

**Techniques for Land Conservation (page 1 of 9)**  
**SHENANDOAH VALLEY BATTLEFIELDS NATIONAL HISTORIC DISTRICT**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
Land purchase at fair market value <sup>1</sup>  <i>Full protection of land in perpetuity</i>	A transfer of ownership to a willing buyer from a willing seller at fair market value.	Depends on available funding and speed with which purchaser(s) can act; 60 days to one year.	Purchase price of land. Closing costs. Appraisal cost (not always required). Maintenance costs of land including taxes.	Strongest; allows complete control over the parcel.	Usually none. Local governments may find it advisable to transfer a conservation easement (see action described below) to an independent qualified holder to bind future officials to conservation intent.	Shenandoah Valley Battlefields Foundation (SVBF), District partners, land trusts, local, state, and federal governments, or conservation-minded buyer(s).
Land purchase at bargain price (less than fair market value)  <i>Full protection for lower purchase price</i>	See above. Buyer agrees to accept less than fair market value, and if selling to a nonprofit or government buyer, the seller may be able to deduct the difference in value as a charitable contribution for state and federal income taxes. Federal deduction generally allowed if the difference in value is 20 percent.	Depends on available funding and speed with which purchaser(s) can act; 60 days to one year.	Reduced purchase price of land. Closing costs. Appraisal cost (not always required). Maintenance costs of land including taxes.	Strongest; allows complete control over the parcel.	Usually none. Local governments may find it advisable to transfer a conservation easement (see action described below) to an independent qualified holder to bind future officials to conservation intent.	SVBF, District partners, land trusts, local, state, and federal governments, or conservation-minded buyer(s).

<sup>1</sup> All transactions listed in this document may be initiated by the property owner or solicited by a land conservation entity.

**Techniques for Land Conservation (page 2 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Acquisition of land via donation or bequest</p> <p><i>Full protection and tax benefit for seller</i></p>	<p>Property owner freely transfers the property by transferring the deed or by instructions in his or her will</p>	<p>Owner may initiate the bequest or donation. Timing varies—60 days to a year for donation; for a bequest, the property would not be transferred until death of the owner.</p>	<p>Donor or the estate of the party making the bequest typically covers transfer costs.</p> <p>Maintenance costs of land including taxes.</p>	<p>Strongest; allows complete control over the parcel.</p>	<p>Donor may choose to stipulate restrictions. Recipients generally prefer to be told of the donation or bequest in advance and to work with the donor on terms, and may refuse unexpected donations or bequests.</p>	<p>SVBF, District partners, land trusts, or local, state, and federal governments.<sup>2</sup></p>
<p>Acquisition or receipt of charitable remainder trust (or “donation with reserved life estate”)</p> <p><i>Full protection similar to bequest without potential for contested wills</i></p>	<p>Sale or donation (for charitable deduction) of property with retention of use by seller/donor until the seller/donor or his or her heirs die. Further stipulations may be applied. Owner can take a deduction for the donation immediately.</p>	<p>Owner initiates the transaction. Timing varies—6 to 12 months.</p>	<p>Administrative costs.</p> <p>Maintenance costs of land including taxes.</p>	<p>Strongest; allows complete control over the parcel once acquired.</p> <p>(Acceptance of the trust can be conditioned on maintenance of property so as to maintain integrity.)</p>	<p>Often none. Use may be restricted to terms negotiated between recipient and donor.</p>	<p>SVBF, District partners, or land trusts.</p>

<sup>2</sup> It is unusual but not unheard of for property owners to donate property to governmental bodies. Other techniques following this point may also be used by governmental bodies to protect land, but require a level of expertise and experience more often found among land trusts, which can work on behalf of governmental bodies.

**Techniques for Land Conservation (page 3 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Acquisition of option or right of first refusal</p> <p><i>Securing exclusive purchase arrangements</i></p>	<p>Property owner agrees to sell or donate a property or property interest by either of two methods:</p> <p>Purchase option – allowing the purchaser the right to buy the property at a later date at a specified value (or with an agreed process for determining future value)</p> <p>Right of first refusal – the right to match a <i>bona fide</i> offer of purchase within a specified period of time.</p>	<p>Depends on available funding and speed with which purchaser(s) can act; 30 days to one year. Property itself may not be acquired for years.</p>	<p>Purchase price of option or right of first refusal.</p> <p>Legal fees.</p> <p>Recording costs.</p> <p>Associated purchase costs when actual purchase occurs.</p> <p>Maintenance costs of land including taxes.</p>	<p>Strong when option or right is exercised. (May be conditioned on maintenance of property so as to maintain integrity.)</p>	<p>Usually none.</p>	<p>SVBF, District partners, land trusts, or conservation-minded buyers.</p>
<p>Acquisition or receipt of undivided interest</p> <p><i>Ownership of a share of a property to affect the use of the whole property</i></p>	<p>Acquisition or receipt of donation of an interest or share of a property.<sup>3</sup> Usually occurs when multiple owners collectively share ownership. Each owner enjoys equal property rights.</p> <p>Such owners may sell or donate their interest to a conservation-minded buyer (if transferred to a nonprofit via donation or bargain sale, the value may be deductible), thus potentially limiting use of other owners.</p>	<p>Depends on available funding and speed with which purchaser(s) can act; 6-12 months.</p>	<p>Purchase price of interest.</p> <p>Closing costs.</p> <p>Maintenance costs assignable to the interest obtained, including taxes.</p>	<p>Protection depends upon scope of ownership interest.</p>	<p>Undivided interest permits holder a voice in operation or disposition of property, including the power to force sale or division of the parcel.</p>	<p>SVBF, District partners, land trusts, or conservation-minded buyers.</p>

<sup>3</sup> Note the difference between the following: rights of a property (development, use, mineral, etc.), share of property (multiple owners with equal rights to a single parcel of land), and subdivision of property (into individual parcels).

**Techniques for Land Conservation (page 4 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
Land exchange  <i>Swapping land to improve effectiveness of conservation activities</i>	Public entities or nonprofits exchange developable land of low conservation value for land with high conservation value. Can be exchanged between private and public entities. May reduce capital gains taxes for original owner of protected land.	Depends on available funding, parcel for exchange, and speed with which purchaser(s) can act; 6-12 months.	Administrative costs. Closing costs. Appraisal costs. Maintenance costs of land if exceeding original holding or if property was bought for the exchange, including taxes.	Strongest; allows complete control over the parcel. Land exchanged may or may not be restricted via conservation easement or covenant.	Usually none.	SVBF, District partners, land trust, or conservation-minded buyer.
Donated conservation easements  <i>Conservation through partial ownership</i>	Owner of land voluntarily restricts the developable use of the land by stating limits in the deed, according to rules specified under Virginia law. The limits form a transferable interest that can be donated to a qualified organization <sup>4</sup> and the value may be deductible from state and federal income taxes.	For purchased easements, depends on available funding and speed with which purchaser(s) can act; if donated, the recipient may initiate; 3-12 months.	Administrative costs. Appraisal, documentation, and endowment costs. <sup>5</sup> Recording costs. Annual inspection costs, when not covered by endowment.	Second strongest after fee simple ownership.	Depends on terms of easement; development, subdivision (beyond reservations for use by the owner and family) or a substantial change in use may be prohibited. Easement restricts all future owners. <sup>6</sup>  Easements often address property maintenance and provide a right of inspection.	SVBF, District partners, land trusts, and local, state and federal governments.

<sup>4</sup> New nonprofit organizations must wait five years to hold non-appurtenant easements in Virginia. There is no waiting period for co-holding easements when one co-holder has been qualified under Virginia law. Organizations receiving donated easements for which the donor intends to take a tax deduction must be qualified under federal tax rules.

<sup>5</sup> The Virginia Open Space Land Preservation Trust Fund may pay for appraisal, survey, and documentation expenses for donated easements. Endowment and other donation expenses are generally tax deductible as charitable contributions. Endowment pays for monitoring and enforcement. Documentation provides "base line" data for monitoring.

<sup>6</sup> Easements must be re-recorded periodically to assure they remain in force under state law.

**Techniques for Land Conservation (page 5 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
Purchased conservation easements  <i>Conservation through partial ownership</i>	Same as above, except that owner sells the interest in exchange for cash and/or other financing and may therefore pay capital gains taxes. Most often used to conserve farmland by limiting development.	Depends on available funding and speed with which purchaser(s) can act; 6-12 months.	Administrative costs. Appraisal, documentation and endowment costs. Recording costs. Annual inspection costs.	Second strongest after fee simple ownership.	Depends on terms of easement; development, subdivision (beyond reservations for use by the owner and family) or a substantial change in use may be prohibited. Easement runs with land, restricting all future owners. <sup>5</sup> Easements often address property maintenance and provide a right of inspection.	Federal, state, and local governments. <sup>7</sup> Land trusts may also use this technique if they have available funding.
Covenants <sup>8</sup>  <i>Deed restrictions</i>	A restriction of use placed on a property by the owner before the property is sold. Though generally voluntary, covenants can bind future owners. Similar to an easement if used by a nonprofit or government. May be purchased or donated, but donation may not be deductible.	Time varies with negotiation; 3-12 months.	Same as an easement.	If adjacent to land permanently held by a nonprofit or corporation covenant holder, second strongest after fee simple ownership.	Depends on terms of covenant. A covenant may not bind future owners.	SVBF, District partners, land trusts, and neighboring conservation-minded buyers.

<sup>7</sup> The Virginia General Assembly has enabled local governments with the authority to use public funds to purchase easements.

<sup>8</sup> This technique is best used where the covenanted land is adjacent to land owned by the covenant holder; for a non-profit, this approach is similar to a conservation easement.

**Techniques for Land Conservation (page 6 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Lease, with option to buy</p> <p><i>Temporary conservation with potential for long-term conservation</i></p>	<p>A rental agreement for a specified period of time, with an extra, legally recorded clause for optional purchase at a specified price.</p>	<p>Depends on available funding and speed with which purchaser(s) can act; 3-12 months.</p>	<p>Negotiable between lessee and lessor.</p> <p>Closing costs.</p> <p>Maintenance costs of land including taxes.</p> <p>Legal expenses of drafting agreement.</p>	<p>Until option to purchase is exercised, it is only as strong as the terms of the lease and the intentions of the landowner.</p>	<p>Use restricted to terms negotiated between lessor and lessee.</p>	<p>SVBF, District partners, and land trusts.</p>
<p>Leases and management agreements</p> <p><i>Low-cost, but temporary conservation method</i></p>	<p>Leases are rental agreements and may be governed by legal rules; management agreements may have fewer legal rules but work in essentially the same way. Rental payments may not change hands for management agreements. Under leases, the lessee is responsible for the property; under a management agreement, the owner retains responsibility.</p>	<p>2-12 months.</p>	<p>Negotiable between lessee and lessor.</p> <p>With a lease, could require maintenance costs of land including taxes, depending on terms of the lease.</p> <p>Legal expenses of drafting an agreement.</p>	<p>Only as strong as the terms and length of the lease or agreement and the intentions of the landowner.</p>	<p>Use restricted to terms negotiated between lessor and lessee.</p>	<p>SVBF, District partners, land trusts, and, for leases, conservation-minded lessee(s).</p>
<p>Voluntary dedication and voluntary payment in lieu of dedication</p> <p><i>Conservation as part of new subdivisions</i></p>	<p>Request by local government for a developer to voluntarily donate land for open space or pay a fee as an incentive for subdivision approval. Payment may be used to fund other land conservation activities.</p>	<p>Speed determined by will of local governments to request such conditions.</p>	<p>Administrative costs.</p> <p>Land maintenance costs including taxes for developer or residents of subdivision.</p> <p>Legal expenses of drafting an agreement.</p>	<p>Potentially strong protection for land dedicated or purchased through payment.</p>	<p>Local government policy may prescribe how such land or cash may be used.</p>	<p>Local governments with public support.</p>

**Techniques for Land Conservation (page 7 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Agricultural and Forestal Districts</p> <p><i>Districts for easier farming</i></p>	<p>Use-value taxation program for forestal and agricultural land in specific districts.</p> <p>Also protects land owner from farm-related nuisance claims and exercise of eminent domain.</p>	<p>Six months or more. Requires minimum acreage (usually involves more than one owner) and agreement by local government.</p>	<p>Administrative costs for local government.</p>	<p>Moderate. Fairly strong through the life of the district, but must be renewed every five to ten years. An owner who stops participating in a district may face penalties.</p>	<p>Limits property to agricultural and forestal uses.<sup>9</sup></p>	<p>Property owners and local government.</p>
<p>Exercise of state and federal regulations for ecologically sensitive areas</p> <p><i>Relying upon available regulations</i></p>	<p>A wide variety of state and federal regulation can be used to support land conservation if enforced. Generally for wetlands and habitat for endangered species.</p>	<p>Usually immediate, but may depend upon the regulation. Habitat conservation plans may take time to prepare, but a moratorium on further development is often imposed until negotiations are complete.</p>	<p>Administrative costs.</p>	<p>Strong but protection technique only available for use in sensitive area.</p>	<p>Restriction depends upon terms of regulation.</p>	<p>Federal and state governments; local governments may participate.</p>
<p>Land use and transportation planning</p> <p><i>Land conservation through local planning</i></p>	<p>Land use planning (zoning and subdivision review) and transportation planning can be used to decrease development pressures on land.</p>	<p>May take years to encourage local governments to require consideration of impacts on battlefields and other resources and to call for their protection.</p>	<p>Administrative costs for local government.</p>	<p>As strong as the will of local government. Not permanent protection.</p>	<p>Depends upon the type of implementation tool employed (i.e., zoning).</p>	<p>Local governments with public support.</p>

<sup>9</sup> Use is limited to agriculture but does not specify type of agriculture. Farm owner may subdivide land for use by family only.

**Techniques for Land Conservation (page 8 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Cluster zoning/ Planned Unit Development</p> <p><i>Conservation as a component of subdivision</i></p>	<p>Allows conservation by clustering subdivisions into small areas and dedicating the remainder of the property as open space. A PUD provision allows clustering for large mixed use developments.<sup>10</sup></p>	<p>Up to one or more years to gain approval from all necessary planning and zoning boards and governing bodies.</p>	<p>Administrative cost for local government.</p> <p>Extra design costs for developer, although costs may be recaptured in faster sales and higher prices.</p>	<p>Good planning concept for land conservation, but not first choice for protecting high priority parcels of core battlefield land. This tool is stronger if it requires permanent dedication of open space, but is still limited by the location and extent of the development.</p>	<p>Varies with local government requirements on protecting open space.</p>	<p>Property owners (developers) and local governments.</p>
<p>Density bonuses</p> <p><i>Offering benefits to developers for concentrating new development</i></p>	<p>Local governments provide developers special conditions, variances and other similar benefits in exchange for increased density in subdivision</p>	<p>Local lobbying for government to offer bonuses for higher density development may take years.</p>	<p>Administrative cost for local government.</p> <p>Extra design costs for developer, although costs may be recaptured in faster sales and higher prices.</p>	<p>Good planning concept for land conservation, but not first choice for protecting high priority parcels of core battlefield land. This tool is stronger if it requires permanent dedication of open space, but still limited by the location of the development. Results in additional development on some land in exchange for protection of other lands. Best if bonuses are banked to protect large areas of significant battlefield land.</p>	<p>Varies with local government requirements on protecting open space.</p>	<p>Property owners (developers) and local governments.</p>

<sup>10</sup> Accomplishes land preservation, but could involve a subdivision or other development on battlefield land.

**Techniques for Land Conservation (page 9 of 9)**  
**Shenandoah Valley Battlefields National Historic District**

Action	Definition	Speed of Use	Expenses	Relative Strength of Protection	Degree of Restriction	Who Can Use the Technique
<p>Conservation subdivisions</p> <p><i>Clustering to protect key features</i></p>	<p>Similar to clustered development with emphasis on conserving specified natural, cultural, and historic features.</p>	<p>Local lobbying for government to permit and encourage such development may take years.</p>	<p>Administrative cost for local government.</p> <p>Extra design costs for developer.</p>	<p>Good planning concept for land conservation, but not first choice for protecting high priority parcels of core battlefield land. Strong if it requires permanent dedication of open space, but a portion of the parcel is still developed. Typically offers smaller lot size than the required minimum and greater dedicated open space.</p>	<p>Usually involves permanent prohibition of additional subdivision and/or permanent protection of shared open space, if any.</p>	<p>Property owners (developers) and local governments.</p> <p>May be used by land trusts in certain situations.</p>
<p>Large lot zoning</p> <p><i>Limiting development through zoning</i></p>	<p>A zoning category for conservation requiring specified minimum lot sizes. (Usually 25-40 acre minimum)</p>	<p>Up to a year to revise zoning ordinance and zoning map. May require time for amendment to comprehensive plan.</p>	<p>Administrative costs for local government.</p>	<p>Not strong because it is reversible by a zoning change, or can be undermined by variance, but it can support agriculture and slow loss of land through subdivision.</p>	<p>Subdivision would require zoning amendment or variance.</p>	<p>Local governments with public support.</p>
<p>Recognition and certification program</p> <p><i>Using prestige, public recognition, and raised awareness to encourage conservation</i></p>	<p>Honorary distinctions conferred for property owners who excel in conservation activities or for properties that exhibit historical and ecological significance. Examples include the state and federal lists for historic resources and scenic byway and river designations. New local programs may be created with similar benefits and results.</p>	<p>Need lead time to create program; once program is set up and the public is aware of the program, speed would be determined by the time needed for application preparation, review and designation.</p>	<p>Administrative costs, publicity, and fabrication of signage.</p> <p>Some monitoring costs, as organizations with such programs typically visit the property for friendly consultation.</p>	<p>Little strength, but educates owners about other possibilities.</p>	<p>No restriction.</p>	<p>SVBF, District partners, or land trusts.</p>

Sources:

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