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Tools and Techniques for Preserving Open Space

In 2010, the Jordan River Commission was created by interlocal agreement to implement the vision outlined in the Blueprint Jordan River. This visioning document highlights the endless opportunities for the Jordan River corridor to enrich quality of life in our region through education, recreation and economic development. The vision includes preservation of open space, completion of trails and

recreational facilities, water quality improvements, river-oriented economic development, habitat

restoration, and overall enhancement of the Jordan River corridor.

Over 3,000 people participated in the process to develop the Blueprint Jordan River, and the final document underscores the community's clear desire to enhance this unique resource. The vision has since been adopted by resolution by every local government along the river's length, and many stakeholders are actively working towards its river corridor enhancement and restoration.

The Blueprint Jordan River planning process clearly stated the community's desire to see even more open space protected from future development, with 80% of survey respondents requesting a green and recreation-based corridor as their preferred land use vision for the river corridor. Thousands of acres of open space have been preserved along the river corridor to date, including a significant portion of South Jordan's river frontage, but nearly 4,000 acres of remaining open space are slated for development.

The river corridor is used by nearly 200 species of birds, many of which rely on the connected water bodies of the Great Salt Lake, Jordan River and Utah Lake as a critical resting area as they migrate – some distances of 10,000 miles or more. This critical riparian and wetland habitat is being lost at alarming rates, which has the potential to disrupt trans-continental ecosystems.

In addition to the environmental benefits of open space, preserving open space along the Jordan River will help elevate quality of life, raise property values, attract tourism and recreation dollars, and incentivize new businesses to locate in the region.

The Jordan River Commission mission is to promote regional coordination and communication and to facilitate the implementation of the Blueprint Jordan River. We are supportive of all proposals and funding tools dedicated to helping implement this long-range, community-driven vision. We look forward to working with local governments to explore a variety of tools and techniques to preserve an additional 67 acres of open space along the Jordan River.

Types of Preservation Tools

Open space preservation strategies typically fall into one of three different categories: planning, regulation, or acquisition.

Planning - Identifies important natural resources, preserved lands, and linkages.

- Use the Wasatch Front Regional Council's (Re)Connect Plan and extensive GIS database to identify local existing preserved lands and important areas for future preservation.
- Inform citizens and local officials of benefits of open space preservation.
- Develop an Open Space Plan or Farmland Preservation Plan.
- Employ flexible development design tools such as conservation subdivision design, clustering, and performance zoning, and PUDs.

Regulation - Uses local ordinances and state laws to protect important natural resources and lands that surround preserved areas.

- Enact overlay ordinances to protect specific resources like steep slopes, stream corridors, and critical habitat.
- Adopt specific open space zoning designations.
- Create a voluntary Agricultural Protection Area.
- Adopt design guidelines to ensure development nearby open space preserves considers and protects resources such as water quality and visual aesthetics.
- Consider requiring conservation easements on wetlands, stream corridors and other important resources as conditions of approval for subdivisions and site plans.
- Inventory, monitor and enforce existing conservation easements, or work with a third party land trust to hold and monitor the easement.
- Implement a transfer of development rights program.

Acquisition - Obtains land through purchase, "bargain sale" (obtain land at less than appraised value) or donation; includes purchase of full title, development rights and/or conservation easement

- Pass a referendum to establish a local open space bond or open space sales tax dedicated to land acquisition.
- Organize and serve on a local Open Space Committee and lead a grassroots fundraising campaign.
- Work with local officials, local and statewide land trusts to develop applications to programs such as the LeRay McAllister Critical Land Conservation Fund, the Land and Water Conservation Fund, NRCS's Agricultural Conservation Easement Program. Private grants may also be available, such as Wal-Mart's Acres for America.
- Implement a Purchase of Development Rights program.

Available Regulatory and Acquisition Tools

Tool	Benefits	Drawbacks
	Federal Regulatory Tools	
Clean Water Act. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material into waters of the United States, including wetlands. Administered by the U.S. Army Corps of Engineers. Section 401 of the Clean Water Act delegates authority to the State of Utah to issue a 401 Water Quality Certification for all projects that require a Federal Permit (such as a Section 404 Permit). The 401 certification is verification by the UT Division of Water Quality that a given project will not degrade "waters of the State" or otherwise violates water quality standards.	 Regulations have slowed the rate of wetland conversion. Ensures wetlands are identified during development planning/. Mitigation of wetlands, including restoration, creation, or replacement—inkind of wetlands, presents opportunities to preserve open space. 	 Cumbersome and time consuming regulatory process involving both a state and federal agency. Mitigation of wetlands can be expensive.
Tool	Benefits	Drawbacks
1001	County Tools	Diawbacks
Meander Corridor Protection Ordinance. Salt Lake County adopted the Chapter 17.10 – Jordan River Flood Channel Management ordinance that requires permitting by the county for any development within any area of the Jordan River flood channel. All proposed subdivision plats in the unincorporated county and in the incorporated municipalities in the county which are located wholly or partly within the Jordan River flood channel, as shown on the Jordan River channel meander/bend migration corridor maps on file with the county engineering division, shall be reviewed and approved by the county engineering division prior to their presentation to the office of the county recorder for recording.	Something similar could be adopted as a local zoning ordinance	Does not ensure preservation, but can help guide development away from the most sensitive areas.

Salt Lake County Open Space Program. Salt Lake County voters approved a bond measure in 2005 which allowed for the acquisition of several acres of open space throughout the County. A renewal of this bond is expected to be placed on the November 2016 ballot.	 Permanent protection of open space through deed restrictions. Management and maintenance responsibilities would be transferred to Salt Lake County. 	 Transfer of ownership from one public entity to another may be seen as a drawback. Properties with existing active uses and structures may not meet program criteria for acquisition.
Tool	Benefits	Drawbacks
Any specific zoning districts or overlays? New Riparian Corridor Protection Ordinance. The City could establish a new zoning district or overlay to help guide planning and development in sensitive areas. The Jordan River Commission has created a model ordinance that could be adapted for use	Often already within City's toolbox Can effectively ensure preservation for present. Can provide additional protections for sensitive areas, while allowing for flexibility to accommodate specific site needs and local goals. City has tools already to implement this.	 Zoning can be changed at any time by City Council, after going through public processes. Zoning can be changed at any time by City Council, after going through public processes. Can be time consuming and require significant staff resources to draft and move a proposed zone through the adoption process.
by the City.	Benefits	Drawbacks
1001	Other Regulatory Tools	Diawbacks
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 a commonly used form of overlay zoning.	 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 across the country for the preservation of historic districts 	 Standards must be defined clearly to ensure that open space can be protected. Zoning regulations can be changed. Does not address resource preservation outside the zoning district. Not often used for open space.
Voluntary Agricultural Districts. Special districts established to promote continuation of agricultural and forestry activities.	 Maintains land in agricultural and forestry use. Provides some protection from nuisance lawsuits against agricultural operations. An existing program authorized by Utah statute. 	 Voluntary participation. Minimum acreage criteria. Does not provide long-term protection. Most effective when several contiguous farms participate in areas with development pressure.

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.	 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 rights. Property taxes should be reduced. 	 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.
Local Historic Landmark Designation. An effective means of protecting historic sites. For historic districts, constitutes a form of overlay zoning. Utah's State Historic Preservation Office assists communities, agencies, and the general public in researching, surveying, designating, and treating their historic buildings and structures.	 Property tax deferral for individually-designated sites. Strengthens property values. 	 Primarily a voluntary program Designation over the objection of a property owner is allowed, but rarely done.
National Register of Historic Places Designation. The National Register is the official list of buildings, structures, objects, sites, and districts deemed worthy of preservation. Listing of a site on the National Register of Historic Places is a prestigious honor, signifying the site has historical significance to the cultural heritage of the Nation.	 Provides significant rehabilitation tax credit opportunities. Sites are afforded an environmental review of projects involving federal funds or licensing requirements that may have an adverse impact to the resource. 	Does not prevent private landowner-initiated changes to site, including major alterations and demolition.
Transfer of Development Rights (TDR). The rights to develop one parcel of land are sold or transferred to another parcel of land to protect resources on the first, in exchange for increasing development density on the second. Programs are carefully designed with "sending" (protection) areas and "receiving" (development) areas clearly identified.	 Potentially effective growth management tool. Resources can be protected without huge capital expenditures. Large tracts of protected land can be created in "sending" areas. Enabling legislation allows local governments to use TDRs. Has been used in Utah effectively. 	 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.

Tool	Benefits	Drawbacks
	cquisition Tools - Owner Retentio	
Conservation Easement. A legal agreement between a landowner and a qualified conservation organization or government agency to voluntary 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.	 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 	 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. 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.
Lease. An agreement between agency and landowner to rent the land in order to protect and manage a sensitive resource.	 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. Owner may be eligible for 	 Short-term protection strategy. Even long-term leases are not permanent.
Management Agreement. Agreement between landowner and conservation agency to manage property to achieve resource conservation goals.	direct payments, cost share assistance, or other technical assistance from the agency. Management plan is developed based on owner's preservation aims.	 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.	 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. 	 Loss in market value from mutual covenants does not qualify as a charitable deduction for income tax purposes.

Limited Development Techniques. Landowner prepares a conservation plan for the environmentally significant portions of the property, then develops a less-sensitive section to finance the plan and derive income. Tool	 Encourages landowners to evaluate long-term preservation and economic goals for their property. Presents attractive option to many landowners by providing income while meeting a preservation objective. Tax advantages may be realized from recording an easement over the conservation land. 	 Landowner relinquishes full development potential of property. Requires close attention and hands-on involvement by conservation agency. Difficulty in determining degree of environmental significance; some resources will be lost to development. Public may misunderstand the resource protection component of the development project. Drawbacks
1001	Acquisition Tools – Title Transfer	
Fee Simple Acquisition. Usually the sale of land at full market value. Ownership and responsibilities are transferred completely to the buyer.	 The most straightforward acquisition method. Provides agency with full control over future of property. 	 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.
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.	 Reduced acquisition costs. Seller may qualify for tax benefits for charitable donation. May offset capital gains. 	 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.	Possible capital gains tax advantages for seller.	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. Undivided Interest.	 Agency can gain extra time to acquire funds for purchase. Changes to property cannot 	 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. Property management can
Several parties share ownership in a parcel of land, with each owner's interest extending over the entire parcel.	be made unless all owners agree.	be complicated.
Tool	Benefits	Drawbacks
Outright Donation. Owner grants full title and ownership to conservation agency.	 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. 	 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.

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.	 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. 	 No income tax deduction for donation of land through a will Requires careful estate planning by the landowner. 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.
Tool	Benefits	Drawbacks
	Agreements and Other Tools	
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.	 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. 	 Local government must be willing to purchase land and assume management responsibilities.
Intergovernmental Partnership. Federal, state, and local agencies form joint partnerships to own and manage land.	 Sharing the responsibilities and costs of acquisition and management can protect larger or more expensive properties. Can foster regional cooperation to preserve open space. 	 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.
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.	 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. 	 More complicated property management and decision-making. Conflicts in acquisition criteria and funding priorities must be resolved.
Acquisition & Saleback or Leaseback. Agency or private organization acquires land, places protective restrictions or covenants on the land, then resells or leases land.	 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. 	 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.

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.	 Local government proactively identifies and purchases resource land. Lowers future preservation cost by working as a defense against future increases in land prices, speculation, and inappropriate development. 	 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 may require local enabling legislation.
Land Exchange. Land may be exchanged for another parcel that is more desirable for resource protection.	 Lower acquisition costs. Scattered properties can be exchanged for a single, larger parcel. 	 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.
Agency Transfer. Government transfers excess land to another agency that can assume resource protection and management responsibilities.	 Resource protection and management with little additional expenditures. 	 Excess property may not be suitable for resource protection. Obtaining fair market value for the property may be agency's priority.
Eminent Domain. Government uses authority to take private property for a public purpose, and pay the landowner fair market value. If the landowner is unwilling to sell, government can condemn the land, providing fair market value compensation.	Can be used if other techniques are not working, or to resolve an emergency situation.	 An extreme measure; should only be used as a last resort. Controversial: can alienate the public and owners who are unwilling to sell. Potentially expensive.
Tool	Benefits	Drawbacks
	Financing Strategies	
Bond Issue. Local government borrows money through the issuance of bonds, which are repaid with interest over a certain time period. Bond issues must be approved through a public referendum vote.	 Large amounts of funds can become available within a relatively short (1 year or less) timeframe. Acquisition costs are spread out over a long time period. Commonly used financing tool. 	 Requires intensive political and public relations campaign. Bond interest repayment costs included in the costs of acquisition. Uses local government debt capacity; make conflict with other capital needs.
General Fund Appropriation. Local government allocates funds from the annual budget for land acquisition.	 Earmarks funds for priority acquisitions. Paying entire purchase price eliminates interest costs. 	 Subject to approval of annual budget – can become political issue. Amounts may be too small to finance needed acquisitions. Other programs may compete for same funds.

Revolving Fund. Creation of a pool of capital reserved for preservation and acquisition. Revolving fund programs encourage use of funds on revenue-generating projects that can reimburse the fund. Highly visible tool for preserving historic resources. Could be used for acquiring resource lands with eventual resale to conservation buyers.	 Replenishing fund can help lower acquisition costs. Agency or nonprofit with a revolving fund can often respond quickly to acquire threatened properties. Used successfully to protect threatened historic resources. 	 May not provide full funding - recipient may be required to contribute financially. Emphasis on revenue generating projects may have limited use for protecting open space.
Preferential Tax Assessment. Provides financial incentive to owners of preserved land by assessing property at its conservation, rather than development value. Similar to the Present Use Value Program for agricultural land. May include a penalty requiring repayment of back taxes if property is converted to another use.	 Tax break for preserved open space may be costeffective, since conservation land demands fewer local public services. Voluntary incentive program may provide attractive financial option for landowners. Penalty payments can be dedicated to a fund for acquiring resource lands. 	 Requires statewide legislative approval. Owner participation is voluntary. Ineffective as a permanent preservation measure. Amount of tax savings may not outweigh sale income for development. Reduces tax revenues, which may necessitate tax increase.
Real Estate Transfer Tax. A percentage of the local tax on real estate transfers is allocated to a resource acquisition fund.	 Funds are generated and used within the local community. Sizeable funds can accumulate in fast-growing communities. 	 Fund amounts can fluctuate based on the real estate market. Can increase real estate prices, thereby raising costs for land acquisitions. Requires legislative approval; proposal would meet strong opposition from development and real estate lobby.
Development Impact Fees. Impact Fees are intended to pay for a development's proposed impact on public infrastructure, Impact Fees are frequently assessed for roads, schools, parks, and fire protection.	 Funds are generated and used within the local community. Development activity directly contributes to open space acquisition funding. 	 Revenues generated cannot adequately compensate for loss of open space. Requires legislative approval; proposal would meet strong opposition from development and real estate lobby.

Other Taxes and Fees. Funding for resource protection lands can come from a variety of sources. These may include state income tax return check-off, user fees, sales taxes, document recording stamp taxes, dedicated commodity taxes, gasoline, cigarette, and vending machine taxes. Fees, such as resource exploitation and specialty license plate fees, are also used to fund acquisition and historic preservation activities. In some states, lottery or gambling proceeds provide major funding for resource protection, conservation, and historic	 Relatively consistent funding source targeted specifically for acquisition and management of resource protection lands. 	 Intense competition for these funds; amounts may be inadequate to meet the need. Establishing new taxes is politically unpopular. Portion of funds needs to be allocated to managing the lands and resources that are acquired. Legislative approval required for most proposals for new taxes and fees.
State Federal or Private Grants. Several state and federal programs provide grants to support local government or nonprofit acquisition of open space. See list below.	 Grants reduce acquisition costs to local communities and nonprofits. Matching fund requirements encourage local involvement and commitment to the acquisition project. 	 Local governments and nonprofits may be required to match funds. Competition for funding is intense – some worthwhile projects may be excluded. Contributions to grant program from state or federal government may vary from year to year. Grant management may increase administrative

costs.

Available Grants and Preservation Programs

Federal Grant/Financial Assistance Programs

- National Park Service Programs:
 - o Open Space and Recreational Resource Preservation Programs:
 - Land and Water Conservation Fund
 - Rivers, Trails, and Conservation Assistance program
 - Historical and Cultural Site Preservation Programs:
 - Federal Historic Preservation Tax Incentives program
 - National Register of Historic Places
 - National Historic Landmarks Program
 - Traditional Cultural Property Program
 - Historic Preservation Fund Grants /Tribal Project Grants
 - Preserve America (Funding not currently available)
 - Save America's Treasures (Funding not currently available)
- US Fish and Wildlife Service Programs:
 - Neotropical Migratory Bird Conservation Act
 - North American Wetlands Conservation Act
 - Partners for Fish and Wildlife
 - Urban Conservation Treaty for Migratory Birds Urban Bird Treaty Act

- US Department of Agriculture Programs:
 - o Debt for Nature Program/Debt Cancellation Conservation Contract Program
- Natural Resources Conservation Service Programs:
 - Agricultural Conservation Easement Program
 - Agricultural Land Easements
 - Wetlands Reserve Easements
 - o Agricultural Management Assistance
 - o Conservation Stewardship Program
 - o Environmental Quality Incentives Program

State Grant Programs for Land Acquisition

LeRay McAllister Critical Land Conservation Fund

State Incentive Program for Conservation Land Donations

Utah Conservation Tax Credit Program

County Programs

Salt Lake County Open Space Program

Private Grants and Programs

- Wal-Mart Acres for America
- Kodak American Greenways Grant Program
- Banrock Station Wines Wetlands Conservation Program
- Acorn Foundation Grants.
- George S. and Dolores Dore Eccles Foundation
- Stonyfield Farms Profits for the Planet Program