

*Section 3.*

## **Open Space Acquisition, Administration, Management and Funding Analysis, and Policy Recommendations**

### **3A. Acquisition Issues & Policies**

#### **Tools for Acquiring and Protecting Greenways and Open Space**

There are many ways to protect open space. The most common—but also most expensive as a rule—method of protecting land is to purchase it outright (i.e., to buy it in “fee simple”). This tool is well known in Gwinnett County. Since the passage of the 2001 Special Purpose Local Option Sales Tax, the County has led the Atlanta metropolitan region in acquiring and protecting new parkland. It is expected that fee simple acquisition will remain a key element of the Open Space and Greenway Plan, and was, in fact, identified as the preferred land preservation method by the Citizens’ Steering Committee. Gwinnett County has recognized from the beginning that it cannot meet all of its open space protection goals through acquisition alone.

The County’s 2000 Georgia Community Greenspace application specified the use of several other tools, including conservation subdivisions and stream corridor protection, in meeting a total goal of protecting 20% of the County land area. The purpose of this chapter is to evaluate the tools currently used in Gwinnett County and to present some additional options. The presentation has been restricted to those methods judged to have the best chances of success, based on current conditions and information provided by County staff and citizens. Some tools, such as transferable development rights, are not currently viable but are presented because they have good potential for use in the future.

#### *Acquisition*

Acquisition is not limited to purchase of land in fee simple, but also includes purchase of development rights and acceptance of donations of land and development rights. This discussion includes acquisition by conservation organizations, such as land trusts, as well as by the County. This method of land preservation was identified as one of the top three methods of land preservation by the Citizens’ Steering Committee.

#### *Fee Simple Acquisition*

Fee simple acquisition results in the direct ownership of real property; it is the most complete form of land ownership. Fee simple purchase will provide the County title to the property. Within reasonable limits, the County can use the property in any manner consistent with its goals for permanent open space protection including providing for public access.

Fee simple acquisition can be very expensive. Nevertheless, it is probably the best choice for properties to be used for parks, trails, or other uses where public access is necessary. For many types of land, such as riparian corridors protected mainly for water quality purposes, public access is unnecessary or even undesirable. In these cases, it may make sense to acquire only limited development rights or to use other forms of land protection that do not require the expense of outright purchase in fee simple.

### *Acquisition of Development Rights or Less-Than-Fee Interests*

#### *Conservation Easements*

Landowners can voluntarily agree to give up one or more of their development rights in order to protect natural or cultural resources. The landowner sells or donates the development rights to a second party, either a government body or a charitable organization called a land trust, which “holds” the development rights and ensures that they are not used. This is documented in the form of a conservation easement which is recorded with the chain of title for the deed to the property. If the parties agree that the restrictions are to be permanent (rather than for a specified term of years), all future owners of the property are subsequently bound by the restrictions of the easement. The easement holder monitors the property to ensure that the agreement is not violated and pursues legal recourse if necessary to compel compliance.

The federal and state governments provide some tax relief to landowners who donate permanent conservation easements that promote the conservation values of outdoor recreation and education, habitat protection, open space that provides a scenic view or promotes a clearly delineated governmental policy, and historic resource protection. The landowner may deduct the value of the easement from federal and state income taxes (up to 30% of the landowner’s adjusted gross income over a period of six years until the value of the easement is exhausted). Estate tax liability should decrease as well because the estate tax is levied on the encumbered value of the estate. Furthermore, property taxes may decrease because restricting various development rights may diminish the fair market value of the land.

Georgia’s Uniform Conservation Easement Act, O.C.G.A. Sections 44-10-1 et al., authorizes and promotes the use of conservation easements to “retain or protect natural, scenic, or open space values; assure availability for agricultural, forest, recreational or open space use; protect natural resources; maintain or enhance air or water quality; and preserve the historic, architectural, archeological or cultural aspects of real property.” Thousands of acres of land in the state are permanently protected via conservation easements. These include longleaf pine plantations in southwest Georgia, a meadow of wildflowers in Gilmer County, sensitive floodplains and wetlands adjacent to major rivers and their tributaries throughout the state, the façade of a historic factory now housing loft apartments in Marietta, and large open spaces in conservation subdivisions in metropolitan Atlanta. There are at least five easements in

place in Gwinnett County, providing permanent protection of over 200 acres of riparian buffers and other sensitive land. These easements are held by the Gwinnett Open Land Trust, the Southeast Land Preservation Trust and the US Army Corps of Engineers. In all of these cases, the landowner continues to hold title to and enjoy his property while forgoing only those development activities (such as subdivision of the land) that would adversely affect the conservation values set forth in the easement. The Chattowah Open Land Trust and the Gwinnett Open Land Trust protect an additional 200 acres of land through fee ownership.

#### *Cooperation with Land Trusts and Other Organizations*

Gwinnett County landowners have proved by example that they are willing to donate certain development rights in order to permanently protect greenspace. It is likely that more easements would be donated if more landowners understood this tool. The County can play a critical role in promoting the use of conservation easements in several ways. It can actually recruit and hold conservation easements; it can partner with private land trusts such as the Gwinnett Open Land Trust and the Chattowah Open Land Trust to educate landowners about easements and to target lands identified in this master plan for the recruitment of easements; and it can continue to provide ad valorem taxation relief to easement donors.

It is recommended that, where appropriate, Gwinnett County should work in concert with private land trusts. Also, the County should develop internal educational opportunities to educate staff so they can answer basic questions about conservation easements and, where appropriate, suggest an easement as an option to a developer or other landowners. They could also encourage land trusts to recruit easements in the areas identified as priorities in this master plan. The County should also be prepared to hold some easements on its own.

There are advantages to having both private land trusts and the government acting as a land trust in a single community. Some landowners are more comfortable donating land to a private nonprofit organization than to a government body. Furthermore, there are occasions when land trusts can move more quickly in negotiating and accepting easements than can public agencies. At the same time, it might be optimal for the County to hold some easements itself in order to have more control. These might include easements on land that must be protected in order to assure that source water standards, total maximum daily loads and other water quality mandates are met. These easements could be held by the Department of Community Services or by the Department of Public Utilities, depending on whether public access will be allowed. There is precedent for local governments holding conservation easements in Georgia; the City of Alpharetta holds an easement on wetlands and Newton County is in the process of establishing a quasi-governmental land trust. This is an option for Gwinnett County, as is working out arrangements for the Recreation Authority to hold some easements.

### *Purchase of Development Rights (PDRs)*

Though both federal and state law provide income, estate and property tax benefits to landowners who donate conservation easements on their property, these benefits may not fully compensate the landowner for the development potential they lose by foregoing certain uses of their land. This makes the donation of conservation easements unattractive to many landowners. In response, over 200 local and state governments have developed Purchase of Development Rights, or PDR, programs. The landowner retains ownership of the property and usually continues traditional uses of the land, such as farming or forestry. In consideration of the sale of development rights, the landowner places a conservation easement on the property, which restricts specified development of the property in perpetuity. The acquisition and maintenance costs associated with a PDR program can be significantly lower than that of a fee simple acquisition program, although the County's control of the property is not as complete. A purchase of development rights generally does not include a provision for public access, although this may be negotiated.

Governments rely on a variety of funding sources to purchase these development rights ranging from bond referendums to sin taxes to special purpose local option sales taxes to real estate transfer taxes. In addition to local legislation and community funding, these programs also require state legislation that supports the program. Howard County Maryland, Sonoma County, California, Town of Dunn, Wisconsin and Lancaster Pennsylvania are a few of the communities that have initiated programs to purchase development rights to protect open space. For that reason, we have included a series of case studies on successful PDR programs in Appendices B and D. The potential for purchasing development rights, particularly along stream corridors and agricultural lands adjacent to existing park and open space properties, is high in Gwinnett. However, the steps discussed in the case studies must be completed in order for the program to become a reality.

### *Multi-Purpose Easements*

It is recommended that Gwinnett County incorporate the right of public access into new sewer easements or coordinate the acquisition of sewer and access easements, creating a network of greenways that link new subdivisions and homes with other greenspaces and public facilities such as schools, libraries and job centers. To that end, the Gwinnett Parks and Recreation Department would work with the Department of Public Utilities, as well as the municipalities, to acquire public access easements on new sewer lines and would recruit public access easements along existing sewer lines in areas of desired linkages specifically identified in the greenspace plan. The needs associated with water and wastewater services must be met, and supplemental funding provided. Georgia Greenspace Trust Fund monies could be used to acquire these public access easements so long as they were permanent and the corridor was managed in a relatively natural state. In addition to joint access easements, access easement within existing utility easements is another tool for connecting open space properties.

Local governments that have been successful in linking sewer corridor acquisition to greenway facility development include the City of Vancouver, British Columbia and Raleigh, North Carolina. Over half of Raleigh's 40-mile greenway system, consisting of twenty different trail segments along tributaries to the Neuse River, is located on sewer easements. Over 200 property owners have sold greenway access rights to the city.

In 1989, the City of Raleigh enacted an ordinance requiring any new development occurring along the city's proposed greenway trail to provide greenway right-of-way and requiring dedication of greenway access in the floodplain. The ordinance also provides that the city may use impact fees to acquire development rights for its greenway trail. The Raleigh Ordinance, and model greenway access easements, are attached in Appendices B and D.

One of the issues that may be raised by the owners of the land burdened by a public access easement is that of liability for the injury of pedestrians using the footpath. Because they are providing recreational access without charge, Georgia's Recreational Property Act (O.C.G.A. 51-3-20) shields the landowner who donates a public access easement from liability except in the event of gross negligence. It appears that the act also shields the landowner who receives a one-time payment for a public access easement and thereafter allows the public on the land without charge. The Uniform Conservation Easement Act, O.C.G.A. 44-10-3 (e), appears to protect the local government or utility which holds the easement from liability as well. Note that the local government may assume liability from the landowner, as the City of Raleigh has done in its access easement. The relevant provisions of these laws are attached in Appendices B and D.

### *Restrictive Covenants*

Under Georgia law, O.C.G.A. Section 44-4-60, a restrictive covenant can protect greenspace from development in perpetuity if it is written in favor of, or for the benefit of, any federal, state or local unit of government or any corporation, trust or other organization *holding land for use of the public*. There has been no case law in Georgia interpreting the phrase "holding land for use of the public" so this concept remains somewhat ambiguous. Clearly, a restrictive covenant that prohibits development and specifies that the general public may access the space for hiking and biking purposes would qualify. It is less clear whether a covenant that prohibits development in order to protect water quality or wildlife habitat—and does not specifically provide for public access—would be considered "for use of the public." Any covenant that does not satisfy this requirement may be terminated by a majority vote of the affected landowners after twenty years in counties or cities that have adopted zoning laws. Thus, Gwinnett County should rely on restrictive covenants to provide permanent protection of open space only under those conditions where it is sure that the covenant will meet the "holding land for the use of the public" test.

### *Donated Property*

Occasionally, property owners will wish to donate land or interest in land (development rights) to the County to be preserved as public open space. While this may not be an everyday occurrence, the County should be well prepared to accept offers of such land as appropriate. Establishing procedures to streamline the donation process will benefit the County by reducing staff time to handle these cases. The tax benefits received by donors should encourage future donations of land.

The Metropolitan Board of Parks and Recreation in Nashville has found that donations are an important component of its greenspace protection program. Most of the city's greenways cross land protected with "Conservation Greenway Easements" that were donated to the city by the property owners. A sample easement is included as an appendix.

### *Authorization to Accept*

Nationwide, some cities, states and counties authorize particular agencies or departments to accept donations in advance by statute, while others require that the local governing body authorize individual donations. In Gwinnett, acceptance should probably be conditioned on evaluation of value to this Open Space and Greenway Master Plan. Some properties will be highly desirable; others would only be a burden to the County and provide little public benefit. The County should appoint a department, individual or committee to review each offer and recommend acceptance to the County Commission, who would decide to accept or decline on a case-by-case basis. Note that under O.C.G.A §36-64-6, any gift that will subject the County to additional expense for improvements, maintenance or renewal must be subject to the approval of the governing body. The County Commission should consider enacting an ordinance authorizing and specifying these procedures.

### *Coordination*

It is important to appoint an individual who has the responsibility for handling offers of donated land. This responsibility needs to be assigned based on guidelines established by the County. If the responsibilities are split among staff, then one should be designated to handle this responsibility, and it should be clear to other County employees that this is the person to whom inquiries regarding donations be directed. Coordination among departments will be required in the preparation of legal documents related to the donation.

### *General Guidelines*

It is possible for the County to accept properties in fee simple or to accept and hold a conservation easement on a property. Because the tax benefits associated with conservation donations are a critical incentive to landowners, the property should be protected for conservation purposes in perpetuity by a conservation easement, a restrictive covenant or equivalent mechanism. This will allow a donor to receive all

possible tax benefits on fee simple property donations. See Appendix C for information about tax benefits.

### *Evaluation of Property*

A thorough evaluation of potential properties helps the County avoid acquiring undesirable land. In addition, the donor is much more likely to obtain a federal income tax deduction if the property has been evaluated using a well-defined set of criteria, particularly in the case of donated conservation easements. The evaluation scheme can be the same one used to evaluate properties for purchase or other forms of preservation, as long as it includes the requisite factors to establish the conservation value of the property as recommended below.

### *Steps to Take to Facilitate the Donation of Properties*

1. Establish a procedure and develop fixed criteria for evaluating proffered properties or development rights (conservation easements). Establish by ordinance that these criteria will be applied to all potential greenspace properties, whether donated or accepted. In order for the donor to deduct the gift of an easement for federal income tax purposes, it is critical that the property be evaluated under a “clearly delineated governmental policy” as well as the separate “significant public benefit” requirement under IRC §1.170A-14(d)(4).
2. Adopt a resolution or ordinance stating that donations are to be used for a valid and exclusively public purpose, explaining the conservation purpose, committing to protect the property or interest in perpetuity and stating that it is the intent of the County that such donations be tax deductible to the extent provided by law. This may be done once for all donations or as each donation is accepted, in the form of a resolution of acceptance.
3. Prepare model language for conveyances. The conveyance must provide that the donor prohibit the County from subsequently transferring the property interest, unless transferred to a qualified conservation organization and restricted to the original conservation purpose.
- 3a. Prepare a model conservation easement. This will ensure that the County's interests are fully protected and will minimize legal costs of the donor.
4. Designate a County representative to provide acknowledgement of the gift and to sign IRS forms documenting the gift.
5. Prepare a form or certification that the designee can use to acknowledge the gift, including a description of the property, the date and location of the donation, whether the County provided any consideration for the donation (goods or services), and a description and good faith estimate of the value of any such consideration.
6. Prepare guidelines for accepting easements or restrictions on property subject to a mortgage. In order to qualify for a tax deduction, the mortgagee must agree to subordinate its interests to the right of the County to enforce the restriction.

### *Steps to Take When Approached With a Potential Donation*

1. Refer the donor to the designated coordinator, who is responsible for the succeeding steps.
2. Request proof that the property has no known encumbrances, liens, or conditions to transfer.
3. Request a current map of the property and current appraisal of the value of the property. Refer the donor to IRS Publication 561 regarding appraisals, which must be made no earlier than 60 days before the donation.
4. Request proof of title, i.e. title certificate.
5. A Phase 1 environmental study will be required on all property transactions.
6. Evaluate the property and documentation using criteria established in advance by ordinance.
7. Recommend acceptance or denial to the County Commission, who will then vote on the matter.
8. If the property is accepted, provide guidance for preparation of the conveyance, incorporating language ensuring perpetual protection. The deed must substantiate the donative intent of the donor and the conservation purpose of the County, and must prohibit transfer of the property except to another qualified conservation organization.
9. If the contribution is of an easement or similar restriction on property subject to a mortgage, obtain an agreement with the mortgagee subordinating the mortgagee's interest to the right of the County to enforce the conservation purposes of the gift in perpetuity.
10. Record the transfer or restriction in the County land records. Note: in the case of an easement or restriction where the underlying property is subject to a mortgage, the subordination of rights agreement with the mortgagee must be recorded as well, and should be recorded immediately prior to recording the conveyance of easement.
11. After conveyance, provide documentation to the donor. A letter or certification should incorporate a description of the property, a statement indicating whether the County provided any consideration for the donation (goods or services), and a description and good faith estimate of the value of any such consideration. This must be furnished to the donor before he files his tax return for the year in which the property interest is conveyed.
12. Where the County has provided consideration, provide the donor with a statement explaining that only the amount by which the donor's gift exceeds the fair market value of the benefits is deductible.
13. Enter the donation in a register or roll of donations such that a designated County representative may sign IRS Form 8283, required for the deduction.
14. In the case of an easement, take steps to revalue the property for property tax purposes pursuant to O.C.G.A §44-10-8.

### *Mitigation Banking*

Gwinnett County is in the process of developing watershed master plans to fulfill federal and state regulatory requirements for surface water quality. The plans are intended to achieve a reduction of non-point source pollution through the management of stormwater runoff. Master planning for Crooked Creek, Beaver Ruin Creek and Jackson Creek is underway, and all other watersheds will be studied over the course of a five-year period. Planning involves two surveys: the first to identify sites that are in need of stream bank restoration, and the second to identify sites with inadequate stormwater best management practices.

Stream bank mitigation banking and wetland mitigation banking allows the County to meet the objectives of both open space and stormwater programs simultaneously and at a lower cost. A mitigation bank consists of wetlands, stream banks, and upland or riparian buffers that have been permanently protected through a conservation easement or a restrictive covenant. Credits are created from the restoration, enhancement and preservation of these resources. In addition to wetland banks developed by the County, wetland banks developed by private land trust can also benefit the County's overall greenspace goals.

The owner of the bank can then sell the credits to residential and commercial developers, the Department of Transportation and other public and private entities who are required to mitigate the impacts of their development on wetlands and streams pursuant to Section 404 and Section 401 of the Clean Water Act. The County can also use the credits to mitigate the impacts of its own road-building and land clearing operations. By creating a mitigation bank and selling credits, Gwinnett County can recoup the cost of permanently protecting wetlands and streams; it can even use these recovered funds to purchase additional open space.

What type of demand for mitigation credits might Gwinnett County expect? The federal Clean Water Act requires that projects that impact as little as 100' of stream or one-tenth of an acre of wetland be mitigated<sup>1</sup>. The Corps of Engineers authorizes mitigation banking in cases where no feasible opportunities for mitigating at the development site are available, where off-site mitigation is demonstrated to be more environmentally beneficial than on-site mitigation, where impacts of development will be minor, or where projects are linear in nature.

### *Greenway Acquisition*

For the greenway trail development, public access will be required. Since mandating public access to private property raises significant legal problems (including the possibility of "takings" claims), how can Gwinnett County ensure that properties that

---

<sup>1</sup> Projects that impact less than 100 linear feet of stream or one-tenth of an acre of wetland are reviewed case-by-case.

are developed along a planned greenway trail cooperate in its construction and provide public access? There are four options:

- Acquire the greenway portion of the property in fee simple
- Acquire an easement for the greenway portion which stipulates public access as a condition
- Arrive at a mutual agreement between the developer and the County, in which creating the public access greenway is a condition of rezoning
- Provide incentives for developers to include public access greenways

Additional recommendations for developing a greenway system are provided in Section 4.

### *Condemnation*

The practice of condemning private land for use as passive or active recreational parkland is an established practice, though one to be exercised with care. “Friendly condemnation” is commonly used to set a purchase price that is acceptable to both the seller and the County. Condemnation may also prove necessary when there is absentee property ownership, when title to the property is not clear, or when it becomes apparent that obtaining the consent for purchase will be difficult because there are numerous heirs located in different geographic areas. The need to use condemnation to acquire property from unwilling sellers can be minimized with adequate public support for the Open Space and Greenway program.

### *Summary of Major Policies Related to Acquisition*

1. The County should consider adopting a system of evaluating properties for fee simple acquisition based in concordance with the recommended targets for preservation described in Section 3.
2. The County should examine the feasibility of establishing a system for the Purchase of Development Rights (PDRs). The PDR program could be focused on acquiring easements for stream banks and floodplains.
3. The County should consider negotiating multi-purpose easements that combine greenway public access rights with sewer and access easements.
4. The County should consider establishing a system for accepting donations of land. Preparations for receiving such donations could include:
  - enacting an enabling ordinance for land donations
  - establishing a system and responsibility for reviewing and evaluating offers of donations
  - asking the Board of Assessors to evaluate state law regarding the assessment of properties with conservation easements
5. The County should consider establishing *its own* wetlands/streambank mitigation bank to provide a low-cost mechanism to restore and protect streams and wetlands in the County.
6. The County should consider providing incentives for development projects that provide a public access greenway consistent with the Greenway System Plan.

## 3B – Planning, Zoning and Regulatory Tools

### *Conservation Subdivisions*

Conservation subdivisions are residential (or mixed use) developments in which a significant portion of the property is permanently protected as open space and development features are clustered on the remainder of the property. Conservation subdivisions represent a means of preserving significant areas of greenspace at little or no cost to taxpayers while providing increased variety in the housing market—plus infrastructure savings for developers in the bargain. In its greenspace application, Gwinnett County listed the use of conservation subdivisions as one of its tools for meeting greenspace protection goals. Pursuant to this, Gwinnett County created a Conservation Subdivision Overlay District in May, 2001 as an amendment to its zoning code. The ordinance is intended to:

- Promote and protect the environment and its value to people
- Require density neutral development
- Minimize the area of land disturbance
- Provide permanent open space protection
- Improve stream buffers
- Reduce storm water runoff
- Create wildlife corridors
- Protect scenic vistas, archeological and historic features

The ordinance provides the necessary framework for facilitating conservation subdivision development, although it is limited in geographic scope to the R-75 and R-100 zoning districts. It specifies a minimum of 40 percent and 50 percent, respectively, open space and is intended to be density-neutral, so that the same number of houses can be constructed on the property as allowed in the land use plan. This new zoning ordinance produces rewards for the County, the developer and the environment.

The conservation subdivision overlay district option is intended to provide permanent protection of open space. The Gwinnett Board of Commissioners has debated the best way to achieve this goal. At the time of this writing, the rules specify that the open space be deeded both to the homeowner's association and to every lot owner of the subdivision. It appears that this approach would indeed result in permanent protection, although the Georgia Community Greenspace Program might not consider such land permanently protected for its purposes. Placing a conservation easement on the open space remains an option for guaranteeing permanent protection and acceptance by the Georgia Community Greenspace Program. The Tree Advisory Committee has recommended to the Board of Commissioners new language for permanent protection of the open space, primarily through the use of conservation easements.

Since the conservation subdivision was introduced, a number of developers have applied for permits to build under the new rules. In the future, Gwinnett County may wish to consider expanding the overlay zone to other zoning districts. Given the present zoning, most undeveloped areas are classified as R-75 or R-100, so most new home developments can use the conservation subdivision option. However, providing a version of the ordinance for higher density zones and mixed-use zones would encourage the preservation of open space as part of redevelopment projects in more dense areas—a way to provide small neighborhood parks in areas where acquisition is difficult and expensive. In addition, if the County chooses to reclassify zoning districts according to the recommendations in the next section, the conservation subdivision regulations should be modified so that they remain an option in all these districts.

### *Managing the Patterns of Growth*

To be most effective at open space preservation, Gwinnett County should approach land preservation at two scales: the site level and the county-wide level. At the site level, tools such as conservation subdivisions are effective at protecting small parks and open spaces. With luck, these may be connected to form larger areas of open space. At the County level, planning is essential to preserve large areas of open space, to protect watersheds and to provide extended greenway trails.

Gwinnett County's current comprehensive plan and zoning ordinance specify that most of the remainder of the County will develop at a density of three units per acre. Many residents support low density development and are wary of higher densities, since they associate this with less expensive housing and lower property values. Nevertheless, a uniform pattern of low-medium density development can have negative consequences for greenspace preservation since land consumption rates are high. In addition, such a development pattern has economic and social costs. For example, road and utility networks must be longer, making them more expensive to build and maintain. Fire, ambulance and police services are also more expensive and response times are longer.

One way to combat this problem is to allow more housing options and higher housing densities in certain areas while limiting densities in others. Some cities in the County have developed mixed-use zoning districts that allow the blending of residential, commercial and office space within a single development (and requires preservation of 20% open space). This allows neighborhoods where residents can walk or bicycle to work and other destinations. Mass transit stops can be included in this type of development. Currently, Gwinnett County is constructing a form of city center as part of a Livable Centers Initiative. This approach of encouraging development in nodes can also be adapted to the largely undeveloped portions of the County.

### *Transferable Development Rights (Future Acquisition Tool)*

A transferable development rights (TDR) system is a tool that uses market forces to preserve greenspace while encouraging development in the most suitable areas. In a

TDR program, development rights are sold by landowners in “sending zones”, which are designated as priorities for greenspace protection, to landowners in “receiving zones,” which are designated for future growth. Once development rights are transferred, the sending area is protected with a conservation easement. Currently, the County Comprehensive Plan guides the growth patterns county-wide. Updates of the comprehensive plan may want to utilize TDR tools for future open space acquisition. State law changes are necessary to allow transferable development rights (TDR) to be a viable option for the County. If state laws do change, the County should explore TDR programs in greater detail.

### *Riparian Buffers*

Riparian buffers, also known as stream buffers and protected stream corridors, are areas along streams, rivers and lakes that are preserved in natural vegetation to protect water quality and to provide other benefits. For larger streams and rivers, the buffer can essentially be the floodplain; for smaller tributaries that lack an active floodplain, the buffer is simply the adjacent land. Preserving buffers is a cost-effective way to protect water quality because of the pollutant filtering functions of streamside land. Also, the property is often poorly suited to development and, therefore, inexpensive.

Riparian buffers can be protected by regulation or by acquisition. The Erosion and Sedimentation Act protects all Georgia streams (with a defined channel) with a minimum buffer of 25 feet. The Metropolitan Rivers Protection Act protects the Chattahoochee River with a 50’ buffer (and 150’ setback for impervious surfaces), while Chattahoochee tributaries within 2000’ of the mainstream are protected with a 35’ impervious buffer setback. Gwinnett County has also complied with the Georgia Planning Act by establishing wider buffers on the two small water supply watersheds that originate in the County: Big Haynes Creek and the Alcovy River. All streams in these watersheds have a minimum 50’ undisturbed buffer with an additional 25’ setback for impervious surfaces. Gwinnett County has also incorporated incentives for buffer protection into its revised stormwater management ordinance, passed early in 2001.

The problem with the state-mandated buffer regulations is that they provide only minimal protection to many streams which, from a scientific perspective, merit preservation. Because of this, most Atlanta metropolitan governments have established their own riparian buffer ordinances to provide a good level of protection for all streams. For example, Cobb County protects buffers of 50-200’ on its streams (depending on size and other factors); Fulton County has 75’ buffers with an additional 25’ setback; DeKalb County recently passed a 75’ buffer ordinance. In the future, Gwinnett County may wish to consider an ordinance that protects buffers of 50’ or more on all streams in the County. Given the considerable changes the County has made in the past year—protecting buffers on water supply watersheds and encouraging buffers for stormwater management—the County may wish to monitor the

effectiveness of current rules for a year or two before considering a new buffer ordinance.

It is important to note that the regulatory approach is only good for protecting buffers on developing lands, not lands that have already been developed. In addition, lands protected through regulation alone cannot be counted toward the 20 percent goal of the Georgia Greenspace Program. For both these reasons, it is recommended that Gwinnett pursue a buffer/floodplain acquisition program. In its greenspace application, Gwinnett County listed floodplain preservation as one of its main approaches for greenspace preservation. As noted earlier, this can be a very cost-effective way of both protecting water quality and preserving greenspace because many of these lands are flood-prone or contain wetlands and are less suited to development.

The most economical approach of all may be to purchase just the development rights to these properties. This protects the land from development and degradation but maintains it in private ownership. Many landowners would be willing to agree not to alter streamside land in exchange for a cash payment—the property owner literally gets paid to do nothing while the County protects land at low cost. On the other hand, it is not possible to have public access to such land unless the landowner agrees to this as well (which is a much more difficult proposition, as discussed elsewhere). Therefore, for lands to be used as greenway trails it is preferable to purchase the land outright.

#### *Highway Buffers*

It is recommended that the Department of Transportation work with the Department of Planning and Development and the Law Department to develop policies and procedures regarding Highway Buffers. Said policies and procedures may include: the purchase of additional rights-of-way that can be used as green corridors; specific purchase or set aside of additional green buffers contiguous to proposed new highways; requirements of larger front or rear yard setbacks along the frontage of certain highway corridors; or other methods as might be deemed appropriate. If adopted, these policies and procedures should also include proposed methods for funding for each.

#### *Amenity/ Open Space Requirements*

At present, Gwinnett County's Zoning Resolution and Development Regulations require passive or active recreation amenities in all multi-family and many single-family residential projects.

- 1) Single-family Subdivisions. A six percent (6%) passive, or three percent (3%) active recreation amenity is required in any single-family residential development which exceeds 50 gross acres. This amenity is dedeed to a mandatory property owner's association for care and maintenance.

- 2) Modified (cluster) Single-family Subdivisions. In addition to the recreation amenity stated in item 1 above, this zoning requires preservation of open space equal to cumulative lot reductions (up to 4,500 square feet per R-100 lot and 3,000 square feet per R-75 lot). Open space areas are deeded to a mandatory property owner's association, and are typically 15 – 20% of the gross project area.
- 3) Conservation Overlay Single-family Subdivisions. In addition to the recreation amenity stated in item 1 above, this overlay district requires preservation of 40 – 50% of the gross project area as open space (dependent upon developed density). Open space areas are deeded to a mandatory property owner's association and an undivided interest in the open space is also deeded to each lot owner within the subdivision.

Note: presently, new methods are being considered to promote the preservation of open space in conservation overlay subdivisions, primarily through the use of permanent conservation easements.

- 4) Fee Simple Townhomes. A recreation amenity is required in any townhouse development which exceeds 10 gross acres. The requirement is six percent (6%) of the gross acreage for passive recreation, or three percent (3%) of the gross acreage for active recreation. This amenity is deeded to a mandatory property owner's association for the care and maintenance.
- 5) Multi-family Developments. An active or passive recreation amenity equal to 550 square feet per dwelling unit is required in all multi-family residential projects. Depending upon project density, this amounts to between 10% and 15% of the gross project acreage.

These regulatory requirements have resulted in the dedication and preservation of substantial recreation and open space acreage throughout Gwinnett County since their inception in the late 1980s and early 1990s. To achieve even greater preservation and/or qualification for the Governor's Open Space Program, Gwinnett County could increase or modify those regulations by amending the Zoning Resolution or Development Regulations.

Gwinnett County has also included preservation of greenspace and use of lower impact pervious/grassed parking in a number of nonresidential developments, most notably the Mall of Georgia at Millcreek in northeast Gwinnett. Through conditions of rezoning and adoption of an overlay district for the area surrounding the Mall of Georgia, a substantial open space/natural area along Ivy Creek has been preserved. Such requirements for open space set-asides, trails and/or greenways could be applied to other medium and large-scale projects through the zoning process or adoption of overlay requirements.

### *Amenity Incentives*

In addition to regulatory-based requirements, which Gwinnett County already has in place, an array of development incentives could be adopted. Many communities use amenity-based incentives as part of their development process to meet the need for open space and recreation improvements. In Murfreesboro, Tennessee, there are amenity incentives built into their multi-family residential zoning districts. As outlined in the Murfreesboro Zoning Ordinance revised in December of 1998, multi-family zone districts provide a density bonus not to exceed 30% of the maximum density permitted in the district when developments are over one acre in size and exceed five units.

The density bonus is provided to developments that have amenities such as walking and bicycle trails, preservation of a structure listed on the national Register of Historic Places and the preservation of natural features on the site, such as lakes and woods, as common open space. For preservation of natural areas, a credit up to a maximum increase of ten (10) percent, or ten units, is allowed for each one percent of ten thousand (10,000) square feet of amenity preserved or provided. For preservation of a historic structure, there is a bonus of one percent for each one thousand (1,000) square feet of floor area preserved for a maximum increase of five (5) percent of six (6) dwelling units. For development of walking or bicycle trails constructed with a minimum width of four (4) feet and with a permanent hard surface, a bonus of one percent for each 1,000 linear feet of improved trails for a maximum increase of five (5) percent of six (6) dwelling units is allowed.

Incentive-based acquisition of open space, or for the development of greenways, is a tool that could be used in Gwinnett County. The example in Murfreesboro provides density incentives only. Other incentives could be developed in addition to, or rather than, density bonuses. These could include items such as a reduction in the number of required parking spaces in commercial or retail developments, road width reductions, lot size reductions and removal of sidewalks where trails are provided are a few examples. Amenity incentives such as these could be formulated for both new construction projects and for redevelopment projects. The ratio of the incentives for each new and redevelopment project would be predetermined and incorporated into the zoning regulations.

Redevelopment project incentives could be higher than for new development projects if specific desired open space and greenway goals of the County are achieved by redevelopment. As an example of how an amenity incentive could work, let's look at the redevelopment of an old retail center that is located along a stream corridor. In this example, let us assume that the retail center contains fill material that encroaches into the floodplain beyond the limits that would be permitted under current zoning and storm water regulations. In this example it would be difficult to stimulate interest in a complete redevelopment of the site because a center of existing size could not be redeveloped and the center in its current configuration is obsolete. However, because

the site in this example is located on a proposed greenway route and adjacent to a proposed transit stop, there is justification for reducing the number of required parking spaces.

As an amenity incentive, the reduction in parking spaces could be offered in return for developing the greenway and providing a sidewalk connection to the transit stop. Also, reducing the on-site parking requirements would allow additional land to be available to meet the new storm water regulations. The County would gain a section of greenway, improved water quality and reduction of impervious surfaces located in the floodplain.

Other sites with different variables exist throughout the County. By establishing amenity incentives that address different site conditions, the cumulative result would be improvements in pedestrian and bicycle transportation, larger areas of stream corridor buffers and improved water quality—all of which are goals of this master plan.

#### *Policy Recommendations*

- Monitor the effectiveness of the conservation subdivision ordinance in protecting open space.
- Continue the use of conservation easements in protecting open space in conservation subdivisions.
- Extend the option for conservation subdivisions to other zoning districts.
- Increase public awareness of the economic and quality-of-life benefits of mixed-use development, greenways and higher density residential developments.
- Map priority protection areas and development nodes on future land use maps.
- Consider updating the existing comprehensive plan to designate portions of the County as higher or lower density, as appropriate.
- Consider the use of a transferable development rights program once the state enabling legislation has been amended.
- Consider providing incentives for developments that provide public-access greenways.
- Consider providing redevelopment incentives.
- Monitor the effectiveness of the current buffer protection for water supply watersheds and storm water management.
- Consider the development of a riparian buffer ordinance calling for the protection or acquisition of riparian corridors along streams.

### **3C. Open Space Management and Operations Issues**

#### *Overview*

Operating, maintaining and managing a system of open space and greenways in Gwinnett County will require a coordinated effort among all County departments, private sector organizations and individuals. The following text defines key aspects of open space and greenway system management, beginning with a discussion of a governance structure for the system, followed by definitions of operational policies, facility management, land management, safety and security, trail user rules and regulations, an emergency response plan and risk management program.

#### *Governance Structure*

It is recommended that Gwinnett County utilize the existing framework of County government services to implement and manage the Gwinnett County Greenways System. This would be accomplished by defining specific roles and responsibilities for existing departments within the County. Additionally, it is anticipated that the County would partner with local municipal governments, private sector organizations and the state of Georgia to implement the program. The following text provides guidelines for how this can be accomplished.

#### *Role of Gwinnett County*

The Gwinnett County Open Space and Greenway System will be developed and managed by the County and its departments. It will be necessary for the County to partner with local municipalities throughout the County to build and maintain various segments of the Open Space and Greenway System. Listed below and on the following pages are the key departments and organizations that will play a role in this implementation.

#### *Role of the Gwinnett County Board of Commissioners*

The Gwinnett County Board of Commissioners will be called upon to implement the recommendations of this master plan. The County Commissioners will need to work with the County Administrator to determine the most effective implementation strategy for the county-wide Open Space and Greenway System. This will include engaging in public-private partnerships, determining an appropriate financing strategy for greenways, and defining appropriate coordinated capital improvement projects which maximize the use of County resources.

#### *Role of the Gwinnett County Administrator*

The Gwinnett County Administrator is vested with management responsibilities for the community's public resources. As such, the primary role of the County Administrator, with respect to the Open Space and Greenway System, would be to direct the activities of the various departments of the County as necessary to

perform required acquisition, development, stewardship and maintenance activities for the Open Space and Greenway System.

*Role of Department of Community Services*

The Department of Community Services will work under the direction of the County Administrator to acquire necessary land, prepare detailed corridor master plans and construction documents, and serve as the lead department for implementing the Open Space and Greenway System. The Department should become the primary steward for greenway lands and facilities. However, due to the size and scope of this endeavor, it is strongly encouraged that the Department partner with other County departments, municipal governments and the private sector to fulfill this responsibility.

*Role of Department of Planning and Development*

The Department of Planning and Development should provide support for the Open Space and Greenway Master Plan and assistance with future implementation of the system. This can be accomplished by defining future greenways within related planning efforts; notifying the Department of Community Services of proposed land use developments adjacent to a greenway corridor; utilizing the rezoning process to encourage dedication of lands, including sidewalks and bicycle facilities for the Open Space and Greenway System; and planning transportation improvements in coordination with greenways.

*Role of Department of Public Utilities*

The Gwinnett County Department of Public Utilities is an important player in the implementation strategy for the Open Space and Greenway System. The Department manages the system of sanitary and stormwater sewers which offers enormous potential for shared use with greenway development objectives. However, existing easements do not allow multiple uses. Easements would have to be re-negotiated with property owners to allow additional uses. For the expansion and development of new sanitary sewer lines, the Department should consider the use of a joint-use easement document during right-of-way negotiations to acquire subsurface and surface rights from willing sellers, provided additional funding is available. During facility development, the Department should partner with other County departments and local municipalities to build trail facilities where feasible. The Department could function as a greenway developer in partnership with the Department of Community Services. Additionally, stormwater management objectives can be enhanced through the development of the Open Space and Greenway System through the use of funds obtained from federal and state grants.

*Role of Department of Transportation*

The Gwinnett County Department of Transportation should also assist the Department of Community Services with the implementation of this master plan.

The DOT can insure that plans and projects are consistent with the County's transportation objectives. The DOT will also work with other County departments to assist in the identification of and applications for funding for federal, state and regional programs, such as the Transportation Enhancement Act (TEA).

*Role of Law Department*

The Gwinnett County Law Department will provide legal assistance to the Department of Community Services with respect to the acquisition of land and development of greenway facilities.

*Role of Support Services*

The Department of Support Services should assist with the acquisition process for open space and greenway land and facilities by securing appropriate surveys, environmental tests and research of potential sites as necessary.

*Role of Department of Police Services*

The Department of Police Services should assist the Department of Community Services with patrolling and law enforcement for open space and greenway lands and facilities.

*Role of Department of Financial Services*

The Department of Financial Services will be called upon to determine an effective, coordinated capital improvements program that enables various County departments to share resources in support of greenway development. They will also assist in the development of grant applications and the administration and disbursement of grant funds on open space and greenway projects.

*Role of Cities in Gwinnett County*

The cities of Auburn, Berkley Lake, Buford, Braselton, Dacula, Duluth, Grayson, Lawrenceville, Lilburn, Loganville, Norcross, Snellville, Suwanee and Sugar Hill have very important roles to play in the implementation of this greenway plan. Each is a partner in the development of the county-wide Open Space and Greenway System. As such, the physical development, maintenance and acquisition of the Open Space and Greenway System should be a shared responsibility wherever and whenever possible. The specific level of participation in any given project will be subject to the unique conditions of each project. The municipalities should embed the greenway philosophy in their planning and zoning processes. The cities should also develop portions of the Open Space and Greenway System located within their corporate limits and be prepared to maintain these elements of the program in partnership with the County. The cities have much to gain through their involvement with the greenway program and should take every opportunity to coordinate their activities with those of the County to ensure that the best possible greenway solution is realized.

### *Role of Schools*

The Gwinnett County school system should plan for providing open space and greenways as part of their land acquisition process. Public school sites not only provide open space but also present opportunities for environmental education. Providing connections between schools, neighborhoods and other public facilities with a greenway system is an important part of an open space system.

### *Role of State of Georgia*

Through the Georgia Greenspace Program, the state of Georgia is a partner in the future development of the Gwinnett County Open Space and Greenway System. The goals of Gwinnett County's Open Space and Greenway System satisfy objectives of the State Greenspace Program in areas related to water quality and ecological protection. The County has been the recipient of grant funds from the Greenspace Program to assist with property acquisition. The County anticipates making future applications to the State for acquisition and system development. The County will continue to maintain consistency with the objectives of the Georgia Greenspace Program.

### *Role of Private Sector*

The private sector throughout Gwinnett County is the primary beneficiary of the Gwinnett County Open Space and Greenway System. As such, private organizations, businesses and individuals can and should play an important role in the development and management of the system. Private sector groups and businesses can sponsor implementation projects for open space and greenways as a partner of the County. These groups can also help to maintain open space and greenway lands through cooperative management agreements with the County.

### *Role of the Non-Profit Land Trust*

Non-Profit Land Trust can become an important partner in the future development of the Gwinnett County Open Space and Greenway System. One group that has initiated several recent projects is the Gwinnett Open Land Trust. Working with the Gwinnett Open Land Trust and Non-Profit Land Trust, many open space goals can be achieved. This can include items such as:

1. the education of citizens on the objectives of the master plan
2. the coordination of its activities with other entities, programs and departments
3. the identification and solicitation of resources to accelerate land acquisition for the system
4. the development of a regional greenway network in partnership with surrounding counties

The Non-Profit Land Trust can also support the implementation and development of trails in accordance with the recommendations of this master plan.

### *Role of Local Businesses and Corporations*

Gwinnett County businesses and corporations might choose to sponsor a segment of greenway for development or maintenance. Businesses and corporations can work with the Department of Community Services to give money, materials, products and labor toward the development of a greenway facility. Businesses can also consider installing facilities, such as bike racks or lockers, benches, and signage that links their operations to the Open Space and Greenway System.

### *Role of Civic Organizations*

Local civic groups and organizations, including the Junior League, Boy Scouts and Girl Scouts, garden clubs, YMCA, Kiwanis and Rotary Clubs, to name a few, can be participants in the Gwinnett County Open Space and Greenway System. These organizations can play a vital role in building sections of greenway trails, maintaining and managing greenway lands and facilities, and co-hosting events that raise money for the Open Space and Greenway System. There are many ways in which civic organizations can participate in the development of the Open Space and Greenway System. The most appropriate involvement can be determined by matching the goals and objectives of each organization to the needs of the greenway program.

### *Role of Individual Citizens*

Local residents who are interested in the development of Gwinnett County's Open Space Greenway System can participate by agreeing to donate their time, labor and expertise to the Department of Community Services. Residents might choose to partner with a friend or form a local neighborhood group that adopts a section of greenway for maintenance and management purposes. As an adopt-a-greenway organization, individuals might help pick-up trash, plant flowers and trees, care for newly planted vegetation and serve as additional "eyes and ears" for safety and security on open space and greenway lands. All volunteer efforts would be recognized by the Department of Community Services through a community-wide program.

### *Staffing the Open Space and Greenway Program*

In order to implement the recommendations of this master plan, it will be necessary to add staff resources to the Gwinnett County Department of Community Services to facilitate, coordinate and implement the activities of the Open Space and Greenway System. The greenway program will need new staff positions, as well as lead positions in various departments, to assist in the implementation of the master plan.

### *Open Space Coordinator*

The Open Space Coordinator should be a staff person working with the Community Services Division whose role is to coordinate open space and greenways planning

efforts among County departments and public groups. The Open Space Coordinator should lead the public education process on open space and greenways. The Open Space Coordinator should focus on the overall program objectives and not be directly involved in the daily management duties of the system. The Open Space Coordinator will work with municipalities throughout the County to achieve connectivity between municipal and County greenways.

As the Open Space and Greenway System grows, it will be necessary to provide additional staff to oversee the management and implementation of the system. This will include oversight of planning and design of specific greenway projects, maintenance and management of the completed sections, and coordination with consultants working for the County. These duties may be completed by existing park staff if they have the capacity to expand their present workload. Additionally, the departments of Planning and Development, Public Utilities, Police and Transportation will be responsible for various aspects of the overall program.

#### *Open Space and Greenways Operations*

Over the course of time, Gwinnett County will encounter a variety of issues that are important to the successful management and operation of the Open Space and Greenway System. The following operational policies are defined to assist Gwinnett County in responding to typical greenway implementation issues. More specific problems and issues may arise during the long-term development of the system that result in additional policies being considered and adopted.

#### *Right of Public Access and Use of Trail Lands*

The general public should have access to and use of those greenway lands that support public use (i.e. trail development), and that are owned by Gwinnett County or are on land where the County has secured the right of public access and use. All access and use is governed by existing County policies and should also be governed by a Greenway Trail Ordinance. The use of all trails is limited to non-motorized uses, including hiking, bicycling, running, jogging, wheelchair use, skateboarding, in-line skating (rollerblading), equestrian use, mountain biking and other uses that are determined to be compatible with the County's greenway trails.

#### *Naming of Greenways*

Greenways are named for the significant natural features that are found within the corridor. Greenways can also be named after an individual or individuals if these persons are truly distinguished within the community, or if these persons have contributed a gift equal to more than 50% of the value of greenway development within that corridor segment.

#### *Fencing and Vegetative Screening*

Gwinnett County should work with each landowner on an individual basis to

determine if fencing and screening is required and appropriate. The County may agree to fund the installation of a fence or vegetative screen; however, it should be the responsibility of the adjacent property owner to maintain the fence or vegetative screen in perpetuity, including the full replacement of such fence or screen in the event of failure or deterioration due to any circumstances.

#### *Adopt-a-Greenway Program*

An Adopt-a-Greenway Program should be established by Gwinnett County to encourage community groups, families, businesses, school groups, civic clubs and other organizations to join in managing the Open Space and Greenway System. Gwinnett County should implement this program for every greenway corridor in the system, and work closely with local organizations to ensure that these groups manage and maintain trails in a manner that is consistent with County objectives. The County should develop written agreements for each Adopt-a-Greenway entity and keep a current record of this agreement on file. Adopt-a-Greenway entities will be assigned a specific section of the Open Space and Greenway System, defined by location or milepost. The activities of each organization should be monitored by the County or its designee. Agreements for management can be amended or terminated at any time by either party, giving 30 days written notice.

#### *Management Agreements*

Management Agreements will be established between Gwinnett County and specific public or private organizations wishing to assist with the management of designated segments of the Open Space and Greenway System. The objective of these agreements is to define areas of maintenance and management that are compatible with existing land management activities, especially where greenways intersect with public or private properties and/or right-of-ways. Management agreements spell out specific duties, responsibilities and activities of the Gwinnett County and public or private organization that wishes to assist with management activities. They can be amended or terminated at any time by either party, giving 30 days written notice.

#### *Cross Access Agreements*

Gwinnett County can use cross access agreements to permit private landowners that have property on both sides of a greenway corridor access to and use of a greenway corridor to facilitate operation and land use activities.

Cross access agreements are based on case law of the United States and specific experiences from other greenway trail systems throughout the United States. Adjacent landowners generally have the right to use the access at any time. However, access cannot block the right-of-way for trail users, other than for temporary measures such as permitting livestock to cross, or transporting equipment. Adjacent landowners are responsible for acts or omissions that would

cause injury to a third party using the trail. If a landowner must move products, materials, livestock or equipment across the trail on a regular basis, appropriate signage should be installed to warn users of the trail to yield for such activities.

Crossing of abandoned or active rail lines, utility corridors and/or roads and highways will require the execution of agreements with companies, local, state or federal agencies and organizations that own the rights-of-way. These crossings must provide clearly controlled, recognized, and defined intersections in which the user will be warned of the location. In accordance with the American Association of State Highway Transportation Officials (AASHTO) and the Manual on Uniform Traffic Control Devices (MUTCD), the crossing will be signed with appropriate regulatory, warning and information signs.

#### *Greenway Facility Management*

Greenway facilities shall be maintained in a manner that promotes safe use. All trail facilities should be managed by Gwinnett County or its designee. Trail maintenance should include the removal of debris, trash, litter, obnoxious and unsafe man-made structures, and other foreign matter so as to be safe for public use. Trail heads, points of public access, rest areas and other activity areas should be maintained in a clean and usable condition at all times. The primary concern regarding maintenance should always be public safety.

All trail surfaces should be maintained in a safe and usable manner at all times. Rough edges, severe bumps or depressions, cracked or uneven pavement, gullies, rills and washed out treads should be repaired immediately. Volunteer vegetation occurring in the tread of the trail should be removed in such a manner so that the trail surface is maintained as a continuous, even and clean surface.

#### *Land Management*

Property owned or used by Gwinnett County for the Open Space and Greenway System shall be maintained in a condition that promotes safety and security for greenway users and adjacent property owners. To the extent possible, the property shall also be maintained in a manner that enables the corridor to fulfill multiple functions (i.e. passive recreation, alternative transportation, stormwater management and habitat for wildlife). Property that is owned or managed by other entities should be managed and maintained in accordance with the policies of that public body responsible for the affected parcel.

Vegetation within each greenway corridor shall be managed to promote safety, serve as wildlife habitat, buffer public trail use from adjacent private property (where applicable), protect water quality, and preserve the unique aesthetic values of the natural landscape. Removal of native vegetation shall be done with discretion, removal of exotic species should be accomplished in a systematic and

thorough manner. At times, and in appropriate locations, Gwinnett County may choose to use control burns or approved herbicides and pesticides to manage lands and vegetation in public ownership.

Vegetation adjacent to trails shall be managed as necessary to maintain clear and open lines of sight along the edge of the trail and eliminate potential hazards that could occur due to natural growth, severe weather or other unacceptable conditions. To promote safe use of any greenway trail, all vegetation should be clear cut to a minimum distance of three feet from each edge of a trail. Selective clearing of vegetation should be conducted within a zone that is defined as being between three to ten feet from each edge of a trail. At any point along a trail, a user should have a clear, unobstructed view, along the centerline of a trail, 300 feet ahead and behind his/her position. The only exception to this policy should be where terrain or curves in a trail serve as the limiting factor.

Gwinnett County or its designated agent should be responsible for the cutting and removal of vegetation. Removal of vegetation by an individual or entity other than Gwinnett County or its designee shall be deemed unlawful and subject to fines and/or prosecution.

It may also be necessary for Gwinnett County to conduct wildlife management programs on lands that are publicly owned. This shall be accomplished in a manner that is in keeping with accepted laws, professional practices and/or recommended strategies that are provided to Gwinnett County by wildlife management experts.

#### *Safety and Security*

In order to provide a standard of care that offers reasonable and ordinary safety measures, Gwinnett County shall cooperatively develop and implement a Safety and Security Program for the Open Space and Greenway System. This program will consist of well-defined safety and security policies; the identification of trail management, law enforcement, emergency and fire protection agencies; the proper posting, notification and education of the trail user policies; and a system that offers timely response to the public for issues or problems that are related to safety and security. The safety and security of the Open Space and Greenway System will need to be coordinated with local law enforcement officials, local neighborhood watch associations and Adopt-a-Greenway organizations. Crime Prevention Through Environmental Design practices should be followed in the design and operation of the greenway and open space system. In areas where the public access will be allowed, vegetation pruning practices to maximize safety should be followed.

*Important components of the safety and security program are listed below.*

Gwinnett County should:

- 1) Work with law enforcement agencies to establish a Greenway Safety and Security Committee that can meet periodically to discuss management of the Open Space and Greenway System
- 2) Prepare a Greenway Safety Manual, distribute it to management agencies and post it at all major trail heads
- 3) Post User Rules and Regulations at all public access points to greenway trails
- 4) Work with the management agencies to develop Trail Emergency Procedures
- 5) Prepare a Safety Checklist for the Open Space and Greenway System, and utilize it monthly during field inspection of greenway facilities
- 6) Prepare a Greenway User Response Form for complaints and compliments and provide copies at all trail heads
- 7) Work with management agencies to develop a system for accident reporting analysis
- 8) Conduct a regular Maintenance and Inspection Program and share the results of these investigations with all management agencies
- 9) Coordinate other Public Information Programs that provide information about greenway events and activities that County residents can participate in
- 10) Have an ongoing evaluation of greenway program objectives

#### *User Rules and Regulations*

Trails within greenway corridors shall be operated like all other trails provided within Gwinnett County Parks. Where trails are lighted for nighttime use, the rules established within the Trail Ordinance should govern permitted uses and activities.

Gwinnett County shall enforce trespassing laws as defined under Georgia General Statutes for publicly owned lands and facilities.

Gwinnett County should always discourage the general public from using any segment of a greenway trail that is under construction. Trail segments should not be considered officially opened for public use until such time as a formal dedication ceremony and official opening has been completed. Individuals who use greenway segments that are under construction, without written permission from Gwinnett County, should be deemed in violation of this access and use policy and treated as a trespasser.

#### *Trail Ordinance*

Multi-use conflict is a national problem for community and regional open space and greenway systems. Typically, conflicts are caused by overuse of a greenway trail; however, other factors may be problematic including poorly designed and

engineered trail alignments, inappropriate user behavior, or inadequate facility capacity. The most effective conflict resolution plan is a well-conceived safety program that provides the individual user with a Code of Conduct for the greenway trail, sometimes called a Trail Ordinance. Several communities across the United States have adopted progressive trail ordinances to govern public use and keep trails safe for all users. The following Rules and Regulations are recommended for the Gwinnett County Greenway Trails System. These rules should be displayed on brochures and information signs throughout the Open Space and Greenway System.

1. **Be Courteous:** All trail users, including bicyclists, joggers, walkers, wheelchairs, skateboarders and skaters, should be respectful of other users regardless of their mode of travel, speed or level of skill. Never spook animals; this can be dangerous for you and other users. Respect the privacy of adjacent landowners! No trespassing allowed from trails; remain on trails at all times.
2. **Keep Right:** Always stay to the right as you use the trail, or stay in the lane that has been designated for your user group. The exception to this rule occurs when you need to pass another user.
3. **Pass on the Left:** Pass others going in your direction on their left. Look ahead and behind to make sure that your lane is clear before you pull out and around the other user. Pass with ample separation. Do not move back to the right until you have safely gained distance and speed on the other user. Faster traffic should always yield to slower on-coming traffic.
4. **Give Audible Signal When Passing:** All users should give a clear warning signal before passing. This signal may be produced by voice, bell or soft horn. Voice signals might include "Passing on your left!" or "Cyclist on your left!" Always be courteous when providing the audible signal - profanity is unwarranted and unappreciated.
5. **Be Predictable:** Travel in a consistent and predictable manner. Always look behind before changing position on the trail, regardless of your mode of travel.
6. **Control Your Bicycle:** Lack of attention, even for a second, can cause disaster - always stay alert! Maintain a safe and legal speed at all times.
7. **Do not Block the Trail:** When in a group, including your pets, use no more than half the trail, so as not to block the flow of other users. If your group is approached by users from both directions, form a single line or stop and move to the far right edge of the trail to allow safe passage by these users.
8. **Yield When Entering or Crossing Trails:** When entering or crossing the trail at an uncontrolled intersection, yield to traffic already using the other trail.
9. **Do not Use this Trail Under the Influence of Alcohol or Drugs:** It is illegal to use this trail if you have consumed alcohol in excess of the statutory limits, or if you have consumed illegal drugs. Persons who use a prescribed medication should check with their doctor or pharmacist to ensure that it will not impair their ability to safely operate a bicycle or other wheeled vehicle.

10. Clean-up Your Litter: Please keep this trail clean and neat for other users to enjoy. Do not leave glass, paper, cans or any other debris on or near the trail. Please clean up after your pets. Pack out what you bring in - and remember to always recycle your trash.
11. Keep Pets on Leashes: All pets must be kept on secure and tethered leashes. Keep pets off of adjacent private property. Failure to do so will result in a fine.
12. Prohibition on Camp Fires: Fires, for any purpose, are prohibited within the trails system. Any person caught lighting a fire for any purpose will be prosecuted to the fullest extent of the law.

### *Emergency Response Plan*

In order to effectively patrol the Open Space and Greenway System and respond to potential fire, flash floods and other natural or human-caused disasters, Gwinnett County shall adopt a greenway emergency response plan. This plan defines a cooperative law enforcement strategy for greenways based on services required and those that are typically provided by police, sheriff, fire and EMS agencies. Specifically, all trails should be provided with an address system that denotes specific locations along the length of a trail corridor.

A site plan that illustrates points of access to each trail corridor should be produced and kept on file at the Gwinnett County Office of Emergency Services and provided to each agency. Trails in flash flood areas shall be appropriately signed to warn users. Each trail should be designed to permit access for law enforcement, fire and EMS agencies and vehicles that are a minimum of 6.5 tons gross vehicle weight. Typically, inter-governmental agreements are executed for this. A system of cellular-type emergency phones should be located in remote sections of the system, providing users with access to the area 911 Emergency System. All emergency phones should be placed above the flood elevation to ensure long term usage.

The emergency response plan should also define the agencies that should respond to 911 calls, and provide easily understood routing plans and access points for emergency vehicles. For long distance trails, access points for emergency and maintenance vehicles should be located at reasonable distances from trail heads (approximately every 2-3 miles). Local hospitals should be notified of these routes so that they may also be familiar with the size and scope of the project. The majority of the greenway system should be designed and developed to support a minimum gross vehicle weight of 6.5 tons. Developed access points to open space lands should be designed for emergency equipment access. Emergency plans should also be developed for remote open space properties.

### *Risk Management Plan*

The purpose of a Risk Management Plan is to increase safety for the users of the Gwinnett County Open Space and Greenway System and reduce the potential for

accidents to occur within the system or on lands adjacent to the system. While it is impossible to guarantee that all risk will be eliminated by a Risk Management Plan, implementation of a plan is, in fact, a critical step to reduce liability and improve safety. A Risk Management Plan establishes a methodology for greenway management that is based on current tort liability and case law in the United States related to the development, operation and management of public use greenway lands and facilities.

The ultimate responsibility for managing the Open Space and Greenway System, as defined within this master plan, rests with Gwinnett County. The Risk Management Plan has as its major goals:

1. Risk Identification: determining where risk (threat to safety or potential loss) exists within the corridor
2. Risk Evaluation: conducting appropriate examination of areas defined as a risk and determining the factors that contribute to risk
3. Risk Treatment: defining and implementing an appropriate solution to the area of risk in accordance with one of the four options:
  - a. Risk avoidance: prohibiting use of a risk area
  - b. Risk reduction: limit use of area and repair risk area immediately
  - c. Risk retention: obtain waivers from all potential users of the risk area
  - d. Risk transfer: transfer risk area (property) to an agency better suited to manage the area

The following sixteen-step plan should be implemented by Gwinnett County to establish a Risk Management Plan for the Gwinnett County Open Space and Greenway System.

1. Develop a policy statement about risk management.
2. Conduct a needs assessment for the greenway program.
3. Determine goals and objectives for risk management - what are acceptable and not acceptable management levels.
4. Develop specifications for site and facility development.
5. Establish a clear and concise program for risk management.
6. Define supervision and responsibility for risk management.
7. Define appropriate rules and regulations that govern the use of the trail system.
8. Conduct routine/systematic inspections and investigations of the trail system.
9. Develop an accident reporting and analysis system.
10. Establish procedures for handling emergencies.
11. Develop appropriate releases, waivers and agreements for use and management.
12. Identify best methods for ensuring against risk.
13. Develop a comprehensive in-service training program for employees of the County.

14. Implement a public relations program that can effectively describe the risk management program and activities.
15. Conduct periodic reviews of the Risk Management Plan by outside agents to ensure that the Plan is up-to-date.
16. Maintain good legal and insurance representation.

### *Liability*

The design, development, management and operation of the Gwinnett County Open Space and Greenway System must be carefully and accurately executed in order to provide a resource that protects the health and welfare of the public. Liability may occur when a facility has been under-designed to handle its intended volume of use; when management of the facility is poor; or when unexpected accidents occur because the trail manager failed to recognize the possibilities of a potentially hazardous situation. To reduce the possibility and exposure to liability, the County should have in operation the following measures prior to opening the first segment of greenway:

1. A thorough Maintenance Program that provides the appropriate duty or level of care to greenway users
2. A Risk Management Plan that appropriately covers all aspects of the Open Space and Greenway System and, as necessary, adjacent landowners
3. A comprehensive working knowledge of public use laws and recent case history applicable in Georgia

Gwinnett County's existing self-insurance program may be adequate to protect the County government from financial loss that might occur through the development and operation of the Open Space and Greenway System. Trails are no greater liability to Gwinnett County than parks and recreation, sidewalks or urban open space resources. The County should review its current policy and check coverage to be certain that all aspects of its policies are up-to-date.

Gwinnett County should exercise reasonable care in the design and construction of all greenway facilities to reduce hazardous, public nuisance and life threatening situations. Recreational Use Statutes in Georgia serve to reduce the exposure that adjacent landowners might expect to realize from the proximity of trails to private property. In fact, it is very difficult to find any case law in the United States where an adjacent property owner has been sued because a trail user strayed onto the adjacent private property and fell victim to an accident that was caused by the adjacent landowner. Some landowners have claimed that their insurance rates will go up because of the presence of a trail abutting their property. Once again, there is no case history among insurance companies to support this claim—provided the landowner has not gone out of their way to create an attractive nuisance and lure trail users onto their property.

It is also important that a fee not be charged to use any portion of the Open Space and Greenway System because typically, this may impact the way in which the recreational use statutes in Georgia apply to the use of the system. A voluntary donation applied to the Open Space and Greenway System will generally not affect the recreational use statute.

### *Recommendations Summary*

The following recommendations regarding tools, policies and actions to assure the successful acquisition, administration and management of open space and greenways are for consideration by Gwinnett County.

## **GENERAL ADMINISTRATION**

### *Open Space and Greenway Administration*

1. The County should consider utilizing the existing framework of County government services to implement and manage the open space and greenways system and define specific roles and responsibilities for existing departments.

*Additionally, the County should also consider:*

- A. using the Open Space and Greenway Master Plan as a guide for implementing the open space and greenways program;
- B. establishing that the County Administrator will continue in the role of directing the activities of the various departments of the County as necessary to perform required acquisition, development, stewardship and maintenance for the open space and greenway system as described below;
- C. establishing that the Department of Financial Services will develop an effective coordinated capital improvements program that enables County departments to share resources in support of the master plan;
- D. establishing that the Department of Community Services should work under the direction of the County Administrator to acquire necessary land, prepare detailed greenway corridor master plans and construction documents, and serve as the lead department for implementing the recommendations of the master plan;
- E. assigning lead responsibilities to staff within the Department of Community Services to implement the recommendations of this plan, as well as additional staff as necessary to facilitate, coordinate and implement the proposed activities and adequately fund needed staff positions;
- F. establishing that the Department of Planning and Development will provide support for the Open Space and Greenway Master Plan and assistance with future implementation of the recommendations;
- G. establishing that the Department of Public Utilities will consider the use of a joint public access and utility easements during rights-of-way negotiations in areas

where the need for pedestrian and bicycling facilities has been identified, as well as consideration of acquiring conservation easements in riparian areas to protect water quality;

- H. establishing that the Law Department will provide legal assistance with respect to the acquisition of land, development rights and development of greenways;
- I. establishing that the Department of Support Services will assist with issues related to land acquisition;
- J. establishing that the Police Department will assist with patrolling and law enforcement on open space and greenway properties;
- K. providing an organized opportunity for citizens to participate in open space and greenway issues which might involve amending the responsibilities of an existing citizen committee, such as the Recreation Authority or the Tree and Landscape Committee, to include input on open space and greenways activities;
- L. establishing that the Department of Transportation will assist with the implementation of this master plan and, as portions of this master plan are consistent with the recently completed Comprehensive Transportation Plan (CTP), the Department can assist by applying for funding through federal grant program for greenway projects and by allocating wetland and stream bank mitigation funds to areas designated for preservation in the Open Space and Greenway Master Plan and providing on road elements outlined in the CTP. The Department of Transportation and the Department of Community Services will work together to ensure that both agencies' pedestrian and bicycling facilities complement one another and are linked where appropriate.

#### *Partnership*

- 1. The County should consider encouraging the municipalities within Gwinnett County to adopt compatible plans and ordinances with respect to open space and greenways.
- 2. Develop partnerships with Land Trust and other non-profits whose open space goals are consistent with the use of the County.

#### *Education*

- 1. The County should consider promoting increased public awareness of the economic and quality of life benefits of land conservation, greenways and other open space developments.

#### *Resource Management*

##### *Greenspace Management and Maintenance*

- 1. The County should consider developing management plans for all open space and greenway properties which could be valuable in:
  - A. identifying valuable resources;

- B. determining compatible uses relative to adjacent lands;
  - C. determining administrative needs of the specific parcel, including maintenance, security and funding requirements for both capital projects, long-term operations and maintenance;
  - D. recommending both short-term and long-term action plans for the management and protection of the natural resources.
2. The County should consider maintaining open space and greenway facilities in a manner that promotes safe use. In connection with this recommendation the County should consider:
- A. developing and implementing a safety and security program for all open space and greenway properties in order to provide a standard of care that offers reasonable and ordinary safety measures;
  - B. operating public open space and greenway trails in a manner that is consistent with the operational goals of the County;
  - C. enforcing trespassing laws as defined under the Official Code of Georgia for publicly owned lands and facilities;
  - D. developing a list of rules and regulations to be displayed on brochures and signs throughout the Open Space and Greenway System;
  - E. adopting an emergency response plan in the event of fire, flash floods and other natural or human-caused disasters.
3. The County should consider developing a Risk Management Plan that assures:
- A. risks and exposures associated with open space and greenways should be reviewed periodically and addressed by Risk Management, using any of the Risk Management techniques that are available and accepted by the Board of Commissioners;
  - B. reasonable care is exercised in the design and construction of all facilities to reduce the potential for hazardous, public nuisance and life threatening situations.
4. The County should consider not charging a fee to use any portion of the Open Space and Greenway System. Charging a fee would impact the application of the state's recreational use statute. A voluntary donation applied to the program will generally not affect the recreational use statute.
5. The County should consider partnering with municipalities within the County to build and maintain various segments of the Open Space and Greenway System.