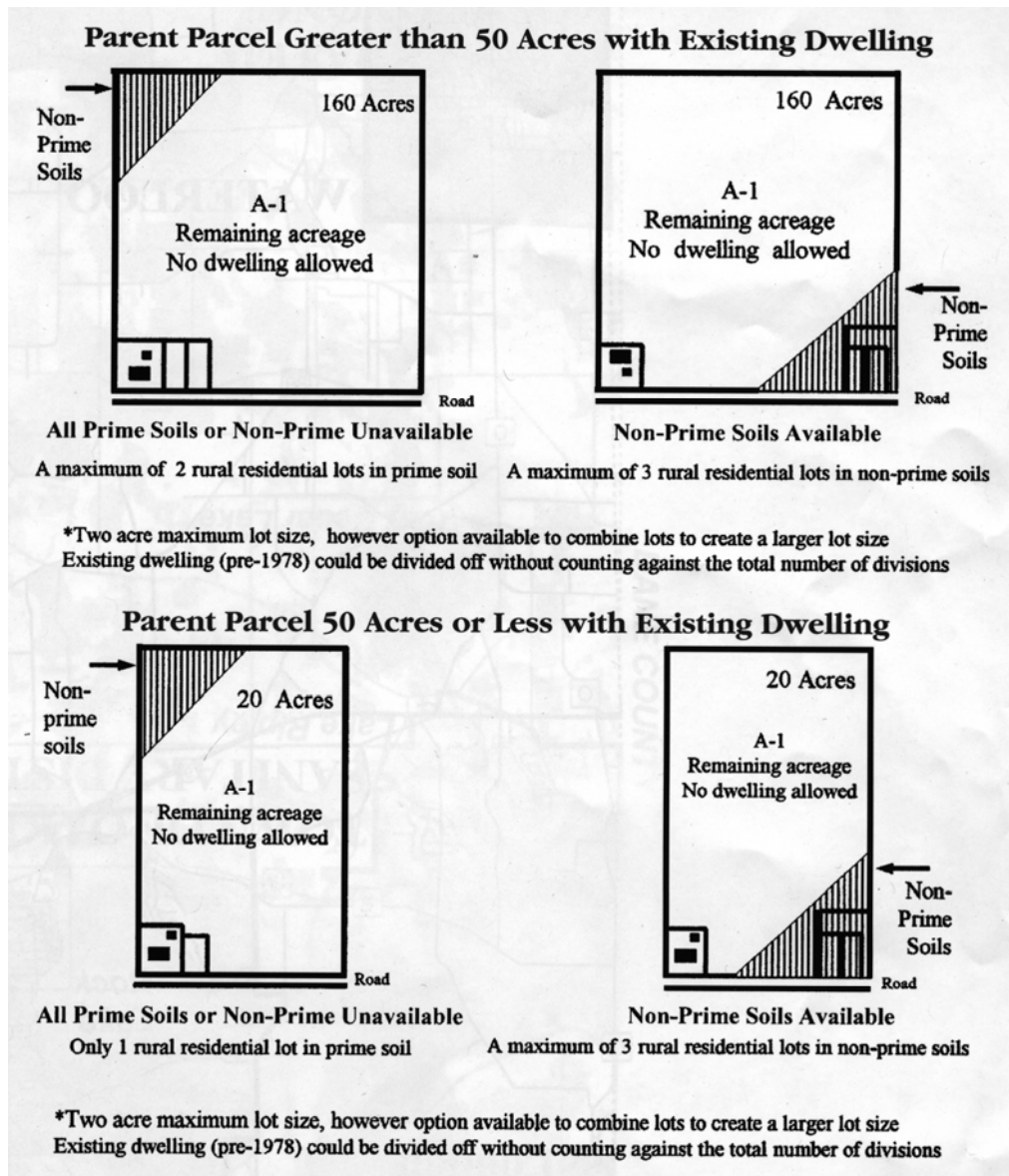
Size of Parent Parcel	# of Permitted Lots
0.0 to 10.0 Acres	Up to 3 lots
10.01 to 30.0 Acres	Up to 4 lots
30.01 to 50.0 Acres	Up to 5 lots
50.01 to 70.0 Acres	Up to 6 lots
70.01 to 90.0 Acres	Up to 7 lots
90.01 to 110.0 Acres	Up to 8 lots
110.01 to 130.0 Acres	Up to 9 lots
More than 130.0 Acres	Additional 20 Acres

How you subdivide your parent parcel depends on the size of lots you want to create. Lots, which have been created from a parent parcel, cannot be further subdivided unless more than one lot assignment was made to the parcel during the initial subdivision of the property. For example, say a landowner has a 100 acre parent parcel and would like to subdivide the parcel into two lots, one with 40 acres and one with 60 acres. The original parent parcel was allowed eight lots. The landowner could stipulate that the 40 acre parcel is given six lot assignments and the 60 acre parcel is given two lot assignments. The assignment of lots can total, but not exceed, the maximum number of lots allowed for the original parent parcel (See Appendix F for an illustrated example of Montgomery County Sliding-Scale Zoning).

Sliding-Scale Zoning	
Benefits	Limitations
<ul style="list-style-type: none"> • Areas of open space and resource sensitivity may be zoned with low density restrictions • Flexibility is high 	<ul style="list-style-type: none"> • Reduction in property values may result on properties where density restrictions require a "downzoning" from the current density levels of permissible development • Requires extensive staff time and expertise to implement • Extensive mapping of resources may be necessary before implementing sliding-scale zoning • Tracking compliance complicated by the number of sliding-scale density zones that may exist

This tool may be modified to further improve its effectiveness by including a maximum lot size requirement on newly created lots. Jefferson County, Wisconsin, implemented a modified version of sliding-scale zoning (See Appendix G for Jefferson County ordinance). At the time the ordinance was implemented, land was classified into parent parcels. (Jefferson County defines parent parcels as all contiguous A-1 agricultural lands that are under the same ownership that existed on December 13, 1977. All A-1 zoned lands created by variance before December 13, 1977 are not considered parent parcels¹⁰.) Land that is identified as a parent parcel at the time of ordinance implementation and is greater than 50 acres would be allowed to build a maximum of two rural residential lots in prime agricultural soil or three rural residential lots in non-prime soils¹¹. If the parent parcel is 50 acres or less, a parent parcel could develop one rural residential lot in prime soil and three lots in non-prime soils. These residential lots have a two acre maximum lot size, but have the option to combine to create a larger lot size. See Figure 5 for an illustration of Jefferson County modification of the sliding-scale ordinance.

Figure 5: Jefferson County Modified Sliding-Scale Zoning



Source: Agricultural Preservation and Land Use Plan, Jefferson County

¹⁰ Agricultural Preservation and Land Use Plan, Jefferson County, Wisconsin

¹¹ Agricultural Preservation and Land Use Plan, Jefferson County, Wisconsin

Incentive Based Tools

Unlike regulatory based tools, incentive based tools are voluntary and are mostly based on the willingness of the landowner to sell their property. Where public access and use are desired or complete ownership control is preferred, outright donation, purchase or bargain sale of land to a government entity, conservation organization, or public charity are perhaps the best methods of permanently protecting lands of preservation importance. Usually the jurisdiction or group receiving a donation will assume the responsibility of maintaining the donated property.

Also included in incentive based tools are conservation easements and purchase and transfer of development rights programs where a landowner sells the development right of their land.

Fee-simple Purchase

In a fee-simple land purchase, the buyer acquires full title to a parcel, along with the entire bundle of rights that comes with it. This type of purchase allows for permanent open space protection. A municipality or nonprofit agency uses funds to purchase land available. In most cases, fee-simple acquisition for open space is based on a willing seller, willing buyer basis to obtain property. With open space preservation, fee-simple acquisition primarily involves a conservation organization, or the State, County, or Local government working with a willing landowner.

Often, nonprofit conservation organizations purchase land and then lease it to the original owner or another individual. A conservation group may lease the land to a local farmer who will use the land for economic benefits, such as grazing and crops. The conservation group benefits from this partnership by receiving rent and by having the land managed. This way, the land generates rent for the landowner as well as products and activities for the public, such as farm produce and recreational opportunities.

Fee-simple has its limitations. As mentioned above, there is considerable cost in the outright purchase of lands that are of high priority, thus reducing the amount of land that can be preserved as farmland or open space. In addition, if a non-profit agency purchases the land, they may or may not allow public access. Also, as land is acquired, it may be taken off the tax rolls, although studies indicate that land adjoining preserved open space typically increases in value, possibly offsetting the loss of taxes. Lastly, as more land is acquired by a non-profit agency or local government, the overall cost of owning and maintaining the acquired land becomes increasingly more expensive.

Conversely, there may be a cost savings to local governments if land is not developed, since agriculture and open space require far less spending for community services.

Fee-Simple Purchase	
Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development pressures • Public access to purchased land if purchased by public entity or private group using public funds • Tool includes willing buyer and willing seller • Increase in adjoining property values 	<ul style="list-style-type: none"> • Costly for recipient to purchase land • Land may be taken off the tax rolls

Donations

A donation occurs when a landowner transfers agricultural land or open space to a governmental entity or to a land trust in the form of a charitable gift. Land donations of real property can be arranged in various ways to suit the needs and desires of a donor. The potential recipients of donated property should encourage donors to disclose their plans for a bequest, in advance, in order to assure that the donation is appropriate, and to discuss financial arrangements for the property's maintenance and operation.

A donation example is Leonard J. Yahr County Park. In December 2000, The Yahr family donated 39 acres of land to Washington County, consisting of wetlands, and primary environmental corridors on Erler Lake. This land will partially consist of a public park with the remaining land being preserved as open space, including a savannah restoration.

Donations with a reserved life estate, also called a life tenancy, are donations proposed by individuals who wish to continue owning and living on their property until death. At the time of death, the property is donated to a non-profit organization or a government agency. The donor or heir is eligible to deduct the value of the gift, called a "remainder interest", at the time it is made, although the recipient will not actually take control until the donor or heir dies.



Donations	
Benefits	Limitations
<ul style="list-style-type: none"> • Private and completely voluntary • Long-term agricultural land protection • Tax benefits may accrue to the donor, such as state and federal income taxes, capital gains, and estate taxes • Tool includes willing buyer and willing seller • Increase in adjoining property values 	<ul style="list-style-type: none"> • Limited usage due to the absence of monetary benefits – owners must be in position to benefit from tax advantages • Maintenance and organizational costs exist to manage the property by the recipient organization • Land may be taken off tax rolls • Donor is responsible for property appraisal costs

Example: Donation Compared to Sale

The following is a comparison of tax savings for land donation and sale of land¹². A married couple is considering selling their \$270,000 property, which they bought in the 1960's for \$25,000, to a local developer or donating it to a land trust interested in protecting it. While donating the land would be a very generous thing to do, would it be a \$270,000 sacrifice?

Not nearly, to keep it simple, assume that their income is \$150,000, that the property is not their principal residence, that they are filing jointly, that they have no other deductions, and that these conditions will remain the same for the next five years.

Donating the land would result in a \$270,000 tax deduction, which the couple can use over six years. Their federal tax bill for each of the next six years would be as follows:

(State tax will vary from state to state and is not computed here.)

Federal tax \$23,670

Their total federal tax due over six years would be \$142,020.

On the other hand, if they sell the land, they would be subject to \$245,000 in capital gains. Their federal tax bill for the year the property is sold and over the next five years would be as follows:

Federal tax: year 1- \$86,621, years 2-6 - \$37,621

Their total tax due over six years would be \$274,726.

In addition, if there is a 10% realtor's commission on selling the land, the "cost" of donating the \$270,000 property, compared to selling it, not including state tax savings, would be only \$110,294 sacrifice.

Selling price	\$270,000
Tax difference for sale vs. donation	-\$132,706
Realtor's commission	<u>-\$ 27,000</u>
	\$110,294

Bargain Sale

An alternative to fee-simple acquisition of land or the donation of land is a bargain sale. This type of transaction represents a balance between an outright sale of the property at fair market value and a land donation. An outright sale makes the conveyance more expensive for the entity acquiring it, whereas the donation of an entire property may not be attractive to a landowner. The landowner may, with a bargain sale arrangement, sell the land to a trust or government at a lower price and contribute the balance of the value of it as a charitable gift, which can be claimed as an income tax deduction. A gift of land subject to a mortgage is also considered a bargain sale. In this instance, an entity purchasing the land would pay the landowner the remaining mortgage.

¹² Conservation Options A Landowner's Guide, Land Trust Alliance

Bargain Sale	
Benefits	Limitations
<ul style="list-style-type: none"> • Voluntary program • Landowner may be able to receive capital gains and income tax benefits on the percentage of the land's value that was donated • Tool includes willing buyer and willing seller 	<ul style="list-style-type: none"> • Recipient of land needs to fund land acquisition which may still be costly • Landowner receives less monetary compensation compared to the open market

Example of Bargain Sale

The following is an example of how a bargain sale affects Federal Income Tax: A couple purchased a farm in 1950 for \$20,000 (the "basis"). By 1998, the fair market value of the farm increased to \$100,000. They sell the farm to a land trust for \$30,000. The charitable donation is considered to be the difference between the fair market value of the land and the sale price. In this case, the donation would be \$70,000. The capital gain is more complicated. If the land were sold at fair market value, the capital gain would be the sale price minus the basis. In a bargain sale, the capital gain is the sale price minus a "sale portion" of the basis. This is determined by the formula;

$$\text{Sale portion of basis} = (\text{sale price} / \text{value of land}) \times \text{basis}.$$

In this example, $(\$30,000 / \$100,000) \times \$20,000 = \$6,000$. The sale portion of the basis, \$6,000, is subtracted from the sale price, \$30,000, to show a capital gain of \$24,000. Therefore, the final result of the bargain sale would be the landowners receiving a deduction for a charitable donation of \$70,000 and owe capital gains tax on \$24,000¹³. If the couple sold the same property at fair market value, the couple would owe capital gains tax on \$80,000; therefore, the amount in which they will have to pay capital gains taxes on was reduced by \$56,000.

¹³ Conservation Options A Landowner's Guide, Land Trust Alliance

Conservation Easements

Conservation easements are a legally binding agreement made voluntarily between a landowner (public or private) and a qualifying organization (also public or private), in which permanent limits are placed on a property’s use and development. Conservation easements limit land to specific uses and thus protect it from development. Sellers can receive federal tax benefits as a result of donating easements. Buyers are responsible for monitoring the land and enforcing the terms of the easements. Easements may apply to entire parcels of land or to specific parts of a property. Most easements are permanent; term easements impose restrictions for a limited number of years. All conservation easements legally bind future landowners. Land protected by conservation easements remains on the tax rolls and is privately owned and managed. While conservation easements limit development, they do not affect other private property rights (See Appendix H for Town of Dunn conservation easement).

Conservation Easement	
Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development • Landowners may receive income, estate, and/or property tax benefits • Land remains in private ownership and on the tax rolls 	<ul style="list-style-type: none"> • Tax incentives may not provide enough compensation for many landowners • Since program is voluntary, it can be challenging to preserve large tracts of contiguous land or specific areas to be protected

Example: A Conservation Easement

In 1997, a landowner with an interest in preserving a 57 acre property in the Town of Farmington, Washington County, worked with the Ozaukee Washington Land Trust in creating a conservation easement. The landowner wished to keep the land in private ownership, but permanently restrict specific uses and activities on the property. In particular, the owner wished to restrict all future development to protect the open fields, hardwoods, marsh, and wetlands for natural wildlife habitat. The landowner also wanted to reserve the right to limited agricultural use on a portion of the open fields on a 5 acre area. In addition, the landowner wanted to reserve the right to utilize a 17.8 acre portion of the property for agricultural use if there were ever local or global food scarcity issues.

A draft easement was prepared regarding the goals and objectives for the property. In this case, the owner wanted to restrict the following to preserve the property’s conservation values:

Example: A Conservation Easement (Continued)

1. *Future residential development and division of the property*
2. *Commercial and industrial uses*
3. *Mining operations*
4. *Commercial harvesting of timber*
5. *Dumping, storage or disposal of waste, refuse, municipal or industrial sludge or sewage, inoperative vehicles, or debris*
6. *Raising or pasturing livestock*
7. *Placement of billboards or signage*
8. *Burning of trash, garbage or other material except for organic waste*

Once the easement document was in its final form, the owner had the property appraised to justify the value of the gift that he would claim as a charitable tax deduction. The easement was signed and recorded.

At the time of finalizing and recording the easement, the property's present condition was documented through photographs and a baseline report. Baseline documentation files details the property and the landowner's rights and restrictions. The Land Trust then makes annual site visits to ensure that the landowner is in compliance with the terms of the conservation easement.

Purchase of Development Rights

The purchase of development rights (PDR) is a land conservation tool that communities can use to protect important natural resources such as farmland, woodlands, and wetlands. Under a PDR program, a unit of government (city, village, town, county, or state), or a non-profit conservation organization, such as a land trust, buys the development rights to land and places a conservation easement on the land. A conservation easement is a legal agreement between the entity purchasing the development rights and the property owner restricting the type and amount of development that may take place on the land. Easements can be tailored to the unique characteristics of the property and the interests of the landowner. The easement is recorded with the deed to the property to limit the future uses of the land as specified in the easement. PDR programs are voluntary and the sellers of their development rights retain ownership and control of their land. They can sell or transfer their property at any time, but because of the easement, the land is permanently protected from certain types of development stated in the easement. The value of development rights to agricultural lands is based on the difference between what a property would be worth for non-farm development purposes (typically based on the development uses permitted under existing zoning) and its value to a farmer for agricultural purposes. For example, if a farmer's land is worth \$2000 an acre for agricultural use and \$5000 for development, the farmer can sell his development rights for \$3000 an acre. When this sale occurs, a legal document called a conservation easement is created. The farmer retains private ownership of the land and can sell it, hold it or pass it on to heirs.

A local example of a PDR program is in the Town of Dunn located in Dane County. The Town established the state's first PDR program in 1996 (See Appendix I for Town of Dunn ordinance). At that time, the Town's residents approved a tax that would specifically fund the purchase of development rights. In 2000, the Town voted to approve a \$2.4 million bond to acquire additional development rights. As of April 2003, the PDR program has protected 2,064 acres of farmland and received over \$1.5 million in grants to acquire development rights. The PDR program's conservation easements are jointly held by the Town and the Natural Heritage Land Trust¹⁴. For more information describing the Town of

¹⁴ Purchase of Development Rights Program, Town of Dunn

Dunn PDR program, go to www.town.dunn.wi.us (See Appendix J for examples of implemented PDR programs).

Although the public may indicate support for initiating a PDR program, they may not always support the funding of a PDR program. For example, the residents in the Towns of Hartford and Grafton, when surveyed, indicated support for a purchase of developments rights (PDR) program to preserve farmland and open space and willingness to pay for the program through increased taxes. However, residents voted against funding a PDR program when the communities held a referendum proposing tax levy dollars to fund a PDR.

Since the program is voluntary, it may result in scattered preservation, therefore making it difficult to protect large contiguous blocks of land; unless the program sponsor targets specific blocks of land for acquisition. Also, since lands remain in private ownership, residents may be opposed to continued funding of such a program that provides no public access.

Purchase of Development Rights	
Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development • Landowner is paid to protect their land • Local government can target locations effectively • Land remains in private ownership and on the tax rolls • Program is voluntary 	<ul style="list-style-type: none"> • Can be costly for local unit of government, therefore land is protected at a slower rate • Land remains in private ownership – typically no public access • Since program is voluntary, it can be challenging to preserve large tracts of contiguous land

Transfer of Development Rights

The Transfer of Development Rights (TDR) is a tool that establishes areas within a community, called zones, that define areas for preservation (sending zones), and areas for more growth (receiving zones). Sending zones can be areas of agricultural land, open space, historic properties or any other properties that are important to the community.

Receiving zones are areas that the community has designated as appropriate for development. Often these areas are selected because they are located close to existing development, jobs, shopping, schools, transportation, infrastructure and other urban services.

In a traditional TDR program, sending area properties are rezoned to a form of dual zoning that gives the property owners a choice. The owners can choose not to participate in the TDR program and instead use and develop their land as allowed under the baseline zoning. Alternatively, they can voluntarily elect to use the TDR option. Under the TDR option, the sending site owner enters into a deed restriction that spells out the amount of future development and the types of land use activities that can occur on the property. When that deed restriction is recorded, the sending site owner is able to sell a commodity created by the community’s TDR ordinance called a transferable development right or a "TDR". By selling their TDR’s, sending site owners often are fully compensated for the development potential of their property without having to endure the expense and uncertainty of actually trying to develop it. Also, when the sending sites have income-producing potential from non-urban uses, such as farming or forestry, the owners can continue to receive that income¹⁵.

¹⁵ Recent Trends in TDR: Reinventing TDR, Rick Pruetz AICP

A traditional TDR ordinance creates a form of dual zoning for receiving areas as well. Developers can elect not to use the TDR option provided under this dual zoning. Under the baseline option, they do not have to acquire TDR's, but they also are limited to a lower, less-profitable level of development. Under the TDR option, developers buy and retire a specified number of TDR's in order to achieve a higher, more-profitable level of development. The price of TDR's is typically freely negotiated between willing buyers and sellers. The TDR ordinance can influence the price through the number of TDR's that the sending site owners are allowed to sell. When TDR's remain affordable, developers are able to achieve higher profits through the extra development allowed under the TDR option despite the additional cost of the TDR's¹⁶.

Transfer of Development Rights	
Benefits	Limitations
<ul style="list-style-type: none"> • Permanently protects land from development pressures • Landowner is paid to protect their land • Local government can target locations effectively • Low cost to local unit of government • Utilizes free market mechanisms • Land remains in private ownership and on tax roll 	<ul style="list-style-type: none"> • Can be complex to manage • Receiving area must be willing to accept higher densities • Difficult program to establish, especially in areas without County zoning • Program will not work in rural areas where there is little to no development pressure on the area to be preserved • Limited to Cities/Villages/Towns, no statutory authorization in Wisconsin for countywide program • May require cooperative agreements among several local governments to establish sending and receiving zones

Example: Transfer of Development Rights

For example, residents of the Chattahoochee Hill Country, a 40,000 acre area in south Fulton County, Georgia, and land planning experts created a master plan to preserve the area's rural character while accommodating future growth¹⁷. The resulting comprehensive land use plan and overlay district guidelines that were adopted by Fulton County concentrated future growth in three 750 acre high-density, mixed-use and pedestrian friendly villages. The plan was made possible when Fulton County adopted a transfer of development rights ordinance in April 2003. Within Chattahoochee Hill Country, the receiving areas are the three villages. To calculate the number of TDR's needed for residential development, one subtracts the gross acreage to be developed from the total number of residential units to be developed. Thus, if 7,000 residential units are to be developed on 500 acres, 6,500 TDR credits are needed. For every 2,000 square feet of commercial space, a developer is required to buy one TDR credit. For every acre of village, approximately seven acres in the sending area will be preserved in perpetuity (See Appendix K for TDR ordinance).

Another example of Transferring Development Rights is in Montgomery County, MD¹⁸. In the 1970's, Montgomery County, situated just north of Washington DC, became interested in preserving agriculture and controlling residential growth. As a result of this interest, the County created the Rural Zone, a 100,000 acre area of agricultural land that was zoned one house per five acres. It was soon apparent, however, that one house per five acres did not preserve agriculture and, under this zoning, the entire agricultural base would be gone by 2000. Therefore, in 1980, the County rezoned 90,000 acres (approximately 1/3 of the County) of the Rural Zone to one house per 25 acres. This area was named the Agricultural Reserve.

¹⁶ Recent Trends in TDR: Reinventing TDR, Rick Pruetz AICP

¹⁷ Quality Growth Toolkit, Georgia Quality Growth Partnership

¹⁸ Transferring Development Rights: The Experience in Montgomery County, MD, Jeremy Criss, Manager of Agricultural Initiatives

Example: Transfer of Development Rights – (Continued)

The downzoning resulted in a tremendous outcry from the farm community because of the lost equity from the reduction in development potential. The County responded to this outcry by establishing a TDR to build back a portion of the lost equity. The system works in the following way: Farmers sell TDR's to developers at a rate of one TDR per five acres (this ratio is based on the original Rural Zone density) minus the number of buildable lots allowed in the Agricultural Reserve. This means that the number of TDR's a farmer can sell, plus the buildable lots, is equal to the number of houses he was allowed to construct prior to the creation of the Agricultural Reserve. Developers have an incentive to buy the TDR's, because TDR's allow them to increase the development density in designated areas outside of the Agricultural Reserve. These areas are known as receiving areas.

For example, a farmer with a 100 acre farm can sell 16 TDR's to developers. This number is obtained by doing the following calculation:

- *Total TDR's (1 TDR per 5 acres) - 20 TDR's*
- *Ag Reserve Zoning (allows 4 houses) - 4 TDR's*
- *TDR's available to sell to developer - 16 TDR's*

At today's price of \$11,000 per TDR, the farmer in the above example would receive \$176,000 from the sale. Furthermore, additional income can be acquired by selling the four buildable lots that exist due to the 25 acre zoning in the Agricultural Reserve.

Although one TDR sells for \$11,000 today, the price was not always so high. In the early stages of Montgomery County's program, the price was as low as \$2,000 per TDR. This low price was a result of too many farmers wanting to sell TDR's at a time when there were not enough receiving areas. From this experience, Montgomery County learned how important it is to create TDR receiving areas that are large enough to accommodate the entire supply of TDR's that can be sold by farmers in the sending area. This will ensure a proper supply-demand equation resulting in favorable TDR sale prices for farmers.

In addition to the TDR program, Montgomery County has a PDR program that accounts for \$20 million of public funds. It is important to have both programs, because "the more tools you have in a toolbox, the better off you will be in addressing the various needs of landowners". In addition, the PDR program complements the TDR program because it helps to establish a floor price for TDR's. If farmers do not get enough money from developers, they sell their development rights to the County instead. To date, over 47,000 acres of farmland have been protected under easement as a result of Montgomery County's TDR, PDR and easement donation programs.

Although the above examples describe successful TDR programs, there are concerns as to the effective implementation of this tool. Such concerns include:

1. Clearly defined sending and receiving areas.
2. Staff expertise and time needed to administer this tool.
3. Need for development pressure to exist in identified receiving areas.
4. Resistance from residents in receiving areas to higher density development.
5. If value of TDR credits is too low, landowners may not sell their TDR credits, causing no transfers, thus making the tool ineffective.

“Options Review” for Developers

Where farmland or open space is being considered for development, there may be unexplored preservation options. Persons or organizations that may have the resources or interest in preserving a site may not be aware of development proposals until it is too late. This tool would require developers to consult with public agencies and local non-profit organizations working on farmland preservation prior to coming forward with subdivision or site plan applications. This creates the opportunity to explore ways to protect portions of the site for preservation for the purpose of farmland use and/or natural resource conservation. One major limitation to this type of tool is that a community utilizing this tool may find that developers may choose not to implement any of the preservation options proposed since they are not mandatory.

“Options Review” for Developers	
Benefits	Limitations
<ul style="list-style-type: none"> • Opportunity for developers to consult with public agencies and local organizations to explore farmland and open space preservation areas of developments 	<ul style="list-style-type: none"> • Staff resources needed to implement program • Not mandatory, therefore developers may choose not to participate

Economic Viability Tools for Farmland in Washington County

In addition to regulatory and incentive based tools to preserve agricultural land, additional programs can be implemented providing farmers a stable and sustainable environment to continue farming in a community. The following tools describe what programs exist in promoting agriculture.

Differential Assessment Laws (Use Value Assessment)

Wisconsin’s 1995 Budget Act changed the standard for assessing agricultural land from market value to use value. Under use value assessment, agricultural lands are assessed based solely on their value for farming, without regard to development potential or existing zoning. Use values for most farmlands are grouped into four categories based on relative soil productivity within the County. The Wisconsin Department of Revenue (WDOR), each year for every municipality in the state, determines actual values assigned to farmland in these categories. The WDOR uses a complex formula to calculate average values for each municipality. To simplify, use value assessments are calculated according to this equation¹⁹:

$$\text{Use Value} = \frac{\text{Adjusted net farm income potential from growing corn (per acre)}}{\text{Farm mortgage interest rate} + \text{municipal property tax rate}}$$

From this equation, as farm income potential goes up, so does use value. As farm mortgage interest rates and/or municipal property tax rates go up, use value goes down. Because this basic formula tends to

¹⁹ *Use Value Assessment for Wisconsin Farmland*, Laura K. Paine and Mark J. Kopecky

overestimate values for northern areas, adjustment factors are applied to the formula for counties in central and northern Wisconsin.

The lack of profitability motivates farmers to sell land for development. These laws help correct inequities in the property tax system. Owners of farmland demand fewer local public services than residential landowners. Differential assessment helps bring farmers' property taxes in line with what it actually costs local governments to provide services to the land.



While this program provides property tax relief to owners of farmland, it does so without attaching any restrictions to the land, so that there is no guarantee that the land will not be converted to urban use.

Farmland Preservation Program (Circuit Breaker Tax Relief Credits)

The Wisconsin State Statute, Chapter 91, outlines requirements for farmland preservation agreements and farmland preservation zoning. Enrollment into a farmland preservation agreement allows a farmland owner to obtain tax credits for maintaining their cropped lands in accordance with statute requirements. Farmers with property in Exclusive Agriculture Zoning are automatically eligible for the program and receive the highest possible tax credit. Farmers in other areas must file an application to be eligible for tax credits; these credits are not as large as those available to farmers in Exclusive Agriculture Zoning. Participants must follow the county's soil and water conservation standards in addition to other requirements outlined in the statute. Lands enrolled in the farmland preservation program are also protected from sewer and water assessments per Sec. 66.0721 Wis. Stats.

Right-to-Farm Laws

Right-to-farm laws are a state policy that states commercial agriculture is an important activity. The statutes help support the economic viability of farming by discouraging neighbors from filing lawsuits against agricultural operations. Twenty-three right-to-farm laws also prohibit local governments from enacting ordinances that would impose unreasonable restrictions on agriculture.

Wisconsin's "Right-to-Farm Law" (Sec. 823.08 Wis. Stats) was enacted in 1981 to protect farmers from lawsuits, or the threat of lawsuits, where a plaintiff alleges that a normal farming practice poses a nuisance²⁰. The law was designed to protect farm operations, which use good management practices from nuisance lawsuits that challenge acceptable farming practices and the ability of farmers to responsibly continue producing food and fiber²¹. The "Right-to-Farm Law" was strengthened in 1995 to provide recourse for farmers to collect on expenses they incurred from frivolous nuisance lawsuits brought against their operations.

Local communities may supplement the protection provided by the State with their own, more protective ordinance. Local ordinances may require that buyers of land in agricultural areas be provided with an Agricultural Nuisance Notice. Such notices inform buyers of agricultural land that agriculture is the primary economic activity of the area and that the buyer may experience inconvenience or discomfort arising from accepted agricultural practices. In some cases, the notice may be recorded on the deeds to

²⁰ Right-to-farm legislation in Iowa, similar to Wisconsin's legislation, was struck down in September 1988 by the Iowa Supreme Court on the basis that it constituted a "taking" of the property rights of landowners adjacent to farms. The Wisconsin right-to-farm legislation has not been challenged.

²¹ Wisconsin Farm Bureau Federation

new homes. Such notices may help to ensure that people who purchase houses in agricultural areas will recognize, and be more tolerant of, the sometimes inconvenient impacts of agricultural activities²².

Wisconsin Managed Forest Law

The Managed Forest Law is an incentive program intended to encourage sustainable forestry on private woodlands in Wisconsin. Owners of at least 10 acres of contiguous wooded land that is used primarily for growing forest products are eligible to apply for the program through the Wisconsin Department of Natural Resources (DNR). Following approval of the application, the DNR prepares a management plan for the property. The program can provide significant tax savings to participating landowners²³.

USDA Programs

The U.S. Department of Agriculture (USDA) administers a variety of incentive programs to prevent nonfarm development in agricultural areas. These programs include the Conservation Reserve Program (CRP), the Conservation Reserve Enhancement Program (CREP), and the Wetland Reserve Program (WRP), among others. Under these programs, landowners enter into an agreement to restore or protect lands for a 10-year or longer period in return for cash payments or assistance in making land conservation improvements²⁴.

Programs and Approaches to Enhance Economic Viability of Agriculture

State and local governments have created a variety of initiatives to support the economics of agriculture including the development of farmers markets, direct marketing, marketing to restaurants and food retailers, community supported agriculture, promotion of agricultural products and processes, and agri-tourism. Although these programs will not directly preserve an acre of farmland, they help create a sustainable environment for existing agriculture.

Example of Programs to Enhance Economic Viability of Agriculture

For example, The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP), University of Wisconsin-Extension, and the Wisconsin Apple Growers Association (WAGA) worked together to build a website, savorwisconsin.com, that emphasizes the purchase of locally grown, produced, and manufactured products to support Wisconsin's local producers and businesses. The designed site consists of the latest in web technology to connect consumers to businesses, using top web search capabilities. The website enables consumers across the state, nation and world to find their favorite Wisconsin products easily, searching from their home computer. For more information about this program, go to www.savorwisconsin.com.

In addition, residents can actively promote and support local agriculture by doing activities such as; patronizing farmers that provide locally produced goods, participating in community supported agriculture (CSA) programs and purchasing existing older homes.

Specialty farm products and services involve the diversification of farm production in order to take advantage of a large metropolitan population base. A few of the factors which may encourage diversification include the ready market for fresh, high value produce in suburban supermarkets and restaurants; demand for organically produced dairy products, meat, fruit, and vegetables; the greater viability of “U-Pick” farms; and an increased demand for nursery stock and horse stabling services²⁵.

²² SEWRPC

²³ SEWRPC

²⁴ SEWRPC

²⁵ SEWRPC

SPECIAL CONSIDERATIONS

Large lot zoning, also known as low-density residential zoning, is a zoning technique creating lot sizes forty acres or more. The perceived effectiveness of large lot zoning is based on the theory that limiting development density will preserve the open space and agricultural character of an area. The premise of large lot zoning is to select a minimum lot size that is large enough to prevent fragmentation of agriculture and to discourage non-farm homebuyers from purchasing land to build on in the country. Lot sizes ranging from three to ten acre-lots have proven ineffective in preventing non-farm homebuyers from purchasing agricultural land for residential development. In areas where farmland preservation is particularly important to the community, individual lot sizes of 40 to 160 acres may be applicable. Minimum lot sizes in this range may be utilized by niche agricultural industries such as gardening and greenhouses.



Large lot zoning, however, is generally not considered to be an effective farmland preservation tool since low density development patterns create parcel sizes which are “too big to mow, but too little to plow”. In areas of marginal farming production, this technique can have a detrimental effect by requiring large lots for individual homes and taking large parcels out of production for that purpose. This technique may be effective in maintaining rural character, but not farmland. Maintenance of rural character is enhanced if low residential densities are combined with conservation subdivision design in communities that wish to accommodate residential development.

Large Lot Zoning	
Benefits	Limitations
<ul style="list-style-type: none"> • Minimize housing density • Large lots may protect critical resources if development does not occur adjacent to these resources 	<ul style="list-style-type: none"> • Large lot densities are often a waste of rural land • Open agricultural land is fragmented into large lots, producing parcels of land that are often too large to maintain and too small to actively farm • Requires extensive road networks and other infrastructure • If land prices are high in a community, large-lot zoning may discriminate against lower-income groups • Pushes development outward

SUMMARY

- Comprehensive planning is a process that can be used to identify areas for farmland and open space protection and may describe implementation tools that can be used by a community to protect these resources.
- Tools that can be used to preserve farmland and open space typically fall into one or more of these categories: Regulatory, Incentive, or Economic.
- Regulatory tools implemented by ordinances adopted by a local government include:
 - Agricultural protection zoning
 - Conservation/cluster subdivisions
 - Lot averaging
 - Incentive zoning
 - Mitigation policies
 - Overlay districts
 - Sliding-scale zoning
- Incentive based tools based on the willingness of the landowner include:
 - Fee-simple purchase
 - Donation
 - Bargain sale
 - Conservation easements
 - Purchase of development rights
 - Transfer of development rights
 - Options review for developer
- Although economic programs and approaches do not directly preserve agricultural land, they do create a sustainable environment for agriculture to exist, thus keeping agricultural lands in agricultural production. Residents can help preserve agricultural lands indirectly by providing farmers a viable economic environment to continue farming. Such activities include:
 - Farmer's market
 - Direct marketing
 - Marketing to restaurants and food retailers
 - Agri-tourism
 - Patronizing local producers
 - Participating in community supported agriculture (CSA) programs
 - Purchasing existing older homes

**Chart 8:
Farmland and Open Space Preservation Tool Inventory**
Washington County Farmland and Open Space Preservation Study

Regulatory Based Tool	Benefits Farmland and Open Space Preservation	Limitations Farmland and Open Space Preservation	Control			Funding*				Regulatory	Incentive	Currently Available to Property Owners in Washington County	Tool to Preserve Farmland	Tool to Preserve Open Space
			Local	State	Fed	Local	State	Fed	Other					
Agricultural Protection Zoning (Exclusive Agricultural Zoning)	<ul style="list-style-type: none"> Helps prevent agricultural land from becoming fragmented by residential development Clearly identifies agriculture as primary land use Easily implemented by municipalities Able to protect large areas of agricultural land 	<ul style="list-style-type: none"> Does not permanently preserve agricultural land Does not protect agricultural land from annexation 	X							X		X ¹	X	
Conservation/Cluster Subdivisions	<ul style="list-style-type: none"> Helps maintain a rural character of an area Provides permanent open space protection for a community Protects best natural resources of an area Developers may experience greater profits by selling parcels next to open space Reduces impact of development on watersheds Less expensive to provide municipal public services to development depending on how clustering can be accomplished 	<ul style="list-style-type: none"> Maintenance costs of created open space Limited accessibility to low-income households Protected land is typically owned by homeowners association – little to no public access Improper implementation of tool may create conventional subdivisions Minimum lot sizes may not be small enough to offset costs of land preservation Limits, but does not stop residential development in agricultural areas 	X							X	X	X ²	X	X
Lot Averaging	<ul style="list-style-type: none"> Allows flexibility in site design and preservation of farmland or environmentally sensitive areas Useful in creating a few residential parcels 	<ul style="list-style-type: none"> Requires staff resources to track land divisions 	X							X	X		X	X
Incentive Zoning (Density Bonus)	<ul style="list-style-type: none"> Allows for the protection of environmentally sensitive areas while providing development to occur on the property Does not impose any direct costs on landowners and developers 	<ul style="list-style-type: none"> Neighbors may oppose due to concerns of increased density of development May not be mandatory tool; thus there is little assurance that desired project designs will be implemented by developers Can be difficult for local officials to enforce unless bonus criteria are clearly spelled out in an ordinance or policy documentation 	X								X		X	X

¹ Not all municipalities have Exclusive Agriculture Zoning. Exclusive Agricultural Zoning currently exists in the Towns of Barton, Hartford, Kewaskum, Richfield, Trenton, and Village of Germantown.

² Not all municipalities have adopted conservation subdivision regulations.

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Regulatory Based Tool	Benefits Farmland and Open Space Preservation	Limitations Farmland and Open Space Preservation	Control			Funding*				Regulatory	Incentive	Currently Available to Property Owners in Washington County	Tool to Preserve Farmland	Tool to Preserve Open Space
			Local	State	Fed	Local	State	Fed	Other					
Mitigation Policies	<ul style="list-style-type: none"> Low cost for a local government to permanently protect agricultural land Existing policies permanently protects land from development pressures 	<ul style="list-style-type: none"> Sometime in the future, there may not be enough remaining farmland to meet mitigation policies for future development Requires staff resources to implement Regulations and/or ordinances can change as demographics and political realities shift 	X							X		X	X	
Overlay Districts (Agricultural, Open Space, Historical, etc.)	<ul style="list-style-type: none"> Help protect natural resources in desired areas in the community Easily implemented Recognizes land dedicated to agriculture or other specific use Help protect large blocks of land 	<ul style="list-style-type: none"> Additional zoning requirement Not a permanent solution to protect land from development pressures Sanctions for withdrawing from district may not be strong enough to discourage conversion out of a specific land use 	X	X					X	X	X ³	X	X	
Sliding-Scale Zoning	<ul style="list-style-type: none"> Areas of open space and resource sensitivity may be zoned with low density restrictions Flexibility is high 	<ul style="list-style-type: none"> Reduction in property values may result on properties where density restrictions require a "downzoning" from the current density levels of permissible development Requires extensive staff time and expertise to implement Extensive mapping of resources may be necessary before implementing sliding-scale zoning Tracking compliance complicated by the number of sliding-scale density zones that may exist 	X						X			X	X	

³ Not all municipalities necessarily have overlay districts.

**Chart 8:
Farmland and Open Space Preservation Tool Inventory**
Washington County Farmland and Open Space Preservation Study

Incentive Based Tools	Benefits Farmland and Open Space Preservation	Limitations Farmland and Open Space Preservation	Control			Funding*				Regulatory	Incentive	Currently Available to Property Owners in Washington County	Tool to Preserve Farmland	Tool to Preserve Open Space
			Local	State	Fed	Local	State	Fed	Other					
Fee-Simple Purchase	<ul style="list-style-type: none"> Permanently protects land from development pressures Public access to purchased land if purchased by public entity or private group using public funds Tool includes willing buyer and willing seller Increase in adjoining property values 	<ul style="list-style-type: none"> Costly for recipient to purchase land Land may be taken off the tax rolls 	N/A	N/A	N/A	X	X	X	X		X	X	X	X
Donations	<ul style="list-style-type: none"> Private and completely voluntary Long-term agricultural land protection Tax benefits may accrue to the donor, such as state and federal income taxes, capital gains, and estate taxes Tool includes willing buyer and willing seller Increase in adjoining property values 	<ul style="list-style-type: none"> Limited usage due to the absence of monetary benefits – owners must be in position to benefit from tax advantages Maintenance and organizational costs exist to manage the property by the recipient organization Land may be taken off the tax rolls Donor is responsible for property appraisal costs 	N/A	N/A	N/A	X	X	X	X		X	X	X	X
Bargain Sale	<ul style="list-style-type: none"> Voluntary program Landowner may be able to receive capital gains and income tax benefits on the percentage of the land's value that was donated Tool includes willing buyer and willing seller 	<ul style="list-style-type: none"> Recipient of land needs to fund land acquisition which may still be costly Landowner receives less monetary compensation compared to the open market 				X	X	X	X		X	X	X	X
Conservation Easements (donated)	<ul style="list-style-type: none"> Permanently protects land from development Landowners may receive income, estate, and/or property tax benefits Land remains in private ownership and on the tax rolls 	<ul style="list-style-type: none"> Tax incentives may not provide enough compensation for many landowners Since program is voluntary, it can be challenging to preserve large tracts of contiguous land or specific areas to be protected 	X	X					X		X	X	X	X
Purchase of Development Rights	<ul style="list-style-type: none"> Permanently protects land from development pressures Landowner is paid to protect their land Local government can target locations effectively Land remains in private ownership and on the tax rolls Program is voluntary 	<ul style="list-style-type: none"> Can be costly for local unit of government, therefore land is protected at a slower rate Land remains in private ownership – typically no public access Since program is voluntary, it can be challenging to preserve large tracts of contiguous land 	X			X		X	X		X		X	X
Transfer of Development Rights	<ul style="list-style-type: none"> Permanently protects land from development Landowner is paid to protect their land Local government can target locations effectively Low cost to local unit of government Utilizes free market mechanisms Land remains in private ownership and on tax rolls 	<ul style="list-style-type: none"> Can be complex to manage Receiving area must be willing to accept higher densities Difficult program to establish, especially in areas without County Zoning Program will not work in rural areas where there is little to no development pressure on the area to be preserved Limited to Cities/Villages/Towns, no statutory authorization in Wisconsin for countywide program May require cooperative agreements among several local governments to establish sending and receiving zones 	X	X		X			X	X	X		X	X
Options Review for Developers	<ul style="list-style-type: none"> Opportunity for developers to consult with public agencies and local organizations to explore farmland and open space preservation areas of developments 	<ul style="list-style-type: none"> Staff resources needed to implement program Not mandatory, therefore developers may choose not to participate 	X							X	X		X	X

* Specific descriptions of funding sources are presented in Chapter 6

Chart 8:
Farmland and Open Space Preservation Tool Inventory
Washington County Farmland and Open Space Preservation Study