Protection Tools for National Rivers and Trails

Some rules of thumb:

- Landowner liability decreases as degree of government (or conservancy) interest in lands increases.

- Tailor your anticipated protection tools to the intended visitor experience and expected land uses.

- Trail and river plans should identify the minimum interest necessary to protect the resource and provide the desired visitor experience.

No Action

Advantages:	Low cost; reduces short-term stress.
Disadvantages:	No corridor; no permanence; no protection.

Letter or Handshake Agreement

Advantage:	Goodwill.
Disadvantages:	Not permanent; often stops when land is sold.

Cooperative Agreement or License (Certification for National Trails)

Advantage:	Leaves land in private or non-governmental ownership. Often best Federal/State partnership type.
Disadvantages:	Not permanent, usually for 5-year time periods. Changes easily as ownership changes.

Lease of Trail or River Corridor from Others

Advantages:	Cheap; permits continuing local land use.
Disadvantages:	Short-term at best; a headache to administer.

Local Zoning

Advantages:	Low cost; keeps control of land local; flexible (within the limits of state and local law); provides opportunity for holding action; can provide forum for consensus-building and education about resource values.
Disadvantages:	Weak in the long-term; reactive; suspect in certain regions of the country; limited legally; often poorly administered; limited in actual use due to local fears of "taking" restrictions; not flexible from site to site.
Comment:	Strongly encouraged by Sec. 6(c) of the Wild and Scenic Rivers Act.

Setbacks or buffer zones (generally used only along W&S rivers)

Advantages: Similar to zoning above; provides specific, measurable protection zones.

Disadvantage: Often poorly monitored and administered.

Comment: Generally developed as part of local zoning ordinance.

Tax Incentives

Advantage: Useful in estate planning.
Disadvantage: Can be easily changed or waived by local authorities.

Easement (including both positive and negative interests in lands)

Advantages: Encourages land use by occupant; best done by cooperators (such as alnd trusts) and not government; keeps land on local tax rolls; can be tailor-made to the situation (either positive or negative); must be carefully written to be effective.

Disadvantages: Expensive to manage; often expensive to buy. May be ineffective if not carefully written and monitored.

Term Retentions and Life Estates

Advantage: Good for long-term project.

Disadvantages: May need easement also in short-term to protect property during residual occupancy; unreliable -- occupants often unhappy at time of final departure; hard to administer.

Donations (may qualify for conservation tax credits)

Advantages: May help reduce property taxes; good for future exchanges if not right on river or trail corridor; interests may be split; can help with bargain sales or donations.

Disadvantages: Wishes of donor may restrict recipients; title may be clouded and not easily resolved; property may contain hazardous materials or other unpleasant problems; property may have unacceptable retained conditions.

Option and Right of First Refusal (Federal purchase of options on real estate are
$1.00).

Advantage: Little or no cost in the short-term.
Disadvantage: May obligate future funds illegally.

Full Fee Acquisition

Advantages:	Most satisfactory in most cases; includes full rights and title to land; avoids complex long-term administration and/or management.
Disadvantages:	May not include mineral and water rights; often needs boundary inspections; may need ongoing management and maintenance that cooperators may not be able to do.

Leaseback (once land has been acquired)

Advantages:	Promotes appropriate land uses; often used to continue existing agricultural practices; long-term leases provide less hassle for both owners and lessors.
Disadvantage:	May be difficult to police and monitor.

Condemnation (including Declaration of Taking, not available for "willing-seller trails")

Advantages:	Immediate; stops adverse threats; often only way to get attention of unwilling landowners; may provide tax advantages to seller; under "friendly condemnation," helps clear title; under declaration of taking, title immediately passes to government.
Disadvantages:	Highly political; may be very controversial; government rights are often limited; sometime subject to high court price awards.

Further Reference:

- Endicott, Eve, ed., 1993, *Land Conservation Through Public / Private Partnerships,* Washington, DC: Island Press, 364 pp.

- Interagency Wild and Scenic Rivers Coordinating Council, 1996, *Protecting Resource Values on Non-Federal Lands*

- Land Trust Alliance, 1996, *The Conservation Easement Handbook*, Washington, DC: Land Trust Alliance, 269 pp., $35.

- Land Trust Alliance, 2000, *Appraising Easements: Guidelines for Valuation of Historic Preservation*, Washington, DC: Land Trust Alliance, $30.

- Small, Stephen J., *Preserving Family Land* (2 volumes), Washington, DC: Land Trust Alliance.

Interest Sheet for the Willing Seller Summit

_____ _____

Name, Organization Date contacted

Would you be interested in supporting or being involved in 1 3-day seminar on using the willing-seller land acquisition authorities now available to most trails in the National Trails System Act?

What do you think should be the top three objectives of such a training session?

What do you think should be the major skills and tools discussed in the summit?

Who do you think would be the best instructor(s) for such a session?

What case studies should be featured?

What kind of a practicum or role-playing could be built in so that people could apply their skills during the seminar?

Over . . . .

Where should this summit take place? (likely to be Abingdon, VA, May 13-14, 2011)

Would you want to participate – as an organizer, an instructor, and/or participant?

Who else should be involved in this summit?

Would your organization want to support this event financially?

Do you have any other comments or thoughts to share as we lay the groundwork for this summit?

Thanks you for your time and help!