

# Appendix C

## **Land Conservation & Protection Strategies**

## LAND CONSERVATION AND PROTECTION STRATEGIES

The following land conservation and protection strategies have been and can be used by the City of Durango to protect, conserve and steward open space resources.

### 1. Regulatory Mechanisms

The following is a list of regulatory strategies that have been used throughout the United States to preserve open space. There are many benefits to using regulations to protect and preserve open space, most importantly in that these typically have low cost to the overall community tax payer, instead of relying on development to shoulder the primary burden of cost. So long as a community has done adequate advance planning to determine what areas should be preserved or protected within a proposed development site, this can be a very effective method. However, there can also be inherent disadvantages to preserving open space through regulatory mechanisms. First, regulations normally apply when the land development process begins. Unless the advance planning has occurred, the adverse impacts of land clearing, road building and other development activities (including fragmenting habitat) can 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 not enforce those rules.

In order for the City of Durango to utilize many of the following regulatory mechanisms, a pro-active annexation policy would be required as significant open space preservation opportunities do not exist within the City’s current jurisdiction. If the City were to extend its annexation boundary, new opportunities for open space conservation and preservation would become available and the following tools would have greater value and merit.

**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, streetlights, parks, trails or other infrastructure or amenities. The developer might also be required not to develop some portion of the land. In some cases, such as in Durango, developers of new subdivisions are required to build some proportional number of affordable homes.

*Benefits:* A “pay-as-you-grow” program that really has been proven to help cities keep pace with rapid land development.

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

**Hillside/Steep Slope Protection Ordinance:** The City of Durango has developed an interim Hillside Protection Ordinance to protect steep slopes surrounding Durango. Protection is achieved through the subdivision design, site design, and structure design processes to reduce impact during the land development process. The ordinance applies to land with slopes 20% and greater. All development

activity in this area is subject to the provisions of the ordinance. Design objectives stress the need to limit the visual and environmental impact on the site. The Hillside Protection Ordinance is likely to be replaced in 2010 by the Sensitive Lands Ordinance currently under development.

*Benefits:* Protects the City's scenic mountain backdrop from development and landscape degradation. Includes substantial design development provisions to minimize aesthetic impact.

*Drawbacks:* Allows development to occur. Applies to slopes 20% or greater.

**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 city or 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.

*Benefits:* 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.

*Drawbacks:* Complicated program to establish and administer. This will require a level of City-County coordination and cooperation on land use that does not currently exist. Also, since La Plata County is not currently zoned, there is a functional problem in implementing this tool in terms of calculating potential development yield to send to receiving areas. This tool also has high administrative overhead; requires professional staff assigned to the program. Across the country there has been landowner resistance to downzoning in "sending" or higher densities in "receiving" areas. Requires state enabling legislation.

**Cluster Development:** Cluster development allows land developers to develop in a compact form, shifting scattered density from across the development tract to a smaller portion of the site, thereby preserving open space within the same tract that would be developed.

*Benefits:* Allows for flexibility in design to protect natural resource areas located on the parcel. Creates a more compact development, reducing construction and infrastructure costs, as well as long term maintenance costs. Example: Twin Buttes.

*Drawbacks:* If not implemented correctly, protected lands are often scattered and non-contiguous, or low value. Requires significant advanced planning to ensure appropriate long-term management.

**Mandatory Land Dedication:** The City of Durango requires residential developers to dedicate a portion of subdivided property (10.5 acres per 1,000 persons with the conversion factor being 3.2 persons per dwelling unit) or a pay fee for parkland or open space. Given the limited space available within the existing City limits, and the lack of comprehensive plan map showing proposed future park sites, developers typically opt for paying a fee-in lieu rather than a dedication of land meeting this standard.

For properties proposing annexation into the City, the dedication ratio is often greatly exceeded through the negotiated annexation process.

*Benefits:* Park and open space land is protected at little cost to the public.

*Drawbacks:* Applies only to residential subdivision and Planned Developments (PDs). Limited effectiveness in preserving large tracts or corridors.

**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.

*Benefits:* 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.

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

**Density Bonus:** Provides additional density to developers in exchange for preserving designated resource lands. Technique usually applied to cluster developments and transfer of development rights programs. (Please note: This strategy will require revision of the City’s current zoning system in order to be implemented. These revisions are planned for 2010.

*Benefits:* Encourages sensitive site design to protect resources. Helps maintain open space and rural character, particularly for residential developments on the urban fringe.

*Drawbacks:* Requires careful infrastructure planning to prevent sprawl and ‘leapfrog’ development. Conservation value limited if high number of units permitted.

**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. The City of Durango has in place a River Corridor Overlay Zone for the Animas River Corridor (RCOZ).

*Benefits:* Standards and criteria are developed to meet needs of specific resources within the zoning district. Effective in protecting specific resources from development pressures.

*Drawbacks:* Standards must be defined clearly to ensure that open space or other landscapes can be protected. Zoning regulations can be changed. Does not address resource preservation outside the zoning district. Not often used for open space.

## 2. Acquisition of Open Space

Acquisition and management of resource lands can be combined with regulatory measures to broaden the effectiveness of a preservation program. For preserving open spaces and their functions, acquisition is the strongest and surest means of protection. Acquisition methods can be divided into two strategic categories: those methods where landowners retain ownership of the land and preserve a resource

through an easement or other mutual agreement, and those methods involving a transfer of title from the owner to a local government, land trust, or other conservation organization.

**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. Most PDR programs are voluntary and offer a viable financial option to interested landowners.

*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.

*Drawbacks:* Purchasing development rights can be expensive. Funding may not meet demand for easement purchases. Voluntary program means some resource areas may be lost.

**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:* 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:* Mineral rights or timber rights management issues must be resolved.

**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 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.

*Benefits:* 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 and use of the land. Potential property, income, and estate tax benefits for donation or bargain sale of an easement. 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.

*Drawbacks:* Less protection than outright acquisition. Easement purchases may be costly. Terms must be carefully and clearly outlined. Management intensive: easements must be monitored and enforced; easement holder must work closely with landowners. Easement holder 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.

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

*Benefits:* 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.

*Drawbacks:* Short-term protection strategy. Leases are not permanent.

**Fee Simple Acquisition:** Usually the sale of land at full market value. Ownership and responsibilities are transferred completely to the buyer.

*Benefits:* The most straight forward acquisition method. Provides agency with full control over property.

*Drawbacks:* Most expensive. Buyer assumes full responsibility for care and management of property. Loss of potential future property tax revenue when land is removed from tax rolls. Potential capital gains issues for seller.

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

*Benefits:* Reduced acquisition costs. Seller may qualify for tax benefits for charitable donation. May offset capital gains.

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

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

*Benefits:* Possible capital gains tax advantages for seller.

*Drawbacks:* Complicates budgeting and financing of acquisitions.

**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.

*Benefits:* Agency can gain extra time to acquire funds for purchase.

*Drawbacks:* 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.

**Undivided Interest:** Several parties share ownership in a parcel of land, with each owner's interest extending over the entire parcel.

*Benefits:* Changes to property cannot be made unless all owners agree.

*Drawbacks:* Property management can be complicated.

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

*Benefits:* Proceeds from sale or lease can offset acquisition costs. Preservation only occurs on portion of property with conservation values. Land may be more attractive to future buyer due to lower sale price resulting from restrictions or reduction in parcel size. Management responsibilities assumed by new owner or tenant.

*Drawbacks:* 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.

### 3. Donation of Open Space

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

*Benefits:* Resources acquired at very low costs to the agency. Donor may qualify for income tax deductions, estate tax relief, and property tax breaks.

*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 donation cost prohibitive for landowner.

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

*Benefits:* 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.

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

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

### 4 Management Agreements for Open Space

**Intergovernmental Agreements/Partnership:** Federal, state, and local agencies form joint partnerships to own and/or manage land. City of Durango has management agreement with BLM for recreational uses, trailheads, and winter closures on Animas Mountain.

*Benefits:* Sharing the responsibilities and costs of acquisition and management can protect larger or more expensive properties. Can foster intergovernmental cooperation to preserve open space.

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

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

*Benefits:* Resource protection and management with little additional expenditures.

*Drawbacks:* Excess property may not be suitable for resource protection. Obtaining fair market value for the property may be agency's priority. Long term maintenance costs shift to local government.

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

*Benefits:* Lower acquisition costs. Scattered properties can be exchanged for a single, larger parcel.

*Drawbacks:* 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.

**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.

*Benefits:* 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.

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

**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.

*Benefits:* 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.

*Drawbacks:* More complicated property management and decision making. Conflicts in acquisition criteria and funding priorities must be resolved.

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

*Benefits:* 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.

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

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

*Benefits:* Permanent: 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.

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

### **Funding**

The following funding has been and can be used to support the Durango Open Space program.

#### **1. City of Durango Funding Sources**

The 2001 Open Space Master Plan recommended that the City create a “dependable and ongoing funding source” for open space conservation. The City has accomplished this through a sales and use tax strategy.

#### **Dedicated Sales Tax Funding**

Two separate sales tax measures were approved by the citizens of Durango that can be used in acquiring, constructing and maintaining parks, open space and trail projects. They include:

**1) Recreation Complex/Trails Fund:** In 1999, City residents approved a one-half of one percent sales and use tax (one-half penny of every dollar spent) to support construction of the Community Recreation Center and completion of the Animas River Trail. The resolution enacting the approved ballot measure, in part, reads “after construction (of the Community Recreation Center) has been completed, any tax revenues generated in excess of amounts required to make annual payments on the debt may be used for the operation and maintenance of the Community Recreation Center and for the development and construction of the Animas River Trail, **including adjacent greenway areas.**”

**2) Parks, Open Space and Trails Fund:** In 2005 City residents approved a second ballot measure to provide one-quarter penny of every dollar spent to be used to “**finance the preservation, acquisition, and maintenance of natural lands including but not limited to, land to preserve water quality in rivers and streams, wildlife habitat, land for hiking and biking, and the creation and maintenance of parks and trails...**”

Expenditure of any money from these funds is restricted to the uses specifically identified in the ballots measures approved by City residents and cannot be used for other purposes without a new ballot measure. In 2008, these two funding sources, combined, generated an estimated \$5,597,388. Of this total \$5,000,800 was budgeted for acquisition, development and maintenance of park, open space, and trail projects in the community.

#### **Other Local Funding**

The City of Durango may want to examine other local resources for accomplishing open space conservation. The City of Durango has established and utilized an Enrichment Fund to acquire land and provide capital for parks, open space and trails development. Another funding tool could be to establish

a Parks, Open Space and Trails Trust Fund that would build a principal balance and use an annual income stream to offset operations and management funding requirements.

#### Trust Fund

City of Durango could work to establish a Parks, Open Space and Trails Trust Fund. This Trust Fund would be a dedicated source of funding that supports the operation and management of portions of the green infrastructure system. The City could work with a private financial institution to set up an investment account or work with a local foundation to establish the endowment. Contributions to the fund would be solicited from parks, open space and trail advocates, businesses, civic groups, and other foundations. The goal would be to establish a capital account that would earn interest and use the interest monies to support the green infrastructure maintenance and operations. Special events could be held whose sole purpose is to raise capital money for the Trust Fund. A Trust Fund can also be used in the acquisition of high-priority properties that may be lost if not acquired by private sector initiative.

A trust fund example is the Mountains-to-Sound Greenway Legacy Fund in the state of Washington. The Mountains-to-Sound Greenway Legacy Fund is an endowment fund managed by The Seattle Foundation. Its purpose is the protection of the Mountains-to-Sound Greenway, for the public good, in perpetuity. It will be used to support restoration, enhancement, education and advocacy programs of the Mountains-to-Sound Greenway Trust.

#### 2. State of Colorado Funding Sources

The State of Colorado has been a good partner of the City of Durango in pursuing open space conservation, preservation and protection projects. The City has successfully worked through the Great Outdoors Colorado program to garner matching funds. However, other matching grant programs exist that the City should also consider as a future funding source. The following is a list of additional funding sources that are being reviewed to determine their applicability for the open space program.

- Conservation Trust Fund (CTF)
- Colorado Division of Parks and Outdoor Recreation (State Parks)
- Conservation Easement Tax Credit
- Colorado Council on the Arts
- Colorado Tourism Office — Marketing Matching Grant Program
- State Historical Fund
- Tourism Cares
- Colorado Brownfields Foundation
- Colorado Division of Wildlife
- Department of Local Affairs — Energy and Mineral Impact Assistance
- Department of Local Affairs — Heritage Grants Through the Smart Growth Initiative

#### 3. Federal Funding Sources

Most federal programs provide block grants directly to states through funding formulas. For example, if a Colorado community wants funding to support a transportation initiative, they would contact a Colorado agency and not a Federal agency to obtain a grant. Despite the fact that it is rare for a local community to obtain a funding grant directly from a federal agency, it is relevant to list the current status of federal programs and the amount of funding that is available to the City of Durango through these programs. The following is a list of federal funding sources that are being examined for possible application to the open space program.

- Land and Water Conservation Fund (LWCF)
- Environmental Protection Agency (EPA)
- Community Block Development Grant Program (HUD-CBDG)
- Economic Development Administration
- Farm Service Administration
- National Trust for Historic Preservation
- National Endowment for the Arts
- National Endowment For The Humanities
- Preserve America
- Small Business Administration
- USDA Community Facilities Grant Program
- USDA Rural Development Co-Operative Service Grants
- USDA Farm and Ranch Lands Protection Program
- U.S. Fish & Wildlife Service

#### 4. Private Foundations/Philanthropic Sources

Private foundations and philanthropic organizations are also known to support open space conservation. The following are a few that have been identified in Colorado as having supported local government open space programs.

- El Pomar Foundation
- Save America's Treasures
- W. K. Kellogg Foundation

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