

8 OPEN SPACE PRESERVATION



“The need for breathing spaces and recreation grounds is being forced upon the attention of practical men, who are learning to appreciate the fact that a city, in order to be a good labor-market, must provide for the health and pleasure of the great body of workers.” -Daniel Burnham, Plan of Chicago, 1909.

Background

The rapid loss of plant and animal species can be largely attributed to the loss of habitat due to the conversion of natural areas to other uses such as agriculture or homes. Thus, one important technique for protecting biodiversity is to prevent the conversion of remaining habitat. One of the most direct and effective means of protecting the land and water necessary for the survival of a wide diversity of species is for public entities and conservation organizations to acquire large tracts of property or development rights to property. Across the

nation, publicly-owned land is by far the greatest repository of valuable habitat and species diversity. Land owned by private conservation organizations is growing daily.

The rationale for increased open space preservation is simple: as the area of protected land and water increases, the variety of habitats that are protected increases as well. Protection of a greater variety of habitats results in the protection of a greater variety of wildlife species that depend on those habitats. While this relationship will generally hold true when many small natural areas are protected, large contiguous natural areas are more beneficial to wildlife than many small ones, as discussed in the section on biological and ecological principles.

Thanks to the efforts of forest preserve districts and conservation district in our region, over 142,000 acres of land have been preserved as

public open space by these entities alone. Also, these entities are continuing to acquire natural areas in response to strong public demand for additional preserves.

Park districts also have acquired a significant amount of land, typically for active recreational uses such as ball fields and picnic areas. While they provide a tremendous public amenity for a great number of people, parks that are largely covered with turf grass do not contribute a great deal to biodiversity and habitat protection. Park districts can contribute to the biodiversity protection effort by complementing their traditional acquisitions with more natural areas and by converting some of their manicured landscapes to native vegetation.

A shift in the direction of acquiring and managing more natural areas can provide important benefits to park districts. First, the goal of providing recreational space can be met because natural areas are destinations for many passive recreational activities such as hiking, bird watching, and photography, as well as for active recreation such as canoeing and fishing. Furthermore, these recreational activities require less maintenance and management of properties, thereby saving the park districts money. Natural areas also provide aesthetic benefits and a sense of identity for a community, enhance property values of surrounding residences, and can benefit the community by providing areas for stormwater retention and flood control.

Although public land acquisition techniques are stressed here, the importance of the actions of private property owners in protecting biodiversity should not be overlooked, and should be encouraged by local governments. Local land conservation organizations are another very useful source of assistance and information. Additional information is provided in the sections below on *Funding Preservation*

Programs and the appendices. Excepting eminent domain, all of the techniques can be applied or amended for use by private property owners.

“By preserving open space we fashion a richer, greener, more complex infrastructure that makes cities more appealing places to live. This, in turn, will reduce the pressure to bulldoze economically valuable farmland and natural areas on the urban fringe.” -William Moorish, Director of the Design Center for American Urban Landscape at the University of Minnesota.

Recommended Approaches

Generally, preservation techniques fall into two categories. The first is fee simple ownership, in which the land itself is purchased or donated, along with all of the rights that are normally associated with land ownership. Once a government entity assumes ownership, it controls development, redevelopment, preservation and access, and can manage the land in accordance with its biodiversity protection goals. The second type of acquisition allows certain rights, usually the right to develop, to be removed from a parcel of land and retired. Ownership of the land itself does not change under this type of program.

Local governments in Indiana wield a great deal of power and control in protecting open space and associated wildlife and natural area values. This section first describes a simple process for an acquisition program, and follows with specific techniques for acquiring land and property rights, as well as ideas for funding these acquisitions.

1. **Identify** non-protected areas within the community that present opportunities for preserving natural areas, habitats of threatened and endangered species, or areas with potential to be restored to a previous natural condition. Preliminary identification should be made in the community's or park district's comprehensive plan. Also consider the importance of greenways and connecting open spaces, and the utility of small but optimally-located patches.
2. **Prioritize** these areas using criteria that maximize biodiversity and community benefits. Valuable assistance can be provided by the U. S. Fish and Wildlife Service, Indiana Department of Natural Resources, or the county forest preserves or conservation districts. Criteria for prioritization should include lands and waters that harbor significant habitat and threatened and endangered species, critically situated lands with important restoration potential, and lands that adjoin high-quality habitat. Areas that contribute to natural area networks and connect with forest preserve and conservation district lands also should be considered high priority. Sites that meet multiple objectives, such as biodiversity protection, restoration and passive recreation should be prioritized as well.
3. **Preserve** the highest priority areas using available resources and techniques that are described below. Realizing that acquisition programs are often expensive, governments may choose to encourage landowners to cooperate with private or non-profit organizations to achieve conservation objectives. Rapidly developing communities should acquire open space while land is still readily available.



Dedications/Donations

One common acquisition technique is requiring developers to dedicate a specific amount or percentage of the development site as a condition of development permit approval.

Governments and park districts also can accept voluntary property donations or dedications from landowners. This can be accomplished in a number of ways and arrangements can be made to accommodate the needs of the property owner. For example, the landowner can designate that the land be dedicated after he or she passes away, and live on the land until then. Donations and dedications often include tax relief for the party donating the property.

Development Rights Acquisition

Rather than purchase the land outright, local agencies may choose instead to pay the landowner to restrict the land from certain activities. Commonly known as purchase of development rights, and also as conservation easements, this technique typically removes or limits a landowner's right to develop his or her property, and may provide them with a tax benefit. The landowner is compensated for the difference between the fair market value of the land and its potential development value, and retains ownership of the property. Though the land is restricted from development, it may be used for other purposes such as recreation or farming.

Purchase

A public entity also may choose to purchase property from a landowner. The landowner may sell the land outright at fair market value to an agency, or it may be sold at a bargain price, which lowers capital-gains tax. As mentioned above, flexible agreements are possible with this technique as well. Funding options are discussed briefly later in this chapter.

In *sellback and leaseback* programs, a local government purchases property, imposes easements, deed restrictions or development agreements on the property, and then sells or leases the property to a third party. The restrictions might state that the owner or lessor may not develop the property, disturb vegetation, or use the property in any way that would harm the species residing there. Sellbacks and leasebacks can be effective site-level tools to reduce the costs of habitat acquisition programs.

Other techniques for purchasing land provide still more flexibility to buyers and sellers, such as purchase options and rights of first refusal. These programs are typically used when buyers want to have first option to purchase property. For example, park and forest preserve districts could be given the right of first refusal on all golf courses before they are sold to other parties. This would allow these entities to purchase golf courses and restore them to a more natural state.

If it is impossible for the government agency to negotiate the acquisition of either the development rights or full ownership of a property, then more drastic measures might be considered as a last resort for highest priority properties. Eminent domain (also known as condemnation) is an inherent power of government. It is the compulsory purchase of land from a private owner in exchange for just

compensation as established by a court of law. It is a right of government as long as the purpose (a public purpose) and value paid are appropriate. Public purpose can include the protection of the environment for the benefit of the residents of a community. It should be noted, however, that this technique is generally unpopular and may only be acceptable in extreme cases.

Conservation Easements

Conservation easements are a fairly common and very useful technique for removing development potential from a property in order to protect it. A conservation easement is a documented agreement whereby private landowners may voluntarily restrict their land from specific activities, either in exchange for money or by donation. Easements are highly flexible and designed to meet the particular needs of the landowner and the receiver of the easement. Restricted activities may include building of structures, removal of native flora and fauna, and grading or disruption of soils. Other less disruptive uses may be allowed within the easement, such as certain types of structures or recreational activities, but these must be specified in the easement document.

Landowners can elect to manage the easement themselves, ensuring that the conditions of the easement agreement are being met, or they may convey rights of management to an organization devoted to such activities. Easement donors may qualify for tax deductions or benefits under certain circumstances and conditions.

“Open space conservation is a one-time investment that can boost property values and swell tax coffers long after the land is paid for. And in survey after survey home buyers identify nearby open space and trails as among the top features in choosing a home.”-The Trust for Public Land, 1999.

Land Trades

Local governments might also consider trading land that is no longer needed for its original purpose (or land acquired through tax reversions or other means) for land that is valuable as wildlife habitat.

Summary of Benefits

Acquiring land or development rights is beneficial to the protection of biodiversity for a number of reasons.

- Most acquisition measures protect land in perpetuity, while regulatory measures, such as zoning, can be changed.
- Acquisition programs can be used with other preservation programs to link existing or future natural areas into a network of habitats useful for wildlife. Open space, public lands and parks are amenities highly valued by residents, are attractive to families and businesses looking to relocate, and can increase property values of the community.
- Protected areas and parks can add to the community's economy by providing destinations for active and passive recreation and other tourist activities.
- Open space preservation can help avoid expensive legal battles associated with regulatory protection measures while reimbursing landowners for the economic and other benefits the open space will bring the community.

The Value of Open Space Preservation

- √ A 1999 National Association of Home Builders survey found that respondents favor development that leaves or plants as many trees as possible (87 percent), protects environmentally sensitive areas such as wetlands (87 percent), and preserves wildlife habitat (59 percent). Access to park areas was one of the top two amenities that would seriously influence the respondents to move to a new community. It was followed by walking/jogging trails (48 percent), and lakes (38 percent).
- √ A 1997 study found that small company owners ranked recreation, parks, and open space as high priorities in choosing a new location for their businesses (The Trust for Public Land, 1999).
- √ In Salem, Oregon, land adjacent to a greenway was worth approximately \$1,200 an acre more than land only 1,000 feet away (The Trust for Public Land, 1999).
- √ In Oakland, California, a greenway around Lake Merritt added \$41 million to surrounding property values (The Trust for Public Land, 1999).
- √ In Dayton, Ohio, five percent of the selling price of homes near the Cox Arboretum and park was attributable to that open space (The Trust for Public Land, 1999).
- √ In San Francisco, California, Golden Gate Park increased surrounding property values by \$500 million to \$1 billion, and generated \$5 to \$10 million in annual property taxes (The Trust for Public Land, 1999).

Local Examples

❖ *Porter and Lake County Smart Growth Initiative*



The Indiana Nonpoint Education for Municipal Officials (NEMO) effort, Planning with POWER, has been designed to empower communities to prevent and solve natural resource problems resulting from changing land use and to empower local officials to incorporate watershed protection measures into their comprehensive land use plans. In Porter and Lake Counties in northwestern Indiana, Planning with POWER has helped officials launch a joint Smart Growth initiative in response to the region's tremendous growth and rapid loss of farmland. As part of this effort, Porter County recently adopted conservation design subdivision regulations requiring 10% open space minimum on all subdivision development, and up to 40% open space requirement on subdivisions in designated sensitive areas.

(Source: <http://nemonet.uconn.edu>)

❖ *Indiana Dunes Land Acquisition*



The U.S. Congressional Representative from Lake, Porter, Jasper, Newton, and Benton County—otherwise known as Indiana's First Congressional District—is Pete Visclosky. From 1986-2003, Congressman Visclosky has secured approximately \$30 million for Indiana Dunes National Lakeshore (IDNL) acquisition, including a sum of \$1 million from an Interior Appropriations bill in 2006.

Dunes acquisition is part of Visclosky's vision for investing in northwest Indiana's natural resources. Of course, one of its most important is the southern end of Lake Michigan and the surrounding dunes and wetlands which largely constitute the IDNL (which stretches from Gary to Michigan City). Not only does this land attract tourists and homeowners, but it also possesses one of the finest collections of biodiversity in the country. According to Tom Anderson, Executive Director of the Save the Dunes Council, a conservation organization committed to maintaining and restoring the natural environment of the Dunes region, states, "The Dunes are the jewel in the crown of northwest Indiana, and restoring more acres to their natural condition will enhance our quality of life for generations to come."

In order for the IDNL to realize its authorized boundary of 15,000 acres, 4,300 acres of additional land need to be acquired.

(Source: www.house.gov)



Suggested Reading

Biodiversity Recovery Plan. Chicago Wilderness. 1999.

Conservation Easements: An Analysis of Donated Development Rights. John B. Wright. 1993. *Journal of the American Planning Association.* 487-93.

Habitat Protection Planning: Where the Wild Things Are. Christopher Duerksen, et al.. 1997. *Planning Advisory Service Report no. 470/1.* American Planning Association. Chicago.

Northeastern Illinois Regional Greenway Plan. Northeastern Illinois Planning Commission and Openlands Project. 1992 and 1997. Chicago.

Regional Open Space and Recreation Policy Plan. Northeastern Illinois Planning Commission. 1980. Chicago.

Techniques for Acquiring Open Space at Less-than-fee: A Guide for Local Officials. Northeastern Illinois Planning Commission. 1982. Chicago.

