THE "VESTING" EASEMENT – A NEW "SMART GROWTH" TOOL

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Purpose: To offer incentives to landowners in the form of additional bonus credits to keep land in its current use and compensate and encourage landowners to postpone the sale of land for development. This tool is not intended to provide permanent land protection or to permanently prevent land from being converted into developed uses. Instead, it is intended as a **non-cash tool** that can be used to prevent premature sales for development and postpone land conversions to:

- Provide for more orderly patterns of development in areas outside existing urban growth boundaries;
- Keep land in current uses until funds to pay for fee and less than fee purchases or other means become available to provide more permanent protection; and
- Encourage urban infill.

The Need: It is clear that Florida will continue to grow and that much of the land that will be used to support that growth is currently in agriculture or open space. It also is clear that the agricultural economy is becoming more competitive, with returns on investment and profits declining, and foreign competition threatening to reduce market share and even take entire markets away from domestic producers. As a result, many agricultural landowners are looking to the value of their land as a final financial fallback if current agricultural trends continue. Lastly, it is clear that there will be continued political pressure from recently arrived residents to restrict development to "keep what they have" and block anyone else from following them.

The Problem: The current structure of land use rules encourage a landowner to jump out early and "get" whatever land use or zoning entitlements that he can before the politics of the area change. Additionally, land use decisions at the fringe of development often involve speculators with "relationships" buying land, for relatively small sums, from longtime landowners and then enjoying large profits to compensate them for the "entitlement risk." One of the resultant problems of this model is that the buyer must immediately move the land into development, generally by spinning off several pods in order to pay for the purchase of the land and get money back quickly to their own investors. Additionally, this type of buyer has no financial incentive to slow development and every incentive to speed it.

The Concept: An alternative model could be adopted from the venture capital/start up business world, which has a similar problem in creating long term value incentives without using cash. This system would allow the vesting of units in land over time that the land is put to a "beneficial use" such as agriculture or open space. Under this scenario a county would match its long-term growth projections (20-30 years) to its available approved land supply and make the net units available to the vesting schedule. (This would allow units to be available to match and meet market demand and, therefore, could promote more orderly development patterns and more stable prices. Units would be less likely to flood the market prematurely, reducing price and encouraging leapfrog development, nor be held out of the market, restricting supply and increasing price.)

To allow a liquid market, some kind of multiple factor would have to be employed to make sure the supply of units exceeded the projected demand of units. The land subject to this system would then earn some fraction of a unit per acre (or some other metric value) for every year that the land was held in a "beneficial" use with the schedule working off of either time or % of approved lots to expected supply.

"Vesting" Easements: One way of implementing this would be through a term easement, known as a "vesting" easement, that would begin with an initial five-year term and would be renewable indefinitely for additional terms of one to five years at the option of the landowner, with payment being made at the termination of the easement in the form of additional "bonus" units per acre or another metric that can be redeemed at the time of sale that increases the market value of the land by some additional percentage or ratio for every year that the land was held in a "beneficial" use.

Benefit: If the vesting schedule were attractive enough, a landowner earning a small amount from operating a business on his landholdings would have the incentive to continue to build the value by operating the business instead of taking a onetime capital gain by selling it to a developer. As the business would be building value in its landholdings, it would reduce the risk for agricultural lenders, which in turn would lower the cost of capital to operate.

This "vesting" program should be seen as a way to counteract development pressure to leapfrog into fringe areas as it would reward the landowner to keep doing what they are doing. On its own, this program would not improve the quality of what was built or protect open space or agriculture once the decision was made to stop vesting and cash in on the land sale.

To address the permanent protection of open space and agriculture, a planning program that rewarded the landowner or assembling developer, such as the Rural Lands Stewardship Program (RLSP), would be structured to protect "beneficial" uses permanently.

Use: "Vesting" easements could be used as a means of discouraging premature development in any area outside an existing urban growth boundary.

Negotiation: A vesting easement would be negotiated between a willing landowner and a county government. Easement negotiations could be initiated with a county at the request of a landowner, or by a county with one or more landowners in an area where a county wishes to discourage premature development.

Legal status: The easement would be recorded as legal document that runs with the land and would be enforceable by the court with jurisdiction in the county where the property is situated

Value: The easement would be designed to provide assurance to a landowner that land values will not be lost or reduced by future downzonings, land use changes or restrictions on development, if a landowner makes a choice not to sell prematurely and to keep land in a "beneficial" use, by guaranteeing that land subject to a "vesting" easement will:

1. Receive bonus densities or another metric that increases market value once an orderly pace of development begins to occur in the area surrounding the land;
2. Result in a premium being paid over the market price or appraised value of the land if it is purchased or placed under easement with public monies;
3. Result in the assignment of additional credits if the property is included at a future date within a Rural Lands Stewardship Area.

All bonuses, premiums, additional credits and other such increases in market value will be based upon the cumulative total of the annual fractions of value that are earned each year that the easement is in force.