



# C: CONSERVATION TOOLBOX

## OVERVIEW

*Chapter Outline:*

*Overview*

*Conservation Toolbox*

Arapahoe County has many tools at its disposal for conserving and protecting open space and building parks and trails. The following pages define a range of tools that can and should be used by the County to implement the Open Space Program. The tools include regulations, various methods of acquiring land, accepting gifts and donations, and the use of management agreements.

This toolbox has been developed to provide Arapahoe County with a quick reference of open space conservation strategies. Experience has shown that when there is a choice of techniques that can be tailored to meet the objectives of a landowner, there is the greatest potential for success. These techniques vary in terms of cost, voluntary or regulatory in nature, effectiveness and ability to protect land resources. This toolbox is divided into four sections: regulatory, acquisition, land donation and other methods and strategies. For each strategy, advantages and disadvantages are provided to help define an appropriate strategy for a given open space opportunity.

# APPENDIX C: TOOLBOX

## REGULATORY MECHANISMS

Regulations mandated by local governments are used to produce outcomes that might not otherwise occur. For the purpose of open space conservation, regulation is often used to ensure that an adequate supply of open space is provided as land is transformed from a natural or native landscape into a more intensive use. There are, however, disadvantages to preserving open space solely through land use regulation. First, regulations normally apply when the building process begins. The adverse impacts of land clearing, road building and other development activities (including fragmenting of habitat) are usually permitted and can often result in resource loss, essentially making open space ‘protection through regulation’ an after the fact exercise. Another disadvantage is that regulations are subject to change. Just as a governing body can adopt stricter regulations, a future governing body could relax or choose not to enforce those rules. So while regulation is an important method for conserving open space, it is not the only method that should be employed. The following is a listing of regulatory strategies that have been used throughout the United States to conserve open space.

### DESCRIPTION OF STRATEGY

**Development Impact Fee:** Impact fees are also known as exactions. In its simplest form, the developer is charged an easy-to-calculate fee. A formula may be created to decide the cost that development will impose on the community. The formula can account for the area of land affected, the number of units built, the expected market value of those units, the distance from the fire and police stations, costs of building roads, and the expected population growth resulting from the construction. The exaction can come in forms other than money. The developer can be required to provide streets, sewers, street lights, parks, or other infrastructure or amenities. The developer might also be required not to develop some portion of the land. In some cases, builders of expensive homes have been required to build some proportional number of low cost homes. The town or county can develop a comprehensive system or formula or exactions can be formulated on a case-by-case basis from more general criteria.

**Transfer of Development Rights:** In some cases, a local government may want to steer development toward areas where it is more appropriate and easier to serve. Generally, the intent is to steer development away from rural areas, agricultural preservation zones, and environmentally sensitive areas and guide it towards existing cities and towns. Transferable Development Rights (TDR) programs are one way to do that. In a voluntary TDR program, the County would designate certain parts of its territory as “sending zones” and other areas as “receiving zones.” Landowners in the sending zones can sell their rights to develop houses or commercial uses to other landowners in the receiving zones, or to a third party who will eventually buy land in the receiving zone. Or, landowners in the receiving zone can buy additional development rights from someone in the selling zone.

**Right To Farm:** A county right to farm and ranch ordinance protects agricultural enterprises from nuisance suits and complaints related to their agricultural activities. It gives constructive notice to potential residential landowners that agricultural activities and practices in the area will continue and may cause odors, land use practices and transportation impacts that may affect residential living.

### BENEFITS

A “pay-as-you-grow” program that really has been proven to help cities keep pace with rapid land development. A particularly useful tool for Arapahoe County, due to its fast pace of growth and rate of change.

Potentially an effective growth management tool. Resources can be protected without huge capital expenditures. Large tracts of protected land can be created in “sending” areas. Model programs: Montgomery County, Maryland and City of Austin, TX. Local Example: Boulder County, Colorado; Boulder County Land Use Department.

Good program for protecting farm land in rapidly growing communities. Encourages farmers to continue their operations and offers legal protection for these land uses.

### DRAWBACKS

Can be difficult to implement, as it must meet Supreme Court rulings on “essential nexus,” fair and equitable implementation. Politically challenging because impact fees are generally not favored by the development community.

Complicated program to establish and administer. High administrative overhead; requires professional staff assigned to program. Landowner resistance to downzoning in “sending” or higher densities in “receiving” areas. An unproven technique. Requires state enabling legislation.

Depends on farmers to continue their operations, so it is not a method for long-term protection of this greenspace resource.

**REGULATORY MECHANISMS (CONTINUED)**

**Urban Growth Boundary:** Demarcation of the limit of urban infrastructure (water and sewer extensions). UGB usually identifies a 10-20 year 'land supply' of buildable land.

---

**Cluster Development:** Cluster development allows land developers to develop in a compact form at higher densities, thereby preserving greenspace within the same tract that would not be developed. Can be combined with conservation easements to protect land created from clustering.

---

**Mandatory Dedication of open space:** Developers are required to dedicate a portion of subdivided property (1/35 acre per dwelling unit) or pay fee for open space, greenway, or parkland.

---

**Performance Zoning:** Zoning categories are based on permissible impacts to natural or historic resources, instead of a list of permitted uses. Requires impact assessment of proposed development projects.

---

**Bonus/Incentive Zoning:** Provides density bonuses; i.e., developers can build additional units in exchange for preserving designated resource lands. Technique usually applied to cluster developments and transfer of development rights programs.

---

**Conservation Overlay Zoning:** Additional or stricter development standards and criteria are established to protect particular features of an existing zone, such as historic districts, landscape features, scenic views, agricultural areas, or watersheds. Local Historic District designation is commonly used form of overlay zoning.

---

**Voluntary Agricultural District:** Special districts established to promote continuation of agricultural and forestry activities. Ag districts are formed where farmers and ranchers agree to keep their land in agricultural uses.

Limits sprawl and encourages more compact development. Allows integration with a TDR program to preserve greenspace. Example: Portland, Oregon

---

Allows for flexibility in design to protect natural resource areas located on the parcel. Construction and infrastructure costs for land developers are reduced. Example: Montgomery Farm in Allen, TX: [www.montgomeryfarm.com](http://www.montgomeryfarm.com)

---

Open space is protected, and recreation lands are acquired at little cost to the public.

---

The local land use plan directs the location of development to resource-compatible areas. Provides flexibility in types and designs of projects – many uses may be permitted in a single zone.

---

Encourages sensitive site design to protect resources. Helps maintain greenspace and rural character, particularly for residential developments on the urban fringe.

---

Standards and criteria are developed to meet needs of specific resources within the zoning district. Effective in protecting specific resources from development pressures. Used widely to create historic districts.

---

Maintains land in agricultural and forestry use. Provides some protection from nuisance lawsuits against agricultural operations. Protects farmers/ranchers from nuisance complaints, provides tax relief, limits infrastructure expansion.

Requires strong countywide cooperation. Can be controversial; downzoning required outside of UGB. Raises land and housing costs inside boundary.

---

Voluntary. If not implemented correctly, protected lands are often scattered and non-contiguous. Clustering may not be a preferred option for Arapahoe County developers. Long-term management of common greenspace may become problematic for homeowner association.

---

Applies only to residential subdivision and PUD's. Limited effectiveness in preserving large tracts or corridors.

---

Effectiveness is based on knowledge of resources and the effects of impacts. Requires a detailed land use plan and staff to administer the program.

---

Requires careful infrastructure planning to prevent sprawl and 'leapfrog' development. Dependence on wells and onsite septic systems in fringe areas. Conservation value limited if high number of units permitted.

---

Standards must be defined clearly to ensure that greenspace can be protected. Zoning regulations can be changed. Does not address resource preservation outside the zoning district. Not often used for greenspace.

---

Voluntary participation. Minimum acreage criteria. Does not provide long-term protection. Most effective when several contiguous farms participate in areas with development pressure.

**ACQUISITION OF OPEN SPACE**

Acquisition and management of resource lands can be combined with regulatory measures to broaden the effectiveness of a land conservation program. If land regulation is temporary, then acquisition of open space is permanent. For conserving open spaces and their functions, acquisition is the strongest and surest means of protection, provided that the public entity can be a good land manager. Acquisition methods can be divided into two strategic categories: those methods where landowners retain ownership of the land and preserve a resource through a conservation easement or other mutual agreement, and those methods involving a transfer of title from the owner to a conservation agency.

**DESCRIPTION OF STRATEGY**

**Purchase of Development Rights (PDR):** The owner's rights to develop a parcel of land are sold to the local government or to a land trust, usually through a conservation easement. Most PDR programs are voluntary and offer a viable financial option to interested landowners.

---

**Purchase of Rights and Other Easements:** In addition to purchasing development rights, other rights, such as the right to timber or extract minerals, could also be purchased. Other 'customized' easements could be developed as needed depending upon the resource in question.

**BENEFITS**

A proven technique for local communities with strong support to acquire lands for preservation. Owners who sell development rights receive an income and continue to use their land while retaining all other right Property taxes should be reduced.

---

For protection of scenic viewshed or forested buffer. Less expensive than fee-simple acquisition or PDR. Provides desired income to owner while keeping resource intact.

**DRAWBACKS**

Purchasing development rights can be expensive. Rarely protects enough land to relieve development pressure on resource land. Funding may not meet demand for easement purchases. Voluntary program means some resource areas may be lost.

---

Mineral rights management issues must be resolved. Limited applicability for protecting open space.

**ACQUISITION OF OPEN SPACE (CONTINUED)**

**Conservation Easement:** A legal agreement between a landowner and a qualified conservation organization or government agency to voluntarily restrict the use and development of the property. Easement grantee (i.e. local government) would hold a partial interest or some specified right in a parcel of land. A conservation, historic preservation, open space, or scenic easement is designed to protect a specific sensitive natural, historic, or cultural resource. An easement may be in effect for a specified period of time but is usually perpetual.

---

**Lease:** An agreement between an agency and landowner to rent the land in order to protect and manage a sensitive resource.

---

**Fee Simple Acquisition:** Usually the sale of land at full market value. Ownership and responsibilities are transferred completely to the buyer. While cash payment yields greatest return, taxes and other expenses may reduce net return.

---

**Bargain Sale:** Land, or a conservation easement, is purchased at less than fair market value. The difference between the bargain sale price and the easement or land's fair market value becomes a charitable donation.

---

**Installment Sale:** A percentage of purchase price is deferred and paid over successive years.

---

**Right of First Refusal:** Agreement giving conservation agency the option to match an offer and acquire the property if the landowner is approached by another buyer.

---

**Rolling Option:** A series of options to buy a property, in portions or sections, extending the purchase over a period of years.

---

**Land Banking:** Land is purchased and reserved for later use or development. Land could be leased for immediate use (i.e. agriculture or athletic field) or held for eventual resale with restrictions. Local government functions as a land trust. Many programs are funded through real estate transfer taxes.

---

**Acquisition & Saleback or Leaseback:** Agency or private organization acquires land, places a conservation easement, protective restrictions or covenants on the land, then resells or leases land.

Can be effective in preserving open space if it meets mutual goals of landowner and agency. Easement provisions are tailored to needs of landowner and site preservation goals. Landowner retains ownership, use and **management** of the land. Potential property, income, and estate tax benefits for donation or bargain sale of an easement if it is permanent. Easements run with the land, despite changes in ownership. Reduces costs for site protection when easements are acquired at less than fair market value for the protected area. GOCO Open Space Acquisition Grant Program and NRCS Farm and Ranchland Protection Program is a possible source of funding for this initiative.

---

Low cost approach to site protection. Landowner receives income and retains control of property. An alternative for preservation minded landowners not ready to commit to sale of easement. Restrictions can be included in the lease to direct the activities of the conservation agency on the land.

---

The most straight forward acquisition method. Provides agency with full control over future of property. GOCO Open Space Acquisition Grant Program is a possible source of funding for this initiative.

---

Reduced acquisition costs. Seller may qualify for tax benefits for charitable donation. May offset capital gains on the sale.

---

Possible capital gains tax advantages for seller.

---

Agency can gain extra time to acquire funds for purchase.

---

Used, when insufficient funds are available, to purchase land, at fair market value, over a period of time using smaller annual appropriations.

---

Local government proactively identifies and purchases resource land. Lowers future preservation costs by working as a defense against future increases in land prices, speculation, and inappropriate development.

---

Proceeds from sale or lease can offset acquisition costs. Land may be more attractive to buyer due to lower sale price resulting from restrictions. Management responsibilities assumed by new owner or tenant.

Baseline survey required to identify the extent of natural, historic, or cultural resources within the easement. Less protection than outright acquisition. Easement purchases may be costly, even though they are less than fee acquisition. Terms must be carefully and clearly outlined. Management intensive: easements must be monitored and enforced; grantee agency must work closely with landowners. Easement grantee must possess technical expertise and financial wherewithal to monitor and enforce easement. Easement restrictions may limit property resale opportunities. Tax benefits may not be sufficient motivation for landowner to donate or sell easement.

---

Short-term protection strategy. Leases are not permanent.

---

Most expensive. Buyer assumes full responsibility for care and management of property. Loss of revenue when land is removed from tax rolls. Capital gains issues for seller.

---

Difficult and time-consuming to negotiate. May still be costly to acquire land.

---

Complicates budgeting and financing of acquisitions.

---

Resource may be lost if offer can't be matched by conservation agency. Some landowners are unwilling to enter into this kind of binding agreement.

---

May not work for the landowner due to time period of payment.

---

Expensive. Requires large upfront expenditures. Public agency must have staff to handle land trust functions of acquisition, management, lease, or resale. Real estate transfer tax for land acquisition would require local enabling legislation.

---

Complicated procedure. Owner retains responsibility for the land but may have less control over the property. Leases may not be suitable on some protected lands.

**DONATION OF OPEN SPACE**

**DESCRIPTION OF STRATEGY**

**Outright Donation:** Owner grants full title and ownership to conservation agency.

---

**Donation via Bequest:** Land is donated to a conservation agency at the owner's death through a will.

---

**Donation with Reserved Life Estate:** Owner retains rights to use all or part of the donated land for his or her remaining lifetime and the lifetimes of designated family members.

**BENEFITS**

Resources acquired at very low costs to the agency. Agency may receive endowment for long-term land stewardship. Donor may qualify for income tax deductions, estate tax relief, and property tax breaks.

---

Reduces estate taxes and may benefit heirs with reduced inheritance taxes. Allows owner to retain full use and control over land while alive; ensure its protection after death.

---

Allows owner to continue living on and using the property during his or her lifetime while ensuring the land's protection. Allows designation of family members to remain on land.

**DRAWBACKS**

Landowner loses potential income from sale of land. Receiving agency must accept responsibility and long-term costs of land management. Stewardship endowments may make donations cost prohibitive for landowner.

---

No income tax deduction for donation of land through a will. Requires careful estate planning by the landowner.

---

Tax benefits may be earned prior to death; some types of open space may not qualify. May delay transfer of title to the conservation agency for a long period of time.

ADDITIONAL METHODS OF OPEN SPACE PROTECTION

DESCRIPTION OF STRATEGY

**Intergovernmental Partnership:** Federal, state, and local agencies form joint partnerships to own and manage land.

**Agency Transfer:** Government transfers excess land to another agency that can assume resource protection and management responsibilities.

**Land Exchange:** Land may be exchanged for another parcel that is more desirable for resource protection.

**Nonprofit Acquisition and Conveyance to Public Agency:** Nonprofit organization (such as land trust) buys a parcel of land and resells it to a local government or other public agency.

**Joint Venture Partnership:** Strategy used by public agencies and private organizations to accomplish projects serving mutual goals. For example, some government grant programs could be matched with both private contributions and public funds.

**Management Agreement:** Agreement between landowner and conservation agency to manage property to achieve resource conservation goals.

**Mutual Covenants:** Agreement between adjoining landowners to control future land uses through mutually agreed upon restrictions.

**Colorado Conservation Tax Income Credit:** A Colorado income tax credit is available to Colorado taxpayers making a qualified donation of a conservation easement to a state certified land trust or governmental entity. The credit is in an amount equal to the value of the conservation easement donation up to \$375,000. The tax credit is equal to 50% of the value of the conservation easement up to a maximum easement value of \$750,000, for a \$350,000 credit. The law further provides that this credit may be used by the donor to: offset the donor's Colorado State income tax obligation, transfer to another Colorado taxpayer for credit against their income tax obligation, or, entitle them to a cash refund from the State in years of a budget surplus. An easement donor may qualify for only one conservation easement tax credit per year, and may not claim a second credit until the first credit has been used or waived. The transferability of the tax credit to another taxpayer, that has high income tax liability, typically occurs with a 20% discount in order to attract the buyer to purchase the credit. Thus, a typical \$375,000 credit can generally earn the seller \$300,000 from the sale of the tax credit.

BENEFITS

Sharing the responsibilities and costs of acquisition and management can protect larger or more expensive properties. Can foster countywide cooperation to preserve greenspace.

Resource protection and management with little additional expenditures.

Lower acquisition costs. Scattered properties can be exchanged for a single, larger parcel. When equal value properties are exchanged, there is no tax on the transfer.

Nonprofits can often move more quickly to purchase and hold land until the public agency is able to buy it. Could reduce acquisition costs for public agency.

Partners share benefits, responsibilities, and costs of acquisition and management. Creates a coalition of support for protecting diverse resources. Brings diverse sources of knowledge and expertise to solve resource protection issues.

Owner may be eligible for direct payments, cost-share assistance, or other technical assistance from the agency. Management plan is developed based on owner's preservation aims.

Permanent (unless parties agree to change): covenants can be enforced by any of the landowners or future landowners of the involved properties. Significant incentive to comply with restrictions, since all parties are aware of use controls. Can reduce property taxes.

Tremendous benefit to landowners that want to participate in County sponsored parks, open space and trails program. Flexible enough to respond to an individual landowner/taxpayer need. One of the most effective conservation based measures in Arapahoe County.

DRAWBACKS

Partners must agree on management strategies in order to reduce potential for conflict. Agency budgets and acquisition criteria may restrict acquisitions. Slower response time: acquisition opportunities may be lost due to agency procedures. May remove land from tax base.

Excess property may not be suitable for resource protection. Obtaining fair market value for the property may be agency's priority.

Complicated process; not widely known and rarely used. Subject to IRS regulations. Property owners must be willing to participate, and properties must be of equal value.

Local government must be willing to purchase land and assume management responsibilities.

More complicated property management and decisionmaking. Conflicts in acquisition criteria and funding priorities must be resolved.

Mutual agreement is more easily terminated than a lease. Agreements are not permanent.

Loss in market value from mutual covenants does not qualify as a charitable deduction for income tax purposes.

Requires a close working relationship with conservation organization and tax accountant to take full advantage of program. May not apply to all types of land conditions. Subject to acceptance by local government.