

Public Space: The Missing Link Between Freedom and Property

PorcFest XV | June 21, 2018

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ANARCHITECTURE podcast

the built environment of a stateless society

anarchism architecture infrastructure urbanism economy community

Exploring non-governmental approaches to the development of buildings, neighborhoods, cities, public space, infrastructure, and transportation.

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Architectural design services for residential, commercial, and healthcare clients in Maine, New Hampshire, and Massachusetts.

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Property is freedom

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"Property is theft;

Property is freedom:

these two propositions stand side by side...
and each is shown to be true"

Pierre-Joseph Proudhon

From Selected Writings of Pierre-Joseph Proudhon, ed. Stewart Edwards, Macmillan 1969. p.133

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Public Space:

The Missing Link Between Freedom and Property

- Public Space Is Where Freedom Happens
- Hoppe's Private, Common, and Public Property
- We Need to Talk About Helicopters
- Divesting Government Property
- Opt-In Trusts

Public Space

Space that is accessible to non-owners without invitation, with reasonable restrictions

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Public Space

Space that is accessible to non-owners without invitation, with reasonable restrictions

- Not always “public property.” Government owned and privately owned
- Many types of public space - Open Space, Buildings, Pathways
- Degrees of access with permissions
- Restrictions on entry and occupancy – Fees, hours, use, behavior
- Many private facilities have public space components (i.e. Lobbies)
- Expectation of entry (if not occupancy) on most properties

Public Space Is Where Freedom Happens

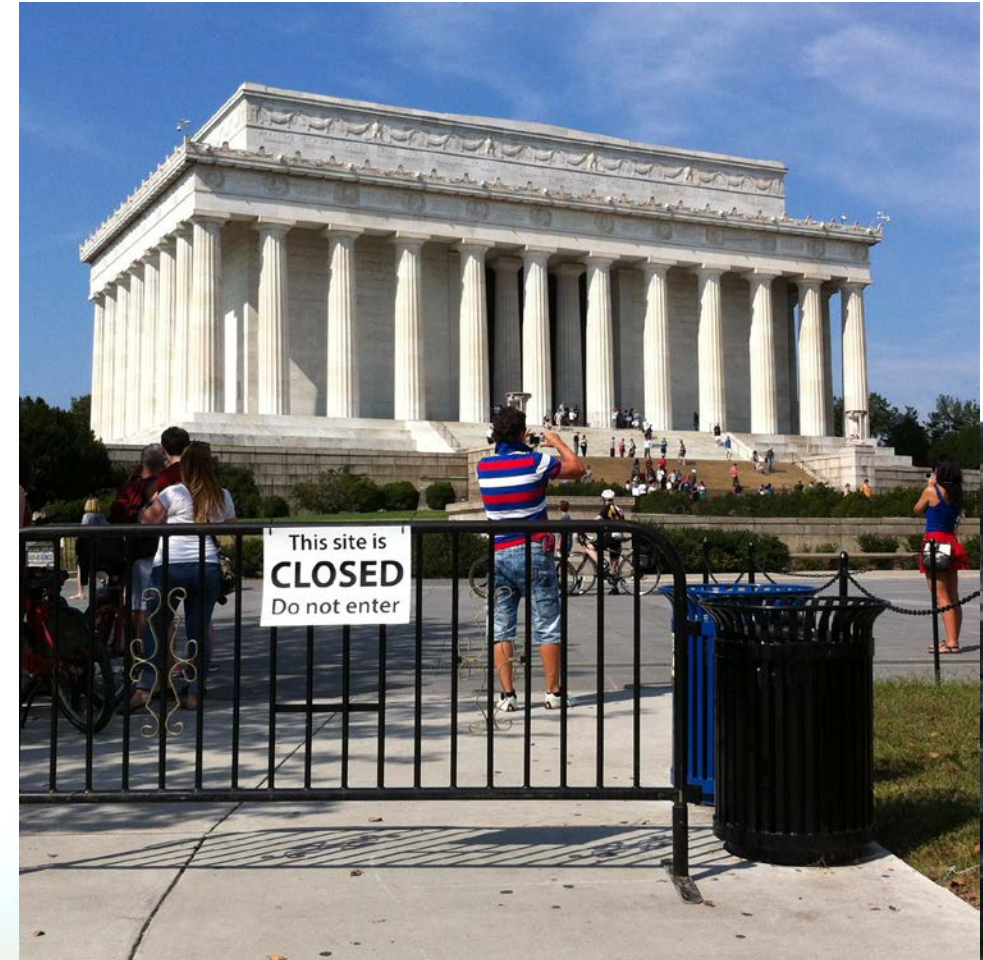
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Public Space Is Where Freedom Happens

Freedom of Movement

- Access - enter and exit, with reasonable restrictions (fees for wear and tear, hours of use, etc.)
- Occupancy
- Immigration



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Public Space Is Where Freedom Happens

Freedom of Speech

- Public Speaking
- Pamphleteering
- Holding signs
- Information booths
- Media - Video / audio recording & distribution

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Image: <http://www.cgpgrey.com>

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Public Space Is Where Freedom Happens

Freedom of Association

- Meet with others
- Assembly
- Protest
- Special Events - Block party, parade, bike race

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Public Space Is Where Freedom Happens

Freedom of Exchange

- Farmers' Market
- Boot Sale
- Food Trucks
- Sidewalk Entrepreneurship
- Peer to peer exchange
- Satoshi Squares



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Public Space Is Where Freedom Happens

Freedom to Bear Arms / Self-defense

- Transport weapons to private property
- Restrictions on self-defense in public spaces may expose the owners of public space to liability for not protecting occupants

Four Tiers of Public Space

1. **Private Space** – Invitation only / eviction rights.
Maximum freedom for owner, minimal freedoms for public.
2. **Permissive Public Space** – Public access and uses permitted by owner. Revocable defined freedoms.
3. **Protected Public Space** – Public access and uses protected by easement, legal rights, etc. Irrevocable defined freedoms.
4. **Unowned Public Space** – State of nature. Unlimited public access and uses. Maximum freedom for public, potential for conflict.

Public Space Is Where Freedom Happens

We should fight for a free society in which public space exists.

How do we divest public space from government ownership and control while preserving the freedom of public space?

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Hoppe's Private, Common, and Public Property

OF PRIVATE, COMMON, AND PUBLIC PROPERTY AND THE RATIONALE FOR TOTAL PRIVATIZATION

HANS-HERMANN HOPPE*

I HAVE THREE GOALS. First, I want to clarify the nature and function of private property. Second, I want to clarify the distinction between “common” goods and property and “public” goods and property, and explain the construction error inherent in the institution of public goods and property. Third, I want to explain the rationale and principle of privatization.

Hans-Hermann Hoppe, “Of Private, Common, and Public Property and the Rationale for Total Privatization,” Libertarian Papers 3, 1 (2011). ONLINE AT: libertarianpapers.org. THIS ARTICLE IS subject to a Creative Commons Attribution 3.0 License (creativecommons.org/licenses). Published by the Ludwig von Mises Institute.

Hoppe's Private, Common, and Public Property

Property Ownership as Conflict Avoidance (paraphrased)

- Physical conflicts over scarce goods can be avoided if every good is exclusively controlled by some specified individual or group.
- To avoid all physical conflict from the beginning of mankind, all property must go back through a chain of conflict-free property title transfers to acts of original appropriation (homesteading).

Hoppe's Private, Common, and Public Property

Hoppe's Village – Unowned / Unused Land (State of Nature)

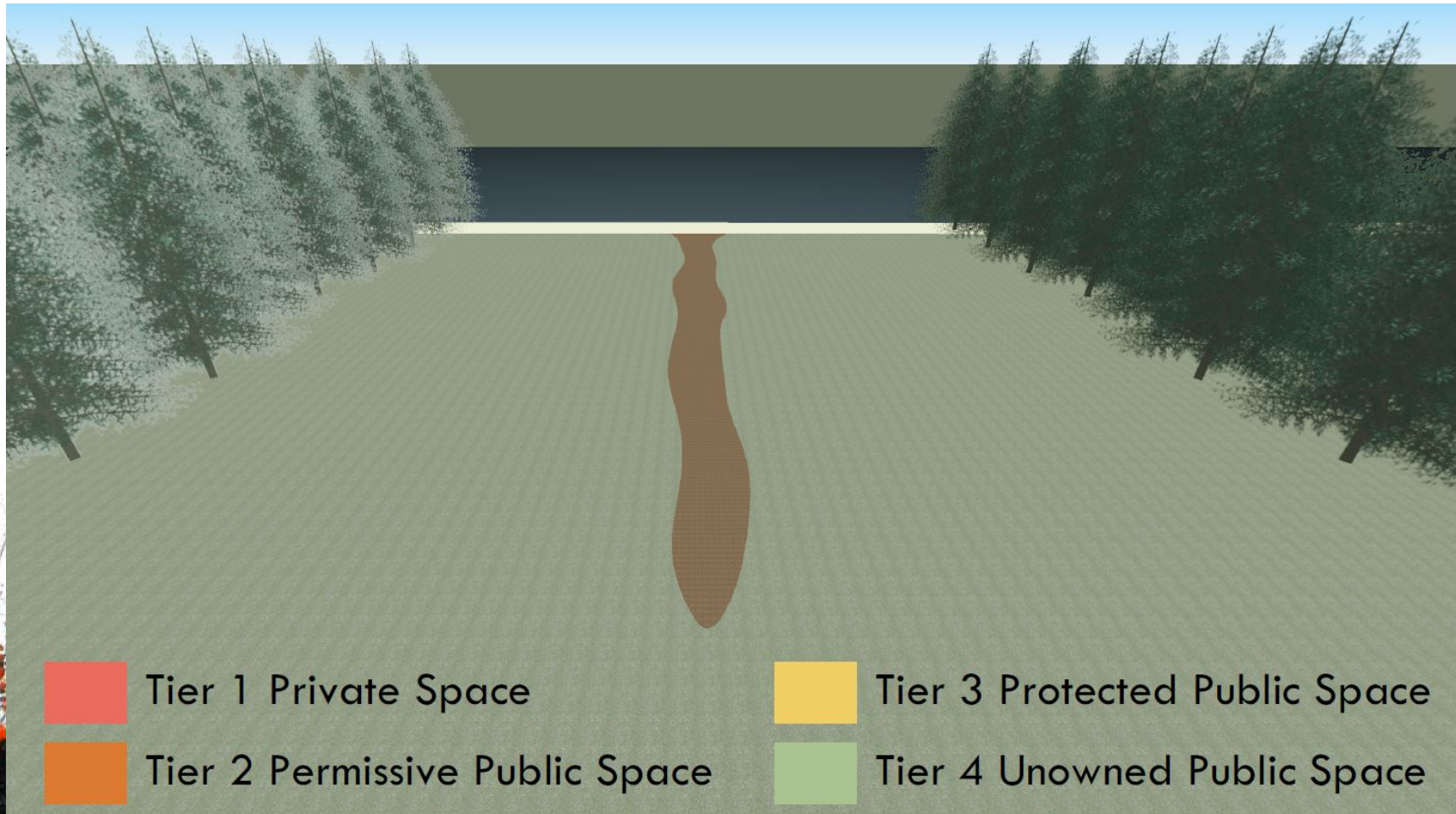


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Unowned Land In Use

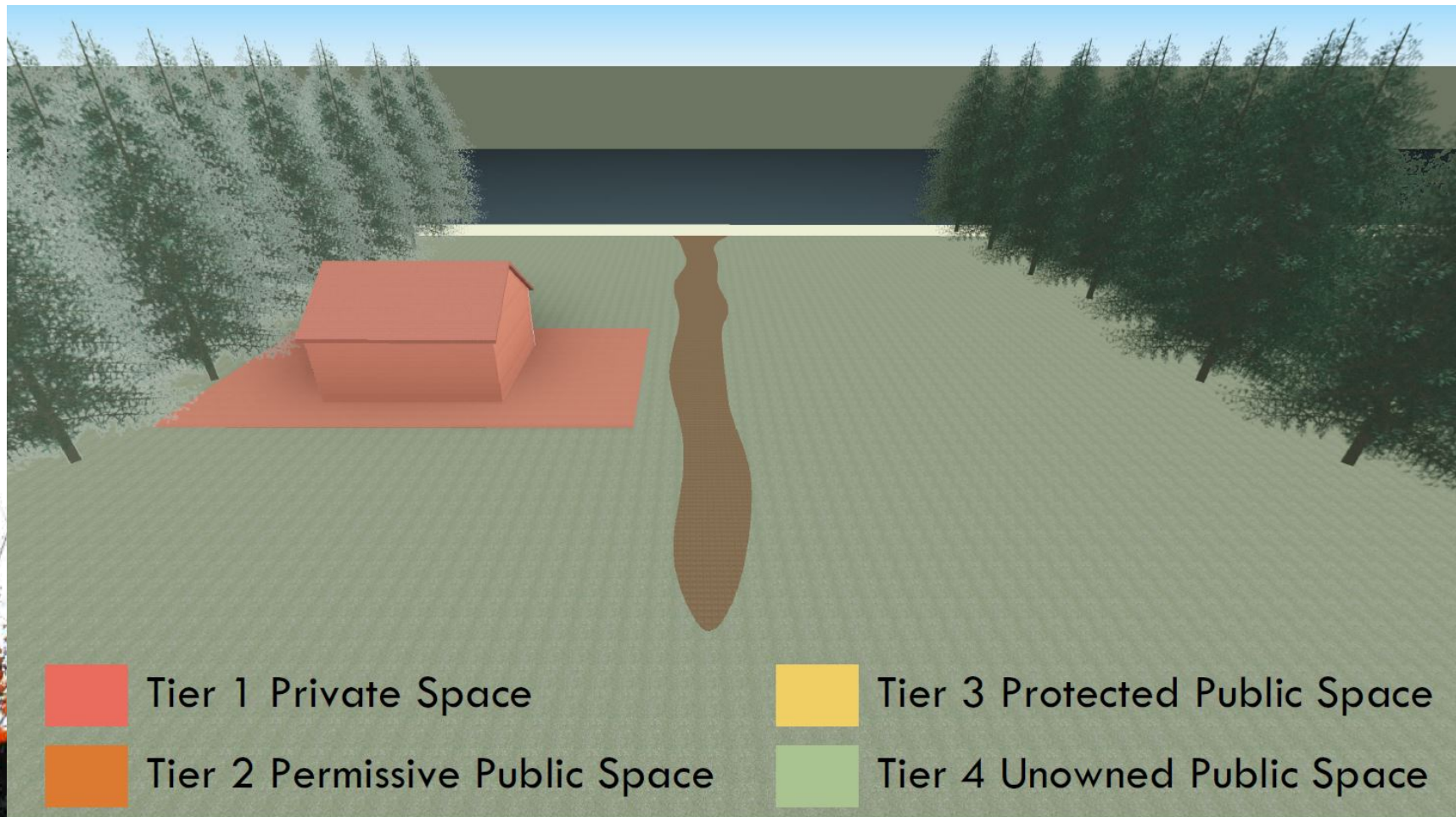


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Property

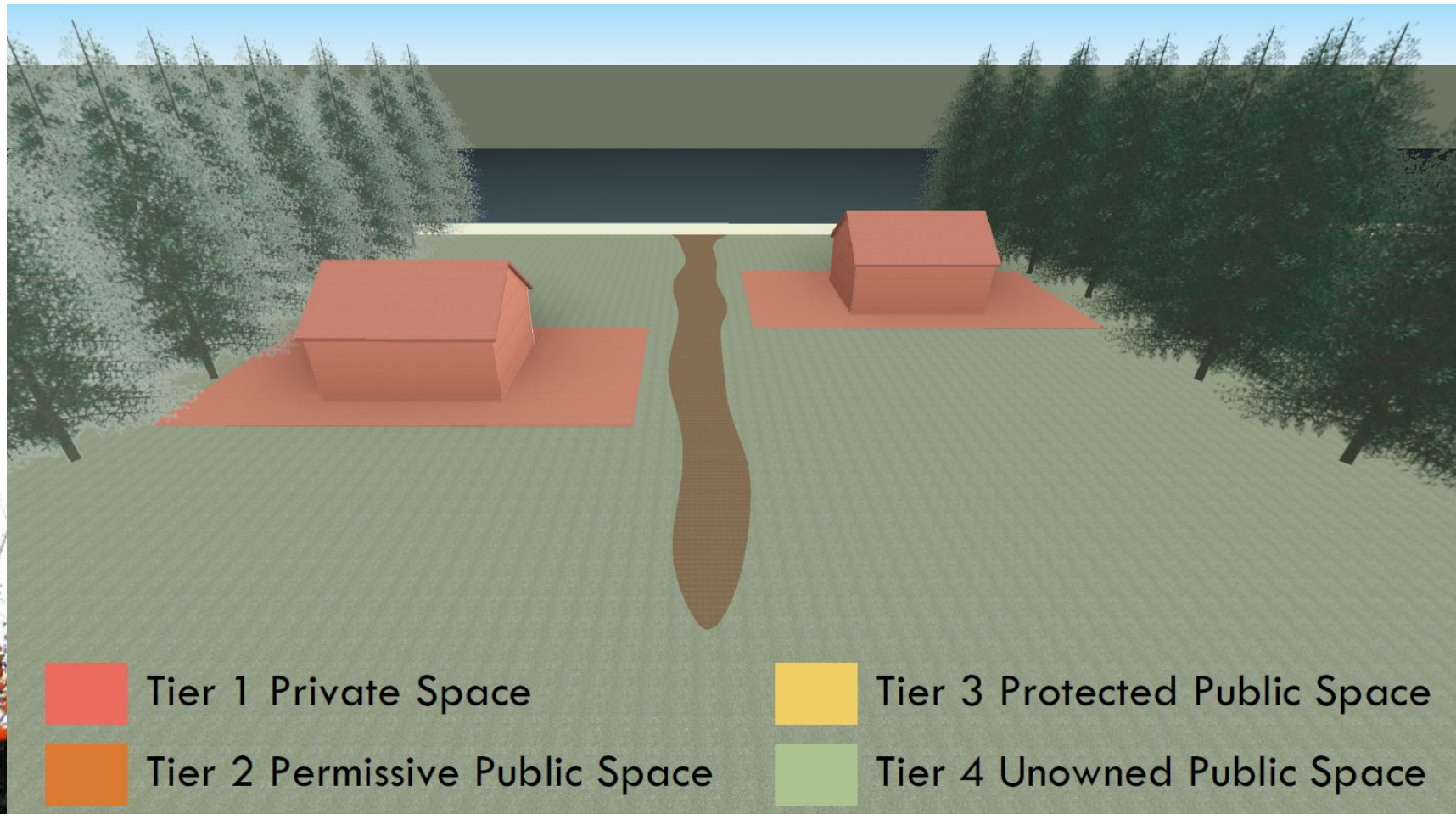


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Neighborhood

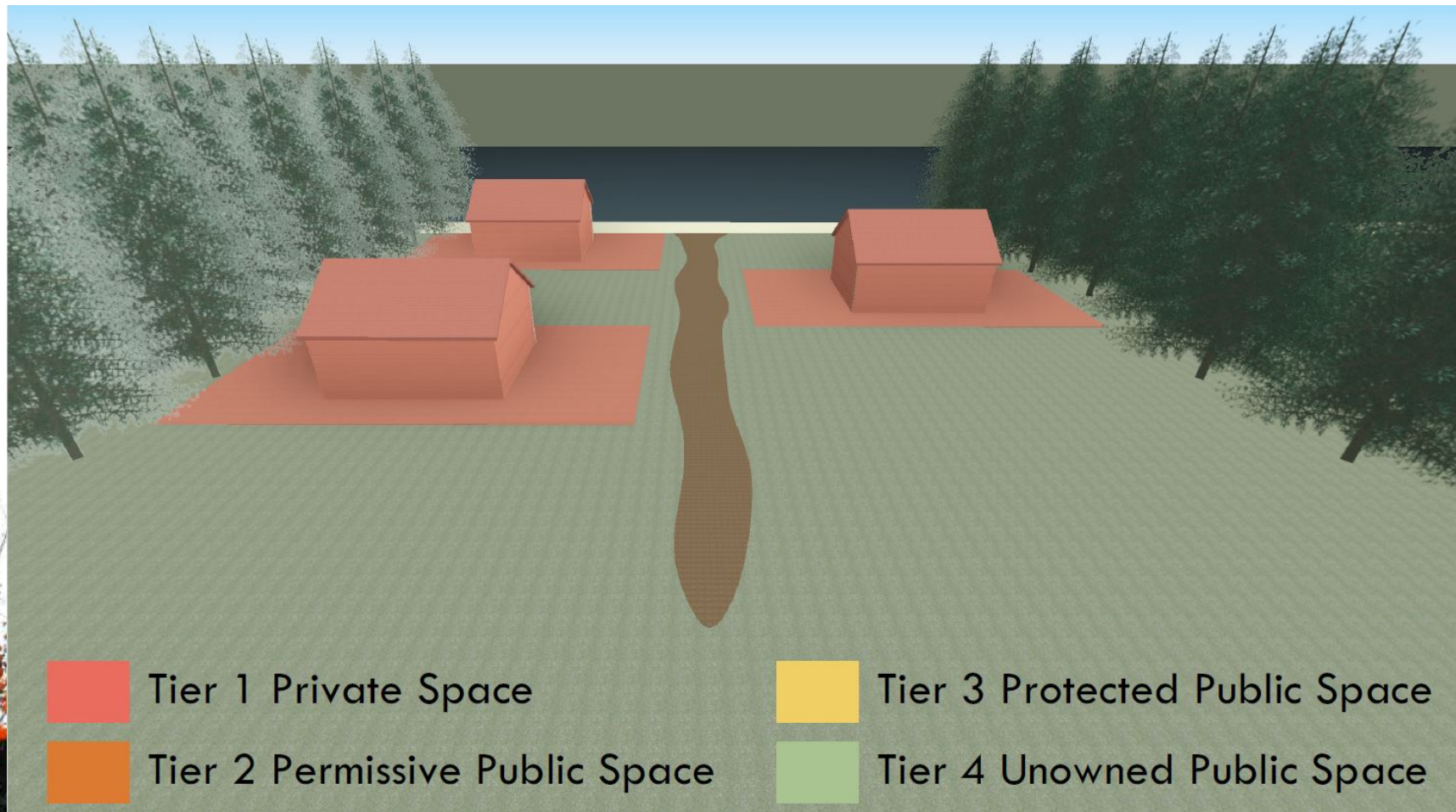


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Neighborhood

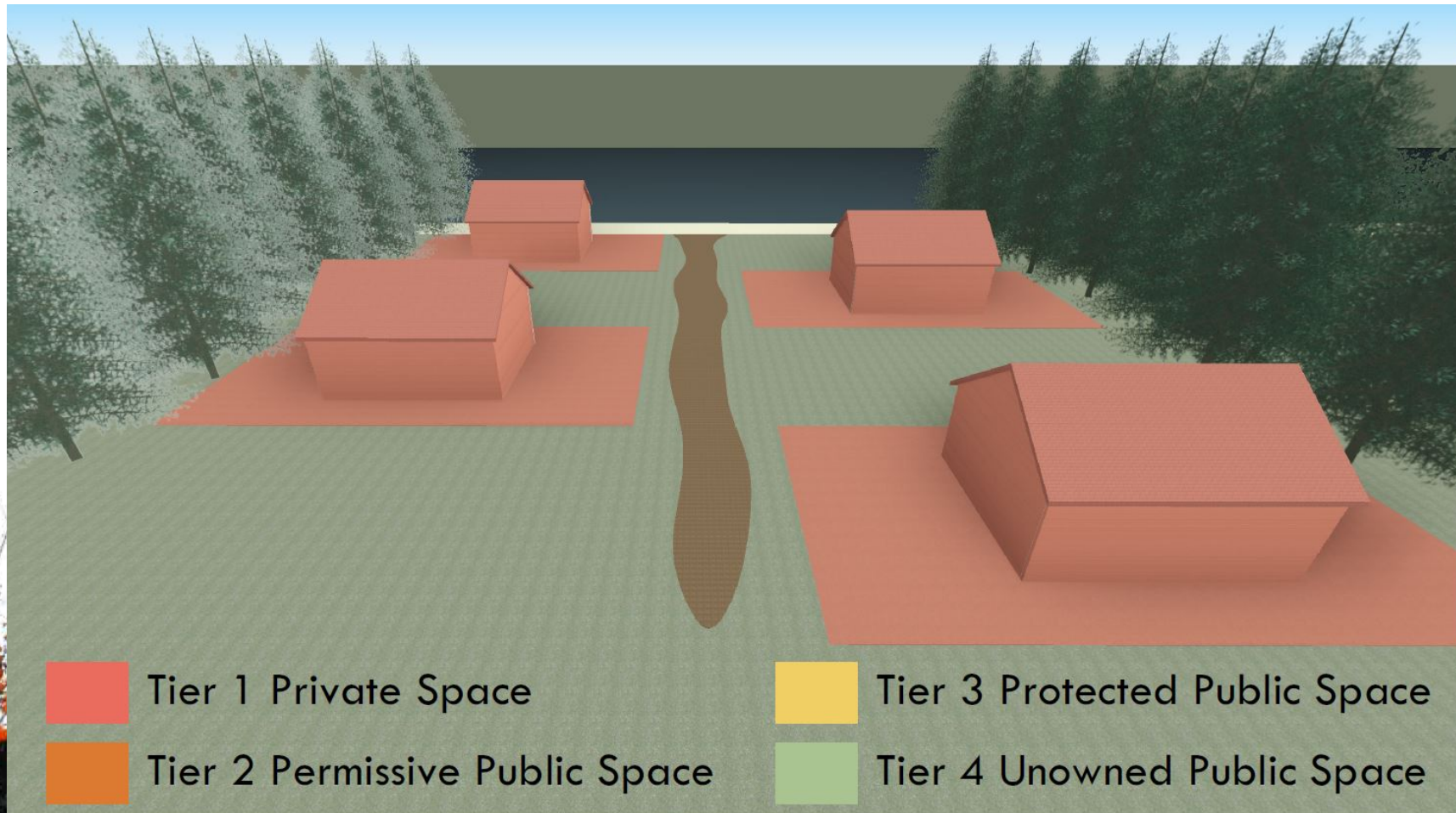


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Hoppe's Village – Homesteaded Private Neighborhood

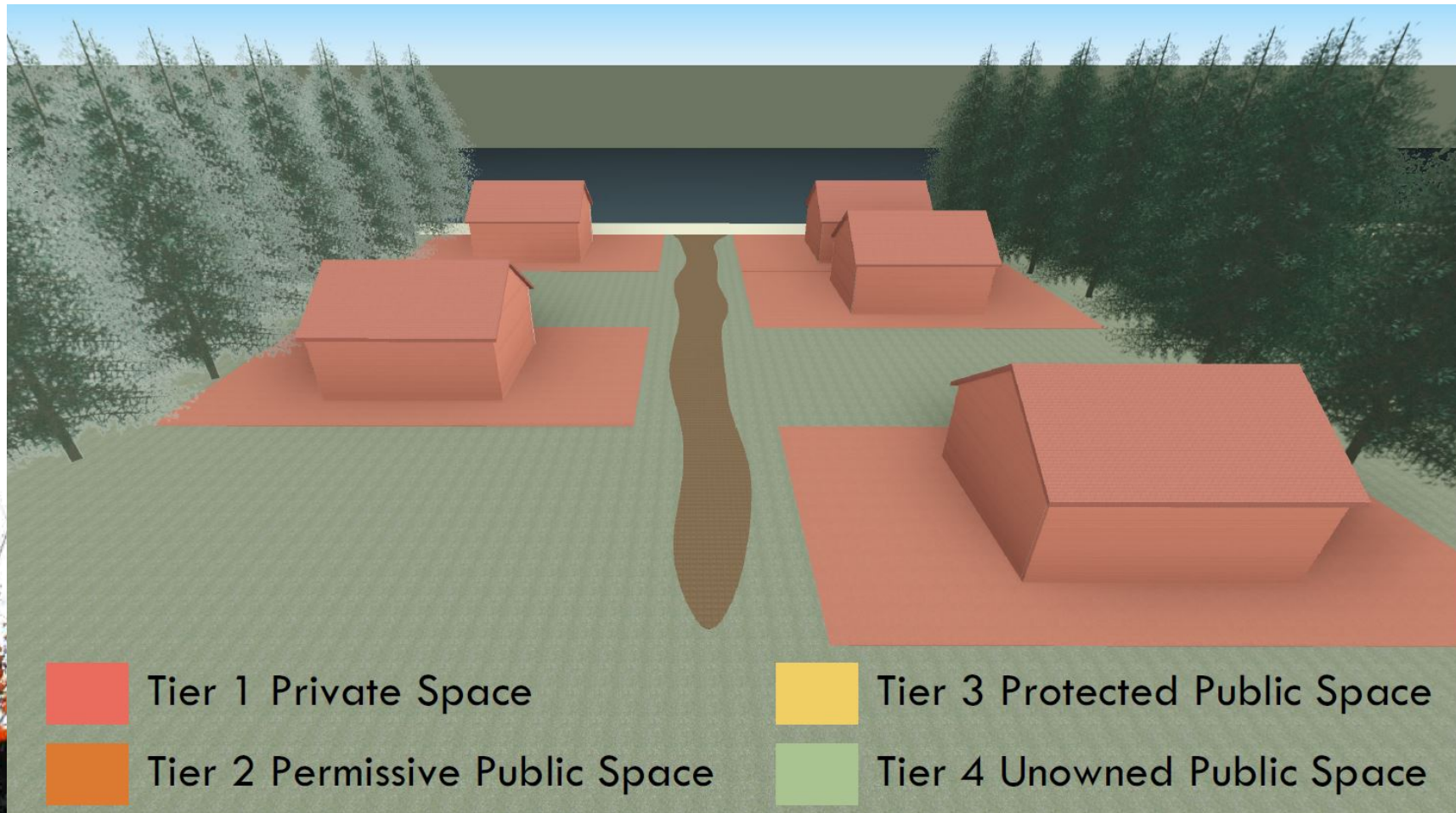


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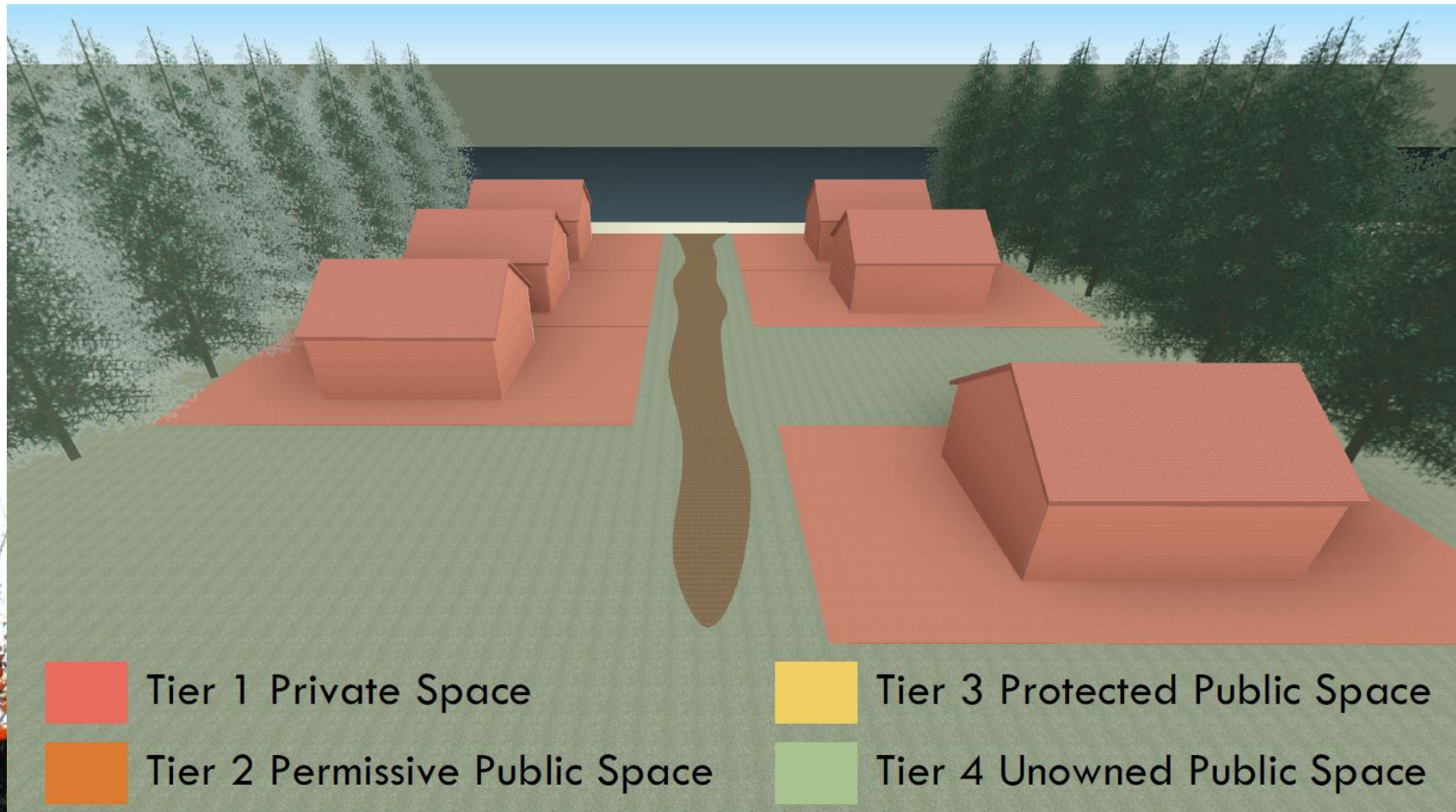


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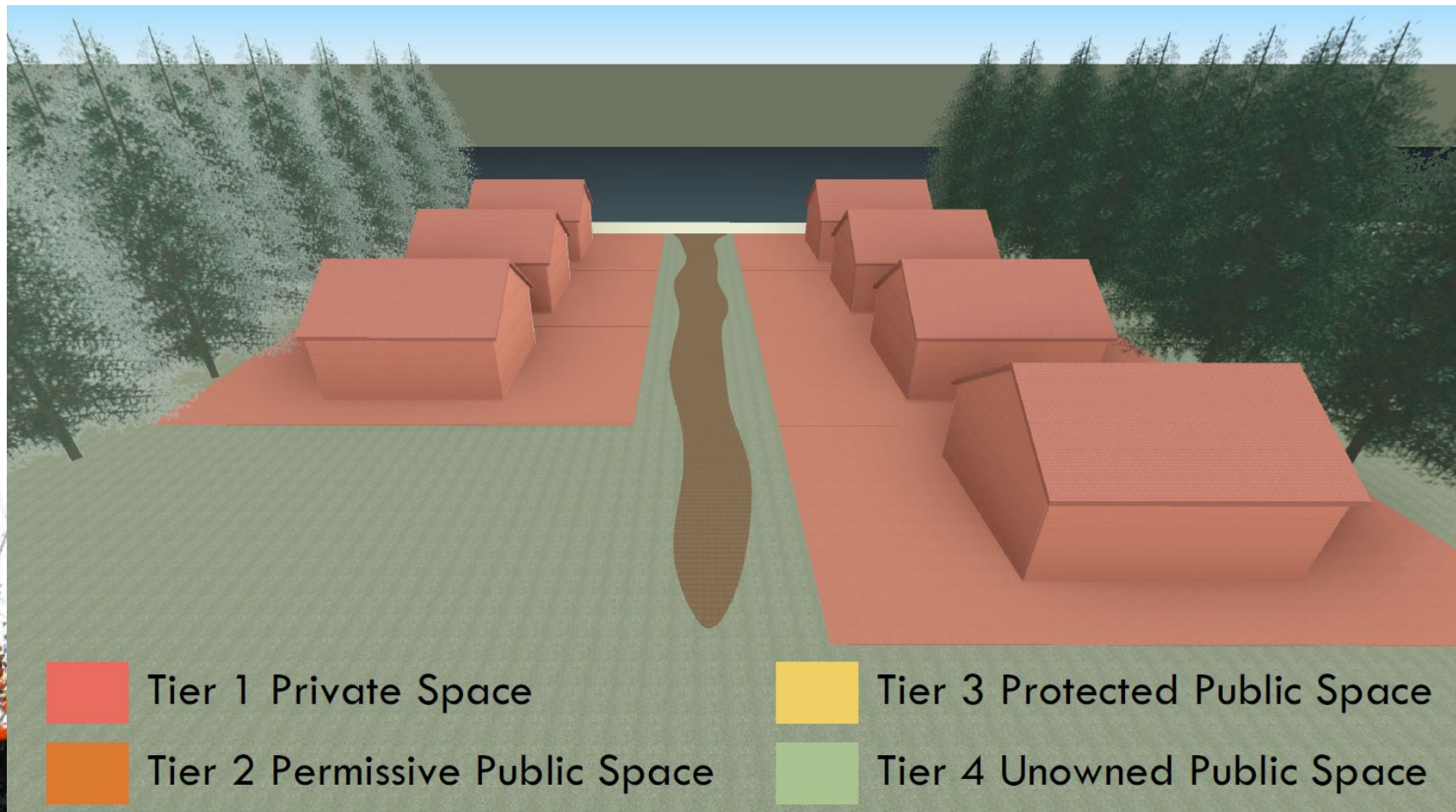


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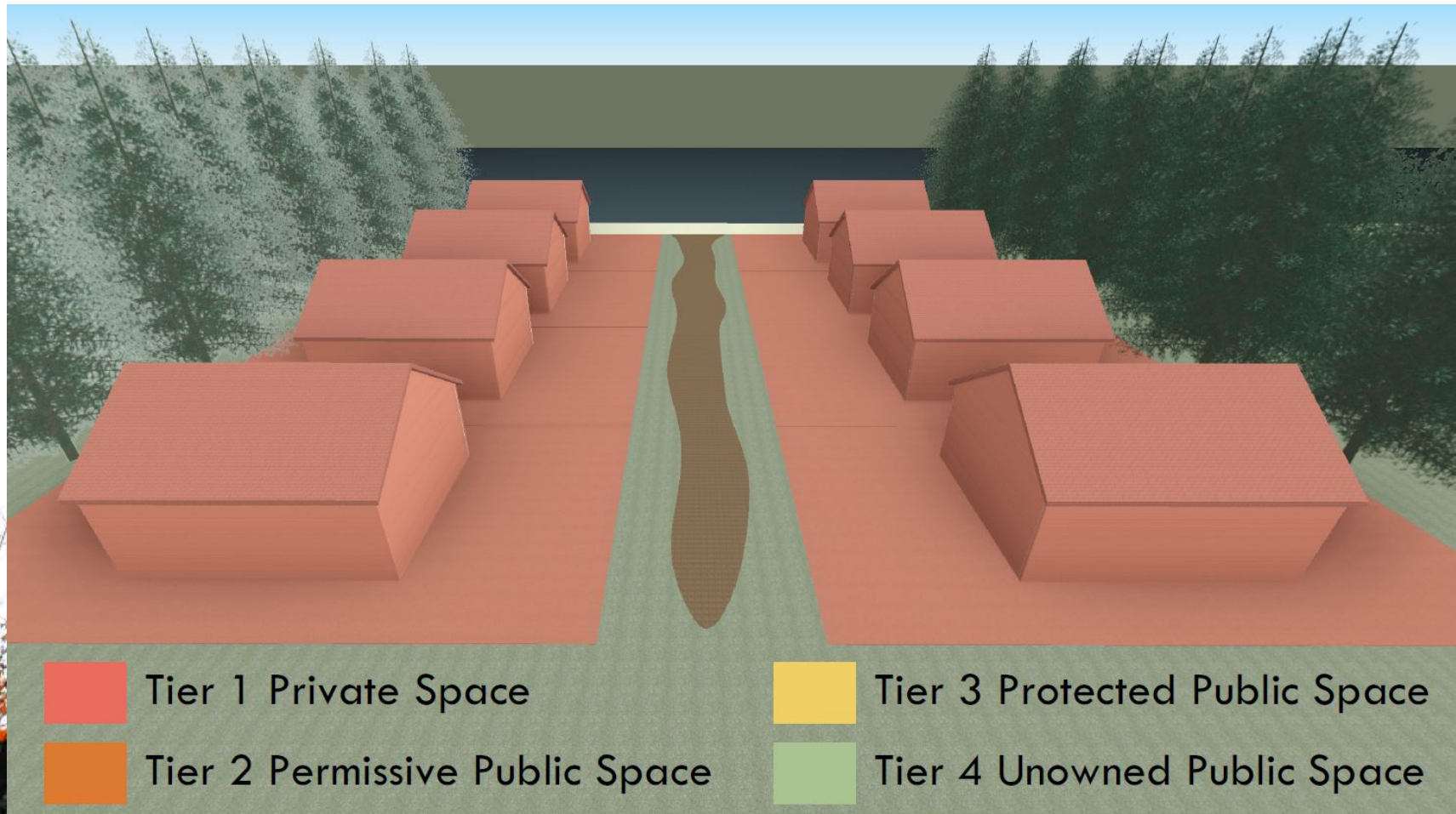


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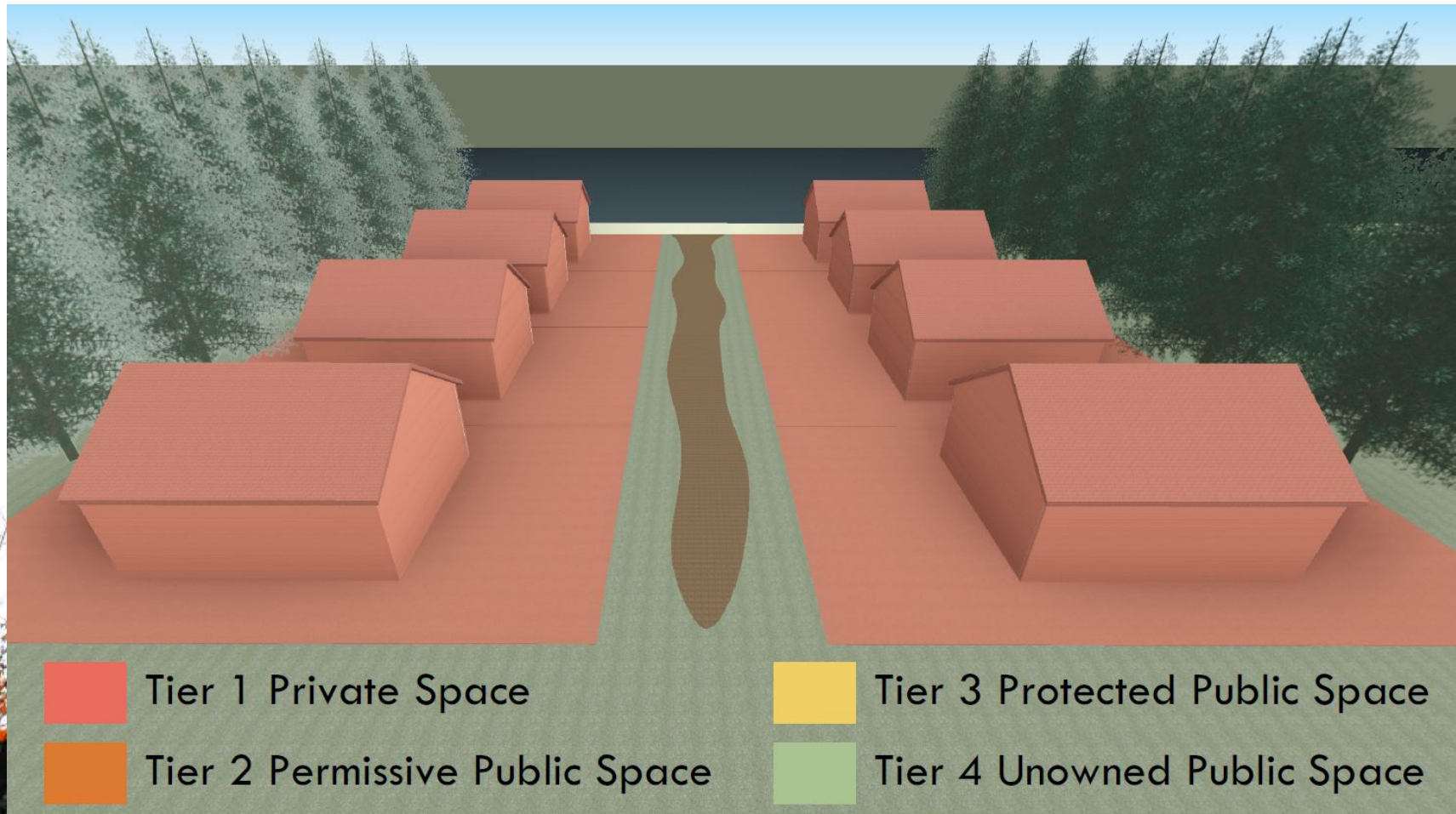


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Public Space Conflict (Scarcity)



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Hoppe's Private, Common, and Public Property

Solution 1 - Government-Owned "Public" Property

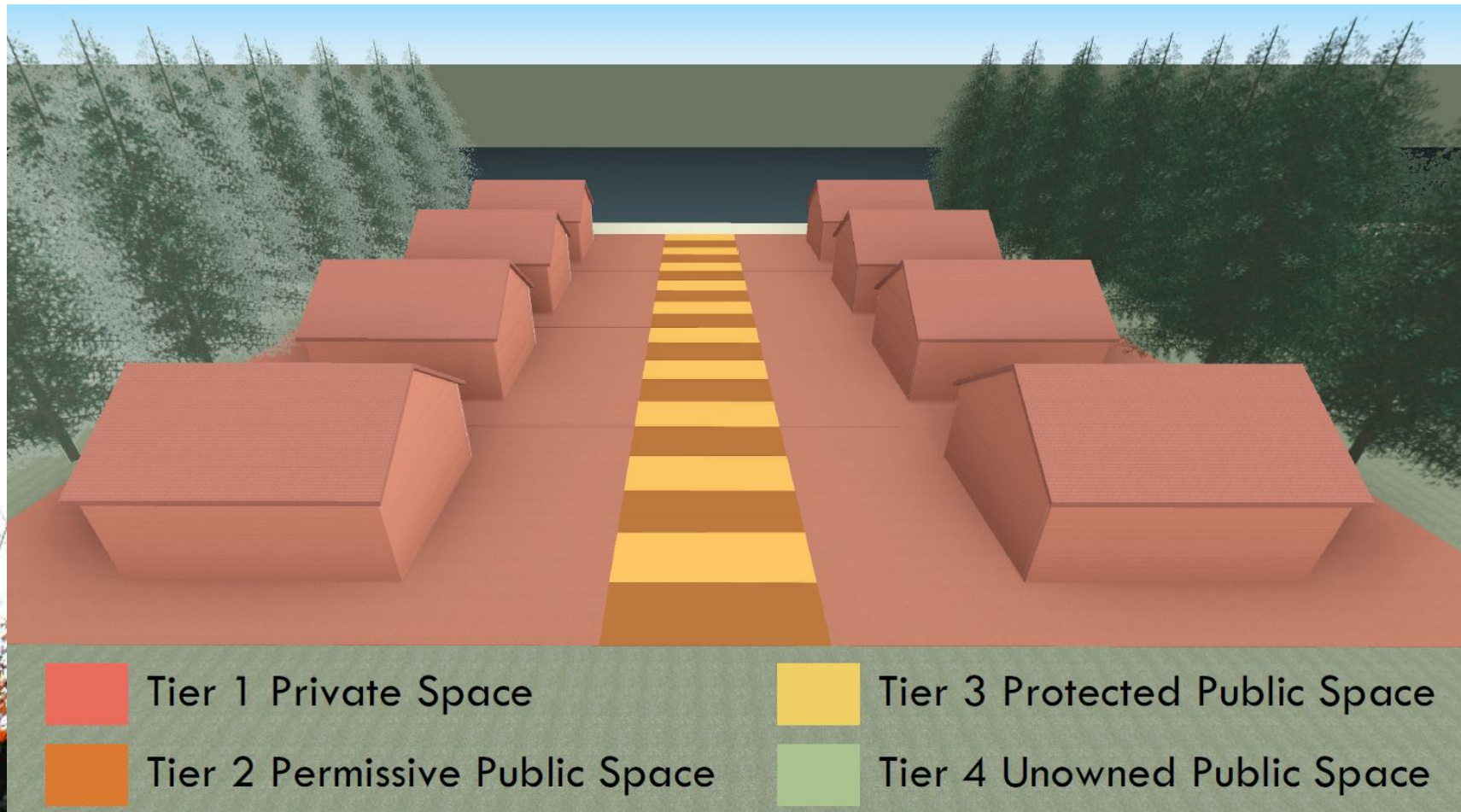
Villagers form a government to own and manage the street.

The Government:

- Restricts access by villagers and foreigners
- Sets rules and regulations
- Controls commercial activity and development on street
- Requires payment - user fees or taxes
- Does not allow exit from ownership
- Gains control over abutting private property (encirclement)

Hoppe's Private, Common, and Public Property

Hoppe's Village – Government-Owned "Public" Property



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Hoppe's Private, Common, and Public Property

Solution 2 – Homesteaded Private Property

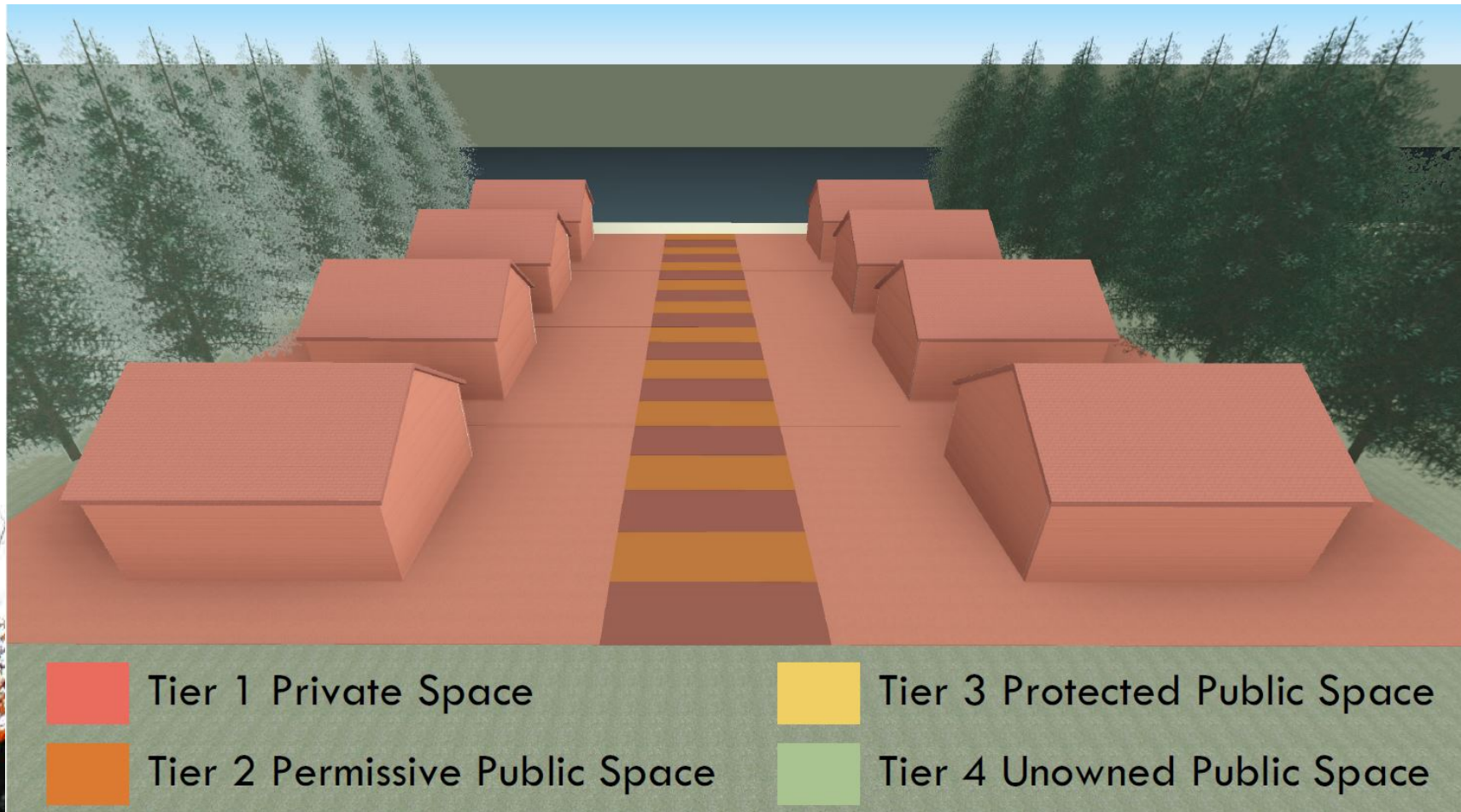
Individual or group “homesteads” the road by making repairs, granting them exclusive ownership

The **Owner**:

- Restricts access by villagers and foreigners
- Sets rules and regulations
- Controls commercial activity and development on street
- Requires payment - user fees or ~~taxes~~ **subscription**
- Does not allow ~~exit from~~ **joining** ownership
- Gains control over abutting private property (encirclement)

Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Property



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Hoppe's Private, Common, and Public Property

Solution 2.1 – Homesteaded Private Property with Easement

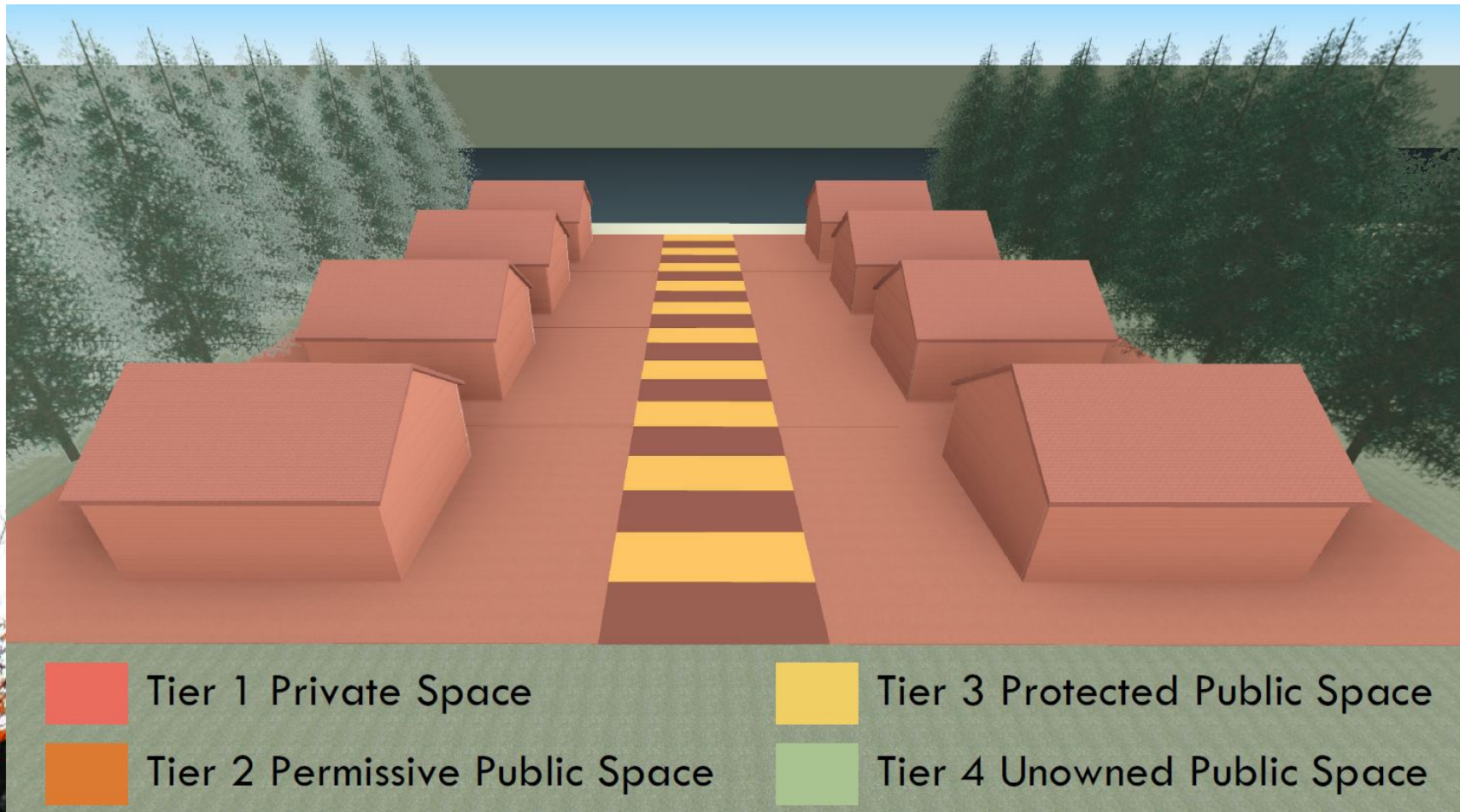
Individual or group “homesteads” the road by making repairs, granting them exclusive ownership. Villagers are granted a right-of way easement.

The Owner:

- Restricts access by ~~villagers and~~ foreigners
- Sets rules and regulations
- Controls commercial activity and development on street
- Requires payment by foreigners only - user fees or ~~taxes~~ subscription
- Does not allow ~~exit from~~ joining ownership
- ~~Gains control over~~ Restricts foreigners' access to abutting private property (~~encirclement~~) (border control)

Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Property / Easement



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Hoppe's Private, Common, and Public Property

Hoppe's Easement Problem

"For, by definition, as the first appropriator he cannot have run into any conflict with anyone in appropriating the good in question, as everyone else appeared on the scene only later."

Easement means:

- First appropriator *did* run into conflict, with previous users
- Use alone creates property rights, not just Lockean labor (improvements)
- Property rights can be granted to an unorganized collective (public), not just individual or organized group entity
- Property rights are divisible and can be allocated, not just exclusive control.

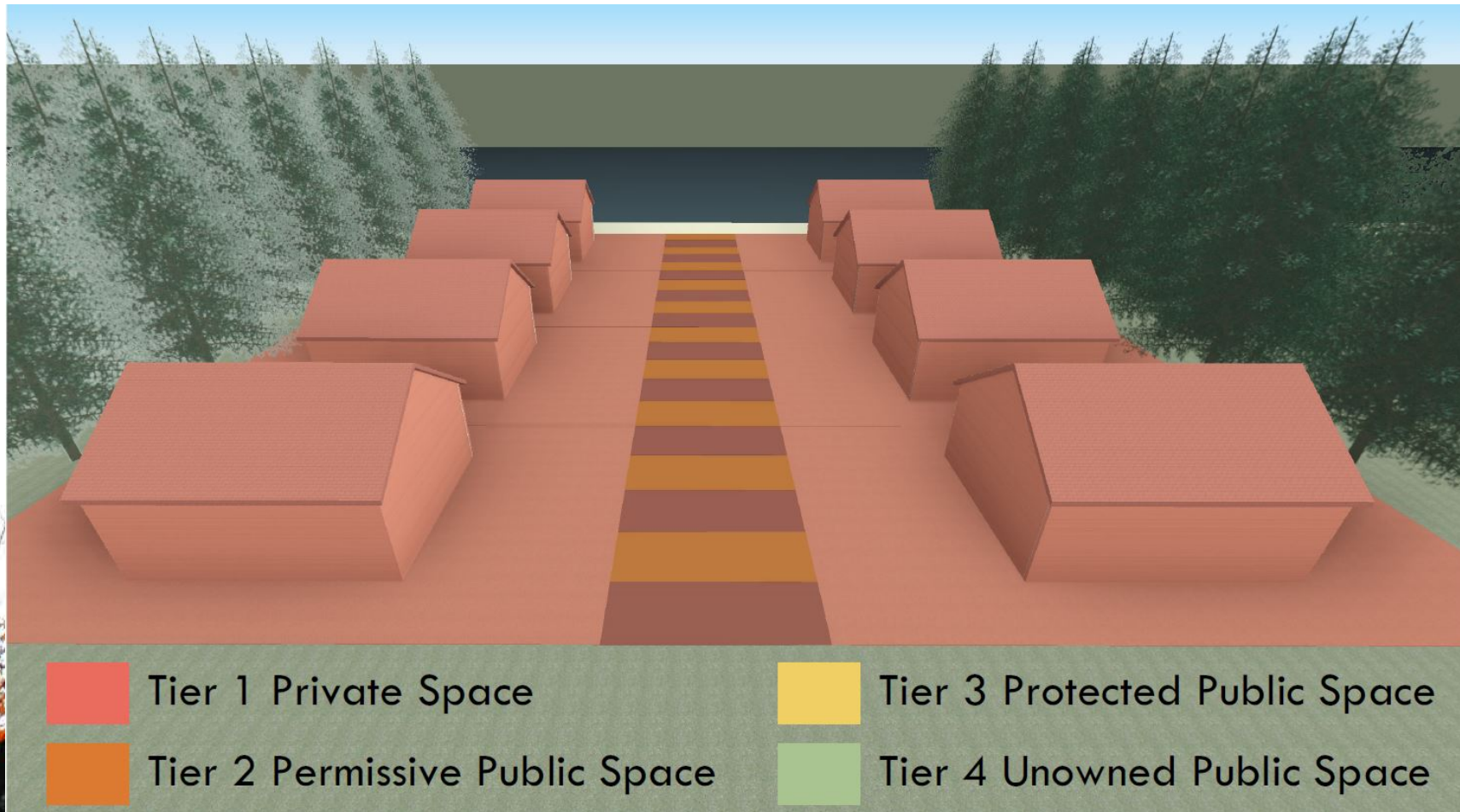
Modes of Property Ownership

(borrowed from Cynefin project management theory)

- **Disorder** - Unowned land
- **Simple Ownership** – Property rights allocated to **one** defined individual or group
- **Complicated Ownership** – Property rights allocated among **multiple** defined individuals or groups
- **Complex Ownership** – Property rights allocated among multiple defined **and undefined** individuals or groups (i.e. the public)
- **Chaotic Ownership** - **Unpredictable allocation** of property rights among multiple defined and undefined individuals or groups

Hoppe's Private, Common, and Public Property

Hoppe's Village – Homesteaded Private Property

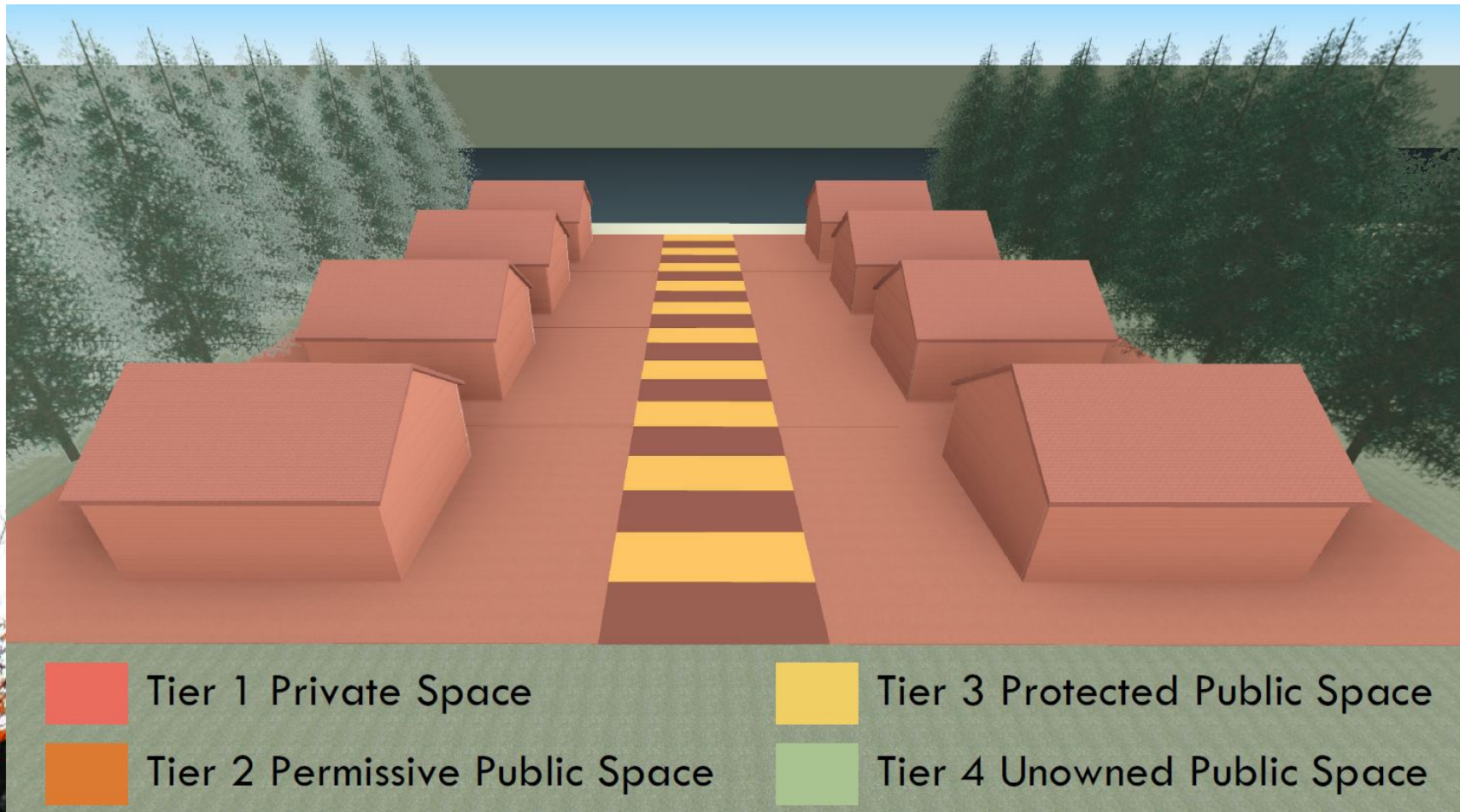


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Hoppe's Village – Homesteaded Private Property / Easement

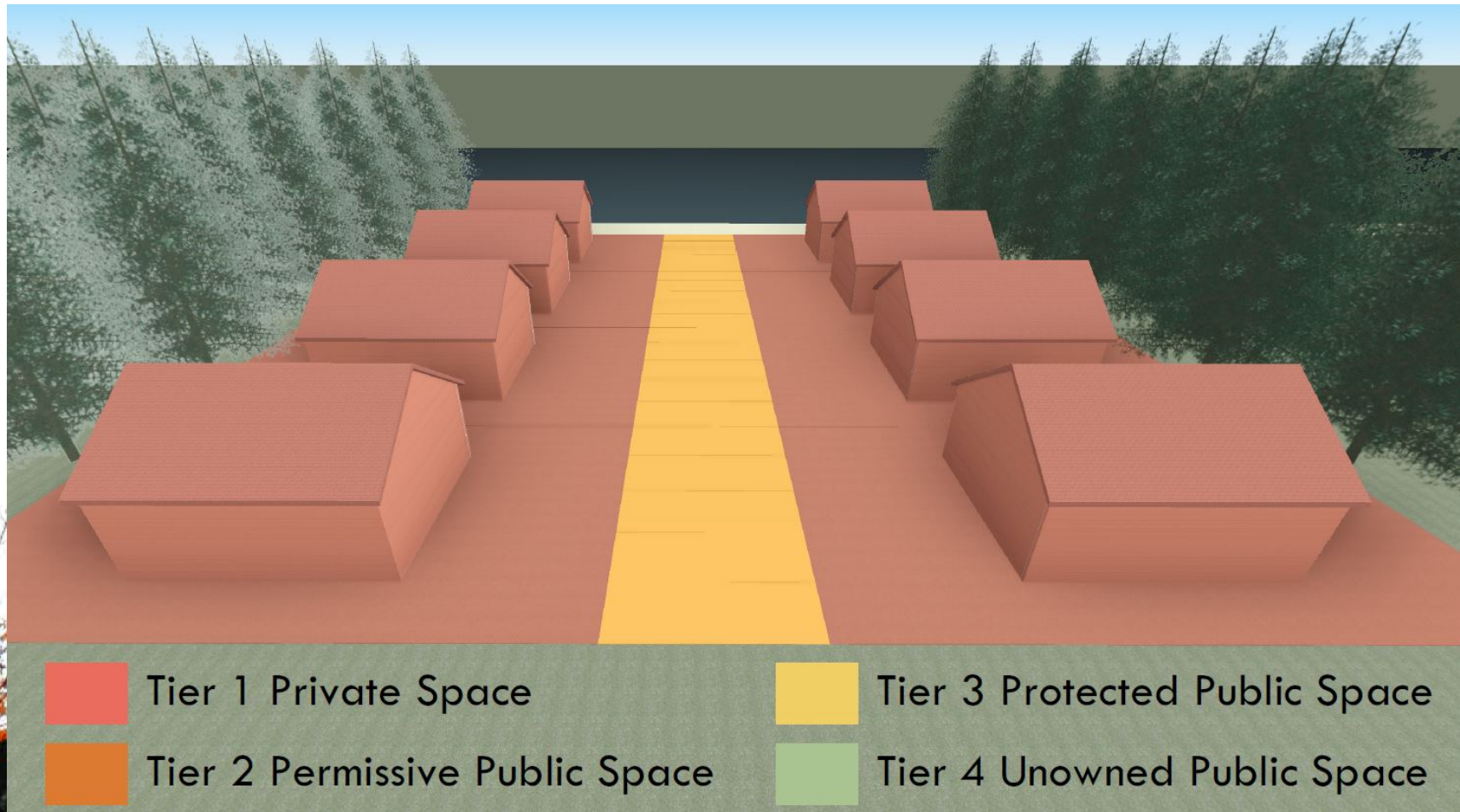


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Hoppe's Private, Common, and Public Property

Hoppe's Village – Protected Public Space



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Public Space:

The Missing Link Between Freedom and Property

- Public Space Is Where Freedom Happens
- Hoppe's Private, Common, and Public Property
- **We Need to Talk About Helicopters**
- Divesting Government Property
- Opt-In Trusts

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We Need to Talk About Helicopters



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We Need to Talk About Helicopters

no such thing as a right to free (unlimited) speech exists, not even to unlimited speech on one's own tenant-property. ...no one is permitted to advocate ideas contrary to the very covenant of preserving and protecting private property, such as democracy and communism.

*There can be no tolerance toward democrats and communists in a libertarian social order. **They will have to be physically separated and removed from society.***

Democracy - The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order (Transaction: 2001) p. 218

We Need to Talk About Helicopters

"In a covenant concluded among proprietor and community tenants for the purpose of protecting their private property,

no such thing as a right to free (unlimited) speech exists, not even to unlimited speech on one's own tenant-property. ...no one is permitted to advocate ideas contrary to the very covenant of preserving and protecting private property, such as democracy and communism.

*There can be no tolerance toward democrats and communists in a libertarian social order. **They will have to be physically separated and removed from society.**"*

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Hoppe's Anarcho-Capitalism

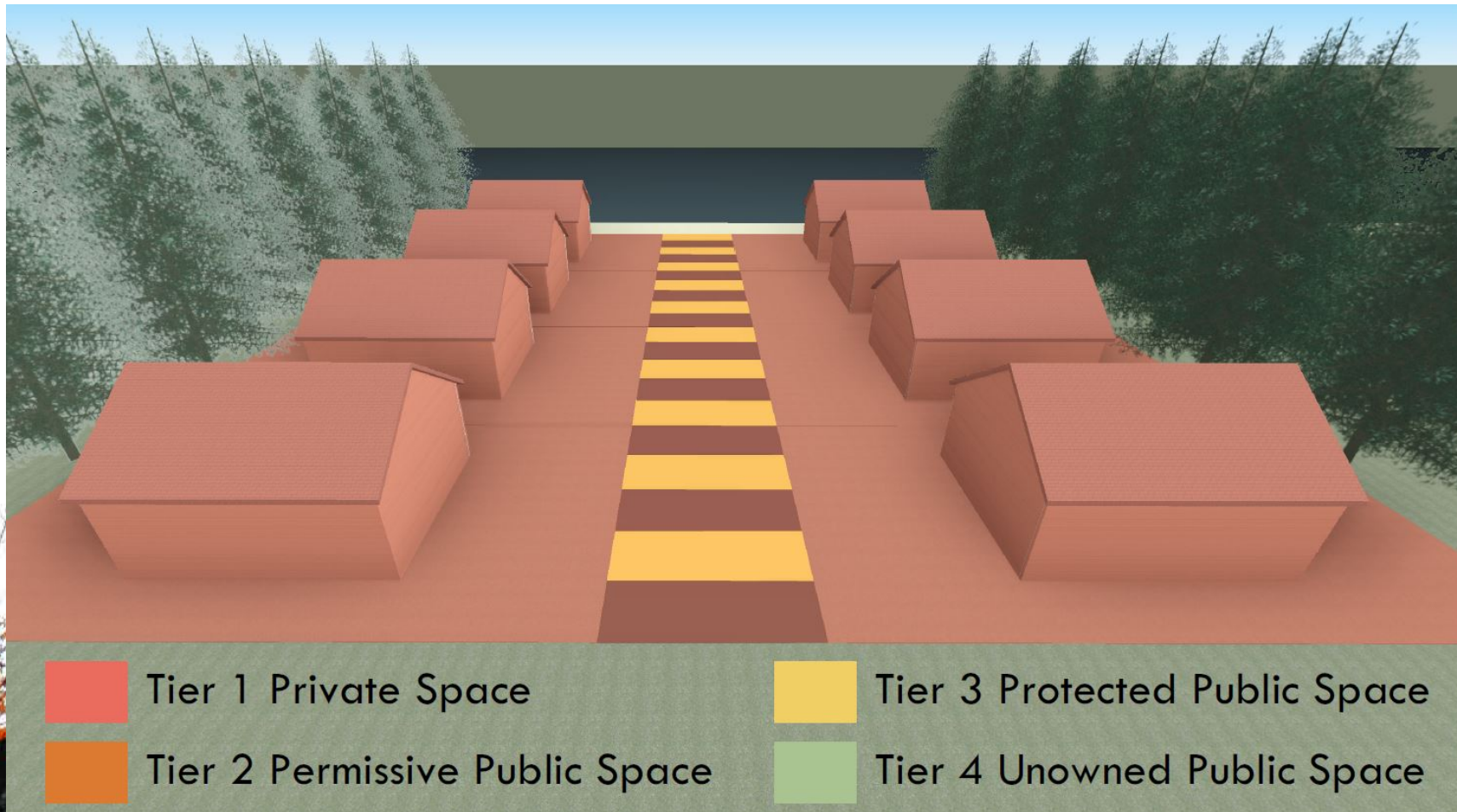
"[In an anarcho-capitalist society] *All land is privately owned*, including all streets, rivers, airports, harbors, etc. ... As is currently the case in some housing developments, the owner may be bound by *contractual limitations* on what he can do with his property (voluntary zoning)...

Clearly, under this scenario there exists no such thing as freedom of immigration. Rather, there exists the freedom of many independent private property owners *to admit or exclude others* from their own property in accordance with their own *unrestricted or restricted property titles*. "

<https://www.lewrockwell.com/1970/01/hans-hermann-hoppe/on-free-immigration-and-forced-integration/>

We Need to Talk About Helicopters

A covenant among proprietor and community tenants



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We Need to Talk About Helicopters

What people get wrong about Hoppe

- “Physical Removal” means eviction from private property (Tier 1 Private Space) by its owner. That’s it. No helicopters, folks.
- Hoppe’s restrictions on speech are consented to within the covenant community and do not apply outside that community.

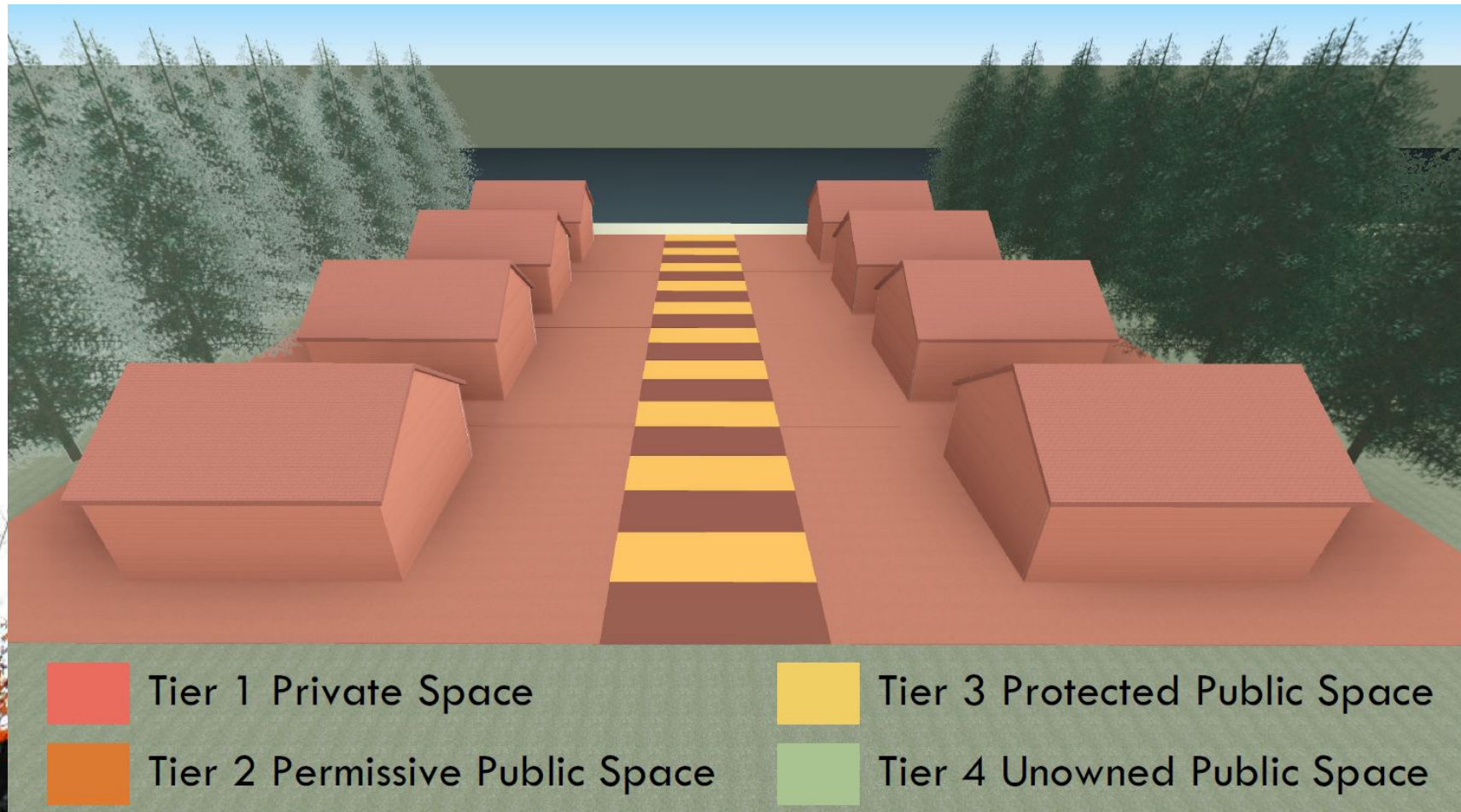
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What Hoppe gets right:

- In a covenant community, property owners can voluntarily agree to mutually restrict their freedoms, including speech about communism.
- Covenant violators could be evicted from the community, if allowed by the covenant terms.
- This is not aggression. The violator consented to removal.

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What Hoppe gets wrong:

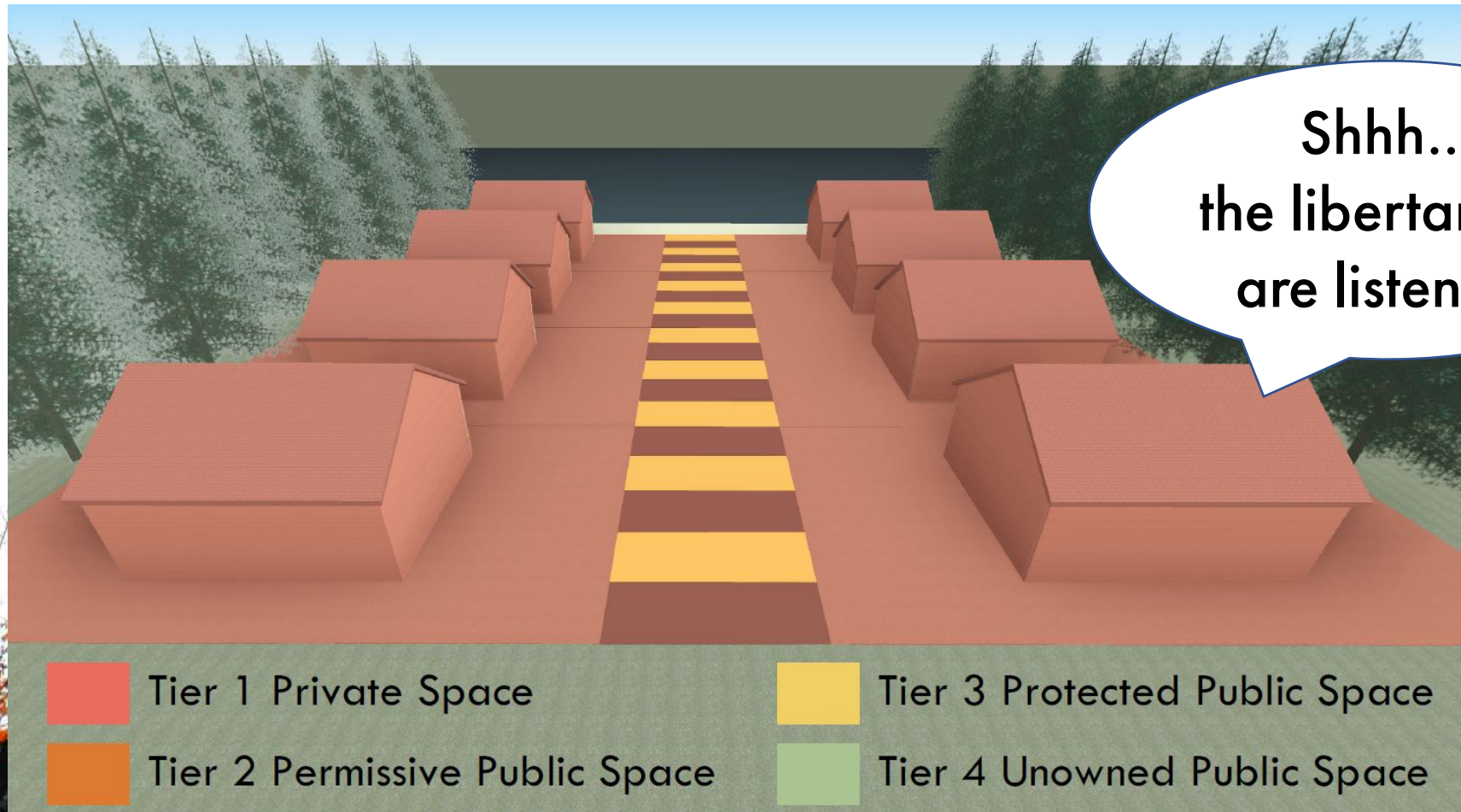


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What Hoppe gets wrong:



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What Hoppe gets wrong:

- Covenant community restrictions only apply to property owners
- “Libertarian” covenant communities would not choose to restrict speech, movement, etc. even if such covenants were possible, which they aren’t
- Collectivized covenant communities are not “a libertarian social order.” They are communist.
- How do covenant communities make decisions? Democracy!
- No government-run nation, state, or village is a voluntary covenant community

We Need to Talk About Helicopters

What Hoppe gets wrong:

Private ownership of public space does not necessarily grant the owner right to admit or exclude others.

In a libertarian society, there should be a network of protected public spaces from which you cannot be physically removed.

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Divesting Government Property

Why Divest Government Property?

- Basis for the state's power and perceived legitimacy
- Private landownership maximizes freedom for landowner and minimizes conflict among permitted users
- Protected Public Space can maximize freedom for the public and minimize conflict through negotiated easements / rules
- Less justification for eminent domain
- Municipal police are not needed to secure private property
- Windfall capital endowment for the poor (and everyone else)

Divesting Government Property

Land Available for Homesteading

	Unimproved Land		Improved Land	
Unowned (State of Nature)	✓		~	Unclaimed improvements (i.e. cleared pathway) may signify established access or use rights
Private Owner, not abandoned	✗	Owner may need to justify ownership claim without improvements (i.e. preservation)	✗	Traditional homesteaded private property
Private Owner, Abandoned	✓	Unimproved land reverts to state of nature. Internal parcel boundaries are invalidated.	✓	Abandoned improvements may be homesteaded.
Private Owner, Illegitimate claim	✓	On unimproved land, consider giving Owner first priority to establish a homesteading claim	✗	On improved land, ownership should be granted to the current owner unless someone has a better prior claim (restitution)
Government Owner	✓	Unimproved land reverts to state of nature. Internal parcel boundaries are invalidated.	✗	Improved land should be distributed to a public form of non-governmental ownership preserving established public access and use rights

Divesting Government Property

Methods of Divestiture

- To the Taxpayers (Hoppe)
- To the Workers
- To the Users
- To the Abutters
- To the Citizens
- To the Creditors
- To the Victims of History (Restitution)
- To the Highest Bidder (Auction)
- Lottery
- Vouchers
- Seizure in revolution

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Divesting Government Property

Methods of Divesting Government Property

Method of Divestiture:	Seizure in revolution	Taxpayer retribution	To the workers	To the creditors	Auction	Abutters claims	To the Citizens	To the victims of history	To the users	Lottery	Vouchers	Opt-In trust
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Evaluation Criteria:

Preserve Property Rights:

Does not infringe on existing property ownership rights	~	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Does not eliminate existing access and use rights	~	~	~	~	~	~	~	~	~	~	~	✓
Does not invalidate existing land parcels	~	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Does not invalidate land title history	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Does not result in developed land being unowned	~	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	~
Allows for ongoing preservation of preserved / historical land	~	~	~	~	~	~	~	~	~	~	~	✓

Divesting Government Property

Method of Divestiture:	Seizure in revolution	Taxpayer retribution	To the workers	To the creditors	Auction	Abutters claims	To the Citizens	To the victims of history	To the users	Lottery	Vouchers	Opt-In trust
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Evaluation Criteria:

Perception of "Fairness:"

Does not privilege the privileged	✗	✗	✗	✗	✗	✗	~	✓	~	~	~	~
Does not disempower the disempowered	✗	✗	✗	✗	✗	✗	~	~	~	~	~	✓
Minimizes likelihood of a "power grab" by elites	✗	✗	✗	✗	✗	~	~	~	✓	✗	✗	~
Places burden of costs on those creating the costs (i.e. wear and tear)	~	~	~	~	~	~	~	~	✓	~	~	~
Does not require users with easements to pay profits in excess of costs to owners (bridge troll)	~	~	~	~	~	~	~	~	~	~	~	~
Benefits to new "public" owners outweigh benefits to "public" of government ownership	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Does not limit ownership based on place or time of birth or habitation	~	✗	✗	✓	~	✗	✗	✗	✗	~	~	✓

Divesting Government Property

Methods of Divesting Government Property

Method of Divestiture:	Seizure in revolution	Taxpayer retribution	To the workers	To the creditors	Auction	Abutters claims	To the Citizens	To the victims of history	To the users	Lottery	Vouchers	Opt-In trust
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Evaluation Criteria:

Voluntary Ownership:

Does not require someone to own something they do not want to own	~	~	~	~	✓	~	~	~	~	~	✓	✓
Does not prohibit someone from owning something they want to own	✗	✗	✗	✗	~	✗	✗	✗	✗	✗	✓	✓

Divesting Government Property

Methods of Divesting Government Property

Method of Divestiture:	Seizure in revolution	Taxpayer retribution	To the workers	To the creditors	Auction	Abutters claims	To the Citizens	To the victims of history	To the users	Lottery	Vouchers	Opt-In trust
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Evaluation Criteria:

Reasonable Transfer Mechanism:

Non-violent transfer of property	✗	✓	✓	✓	✓	✓	✓	~	✓	✓	✓	✓
Consensual transfer of property (acceptable or even desirable to governments)	✗	~	~	✓	✓	~	✓	~	~	~	~	✓
Piecemeal transfer of property (one road or park at a time if desired)	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✗	✓
Does not require dissolution of existing government	✗	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Unambiguous distribution of ownership shares	✓	✗	✗	✓	✓	~	✗	✗	✗	✓	✓	✓

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Opt-in Trusts

A form of non-governmental public ownership

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Opt-in Trusts

Non-governmental public ownership

- Anyone can establish an ownership share at no cost
- Anyone can relinquish an ownership share
- Owners choose board members / management
- Owners have a stake in decision making
- Owners receive benefits of ownership (profit)
- Owners may be responsible for costs
- Owners establish access rights and rules

Opt-in Trusts

Creating an Opt-in Trust

- Someone creates a Declaration of Trust (legal document)
- Defines criteria and process for opting-in
- Defines rights and responsibilities of owners and users
- Individuals opt-in to claim ownership shares
- New owners further evolve Trust policies

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Opt-in Trusts

Divesting Government Property to an Opt-in Trust

- Anarchitecture Podcast convinces governments to divest property
- Various Opt-in Trusts compete to persuade government to divest to them
- Multiple Opt-in Trusts may merge to be more viable
- Government transitions ownership of a specific property to a Trust

Opt-in Trusts

Sources of Revenue

- Owner Fees (may be limited by Trust)
- User Fees (may be limited by easements)
- Abutter Impact Fees (curb cuts, utility work)
- Utility Fees (purchase easements, work permit fees)
- Land-Leases (mining, logging, operators, food trucks, events)
- Advertising (billboards, signboards, naming rights)
- Donations

Opt-in Trusts

Raising Capital For Improvements

- Owner Fees (may be limited by Trust)
- Investment Shares – Separate from Opt-In Shares.
Proportional to value of improvements
- Bonds – May be collateralized by improvements (not land value)
- Asset Sales – Limited by Trust and easements.

Opt-in Trusts

Maintenance Costs

- Paid by Trust
- Wear and tear
- Security
- Insurance
- Claim Damages
- Management / Administrative

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Opt-in Trusts

Profits

- Savings for future improvements
- Discounts to users
- Dividends to Opt-In Shares. Each additional share dilutes previous shares.
- Dividends to Investment Shares. Proportional to value of improvements.

Conclusion

- Public space is where freedom happens
- 4 Tiers – Private, Permissive, Protected, Unowned
- Modes of Ownership – Disorder, Simple, Complicated, Complex, Chaotic
- A libertarian society should have a network of protected public spaces connecting sovereign private properties
- Government property should be divested to public forms of ownership with protections for established freedoms
- Opt-In Trusts may be the best method of divestiture

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