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Mechanisms for Protecting Open Space in Utah

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This fact sheet reviews the wide range of open space protection tools available to individuals, local governments and nongovernmental organizations.

Introduction

Utah is one of the fastest growing states in the U.S. with current forecasts predicting the state's population to increase by 50% over the next 20 years. In many parts of Utah, rapid growth is fueling strong development pressures that can irreversibly alter the long-term economic and social character of our communities. In response, residents are increasingly voicing their concerns over the loss of open space, higher taxes and city service fees, and increased crime and congestion.

In Utah, most land use decisions affecting growth and open space¹ protection take place at the community level, where local planning officials have significant control over the types of development that takes place within their jurisdictions. Too often, however, community leaders and municipal planners lack up-to-date information on the growing array of land use and protection tools available for ensuring that growth complements rather than detracts from community values. Lack of information regarding planning options may be compounded by uncertainties over the degree to which municipalities can limit the use of private property to protect public values. Reluctance to exercise zoning restrictions may be exacerbated by legal threats from affected landowners and development interests. This paper is intended to help communities more effectively plan their future by reviewing the wide range of open space protection tools available to protect important open spaces like farms and ranchlands, forests, and wetlands. Below, these tools

are broken into two groups: options available to individuals, communities, and non governmental organizations (NGOs); and options available for local governments. The protection tools described below are being increasingly used in Utah and other Intermountain States. It is hoped that an increased knowledge of the options available to communities to plan their futures will lead to not only more vibrant communities, but more compatible economic development proposals.

Open Space Protection Tools

Options for Individuals, Local Governments and NGOs

Bargain Sale
Easements
Fee Simple Acquisition
Purchase of Development Rights
Purchase and Sell-back
Purchase and Lease-back
Purchase Option
Right of First Refusal

Local Government Options

Agriculture Land/Open Space Zoning
Performance Zoning
Agricultural Protection Areas
Preferential Tax Assessments
Building Moratorium
Quality Development Standards
Cluster Zoning
Sensitive Lands Overlays

¹ This paper broadly defines open space to include undeveloped land which retains most of its natural characteristics. Examples include forest, grazing and agricultural lands, and recreational areas such as parks.

Exactions and Deductions
Special Areas Preservation/Mitigation Programs
Impact Fees
Intergovernmental Agreements
Transfer of Development Rights (TDRs)
Land and Mitigation Banking
Transfer Development Taxes/ Conservation Taxes
Limited Development
Urban Growth Boundaries (UGBs)

Open Space Protection Tools Available to Individuals, Local Governments, and NGOs

Bargain Sale

In a bargain sale, the landowner sells property to a conservation organization at less than market value, with the difference treated as a donation. The tax advantages of a bargain sale often allow the seller to realize the same financial gain as if he or she sold the property for the full market value, with the recipient organization acquiring the land at the reduced price.

Easements

In an easement, the landowner voluntarily sells or donates certain rights of ownership (e.g., development rights, right to alter wildlife habitat, etc.) to a governmental body or conservation organization, which then holds those rights in perpetuity. Easements are less expensive than fee simple acquisition (see below) and retain property in private ownership and on local tax rolls. Moreover, the costs of managing and maintaining land are avoided, and landowners may receive tax benefits in exchange for granting the easement.

Fee Simple Acquisition

This is the outright purchase of land by a public agency or conservation organization, including all ownership rights. This form of protection offers the most control over land use, but is expensive and removes land from tax rolls. Moreover, lands purchased by local governments may some day face development or receive less rigorous protection if budgetary or political pressures arise, unless a conservation easement is placed on the property.

Purchase and Sell-back

A government or conservation group purchases land and resells it after severing certain rights of use (e.g., development rights). This option keeps land in private ownership and avoids the costs of land management.

Purchase and Lease-back

This is similar to the purchase and sell-back option described above, except that the land is leased for use rather than sold. This alternative retains land ownership with the municipality or purchasing organization, and allows the purchaser to receive income as rent.

Purchase of Development Rights

A government or conservation group purchases the rights to develop a piece of land from the landowner. This is a special kind of easement (see above).

Purchase Option

The organization interested in protecting land purchases an exclusive option to buy the land within a specified time period. This alternative is useful when important parcels enter the market, and conservation interests need time to raise funds or explore protection options. Purchasing an option, however, does impose costs that may not be recovered.

Right of First Refusal

A landowner may grant or sell a right of first refusal. The holder of such a right is given the opportunity to purchase the property when it becomes available for sale. This differs from a purchase option in that it is open-ended and in force until the right holder either buys the property, or declines purchase, in which case the property is placed on the open market.

Open Space Protection Tools Available to Local Governments

Agricultural Land/Open Space Zoning

An assortment of special zoning tools has been used to protect open spaces either by setting minimum lot sizes per dwelling unit, or excluding certain types of activities. Examples include exclusive agricultural zoning (a very large minimum lot size with the exclusion of non-farm land uses), area-based allocation zoning, and sliding scale zoning (sequentially increases the number of undeveloped acres that must accompany each dwelling).

Agricultural Protection Areas

In Utah, one or more contiguous agricultural producers can petition their county to create an agricultural protection area encompassing their lands. This special designation must be of a minimum size (determined by the county), and exempts farmers from farm-related nuisance complaints by nearby residents.

Building Moratorium

Local governments can place a hold on new development to update town planning regulations and/or acquire open space. In Utah, building moratoriums cannot exceed six months.

Cluster Zoning and Conservation Subdivisions

Cluster zoning typically sets a maximum per-acre density for dwellings, but allows for closer spacing between homes to encourage the retention of open space. The goal of cluster zoning is to accommodate the same number of dwelling units on a parcel of land, but “cluster” homes to allow for

permanently protected open space. Cluster zoning can reduce infrastructure and maintenance costs, and increase overall development value by capitalizing on each home's proximity to open space.

Exactions and Dedications

Local governments can require developers to dedicate a certain amount of land within their development as open space.

Impact Fees

Local governments can charge developers a fee to cover the added capital costs the city faces due to the proposed development. Impact fees can cover added costs like sewer or water system expansion. The fee must equal the added financial burden imposed by the development. For open space, relevant capital expenses include parklands, trails, and recreation facilities.

Intergovernmental Agreements

Some states allow jurisdictions to join together to plan and protect open spaces. In Utah, cross-county planning is restricted to the activities of the state's Association of Governments.

Land and Mitigation Banking

Communities or businesses purchase land to offset the impacts of development in other areas. This option is often used to comply with federal regulations that require no net loss of wetlands.

Limited Development

A developer may identify important ecological areas and sell or donate the rights to these areas to ensure their protection. Examples include important wetlands, riparian areas, or special habitats.

Performance Zoning

Performance zoning seeks to mitigate the impacts of development while allowing developers flexibility in meeting performance standards. For example, performance zoning may specify ratios of open space to development, while allowing developers to meet open space goals at least cost.

Preferential Tax Assessments

Preferential tax assessments levy taxes based on current use rather than highest and best use. These lower rates relieve pressure to convert land to pay for taxes. However, low tax rates can spur land speculation by lowering holding costs.

Quality Development Standards (QDSs)

QDSs allow communities to protect the quality and appearance of development (e.g., landscaping, building heights, berms, etc.). Community attributes that can be protected

include gateways, river corridors, vegetation and trees, and scenic views.

Sensitive Lands Overlays

Areas with steep slopes, floodplains, high scenic quality or special habitat may be mapped and overlaid upon standard zoning regulations to identify areas with more restrictive regulation.

Special Areas Preservation/Mitigation Programs

These are used in some states to identify important natural resource areas like watersheds. Mitigation measures are defined to ensure that land uses are compatible with the area's ecological function.

Transfer of Development Rights (TDRs)

TDRs are used to channel growth away from sensitive areas. TDR programs have a sending area (the area to be protected), a receiving area where growth is to occur, and rules for trading rights and determining development restrictions in growth areas. Landowners in sending areas with reduced land development options can sell their development rights to developers. Developers that purchase these rights can then build up to pre-determined ceilings in growth areas. TDRs create a mechanism whereby development in growth areas compensates landowners in sending areas. TDR programs, however, require significant expertise and staffing commitment on the part of the governmental authority creating and managing the program.

Transfer Development Taxes/Conversion Taxes

These taxes are paid by developers who convert low intensity land use parcels to higher intensity use (e.g., agricultural to residential or commercial). These taxes discourage land use conversion and generate revenues that can be used to offset the added municipal costs of development. They are currently not available in Utah.

Urban Growth Boundaries (UGB)

Municipalities can enact UGBs around existing development and infrastructure. UGBs ensure that new development takes place adjacent to the community, and also encourages infill within existing settled areas. Development beyond the UGB is restricted. UGBs are periodically revised outward to identify new areas for development as areas within the boundary are developed.

Discussion

Utah communities increasingly face difficult decisions regarding the protection of open space. Development pressures are spurring community recognition that existing open spaces may be lost without active intervention. Fortunately, the loss of open space need not always be a consequence of development. Indeed, a growing array of policy tools,

described above, is allowing communities to protect open space lands, and improve the quality of development. Community efforts to protect open space should be guided by resident views toward open space values. This can often be done in conjunction with a comprehensive assessment of open space lands. The assessment should include the various benefits of each parcel, along with a description of protection options and costs. Such information can form the basis for prioritizing areas and protection strategies.

Utah communities have significant control over land use within their jurisdictions. Despite these powers, community efforts to protect open space may be controversial. Landowners and developers will assert that they alone control the use of their property, and while many residents will agree, this is simply untrue. Utah communities have always controlled land use to protect the greater good of the community, and development proposals that are incompatible with local values and standards are routinely denied or precluded by zoning. It is as much the responsibility of local government to protect the community and adjacent landowners from undesirable development proposals, as it is their duty to ensure that the development rights of landowners are not unduly restricted. This balance is warranted when one considers the significant development costs that are passed along to the community through higher taxes and city service fees. Moreover, the high value of undeveloped property near existing settlements is largely due to the collective investment of residents in streets, sewers, schools, and other infrastructure. To then assert that the community has no rights to influence the nature of development proposals is simply without merit.

Notwithstanding the community's obligation to protect the interests of all residents, it is wise that communities seek to identify landowners with views that are compatible with protection efforts before enacting restrictions that can polarize a community. As evidenced by the list of protection tools described above, a large number of options are available to help landowners voluntarily protect their lands. Fully exploring these options should result in less need to rely on more costly and controversial regulatory protection approaches, and help to ensure that open space protection builds upon a willing coalition of community-minded individuals. And just as community restraint in protecting open space is warranted, so is restraint on the part of developers. Development proposals that maximize short-term returns at the expense of the community will justifiably be received with contempt by neighbors and the community at large. Alternatively, well-planned proposals that are com-

patible with nearby landowners and community values will better serve all needs, and in the process reduce the likelihood of increased land use regulation in the future.

Summary

The list of open space protection tools described above can help planners and community leaders comprehensively consider the wide range of protection options available for use. While each of the tools described has advantages and disadvantages, a thorough familiarity with these protection options will increase the likelihood of finding compatible responses to community concerns over the quality of development and the loss of open space.

For More Information Contact:

The Trust for Public Land
(415) 495-4014 or www.tpl.org

The American Farmland Trust
(202) 331-7300 or www.farmland.org

Utah Critical Lands Conservation Committee
Governor's Office of Planning and Budget
(801) 538-1696

Utah Forest Legacy Program
Utah Division of Forestry, Fire and State Lands
(801) 538-5555

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