

Watershed Resource Paper #2 Open Space Protection

What is Open Space?

On the surface, it would appear as though “open space” needs no specific definition; the term itself should be sufficiently descriptive. However, when determining the method of regulation of open space the term may serve several purposes.

Purposes: Open spaces can serve several purposes. Each purpose has distinctive characteristics that allows open space to perform various functions or combinations of those functions. A clear understanding of these purposes is necessary to determine which regulations should apply in various situations.

C Cultural Open Space

Cultural open spaces are those which are clearly man-made and are generally carefully maintained. These may range from large open spaces around institutional or other large land uses, down to the well-manicured lawns found in suburban housing developments. Agricultural fields may generally also be considered in this description. Cultural open spaces have many functions, such as improving aesthetics, highlighting or calling attention to specific uses, defining driveway and sign locations, and others.



CULTURAL OPEN SPACE

C Transitional Open Space

A transitional open space is one that occurs between cultural uses. For example, a front yard for a home acts as open space between the roadway and the home. This is also an example of how open spaces can serve more than one function. In this case, a transitional open space can provide visual relief and improve safety by removing obstructions from the view of drivers.

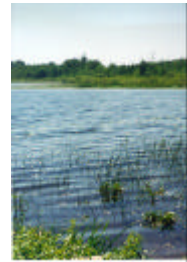


TRANSITIONAL OPEN SPACE

C Natural Open Space

Some open spaces are by their mere presence natural. Natural resources within open spaces can encompass many elements including, but not limited to wetlands, areas of

dramatic topography, forests, and water bodies. The wealth of natural features contained within open spaces in the Dowagiac River Watershed is a valuable community resource, not only for the role they play in maintaining the area's rural character, but also for tourism and its contribution to the state's economy.



NATURAL OPEN SPACE

Natural features within open spaces also have positive environmental effects by helping to protect ground and surface waters through the reduction of soil erosion, flooding, and nutrient over-loading in water bodies. Further environmental benefits of these open spaces come in the form of the preservation of wildlife habitat, improved air quality, and noise reduction.

Master Plan Requirements

Commitment: The Master Plan is used to develop the justification for various techniques that will be used to define various open space provisions. The first requirement of an effective Master Plan is public support. Preserving open space requires a substantial commitment on the part of the community to adopt zoning and other regulations. Involvement of all parties will be required to assure that this commitment is present and enduring.

Discovering the depth of this commitment is an essential element of the Master Plan. Eventually, this commitment will be expressed through one or more goals and objectives set out in the Master Plan. For example, such a goal and an accompanying objective may state:

Goal: The Township will develop regulations and incentives that will assist in the preservation of open space as a valuable resource for the community.

Objective: The Township will implement zoning and other appropriate regulations that permit preservation of land which has the greatest potential value as open space.

Inventory: It is, at best, difficult to determine the importance of natural features to a community if there has not been an inventory of the existing natural resources and open spaces. The Master Plan should be used to inventory areas of significant existing vegetation, soil type, location, size, and other open spaces that contribute to quality of life. Though it is important to identify these areas individually, it is also important to look at these resources collectively. For instance, vegetation lining a river plays an important role in preserving water quality and provides wildlife habitat and scenic views.

Methods of Protection: Several regulatory measures (discussed later in this Resource Paper) are available for communities to assist in the protection of natural features. The Master Plan should address several different techniques in order for the community to have a wide range of methods from which to choose. The Plan should describe these techniques, including a discussion of the relative effectiveness of each and/or the locations where they may be best

utilized to allow the Planning Commission some flexibility in its decision making.

Land Use: The final step in the Master Plan is the identification of the specific Future Land Use categories that will be used in the Plan and mapped. If a diligent effort is to be made to preserve open areas and natural resources, the descriptions of the land use categories should reflect that effort. A "Rural Residential" classification, for example, should clearly state the meaning and intent through its description. Locations on the Future Land Use map should be based directly on the information collected during the inventory process used to determine value.

Implementing Open Space Protection

Land Development Options

Perhaps the most effective method of protecting open spaces is to adopt effective land development regulations for the zoning ordinance. These regulations may affect not only development projects with larger land areas and high intensity uses, but development occurring on individual lots as well.

Lot Widths

Increasing lot widths can have the effect of separating the distance between homes to allow for a more "open" feeling. Other provisions for these lots could also include greater setback requirements and regulations minimizing urban vegetation (manicured lawns, flower gardens, etc.) and preservation of larger trees in areas visible from the roadway.

However, simply changing the district requirements would mean that the width requirements would apply to all roadways. Therefore, to make this regulation more effective, and to discourage development along the roadway, a companion change to encourage development throughout the site may be needed. This would require changing the applicable zoning requirements along certain defined roadways (generally county arterial roads).

This could be accomplished by decreasing the lot frontage required on roads that are part of the development project. Again, this does not imply that the site density needs to be greater, only that the lot widths for interior streets be less than what is required along the arterial roadway. Implementing these provisions requires adoption of an "overlay" district that would apply to residential zone districts along arterial roadways. Lots fronting on the interior streets would only be required to have the normal widths and setbacks.

Development Setbacks

Another effective provision could require a minimum development setback for residential or other projects of more than a single lot. The setback would require that no building or building envelope for the development could be nearer to the arterial roadway than 200-300 feet.

(Obviously, this provision would be more difficult to apply to individual home sites.)

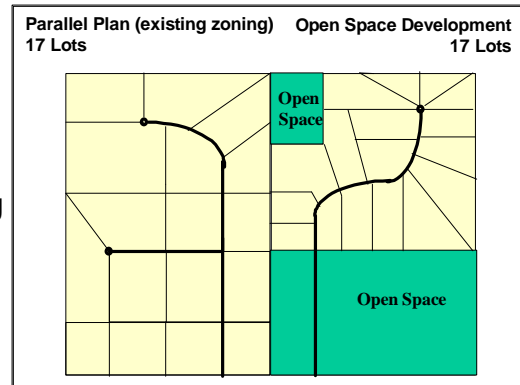
Other provisions applying to this setback area would be that no native or natural vegetation be removed from the setback, nor any grading or changes in topography occur, except that necessary for entrance roads.

The Ordinance could allow the Planning Commission to modify this requirement if the developer demonstrated that the clearing of existing vegetation or reduction of the setback would contribute significantly to the purpose and objectives of the development. Or, the Planning Commission could reduce the setback if existing landscaping provided a natural screen, or the proposed development provided a landscape screen. There should, however, still be some minimum setback.

This provision would also have to include some allowance for lot variations within the development so that the overall density permitted by the Ordinance could be maintained.

Open Space Development

There could be further incentives for the clustering of residential units, also known as Open Space Development. Under this development technique the allowable density is based on a "parallel plan" showing reasonable and permissible development under existing zoning. While Open Space Development may increase the net density for a smaller area of a larger parcel, the overall density would still fall into the requirements of the existing zoning.



It would also allow for the preservation of significant natural features, provide open space for recreation, or allow the continuation of farming on interior land areas. To preserve the roadside character, some or all of the required open space could be placed abutting the roadway.

Currently, open space development in western Michigan is not particularly prevalent, or indeed, attractive to home buyers. One of the reasons that many buyers are looking in the rural areas is to avoid being too near other homes. Unlike eastern Michigan, where land values are generally higher, open lands are abundant in western Michigan and land prices are very reasonable.

However, there is a segment of the marketplace that can appreciate the value of preserving larger open spaces within a development. Therefore, offering of incentives to developers for using this development technique is appropriate. The basic incentive to which developers will most readily respond is an increase in the number of units which could be permitted over the base density calculated under the parallel plan. This is generally considered a development "bonus."

The amount of the bonus may vary depending on the nature of the development, and they may be used in combinations of one or more different incentives. As an example, incentives may include an increase in the number of units if:

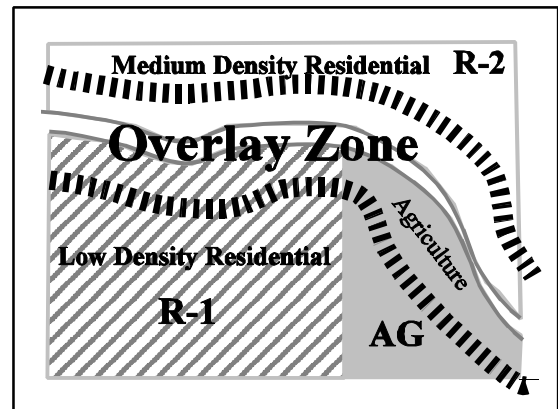
- C additional open space is provided, beyond that normally gained in the lowering of individual lot sizes;
- C a community wastewater and/or domestic water system is used (avoiding the need for septic systems and individual wells);
- C recreational amenities are provided, such as tennis courts, club house, or other similar facility;
- C walkways, trails, or bike paths are included within the development; and/or
- C significant areas of active agricultural lands are preserved.

Another incentive, where appropriate, would permit commercial uses, usually subject to certain restrictions to limit size and effect on the area.

Overlay Zoning

Overlay zoning is the application of an additional set of regulations to an established zoning district or district. Areas commonly targeted by overlay zones include: floodplains, watersheds, environmental areas, lakeshore/shoreline, river corridors, high risk erosion areas, historic districts or economic revitalization areas.

The use of an overlay zone can be especially effective to ensure the consistent regulation of land uses within multiple zone districts, such as greenway or vegetative buffer requirements along a river.



Greenways

Greenways are open spaces used to conserve and enhance natural and cultural resources. Greenways may also provide recreational opportunities, aesthetic benefits, and linkages for users between open space and recreational facilities. Greenways can:

- Tie park components together to form a cohesive park, recreation, and open space system;
- Emphasize harmony with the natural environment;
- Preserve an attractive environment for residents, businesses, and visitors (It seems highly unlikely that the meandering Colorado River in the Grand Canyon National Park would be visited by thousands of people every year if its banks were lined with homes and businesses.);

- Allow uninterrupted and safe pedestrian movement between parks throughout the community;
- Protect areas inappropriate for development such as flood plains, wetlands, and steep slopes;
- Promote tourism and can enhance the local economy;
- Foster a greater awareness and appreciation of historic and cultural heritage;
- Provide people with a resource-based outdoor recreational opportunity and experience;
- Promote a sense of place and regional identity;
- Provide an effective and sensible growth management tool; and
- Enhance property values.

Other Development Regulations

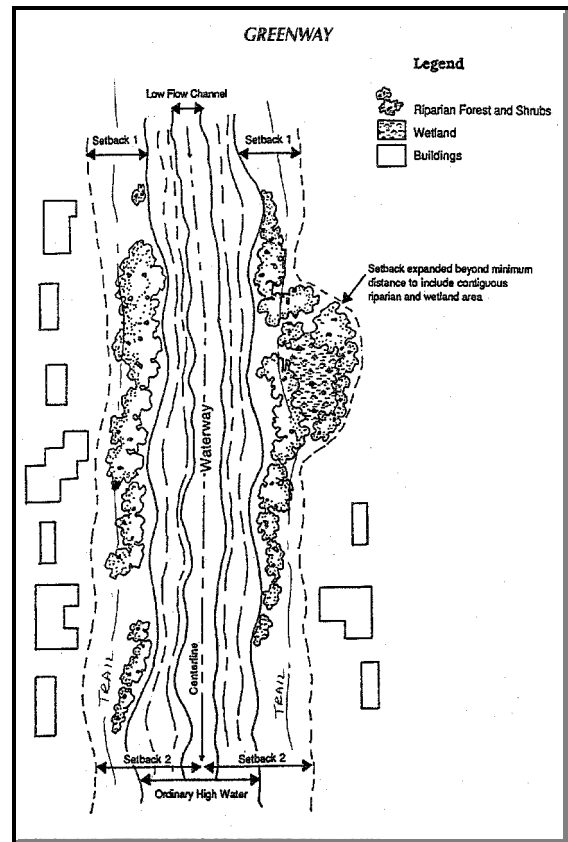
Tree Preservation Ordinance

A tree preservation ordinance can be implemented to reduce the number of trees removed from a new development site. Tree ordinances can be general or specific. A general tree ordinance can refer simply to the natural features of a site. If a general ordinance is preferred by a community, then a natural features inventory and a site design that incorporates natural integrity are usual requirements. If a specific ordinance is desired, regulations can be incorporated that restrict the number and size of trees that are removed from a site or require the planting of additional trees or vegetation to mitigate trees that were removed during site development.

Scenic Resource Preservation

Preserving scenic resources can be difficult, particularly since the definition of what views may be worth saving can vary widely from person to person. In addition, the scenic resource can be very large; a vista down the Dowagiac River can include a wide area. These difficulties limit the extent to which scenic resource preservation can be effective. As a result, the best method to address preservation is to discern the view vantage points, or those locations where the most favorable views can be observed.

While the Master Plan may identify particular views of significance, local authorities may determine that other views are important to their particular community. The same preservation methods described may be used in these situations as well.



View Categories

For the purposes of prioritizing and protecting visual resources, three categories of view resources may be identified:

- C *Cultural views* are those which focus on man-made elements or evidences of human activity.
- C *Natural views* are physical features that are recognizable from long distances.
- C *Viewsheds* are broad areas of view, often encompassing one or more cultural and/or natural views. Viewsheds are often further divided into two categories: critical and scenic.

Critical viewsheds include those views which are so unique to the area that the economy and character of the area are defined by them. They surpass any number of scenic or specific views by encompassing all that which is within sight from specific public vantage points. These views uniquely and dramatically identify the character of the area.

Because of the economic value and universal appeal, critical viewsheds should be protected from the negative impacts of development. The best available planning techniques should be used to regulate development of parcels completely or partially in the critical viewshed. These techniques may include:

- C clustering of structures;
- C sensitive site design;
- C design controls that limit obscuring by artificial berming, mounding, or landscaping;
- C submission of architectural information for dimensions, height, and roof lines;
- C development setbacks from crests of hills.

Scenic viewsheds are views that typify the aesthetic qualities of the region, such as the views of rolling hills and wooded areas. Development in these areas may be allowed, but more restrictive controls concerning height and size of buildings, minimum lake and road lot widths, sign regulations, and increased setback requirements may be appropriate in selected areas.

Implementing scenic view preservation requires:

- C definitions of critical and scenic viewsheds;
- C mapping of viewsheds, viewing points, and view planes; and
- C zoning ordinance provisions, or a separate ordinance, containing development restrictions and review procedures for developments proposed in these areas.

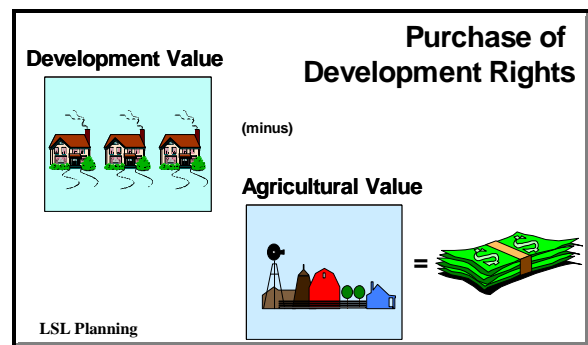
Voluntary Open Space Preservation Techniques

Purchase Of Development Rights/Transfer Of Development Rights

Both Purchase and Transfer of Development Rights (PDR/TDR) programs are voluntary preservation programs that allow individual property owners to sell the development rights to their land. Both programs involve the use of conservation easements. The difference between the two programs is the opportunity in a TDR program for the development right to be utilized in another area. Typically, these land preservation programs are used to preserve agricultural land though the techniques could also be effective for preserving open space.

Purchase of Development Rights (PDR)

The purchase of development rights has a similar setup and advantages as conservation easements. The landowner voluntarily sells the development right to his property, for compensation for not developing the land. The landowner still maintains ownership of the land to continue using the land for farming practices or for preserved open space. The land can be sold or transferred, but can never be used for non-farm development.



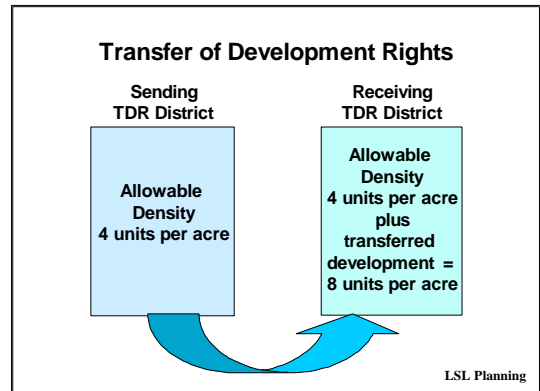
The value for the purchase of the development rights is the difference between the fair market value and the agricultural or open space value of the land. With the income from the sale of the development rights the landowner has money to expand existing farm operations, pay off debt, college education, inheritance to non-farm related children, retirement, and much more. Besides extra income, the sale of development rights allows the land to be assessed at a lower tax rate, decreasing property tax and inheritance taxes of the land.

However, none of these programs are entirely permanent and may be designed to allow some way out by proving through stringent test that keeping the land open for productive agriculture is no longer possible in that area. Then most programs allow the landowners to buy back development rights.

One fundamental concern with PDR programs is funding the program. The funds may come from private agencies like American Farmland Trust, state bond referendums, grants, donations, P.A. 116 lien fund, or an increase in other local funding sources, such as a special tax on building permits. The state of Pennsylvania, for example, adopted a 2% sales tax on cigarettes. These programs have passed voter approval and have been largely supported by non-farming communities and urban residents who have witnessed the loss of farmland and open space. Most people may not live in rural communities, but enjoy viewing them on occasion.

Transfer of Development Rights (TDR)

A TDR program allows the development rights for a particular property to be transferred from land that a community wishes to be kept undeveloped (sending area) to another location where additional development is preferred (receiving area). The second location then is permitted to develop its own development rights in addition to the rights transferred from the first property. TDR then becomes a tool to redirect growth from one area of the community to another. For example, under a TDR program, the property owner of valuable open space, which the local government is committed to preserving, may be permitted to sell the rights to develop the property.



A buyer purchases these rights for use in another location and is permitted to develop the property at a greater intensity than may otherwise be allowed by the community. It is also possible for more than one buyer to be involved in the transaction; an owner of development rights may split those rights to multiple buyers. Once a sale transaction is completed, record of the sale is then recorded with the local Register of Deeds. A conservation easement, or some other permanent instrument, is then recorded against the property whose development rights have been sold.

Although no specific state authorization addresses TDR regulations, particularly for transfers between communities, it may be possible to implement such a program within a single community through a PUD process, where the parties to the PUD would be the "buyer" and the "seller" of the development rights.

Conservation Easements

A conservation easement is the voluntary donation of land to have restrictions placed on it for the protection of agriculture, open space, and natural resources. The landowner still owns the land and can use it for specific conditions that the landowner and the nonprofit easement holder have agreed upon. Agricultural easements are designed to benefit the landowner, to assist him in keeping agricultural lands productive and protected from development.

The easement is considered a charitable contribution for which the landowner does not receive direct income benefits from the donation of their land. The landowner benefits from the donation through federal and state income tax deductions, lower property taxes, and reduction in estate and inheritance taxes. The value of the conservation easement is the difference between the fair market value and the value of the land after restrictions have been imposed.

These values are determined by a professional surveyor who considers the fair market value based on the development pressures of the land to determine how much the conservation easement is worth. The tax relief that the landowner receives can be used to keep the land productive without having to sell more land and ensure the property for future generations.

Preserving Land in the Dowagiac River Watershed

The Southwest Michigan Land Conservancy (SWMLC) is a non-profit, tax-exempt organization that protects the diversity, stability, and beauty of Southwest Michigan by preserving our natural and scenic lands. SWMLC serves a nine county region in southwest Michigan which includes Allegan, Barry, Berrien, Branch, Calhoun, Cass, Kalamazoo, St. Joseph, and Van Buren. To discuss preservation options, call SWMLC at (616) 324-1600.

Conservation easements can be made flexible to the landowner's needs. Certain rights to use the property can be maintained by the owner, such as the right to grow crops, cut timber, construction of new farm buildings, locations of homes for family members, or limited divisions of lots for resale. Requesting to keep these rights will affect the value of the conservation easement. The easement holder assumes the responsibility to make sure that all the restrictions are enforced.

The length of the easement may run from a few years to permanent preservation. However, federal tax benefits are only available on permanent easements. The conservation easement stays in effect if the property is bought, sold, given or transferred to another owner. The new owner then assumes all responsibility of the conservation easement. Should the surrounding areas change to the extent that the restrictions of the conservation easement can no longer be reasonably maintained the easement may be changed or terminated through court action.

P.A. 116

The Farmland and Open Space Preservation Act, known as P.A. 116, provides the framework for four programs to preserve farmland and open space. The two that apply to open space preservation are the Local Open Space Easement and the Designated Open Space Easement.

Both programs are voluntary and involve the use of a temporary conservation easement, usually between 10 and 90 years, do not permit land to be developed while in the easement, allow the landowner a direct property tax reduction equal to the development right value of the property, and provide an exemption from local special assessments.

The difference between the two programs is eligibility. The Local Open Space Easement is available for both open space and farmland on predominantly undeveloped property of any size (but generally 40 acres or more) possessing natural or scenic resources that through their preservation would conserve resources, such as soils, wetlands, beaches, historic sites or recreational assets.

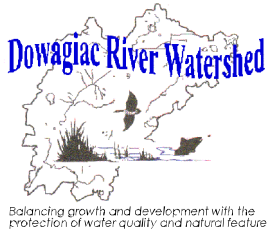
The Designated Open Space Easement is specifically for areas delineated as historic or environmentally sensitive. Eligibility is to undeveloped property of any size that is historic in nature, along a state Designated Natural River, or within an Environmentally Sensitive Area

designated under the Shorelands Protection and Management Act.

Conclusion

There is a wide variety of options available to any community, both regulatory and voluntary, that will assist in the preservation of valuable open spaces. The ability to successfully implement these provisions lies principally in the commitment and will of the decision makers. It is likely that vigorous pursuit of these options lies only in those communities where open spaces are considered essential to the quality of life.

It is equally important that the purpose and intent of any regulation or program is clearly communicated to the people who may be affected. Without popular support, the long term commitment of the community is jeopardized. It is clear that substantial education efforts are needed to ensure that these purposes are properly communicated.



ACTION AND IMPLEMENTATION

Community _____

Open Space Protection	Yes	No	Need to Know More
Lot Widths (page 3)			
Development Setbacks (page 3)			
Open Space Development (page 4)			
Overlay Zoning (page 5)			
Greenways (page 5)			
Tree Preservation Ordinance (page 6)			
Scenic Resource Preservation (page 6)			
Critical Viewsheds (page 7)			
Scenic Viewsheds (page 7)			
Purchase of Development Rights (PDR) (page 8)			
Transfer of Development Rights (TDR) (page 9)			
Conservation Easements (page 9)			
P.A. 116 (page 10)			