GROWTH MANAGEMENT TOOLS WORKBOOK

Prepared for

PARK COUNTY, COLORADO

in conjunction with
The Park County Strategic Master Plan

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I. INTRODUCTION

This workbook on growth management tools is designed to provide background information for the upcoming growth management workshop to be held in Park County on July 19, 2000. Based on the countywide citizen survey and a series of citizen workshops held earlier this year, the consulting team has developed a preferred development scenario to guide preparation of the county's new comprehensive plan. That preferred scenario is summarized in Appendix A. The preferred scenario identifies goals and strategies related to a variety of topics such as residential development, commercial and industrial land use, open space, natural and cultural resources, infrastructure, and transportation. The next step in the process is to discuss the tools available to accomplish the goals and strategies set forth in the preferred development scenario and to select those most appropriate for Park County. This workbook identifies some of the key tools and discusses the pros and cons of each.

In general, growth management systems focus on the five main aspects of growth:

- Location--Where should development take place? Should it be targeted to already developed areas where infrastructure is available or land adjacent to built up areas? Should it be allowed on scattered sites throughout the jurisdiction? Traditional zoning addresses the issue of location of various uses, but more sophisticated growth management systems go further, often restricting development outside of defined urban growth boundaries.

- Amount/Density--Again, traditional zoning typically addresses how densely any particular parcel may be development. Growth management systems go beyond this, sometimes setting population targets for a community or zoning large tracts for open space and agricultural uses.

- Rate/Timing--Often a community will not be opposed to growth, only the pace at which it is occurring. A growing number of communities have adopted systems that allow development to occur only if adequate public facilities such as schools and roads are available. Others have restricted the number of development permits issued annually so that the local government has time to deal with infrastructure and other impacts of growth.

- Quality--Many communities have realized that simply addressing the location, amount, and timing of growth may not be enough to guarantee that they will retain their distinctive character. Also, such restrictions do not ensure that development will be sensitive to environmental and cultural resources. An increasing number are enacting regulations to promote quality development whose environmental impact is mitigated to the maximum extent feasible.
- Cost–With state and local tax limitations in place, and citizens resistant to increases in traditional sources of local government revenue such as property

and sales taxes, local governments are grappling with the issue of how to pay for the services and facilities necessitated by new development. They are exploring a variety of new techniques such as adequate public facility ordinances and impact fees.

The list of tools included in this background paper is not meant to be exhaustive, but to provide a framework and starting point for discussion. The administrative requirements of each approach need to be considered carefully--some require substantial staff and detailed studies to implement successfully. Similarly, while counties in Colorado generally have broad powers to regulate the use of land, the legal aspects of any growth management system proposed for adoption must be explored carefully with the county attorney to ensure it complies with Colorado law and judicial precedents.

II. LOCATION OF GROWTH/DEVELOPMENT

Where growth should occur in a community is often a key issue. Should it be targeted to existing towns and rural centers in Park County to minimize costly provision of services like fire protection and roads and to support existing commercial areas? Should it be adjacent to existing towns and established growth areas such as Bailey, Hartsel, Guffey, and Lake George, or should it be allowed to scatter throughout the county in a way that fragments open space and ranch land? Traditional zoning, of course, addresses the location issue generally by allowing certain uses in specific locations in a community or rezoning which changes allowed uses. However, the traditional approaches have some significant shortcomings--they often encourage sprawl, allow fragmented development patterns, and contribute to the loss of open space. In response, communities are looking at a second generation of approaches to the location of growth.

A. Community Growth Boundaries and Designated Development Zones

Where communities designate areas for urban growth, growth management policies can guide new development patterns by directing urban service extensions to such areas and withholding them from others. The essential concept involves the use of urban service extension policies to define the areas where new development will or will not have access to municipal urban services, thus steering new commercial, industrial, and higher density residential development toward designated growth areas.

One high profile example is the Portland, Oregon, metropolitan area. There a regional government entity has delineated an urban growth boundary, administered by local governments in compliance with state legislative mandates. This program has proven generally successful in confining growth to the areas within the boundary. Within the boundary, development has often bypassed previously "urbanized" areas and located in outlying "urbanizable" areas (defined as available and suitable for urban development upon the extension of urban services), but the overall program has proven successful at containing leapfrog development, preserving outlying areas for agricultural and other less intensive uses, and maintaining order in metropolitan growth patterns.

Some communities have established community growth boundaries in the absence of a statewide mandate. For example, the City of Boulder, Colorado, has delineated the boundary for the extension of urban services and worked with Boulder County to channel growth to areas adjacent to already developed areas, thus precluding development and costly service extensions in the mountainous areas bordering the city. A number of cities in Larimer County including Loveland and Ft. Collins have drawn urban growth area boundaries. Similarly, in the Eagle Area Community Plan, the Town of Eagle and Eagle County adopted a community growth boundary around the Town of Eagle and targeted all more dense residential and commercial development to this area.

Park County, in conjunction with its constituent towns, could designate community growth areas around incorporated towns and unincorporated rural centers much as Eagle County and the Town of Eagle have done. These lands would be rezoned for higher density residential, commercial, and industrial uses and annexation into the incorporated towns would be encouraged. Outside the growth areas, no rezonings would be approved to commercial, industrial, or higher density residential except in unusual circumstances (e.g., for a resort use that needed a rural location or mining).

Another approach that has similarities to drawing urban growth boundaries is that of designating development areas to which new growth is targeted within a region. A home-grown version of targeting development areas is being considered by the Denver Regional Council of Governments. As an alternative to dispersed development patterns that may result as the region adds a predicted 900,000 people over the next 25 years, the MetroVision 2020 Task Force has recommended consideration of development of satellite cities where growth would be channeled. These satellite cities, which could be existing communities or new planned communities, would be physically separated from the central urban area by open space or undeveloped land. Most of the new growth would be direct to existing satellite development with the capacity for growth, including Castle Rock, Bennett, Evergreen, Brighton, Erie, Longmont, and Idaho Springs. Other urban growth would be limited to existing cities and already approved master planned communities.

Several counties have adopted the targeted development approach as part of their overall land use management system. For example, Larimer County has entered into several intergovernmental agreements with some of its constituent cities that targets new development to already built-up areas such as Ft. Collins and Loveland. However, not all municipalities in the county have signed such agreements, and thus some growth has occurred in several smaller, outlying communities with limited infrastructure and services.

Advantages:

- When used in combination with appropriate capital improvement policies, adequate public facilities ordinances, intergovernmental agreements, and policies limiting annexations to delineated urban growth areas, growth boundaries can help steer development toward these areas and prevent the costly overextension of public services.

- Growth boundaries can influence growth patterns in a simple understandable fashion.

- Creation of community growth boundaries has proven to be an effective tool to protect open space and agricultural and forest lands.

Disadvantages:

- Urban growth policies alone provide no guidance to development patterns within the growth boundary and do not address development quality issues.

- Use of community growth boundaries as a growth management tool can be undermined if towns and counties do not cooperate.

- If not enough property is provided to accommodate development within the community growth boundaries, overly strict delineations may drive up the cost of land.

B. Density Transfers

Park County has thousands of undeveloped substandard lots scattered throughout its jurisdiction. If even a fraction of these lots develop, they would dramatically change the character of the county. One approach that might address this issue is density transfers, which involve the shifting of permissible development densities from unsuitable development areas to more appropriate sites.

Where permissible densities are shifted off-site to other parcels, density transfer schemes are known as transfer of development rights, or "TDR," programs, which encourage the maintenance of low-density land uses by establishing an off-site market for the sale of unused development rights. Under this concept, a landowner in a "sending area" transfers development rights to another landowner in a "receiving area," who thus augments his development rights in that area in excess of his otherwise permissible limits. Under either of these types of programs, local governments can maintain low-density land uses in sensitive areas without depriving property owners of their development rights.

The TDR concept has also been applied in a number of jurisdictions. Located in suburban Washington, D.C., Montgomery County, Maryland, has used a TDR program to protect agricultural lands against strong urban growth pressures. The Montgomery program involves three elements: (1) the identification of a "sending area" comprising the county's best agricultural lands; (2) downzoning in the sending area from 5-acre minimum lots to 25-acre minimum lots, with landowners retaining transferable development rights equal to their original 5-acre lot development rights; and (3) the identification of a "receiving area", in which landowners may augment their development rights with additional rights purchased from owners of land in the sending area.

One of the most successful TDR programs for natural area protection has been employed in the Pinelands National Reserve in New Jersey. To date, over 10,000 acres have been preserved, and the TDR market provided by the program was recently held to be an important consideration in rejecting a takings challenge to the Pinelands' strong system of regulatory controls designed to protect existing agricultural lands and open space.

The City of Denver enacted a TDR program to protect historic buildings, allowing the transfer of unused development rights from historic sites to other parcels in the central business district. However, because of generous existing zoning densities in the downtown and the development bust of the mid-to-late 1980s, the system has been utilized infrequently. On the other hand, several other Colorado jurisdictions, including Boulder, Summit, Larimer, and Pitkin Counties have adopted more successful TDR programs to preserve open space in cooperation with their constituent municipalities. While these programs tend to be more limited than those in Maryland and New Jersey, they have provided another tool that has helped preserve some lands that were under development pressure.

A TDR program might be of particular use in conjunction with some of the small-lot rural subdivisions in Park County that are not appropriate for development. The county would have to designate some potential growth areas, perhaps around the towns and rural centers, and require developers there to purchase development rights from owners of the substandard parcels as a precondition of development approval.

Advantages:

- TDR programs help alleviate pressures and incentives to subdivide or develop land by offering some means for landowners to recoup property values while maintaining low-density land uses.

- Where regulations impose low-density limitations on development rights, TDRs restore the value of these rights to the landowners, thus providing a shield against constitutional taking of property claims and concomitant political objections.

- Has less impact on property values than regulations alone.

Disadvantages:

- TDR programs alone cannot ensure quality development.

- A number of conditions are essential to the success of TDR programs:

    1. Development pressures must be sufficient to make development rights valuable, in the sending area as well as in the receiving area.
    2. The local administrative body must be sophisticated enough to manage what can become a complex development rights "bank."

3. TDR programs rely upon appropriate market conditions and will not work where there are no buyers for the rights. While additional planning measures can influence such conditions, the TDR concept is generally most effective where strong development pressures place a high value on development rights.

- TDR programs can require complex administrative provisions and adequate staff to implement.

C. Land and Development Rights Acquisition

1. Fee Simple Acquisition

Various interests in land include rights of possession, access, and rights to various uses such as mining, hunting, or construction. Where one party owns the entire bundle of these rights, such party owns the land "in fee simple." Acquisition of land in fee simple gives the purchaser full title to and possession of all rights associated with the purchased property, subject only to the constraints imposed by nuisance laws and valid public regulations. Fee simple ownership provides the simplest and most effective means of effecting control; where government owns the land, government controls its development, redevelopment, or preservation and access. Once the government entity assumes fee simple ownership, it possesses a broad range of options: The government may reconvey selected interests in the land, restrict future uses of the land, lease the land, or otherwise control the bundle of property rights in a manner appropriate to its intended objectives.

Federal, state, and local government entities commonly use fee simple purchase for properties to be reserved for parks. State and national park systems, for example, consist of lands containing natural resources that are best managed and protected through government ownership; where such resources are valuable, government may determine that such resources should not be subjected to the broad range of unforeseeable threats that may result from private development or ownership. In such cases, acquisition in fee simple provides the surest method for land protection.

A number of state and local sources may be able to fund acquisitions of land to be used for park or other open space purposes. The Colorado Lottery, generating funds since 1983, is an example. From 1983 to 1992, the lottery provided annual funds for capital construction, state parks, and the Conservation Trust Fund. In 1992, the state constitution was amended to create the Great Outdoors Colorado Trust Fund (GOCO) and phase out the capital construction fund by 1998. Approximately 10% of the lottery funds distributed go to the Colorado Division of Parks and Recreation, 40% to the Conservation Trust Fund, and 50% to the Capital Construction Fund and GOCO. Through 1999, proceeds totaled over $100 million for GOCO.

GOCO is perhaps the most promising program to emerge for open space and park purchases. Established by a state constitutional amendment passed in November 1992, GOCO allocates funds to investments chosen to carry out its mission of helping Colorado to "preserve, enhance, appreciate and enjoy our parks, wildlife, trails, rivers, open space, and views." GOCO allocates state lottery

funds to four types of investments, including "competitive grants to State Parks, counties, municipalities or other political subdivisions of the state or to nonprofit and conservation organizations to acquire and manage open space and natural areas of statewide significance; and competitive matching grants to local governments to acquire, develop or manage open lands and parks."

GOCO has been awarding over $15 million annually since 1994 through a program that is highly competitive. Recent grants contributed to the following acquisitions:

- Aurora Jewell Wetland (Arapahoe County) -- 50 acre natural area.
- Bear Creek Canyon (San Miguel County) -- 320 acre natural area buffer.
- Carpenter Ranch (Routt County) -- 957 acre natural area with agricultural production.
- Cathy Fromme Park (Larimer County) -- 80 acre buffer to existing natural area.
- Commons Park (City and County of Denver) -- 40 acre chain of parks and open space.
- Roxborough Buffer (Douglas County) -- 1050 acre enlargement of existing park.

One of the more recent land acquisitions supported in part by a large GOCO open space grant was the Coleman Ranch purchase in Park County near Jefferson. This major acquisition--2,200 acres for $1.6 million--helped preserve high seniority water rights for agricultural production and save critical elk habitat. The preservation of the water rights is critical to preserving one of the identified heritage ranches in South Park.

Local tax revenues provide another potential source of funding for land purchases. The City of Boulder has used a specially earmarked .73 percent sales tax that has funded the purchase of 25,000 acres of dedicated open space to establish a greenbelt around the city. Another 8,000 acres of mountain parks in the Boulder foothills has been separately set aside through the parks and recreation department. Some of the Boulder open space land is leased to farmers to maintain the agricultural uses. Other parcels are maintained as natural areas, allowing passive recreational uses such as walking, bicycling, and horseback riding. Last year, the natural areas received 1.7 million visits. Combined with the mountain parks, the visitation was 3.7 million, six times the number per acre compared to Rocky Mountain National Park.

Boulder County has implemented a land purchase program since 1975. The program was originally funded through the county general fund and the state lottery funds. Beginning with a budget of about $1 million, the appropriated funds grew to a $2.5 million acquisition budget and a $1 million operating budget for last year. A new sales tax was recently approved that has been used to fund a $36 million dollar bond issue, two-thirds of which is already committed. To date, more money than

anticipated has been generated by the new tax, and the original revenue sources remain in place, with $4 million from the general fund and $350,000 from the state lottery approved for 1995.

Approximately 30,000 acres have been purchased through the Boulder County program. The current strategy is to purchase as many of the identified priority parcels as possible with the bond funds, then gradually move into more of a stewardship and maintenance role.

Jefferson County has had an open space program in place since 1977. Funded by a one-half of one percent sales tax, the county has collected almost $250 million and acquired 23,000 acres to date, in addition to conservation easements and leases. The lands are used for a variety of purposes, including natural areas, buffers, trail corridors, protection of historic and archaeologic sites, campgrounds, and a regional multiple sports complex.

Park County has recently established a dedicated fund for land and water asset preservation. The Park County Land and Water Trust Fund is funded by a 1% sales tax levy for a period of ten years. Created initially to cover legal fees associated with the Aurora Conjunctive Use water case, the fund has the potential to evolve into a source of money for land acquisition. It is generating about $400,000 annually. About $200,000 is being dedicated annually for five years towards the Coleman Ranch purchase discussed above. The rest is be used to fund the Aurora water rights litigation.

2. Easements and Purchase of Development Rights

Easements are severable rights or interests in land. The severable nature of easements allows a landowner to convey or reserve specific rights associated with a property, apart from other essential rights of possession and use. There are two distinct types of easements. Positive easements grant an affirmative right to use property in a specified manner, or to interfere with the title holder's otherwise enforceable property rights. A right of access across a neighboring property is a common example of a positive easement. In contrast, negative easements affix restrictions upon the landowner's property rights. Negative easements do not grant affirmative rights; the "purchaser" of a negative easement simply affixes a restriction. Particular restrictions vary in accordance with the objective: where the aim is the preservation of scenic vistas, scenic easements may prevent new construction that exceeds height limitations or blocks specified views; where the objective is historic preservation, government entities may affix easements prohibiting certain specified types of property alterations.

Applying the easement principle that recognizes the separability of distinct rights in land, local governments can initiate purchase of development rights programs, which are essentially government easement purchases wherein local governments pay landowners to forgo certain land development rights.

In the Seattle metropolitan area, King County, Washington, has administered a successful purchase of development rights program for the purpose of preserving agricultural land in the face of metropolitan growth pressures. Drawing upon a $50 million bond issue, the program provided for the county's purchase of development rights for properties facing development pressures, with

priority rankings determined in accordance with the intensity of such pressures. Participation in the program was voluntary for eligible landowners. Purchase prices were calculated as the difference between appraised highest and best uses and appraised values as farmland; upon purchasing development rights, the county recorded restrictive covenants on the property deeds, limiting development rights to five percent of the property's nontillable area.

Timing plays a key role in the success of a purchase of development rights program. Such programs are best administered when development pressures are not so strong as to inflate the values of development rights, and when the agricultural or other residual uses of the land remain profitable: essentially, government should "buy low" so as to maximize its cost savings.

Advantages:

- Provides highest attainable level of control.

- Certainty of preservation: Where government owns a parcel in fee simple, government possesses the greatest certainty that it can prevent undesirable land use patterns from occurring.
- Flexibility: Fee simple ownership gives the owner the broadest range of options in controlling the character of land development. For example, after obtaining ownership in fee simple, sellback or leaseback programs enable the government to affix restrictive covenants or to negotiate for specific types of development.

- Where planners can identify specific rights or uses to be reserved or prohibited, easement purchases provide an effective and relatively inexpensive tool for achieving specific restrictive or use objectives for land.

- Easement purchases allow for continued private ownership; land remains on local tax rolls (although perhaps at a reduced value) and in productive use.

- Unless the property possesses resources or values that are so valuable or fragile as to require government stewardship, easement acquisition provides a cost-effective alternative to fee simple acquisition.

- Like easement purchases, purchases of development rights programs accomplish cost savings (relative to a fee simple purchase program), in terms of both lower acquisition costs as well as the retention of property on local tax rolls.

- Through purchase of development rights (as opposed to a fee simple purchase), the government avoids management and maintenance obligations, and the property remains in productive use.

- GOCO funds, local taxes, and other sources provide an excellent means of acquiring and maintaining land necessary for open space and parks, that local government might not otherwise be able to fund.

Disadvantages:

- The costs of fee simple or easement purchase may be high and may strain local government budgets.

- In addition to initial acquisition costs, carrying costs -- interest on debt, foregone interest on alternative investments, taxes, and maintenance costs -- can also discourage fee simple ownership and easements.

- Additional costs take the form of foregone property tax revenues and property management costs previously assumed by the owners.

- Where government acquires land by eminent domain, extensive government condemnation can be very controversial.

- As compared to purchase of fee simple interests, easement purchases provide less control over the landowner's ultimate disposition or use of land; unforeseen conditions may arise that threaten the values associated with the land.

- Where the public holds an easement, it must police it; harmful acts such as clearing woods along a stream may occur without the knowledge of the easement holder, and unenforced easement rights and restrictions may eventually be forfeited through neglect.

- The purchase of development rights may raise issues involving the effect of zoning upon valuation. For instance, where a property is zoned for agricultural use, what development rights other than agricultural use should the government value and purchase?

- The purchase of development rights may appear to involve a complicated process; many landowners may prefer to avoid such apparently complex transactions and simply sell property in fee simple.

- Requires plenty of lead time to prepare and adopt open space and park planning documents and implement them through grant programs.

- New tax levies necessary for park and open space programs sometimes generate political controversy.

D. Private Land Trusts

Private land trusts, non-profit land-owning and managing organizations, are playing an increasingly important role in land conservation throughout the United States. Where public planning objectives coincide with private land trust objectives -- typical objectives include agricultural protection, habitat conservation, and recreational uses -- local planning jurisdictions can benefit by coordinating efforts with these organizations. While land trusts are private entities and play no regulatory role, they command a broad array of preservation strategies and can be valuable partners to public entities endeavoring to protect valued land resources. For example, where government budgets are insufficient to acquire critical tracts in a given time frame, land trusts may be able to purchase and hold such property for future government acquisition.

Land trusts can also provide significant cost savings in land acquisition efforts. As tax-exempt charitable organizations, land trusts may acquire lands through charitable donations or bargain sales, which may prove financially beneficial to the grantor landowners who will derive tax benefits from such transactions. Landowners can reduce both their income and estate tax burdens and keep their property intact to pass on to next generations for agricultural and other open space purposes.

Where the land trust resells such low-cost acquisitions to the government, the trust may be able to recoup its own costs while still helping the government realize considerable savings. In addition to purchase in fee simple, land trusts can employ any of the forms of control through acquisition discussed above, using easements, purchase and sellback arrangements, or other tools for land protection purposes.

Another land preservation technique that land trusts can use involves the limited development of land. Limited development is effective where the trust can identify portions of a parcel that are critical to preservation efforts, and isolate other portions of the tract upon which suitable development would not conflict with identified preservation objectives. The trust can then identify the most appropriate forms of development and then sell or lease the developable areas for such uses, subject to various restrictions.

Colorado Open Lands used this approach in 1984 to preserve a 3,200-acre property known as the Evans Ranch. Located near Evergreen, at the base of Mount Evans, this ranch contains forested areas providing habitat for a variety of species such as mountain lion, elk, black bear and mountain goat. Initially zoned for residential use in 2-acre minimum lots, Colorado Open Lands divided the property into five topographically separate ranch areas and identified appropriate areas for limited development. The next steps were to affix covenants limiting development rights to one dwelling unit within forty acre envelopes, and positive easements providing common recreational use rights to the owners of all five ranches. Colorado Open Lands then sold the five ranch parcels, recapturing most of its initial investment.

In another example, the Nature Conservancy collaborated with the Phantom Canyon Ranch Company to preserve a 16,000-acre scenic area featuring a wild river canyon, a reservoir, and surrounding wilderness, located just north of Ft. Collins. The Nature Conservancy established a

2,700-acre preserve by purchasing over 1,100 acres and acquiring conservation easements restricting the use of an additional area. On the remaining 13,300 acres, the Phantom Canyon Ranch Company made use of restrictive covenants and restrictions to create four working ranch parcels of 800 to 1,200 acres and a limited number of smaller home sites carefully situated to preserve physical characteristics such as ridge lines, hills, woodlands, wildlife habitat, and other elements, as well as the privacy and views of the property owners.

Nationally, nearly one million acres are in conservation easements, and there are over 1,000 land trusts. The Colorado Coalition of Land Trusts conducted a survey of land trusts and conservation easements in place in 1993 in Colorado. The survey showed that Colorado Land Trusts had directly protected 141,722 acres of land in Colorado, and this number has increased substantially since the time of the survey. The 141,722 acres include the following:

- Twelve land trusts have acquired fee simple ownership of 77 parcels totaling 12,563 acres.
- Twelve land trusts hold 62 conservation easements on private land totaling 48,183 acres.
- Eight land trusts have transferred their interests in 111 land parcels to a third party (mostly governmental agencies) for a total of 78,367 acres.
- Three land trusts are protecting a total of 2,619 acres through other methods.

By 1995 Colorado, the number of Colorado land trusts had increased to 30 and they had protected an estimated 175,000 acres. In 1993, the annual operating budgets of Colorado land trusts total over $1.75 million, and the trusts maintain $4.2 million in restricted funds which are dedicated to the stewardship of the protected lands.

Currently, although Park County does not have a private land trust, county staff have actively participated in land conservation negotiations with landowners.

Advantages:

- Cost savings: As tax-exempt organizations, land trusts can provide savings in a number of ways. For example, land trusts can acquire properties by offering tax deductions to landowners who may wish to donate properties, and then convey such properties to the public. Land trusts can realize additional savings by avoiding real estate transfer taxes, enabling them to reconvey properties to government at below-market costs.
- Efficiency: Local governments can use land trusts to take swift action to acquire properties. Land trusts can act efficiently, without requiring

approvals from various agencies, and may be able to acquire and hold lands for future government acquisition.

- Effectiveness: Land trusts may be able to work more effectively with private landowners, in part because they can provide tax incentives, and in part because landowners may be wary of working with public agencies.

Disadvantages:

- Land trust objectives may change over time, and some may not have adequate staff and resources to administer significant land holdings.

- Where a government entity enlists a land trust to hold property in reserve for future government purchase, the trust must be able to commit adequate resources to the possible long range management of such property.

- Land trusts may not permit public access to properties they own or manage.

III. AMOUNT/DENSITY OF DEVELOPMENT

One of the traditional roles of zoning is to control the amount and density of development--often expressed in permitted dwelling units per acre for residential or floor/area ratio for commercial and industrial development. Growth management systems go beyond simple density limitations to address the total amount of development that a community will allow--sometimes expressed in terms of overall population targets or established as a preferred balance between residential and nonresidential development. Another approach is large-lot zoning to protect open space and agricultural uses.

A. Development Caps

A development cap is a technique which sets an absolute upper limit on the total amount of development within a community.

The development cap technique was given a bad image by the best known system which imposed a population limit. Boca Raton, Florida adopted a 40,000 dwelling unit (105,000 person) cap in 1972. The measure was intended to reduce the number of multi-family units which could be built in the city. This was accomplished by an across-the-board reduction of multi-family densities by 50%, rezoning of some multi-family land for single-family use and rezoning of some residential land for commercial and industrial use. Single family housing was not limited by these regulations; instead it was actually encouraged by city policy.

The Boca Raton approach was ruled invalid by the Florida courts, primarily because it was not based on prior planning studies and was not required because of facility inadequacies or environmental

constraints to development. The court ruled that the cap violated constitutional due process requirements because it did not "rationally promote public welfare without unnecessary and unreasonable consequences to private property rights...".

The Aspen Area Community Plan represents a very different approach to limiting the ultimate buildout of the community. In that planning process, an analysis of remaining development potential was prepared, which demonstrated that the existing peak population of 23,000 persons would grow to about 30,000 persons under existing zoning. Participants in the planning process determined that 30,000 persons was a reasonable peak buildout, provided that the remaining development occurred in such a way as to encourage a more balanced community, that is, one in which at least 60% of the work force resides. This is to be accomplished by directing the vast majority of future development to be affordable or resident-occupied housing. Housing targets were established for both the public and private sector to permit the 60% goal to be achieved by the time buildout occurs.

Advantages:

- If adopted to implement a comprehensive plan, a growth cap can be a way of agreeing upon the ultimate size and form of the county and its unincorporated rural centers.

- Experience in other jurisdictions demonstrates that growth caps can effectively slow the rate of growth in a community affording it time to address issues of infrastructure and service adequacy and update development standards.

- Some European resorts have demonstrated that development caps need not mean stagnation or decline.

Disadvantages:

- Unless used to implement a comprehensive plan, this technique may not stand up to federal constitutional challenges.

- As local jurisdictions approach buildout, the economy may decline, be unable to compete with other areas, or to respond to changes in demands and new technologies.

- As the community approaches buildout, if demand does not slacken, there will be increased competition for a limited resource, causing prices to increase and limiting community diversity.

- If the cap is lower than the buildout allowed under zoning, it will require down zoning to occur, which may not be politically acceptable.

- Does not address issues of quality, location or type of growth.

- Won't necessarily control the rate of commercial growth, unless the cap is expressed in terms of both population and commercial space.

B. Agricultural Land/Open Space Zoning

Zoning ordinances commonly require minimum lot sizes. In suburban single-family residential areas, minimum lot sizes typically range from one-quarter to two acres. To preserve agricultural areas, forests, wetlands, and floodplains, communities have adopted a variety of special agricultural land and large-lot zoning programs that require much larger minimum lot sizes and percentage of a parcel that must remain in open space. While such an approach would not affect existing small lots in Park County, it could help to maintain existing ranches in larger tracts. Park County currently requires minimum lots of 160 acres in the A Agricultural Zone and 20 acres in the R-20 district. This acreage is not large enough for a viable agricultural operation, and actually may contribute to the carving up of ranches in 20 acre “ranchettes.” One of the key issues is, even if the county does not increase the existing minimum 160 acre lot size in the A Agricultural Zone, will it grant rezonings to permit lower density developments in those areas.

1. Exclusive Agricultural Zoning

A few communities have adopted exclusive agricultural zoning that has proven quite effective in protecting farmland. Generally, such zoning includes a large minimum parcel size (often 160 acres or greater), exclusion of all non-farm land uses, and other restrictions such as limits on the number of building permits in the zone. Exclusive agricultural zoning has been utilized successfully in California to prevent suburbanization of Napa County Vineyards and fertile farmland in Santa Cruz County. Exclusive agricultural zoning is often complemented by "right-to-farm" laws protecting agricultural operations from nuisance complaints. Park County has adopted a similar “right-to-ranch” law which gives agricultural operations some protection against nuisance suits by neighbors, but does not have exclusive agricultural zoning.

2. Large-Lot Zoning

Large-lot zoning is far more typical an approach to protecting agricultural land and open space. In this approach, communities establish a large minimum lot size. For example, many Midwestern jurisdictions in Illinois, Michigan, Minnesota, and Wisconsin have required minimum lot sizes of 160 acres and more. In Weld County, Colorado, agricultural districts require minimum lot sizes of 80 acres per dwelling unit. Large-lot zoning provisions may come in a variety of forms:

- Quarter-quarter zoning: Each landowner is entitled to one buildable lot per 40 acres of farmland. Once the allowable number of lots have been developed anywhere on the property, no more construction is allowed. This approach, which works best in rural areas with only moderate growth pressure and larger farms, is used extensively in the rural areas around Minneapolis/St. Paul.

- Sliding-scale zoning: This approach decreases the number of residences allowed per acre as the parcel size increase. Thus a 10-acre parcel may be allowed one residence, a 40 acre-parcel only two, and a 160-acre tract only 3 units. Sliding-scale zoning has shown to be effective in agricultural areas that are under development pressure. They do allow some development to occur, but in a limited fashion, thus preserving some farmland, particularly larger parcels. Adequate buffers must be established between agricultural and residential uses.

Advantages:

- Large-lot zoning prevents the development of large tracts of open spaces and agricultural areas and removes some impetus for speculative subdivisions.

- Large-lot zoning reduces inflationary land speculation by reducing the prospects for easy conversions to higher intensity, non-agricultural uses.

- Large-lot zoning is a relatively simple tool to administer and involves little cost to government.

Disadvantages:

- While the U.S. Constitution does not guarantee the "highest and best" use of a parcel, large-lot zoning must allow for some reasonable economic use of land, such as farming or ranching. Where no reasonable use is allowed, zoning may violate legal restraints against unconstitutional "takings" of private property. Generally, however, where the zoning regulation is reasonably related to a legitimate public welfare purpose, the regulation will be upheld unless it precludes all economic use of the property.

- Large-lot zoning can diminish property values if prior zoning allows higher densities. Where such measures seek to preserve agricultural areas, lowered property values may create the opposite effect by depriving farmers of their collateral, and thus rendering farming economically infeasible. In such cases, large-lot zoning measures can be combined with measures, such as transferable development rights programs or tax incentives, to ensure that the agricultural use remains viable.

- Regulatory authorities must be sensitive to whether any agricultural use in an area is feasible; if farming or ranching has simply become unprofitable in an area, then unless other measures are undertaken in tandem, large-lot zoning provides little more than a short-term solution that cannot prevent conversions of farmlands to economically viable uses.

C. Substandard Lot Consolidation

Park County is pocked with thousands of small parcels that do not meet either current zoning regulations or minimum acreage requirements for water and septic. Most were platted before the county was zoned. These lots are particularly prevalent around Guffey, Fairplay, Bailey, and Hartsel. If only a small portion of these lots were to develop, they would have a tremendous impact on the county in terms of character and demand for services such as fire protection, road maintenance, and emergency medical services.

Much of the Rocky Mountain West suffers from similar problems created by "premature land subdivision" — or what one commentator has called "the perplexing problem of paper plats." Premature land subdivisions occur when a landowner divides a parcel of land into lots for sale far in advance of the market for those lots. In many cases, the landowner does not intend to actually build anything on the subdivided lots, but merely intends to enhance the value of the land and then sell the lots to individual buyers. The subdivision plat is sometimes referred to as a "paper plat" because there is little or no evidence of the subdivision on the ground and very few (or none) of the lots have yet been purchased for building purposes. The lots exist only on paper. Throughout the West, premature subdivision were often filed before the local government had any quality standards in place to govern land subdivision. Because of the lack of any adopted standards or procedures, some land divisions were created merely by drawing a proposed lot layout on a piece of paper and delivering it to the local government for insertion in a plat book. These filings often ignored topography, did not clearly identify the land in question, and showed no means of access and no right-of-way for utilities.

The premature subdivision of land is not just a historical problem, however, because it continues to take place today. Land is being subdivided into future neighborhoods -- sometimes entire new communities -- far in advance of any market for the lots and far away from the services needed to support them. More seriously, many premature subdivisions are still being created before the local government has enacted modern land use controls to guide the layout and quality of the lots and communities being created.

Over time, premature subdivisions tend to become "obsolete subdivisions" because the local government adopts or improves its quality standards for new lots. As more people move into a county or town, population densities tend to increase, the need to coordinate adjoining developments increases, and the community often realizes that its current subdivision standards are not adequate to address the problems that come with a growing community. The local government therefore adopts higher standards for site design, utilities, public improvements, buffering, and aesthetics that apply to all future divisions of land. Since those standards do not apply to already-subdivided lots, however, a there is still a stockpile of obsolete lots -- lots that do not meet current quality standards, and that the city or county would prefer not to see developed as they were originally created.

Obsolete subdivisions are sometimes said to share four characteristics:

1. They were created long before the demand for building activity;

2. They were created before the adoption of substantive land use controls;
3. They were often sold into multiple ownerships (not in bulk to a single purchaser); and
4. By the time buildings are built on the lots, they do not meet current quality standards.

Although obsolete subdivisions occur throughout the United States, they are especially common in the West. The volume of obsolete subdivisions in Colorado was documented by a 1986 survey of Colorado counties, and that study may serve as a general indicator of the problem in other Rocky Mountain states. The 1986 survey was conducted by the Lincoln Land Institute, which obtained information from 50 Colorado counties and 35 municipalities. Responses indicated that 86 percent of the responding counties and 83 percent of responding cities had obsolete subdivisions within their boundaries. Of those jurisdictions that contained obsolete subdivisions, 59% of the counties and 76% of the cities had more than 10 of them. The survey asked each responding jurisdiction to indicate the size range (not the exact size) of the obsolete subdivisions within its boundaries. The total number of lots in obsolete county subdivisions was somewhere between 15,900 and 80,200, and the total number of lots in obsolete city subdivisions was somewhere between 4,300 and 18,600, for a combined total of somewhere between 20,000 and 100,000 obsolete lots. Both the counties and cities responded that there was an average of less than 100 lots in each obsolete subdivision, which indicates that there were probably over 1,000 obsolete subdivisions scattered throughout the state. If this pattern is repeated throughout the Rocky Mountain West, then the stockpile of obsolete lots waiting to be developed is very large indeed.

Obsolete subdivisions are troubling to city and county planners because they create at least five negative consequences:

- **Land Use**. Obsolete subdivisions tend to commit land to residential development patterns long before those decisions can or should be made.

- **Public Safety**. Many lots are far away from fire protection and emergency medical services, and others are laid out on steep slopes and unstable soil types -- which can make them unsafe for building and unreachable by emergency equipment.

- **Financial Liability**. Many lots are far away from roads, water, and sewer lines, and local governments cannot afford to extend streets, utilities, or services to the obsolete lots if they were ever sold to people who wanted to build houses. Because of the small size and close proximity of the lots, many of these subdivisions are required to be served by such utilities and services as development occurs.

- **Community Quality**. Building new houses on lots that are smaller, more irregular, poorly buffered, or inappropriately located tends to decrease the perceived quality of the community and upset residents of neighboring subdivisions that meet current quality standards.

- **Environmental Damage**. Because soils and grades were often not considered in the layout and design of the lots, construction on the lots can cause erosion, subsidence, and water pollution. They also fragment open space and wildlife habitat

For all of these reasons, local governments in the Rocky Mountain West often struggle with their policies for obsolete subdivisions. However, several such as Mesa and Lake County have either taken or are considering action to deal with the issue head-on. These approaches usually fall into four general categories:

- **Improve Quality**. Leave the existing lot lines in place, but impose new quality, environmental, or infrastructure standards in zoning and subdivision regulations to govern construction of houses on those lots;

- **Lower Density**. Leave the existing street and infrastructure patterns in place, but require that fewer houses be built within the boundaries of the subdivision.

- **Merge Lots**. Require merger/consolidation of platted lots by those owning two or more contiguous substandard lots as a condition of obtaining a building permit.

- **Incentives**. Provide incentives for lot merger by, for example, allowing construction of accessory structures only on lots that meet current size requirements.

  Advantages:

  - Lot consolidation reduces the potential adverse impacts of substandard lots on the character of the county and demand for county services

  - Reduces density without having to purchase lots.

  Disadvantages:

  - Landowners may have a vested right to develop their property under prior zoning regulations.

  - Lot owners must be afforded a reasonable economic use of their property or the county risks “taking” their property without just compensation in violation of the U.S. and Colorado Constitutions.

  - Lot consolidation may generate significant political opposition even if legal.

IV. RATE/TIMING OF DEVELOPMENT

One of the primary concerns about growth in many communities is the pace of development--how fast it is occurring. This concern often springs from fiscal impacts of growth, traffic congestion or road deterioration, overcrowded schools, and inadequate fire protection or emergency services. Interestingly, at the public workshops in Park County, there was a great deal of concern about the overall rate of growth which has exceeded 8 percent annually for the past decade, a rate far higher than the state as a whole.

Traditional zoning ordinances usually do not address this rate/timing issue. An increasing number of communities are taking a variety of new approaches to the question of how fast they should grow. Many are focusing on the timing issue through the availability of infrastructure and are requiring that adequate public facilities be available before a development can occur. Others are using a more direct approach–development caps that limit the number of building permits that can be issued annually.

While growth management techniques which limit the amount and rate of growth have not been applied in a large number of communities throughout the country, they have had application to a range of community types, including resorts (Boca Raton, Sanibel, Aspen/Pitkin County, and Lake Tahoe), suburbs (Petaluma and Ramapo), and large cities (Boulder, San Francisco and Seattle). These techniques have been used to address residential development, non-residential development and, in limited cases, both development types.

A characteristic shared by virtually all of the communities which have adopted these controls is they have recently experienced unusually rapid rates of community change and development. In several of the communities, this rate of change led to a voter initiative to impose rate control, because residents felt the change being experienced was not acceptable.

Often, the stated reason for enacting a rate control regulation is to buy time for the community to plan for and respond to the demands of growth (such as by building new infrastructure), and to formulate more comprehensive, long range planning solutions. However, these technical rationales may be driven by a more fundamental community desire to protect property values and to limit the degree of change being experienced.

Controls on the rate and amount of growth have sometimes been enacted on a temporary basis, or have been enacted for a relatively short period and then been repealed or relaxed. Once the short term growth rate has been brought under control, the community can again turn to the broader questions of: (a) the appropriate types and patterns of land uses; (b) the balance among uses; and © the ultimate character and form of the community, none of which can be fully addressed through controls on the amount and rate of growth.

A. Adequate Public Facilities and Concurrency Requirements

Over the past two decades, a number of communities throughout the country have found themselves in a fiscal dilemma. For various reasons, they have experienced a rapid rate of growth due to the in-migration of new residents, the development of second homes or recreational housing, new

commercial investment, requests for annexations, or a combination of these factors. During the same period of time, sources of funds for expanding and upgrading infrastructure have declined both at the federal and state levels. Communities throughout Colorado and the West have had to grapple with ways of accommodating, directing or managing growth so that it does not outstrip the ability to provide public facilities and services.

Adequate public facilities (also known as "concurrency") programs are intended to ensure that public facilities are either in place, planned for, or provided as impacts occur from new development. Such programs seek to prevent an unacceptable decline in service for existing residents by making certain that new or enhanced services are available to meet the demands by new residents. However, the concept of concurrency does not insist that developers pay for public improvements, but only that such improvements must be made when development occurs. In some instances, however, growth may occur only if a developer pays for needed improvements since public funds may not be available.

At present, most communities that apply this concept are found in the states of Florida and Washington, although Douglas County has recently adopted this approach and several communities in Northern Colorado have it under consideration. In some instances, however, growth may occur only if a developer pays for needed improvements since public funds may not be available. This is due to statutory requirements that mandate the principle of concurrency in planning and permitting. Because it has received a massive amount of growth, the city of Orlando has established a comprehensive concurrency approach. First, standards for levels of service are set. This necessitates making sure that such standards are realistic, maintainable and neither too high nor too low. They can be based on existing acceptable levels of service in the community, accepted national standards (e.g., for parks and schools), or national standards tailored to local circumstances. Second, the Capital Improvement Plan (CIP) identifies projects and funding sources. Third, development review procedures involve the issuance of a "certificate of concurrency" after analysis of a proposed project's impacts and mitigation. Fourth, the city monitors the service levels over time to determine that public facilities are keeping pace with development. Finally, a considerable amount of intergovernmental coordination is required, because the city is not the only source of funding for infrastructure in the area.

Requirements that adequate public services\facilities be provided concurrently with development can be most effective when they are applied on a regional or even statewide basis, so disparities in the regulatory framework among adjacent communities are avoided.

Advantages:

- Prevents leapfrog development patterns and high costs of infrastructure extensions.
- A common sense approach to fiscal management.
- Paces development to match desired levels of service.

- Rationalizes development decision-making process.

- Directs development to areas where service delivery is the most cost-effective.

- Provides structure and resources for CIP.

Disadvantages:

- Requires regional application to be most effective.

- Requires system of data collection and monitoring and adequate staff to administer.

- Can cause some over building during the initial implementation period from fear that capacity will be consumed.

- Creates a certain amount of bias in favor of larger projects that are able to marshall resources and manage their timing.

- Does not, and cannot, address correction of existing deficiencies in service levels.

- Will trigger a debate on when public facilities should be in place (i.e., before, during, or by a specified time after development.)

B. Tools Controlling the Rate of Growth

Techniques which place quantitative limits on the amount and rate of growth can be broken into the following two basic categories--Rate Allocation Systems and Phasing/Tier Systems.

1. Rate Allocation Systems

A rate allocation system is one which specifies an annual rate of growth for the community, in terms of numbers of new residential and/or tourist units and/or the amount of new commercial space. The rate may reflect a specified percentage of growth established in a community plan, or it may be in the form of a specified number of units or amount of square footage for which permits can be issued in any year.

The two best known examples of rate control systems are those in Petaluma, California and Boulder, Colorado. The Aspen rate control system was originally modeled after both of these systems, although it has diverged from them in more recent years. For example, where Boulder and Petaluma simplified their systems in the 1980's, after more than 10 years of experience, to pro-rate available

allocations among applicants, rather than engaging in the merit reviews, Aspen's system has become far more complex in its second decade.

The Petaluma system, which was upheld in federal circuit court in 1975, allows an allocation of 500 residential units per year, split between single and multi family units, and split between the two sides of town. The Boulder system allows for a 2% rate of growth; it originally allowed for a 1.5% rate. The Aspen system sets annual dwelling unit, lodge unit and commercial space quotas, with an overall goal to limit growth to 2% per year (the original annual rate was 3.47%). Growth in Petaluma, Boulder, and Aspen in the period since each system was enacted has been below the adopted quotas.

Advantages:

- A direct, effective way of temporarily limiting the rate of, and impacts from, unusually high rates of growth in a community.

- Provides the community with the time to plan for and begin providing necessary public facilities to serve growth.

- Issues such as quality/design, housing affordability, and environmental quality can be addressed through the competition system.

Disadvantages:

- The rate control program must be clearly intended to support a community direction outlined in a comprehensive plan. Otherwise, it will be nothing more than a slow way to get to an unknown (and possibly undesirable) outcome.

- Competition systems can involve very complex regulatory programs, taking considerable staff time to administer and adding considerable time and money to the developer's review process. The staff will be asked to regularly revise the system to reflect current community values and to address the loopholes and administrative problems it generates.

- Limiting the rate at which the market can grow may cause prices to increase and may change the character of resulting projects from a mix of residents and visitors to more exclusive-styled projects.

- If the system is only in place within a single jurisdiction, growth will tend to spill over to adjacent areas, or to leap to other portions of the region where market demand is not being regulated. For example, while the City of Boulder grew more slowly from 1970-1990 than its system allowed, growth exploded in other communities in Boulder County during this period. The

Roaring Fork Valley has also experienced this phenomena, as growth has overtaken the Basalt/El Jebel/Carbondale area because of the Aspen/Pitkin County limits. Both areas have suffered from the transportation and air quality impacts of this sprawl.

- If the system is only intended to limit one development sector (for example, the rate of residential growth), this sector may become out of balance with others (i.e., excess commercial or tourist development).

2. Phasing (Tier) Systems

A growth phasing or tier system is one that regulates the location and timing of new development based on the availability or planned availability of public facilities. It splits the community into a series of growth tiers, based on the planned locations of public facilities and usually requires a project to receive a certain number of points for service availability in order to develop. These points can be achieved if the services are planned to be in place, or if the developer goes to the expense of extending the service to the subject location.

While this approach may sound similar to an adequate public facilities system, in practice, tier systems also incorporate the dimension of rate allocation or phasing into the regulation. Therefore, where an adequate public facilities system is primarily meant to ensure that growth occurs when facilities are (a) available and (b) meet specified level of service standards, a phasing system provides a community with the ability to control the timing and location of growth, even when facilities are available and meet community standards.

The Ramapo, New York, growth management system was the earliest example of a growth phasing system. It focused on the timing of growth by allocating points to development based on the availability of public improvements. The regulation was linked to a plan to install necessary public improvements throughout the community over an eighteen-year period. The program intended that development would follow the availability of public facilities, since developers could obtain the points necessary to be awarded allocations in those locations where facilities were in place.

The Snyderville Basin General Plan, 1992, from Summit County, Utah, represents a more recent version of growth phasing. Summit County is an historically "rural" county located approximately 20 miles east of Salt Lake City and adjacent to the popular Park City ski resort. The population has more than doubled since 1980, rising from 10,200 in 1980 to 19,600 in 1993. Although the county had put in place a performance zoning system, it found that such an approach was not controlling suburban sprawl-type development. In response, the county adopted a new comprehensive plan in 1992 that establishes a tiered system of growth areas separating urban, urbanizing, and future urbanizing areas from rural, natural, and environmentally sensitive areas. Development areas within the urban growth boundary are designed to achieve orderly growth and provide infrastructure and public facilities in a rational and fiscally responsible manner. The plan also establishes level of service standards that must be met before development can proceed and provides for impact fees. Revisions and amendments to the Snyderville Basin Development Code are currently being

reviewed for adoption. The revised code establishes new zoning districts and detailed environmental protection and site design standards as well as the infrastructure provisions noted above.

Advantages:

- Will ensure that development occurs when and where facilities are available and within a rate adopted by the community.
- Can be written to ensure that growth pays its own way.
- Will avoid leapfrog or remote development within the adopting community.

Disadvantages:

- May not be well-suited to already developed communities with limited development areas. Better suited to counties or large urban areas with infill and fringe development potential.
- Will ultimately result in development of the entire jurisdiction, unless combined with other techniques, such as open space acquisition, sensitive lands protection, etc.
- Does not alone address the quality or type of growth or the balance among growth sectors.
- Can cause leapfrog development to other communities.
- A relatively complex form of development regulation, which will typically add new steps to the development review process and be relatively costly for applicants to use and staff to implement.

V. QUALITY OF DEVELOPMENT

While addressing the location, amount, and timing of growth are often key elements of growth management systems, there is an increasing recognition at the local level that the quality, appearance, and environmental impacts of development must also be dealt with. Only then can a community be assured that its distinctive character will be protected and that development will be sustainable from an environmental perspective.

A. Sensitive Lands Overlays/Regulations

Where land areas feature natural or cultural resources, hazards, or other special characteristics, zoning overlay districts superimpose additional layers of regulations upon underlying zoning

districts. Overlay districts commonly impose special development restrictions in floodplain areas or areas with environmental hazards, fragile resources, wildlife habitat, scenic areas, and historic sites.

In many communities, overlays are the typical approach to preserving historic areas; while the underlying zoning remains unchanged, building demolition, alterations, and renovation may be conditioned upon approvals from a local preservation commission.

An increasing number of cities and counties in the Rocky Mountain West are adopting special regulations to protect sensitive environmental areas. For example, Park City, Utah, recently adopted overlay regulations to protect a broad range of environmentally sensitive features including wetlands, stream corridors, steep slopes, ridgelines, and view corridors. Similarly, Summit County, Colorado, in 1994 adopted special regulations to review the impact of development on wildlife habitat.

The City of Denver has had a mountain view protection ordinance for many years. This ordinance restricts the height of buildings around certain city parks to protect views of the mountains to the west. They override any conflicting underlying zoning regulations. The ordinance was upheld by the Colorado Supreme Court in 1986, which held that aesthetic concerns were a valid basis for the exercise of local police powers.

In Colorado, state legislation (H.B. 1041; C.R.S. § 24-65.1-101) establishes a set of criteria to be used by local governments in planning or regulating specific types of development matters of "statewide" concern such as natural hazard areas and areas containing archaeological and natural resources. H.B. 1041, in practice, gives local governments the ability to exert much control over such projects within their boundaries. Eagle County utilized 1041 powers to require the proponents of the Homestake II water project to assess the impacts of that project and abide by local conditions to lessen local environmental and other impacts.

Advantages:

- Zoning overlay districts enable planners to tailor regulations to specific issues that are relevant to a discrete and specifically delineated area.

- Overlay districts do not affect the underlying zoning governing permissible densities and uses.

- Sensitive area regulations help ensure that development is environmentally compatible and can protect open space at the same time.
- Protection of sensitive environmental areas and wildlife habitat will protect resources that are important to the county’s tourism and recreation-oriented businesses.

Disadvantages:

- The implementation and enforcement of zoning overlay districts can create administrative burdens requiring skilled staff.

- Zoning overlay districts add a layer of complexity to development approval processes for developers and landowners.

- While no one is necessarily entitled to the most lucrative or "highest and best use" of his property, sensitive area regulations that deny all reasonable use may raise significant property rights and "takings" issues.

- Regional coordination required where watersheds and sensitive areas cross jurisdictional lines.

B. Quality Development and Design Standards

To address the growing concern about the quality and appearance of development, communities are adopting a number of new approaches that hold promise. Many have enacted standards to protect their scenic qualities and other distinctive features:

- Building Design Standards: Many mountain communities such as Winter Park and Crested Butte require that new residential and commercial construction meet design guidelines that encourage structures to include architectural elements that have a distinctive mountain flavor (e.g., pitched roofs, timber building elements, rock work on foundations and facades). Design standards can also discourage look-alike commercial franchise standard architecture.

- Gateways: Allegheny County, Pennsylvania (Pittsburgh), has adopted standards requiring 100-foot landscaped setbacks along the primary gateway highway, has banned new billboards and encouraged ground-mounted monument style signs, and encouraged heavy parking lot plantings. Bozeman, Montana has won national attention for building design, landscaping, and other standards aimed at beautifying its main entryways.

- River corridor protection: Many communities, such as Park City, Utah, have adopted standards requiring that development set back at least 100 feet from rivers and streams and be buffered from view. Near Atlanta, Georgia, Fulton County has passed the Chattahoochee River Corridor Tributary Act that creates a 35-foot buffer zone along all banks of tributaries of the Chattahoochee, a National Wild and Scenic River. Similar regulations were upheld by the Montana Supreme Court in a recent case.

- Vegetation and tree preservation: One of the fastest-growing issues at the local level, hundreds of jurisdictions have adopted regulations preventing the

wholesale stripping of vegetation from development sites or the removal of larger trees. Some, like Fort Collins, Colorado, and Fairfax County, Virginia (outside Washington, D.C.) require that a certain percentage of tree or vegetation cover (e.g., 50%) remain on a site. Others, like Austin, Texas, and Thousand Oaks, California, prohibit the removal of trees larger than a specified size.

- View protection: An increasing number of jurisdictions have imposed regulations to protect views of mountains, scenic valleys, or landmark buildings. Denver has had a mountain view protection ordinance for many years, designed to protect the views of mountains from city parks. Palmer Lake, between Denver and Colorado Springs, successfully prevented a major development project on a hillside bench area near the town. Cincinnati, Ohio has an ambitious hillside protection program to ensure that development fits into the landscape.

- PUD ordinances: Many Colorado communities have enacted planned unit development (PUD) ordinances as authorized by state law. C.R.S. § 24-67-101 et. seq. The state statute states ten purposes for authorizing counties and municipalities to permit planned unit developments, including encouraging innovations in residential, commercial, and industrial development and renewal, encouraging a more efficient use of land, and reflecting changes in technology of land development. PUDs are geared to give developers greater flexibility in laying out a site to enable more creative site design and provision of amenities. In PUDs, development is often clustered in higher density pods on part of a site enabling the developer to preserve more open space. PUDs can also be used to encourage mixed-use developments that integrate housing with employment, commercial, and educational uses.

Advantages:

- Aesthetic and design regulations can have a very positive impact on community appearance, helping cities and towns retain their distinctive character.
- Well-designed, attractive communities have a proven record in attracting and creating economic development and jobs.

- Better designed developments tend to make people more accepting of growth.

Disadvantages:

- If overly complex, design regulations can create an administrative burden for local governments and add to development costs.

- Aesthetic regulations can make the development process more lengthy and complicated.

- Unless drafted carefully and clearly, design standards and planned unit development ordinances can place undue discretion in the hands of local review bodies.

C. Open Space Conservation/Cluster Subdivisions

Open space/cluster subdivisions provide flexibility for developers to construct buildings in clusters while remaining within the constraints of overall average density restrictions. In an open space subdivision, maximum densities are calculated not for individual lots, but for overall development sites. Rather than requiring uniform intervals between building sites, such ordinances allow tight clusters of buildings in some areas, with other portions of the parcel set aside for open space or recreational uses. Clustering thus provides larger areas for open space and other amenities while minimizing the land area required for roads and other infrastructure.

Cluster provisions can provide an effective tool for reconciling development with preservation by allowing development to proceed on the portions of a property that do not contain valuable resources while preserving open space or natural resources located on other parts of the parcel.

Open space subdivisions are widely used to permit development while setting aside areas for the preservation of sensitive areas, such as forested areas, wildlife habitat, wetlands, agricultural areas, and other such resources. In a farmland preservation context, some communities will allow residential development in rural areas, but require large minimum lot sizes of up to 100 acres. Up to four units might be allowed on the 100 acres, but they would have to be clustered on 10 acres, thus preserving 90 contiguous acres for agricultural operations. The Town of Southampton, New York, a farming and tourist-oriented community located in the coastal and agricultural areas of eastern Long Island, has preserved scenic views and significant agricultural acreage by limiting new development area to 25 percent of development parcels. With 75 percent of their parcels allocated for open space, property owners have leased these areas to agricultural users, thus providing agricultural and scenic amenities while preserving development rights.
Another example of cluster development comes from Montgomery County, Pennsylvania, outside Philadelphia. The intent of the Land Preservation District in Montgomery County is to preserve open space and natural lands on development parcels of 10 or more acres. The regulations permit development of compact residential areas that are carefully located, designed to reduce their perceived intensity, and which preserve agricultural lands. This is similar to "cluster" development, but has several unique features:

- Private open space requirement of 75%.

- New house lots reduced to 10,000 square feet.

- Zero-lot-line homes can be built on lots as small as 6,000 square feet, with a limit of 25 home groupings separated from others by buffers.

- Neighborhoods with more than 10 dwellings are required to provide readily accessible recreational open space of 1,000 square feet per dwelling unit.

- Siting of the neighborhoods must be so that they will avoid sensitive natural areas and be screened from nearby public roads.

- Open space preservation priorities vary according to the type of resource that is most highly valued.

Estate lots are also allowed in the Land Preservation District. The lots must be at least 5, 10, or 15 acres depending on whether the total tract is 10 to 19 acres, 19 to 29 acres, or 30 acres or greater. The lots comprise part of the required protected open land. Standards restrict the building area, driveway, lawn, and gardens to a total of one acre, and the remainder of the lot must be placed under a permanent conservation easement. The estate lots are intended to help retain working farms and to address local concerns about continued management of the preserved open space.

Private cluster development initiatives are also showing promising results in several areas. One interesting project is the Phantom Canyon Ranches north of Ft. Collins on highway 287, near Wyoming border. The project includes over 16,000 acres, of which 2,715 acres are in the Phantom Canyon Conservation Area. This is a joint project with the Nature Conservancy to preserve the Phantom Canyon and provide homesites and working ranches surrounding the canyon with covenants and restrictions designed to preserve the unique values of the area. The original project design included four working ranches ranging from 800 to 1,200 acres and 11 sub-parcels that each include several homesites. For example, one 280-acre parcel contains 7 homesites. The plan designated homesites according to specific criteria relating to privacy, physical characteristics such as ridgelines, hills and woodlands, wildlife habitat and other elements. Each designated building site consists of a 100,000 square foot building envelope that is purchased in fee simple. Purchase of a homesite also includes an undivided acreage equivalent interest in the larger sub-parcel.

The Phantom Canyon Conservation Area consists of four separate parcels, totaling 2,715 acres. The central canyon area is a Nature Conservancy Preserve including 1,120 acres. Additionally, there is a Nature Conservancy easement on 480 acres that is preserved as private wild and scenic open space for the exclusive use of the owners of Phantom Canyon Ranches. This parcel provides superb trout fishing and natural beauty. The Canyon Common Land greenbelt area consists of 840 acres, and the Halligan Reservoir common area includes 275 acres.

Advantages:

- Open space subdivisions provide flexibility for planners and developers to design innovative development layouts that can accommodate development as well as environmental or land preservation objectives.

- Cluster developments can preserve significant tracts of open space while still preserving development values.

Disadvantages:

- The successful administration of these types of ordinances requires a sophisticated planning staff that is able to exercise discretion in determining appropriate and feasible development layouts.

- Clustering may not be appropriate where no residential development should be permitted, such as in noise impact zones, prime agricultural areas, or remote rural districts.

- Substantial numbers of cluster developments in close proximity can lead to "cluster" sprawl and a significant change in the character of an area.

- Homeowners' Associations may need to be established to maintain open space areas. Such associations have spotty records of performance in some rural areas.

VI. COST OF DEVELOPMENT

Increasingly, with taxpayer resistance to increases in general sales and property taxes, there is interest by local governments in how to finance the cost of services and facilities necessitated by new development–roads, schools, parks, fire protection, emergency services, and the like. Park County is facing many of the same fiscal constraints other jurisdictions throughout the state are grappling with. Two relatively new approaches have garnered significant attention–impact fees and adequate public facility ordinances.

A. Exactions, Dedications, and Impact Fees

Strapped by budget limitations, an increasing number of Colorado local governments are imposing land dedication requirements, other exactions, fees in lieu, or impact fees, as conditions for permit approvals. For example, Adams County has imposed a 20 - 25 percent land dedication requirement on residential developments. El Paso County has a land dedication requirement or cash-in-lieu requirement for schools and parks. Practically all Colorado local governments impose some form of water and sewer tap fees which are, in effect, impact fees designed to pay the cost of providing water and sewer services.

Where new development creates needs for increased public services and infrastructure (schools, roads, recreational facilities, etc.) this practice is intended to ensure that new development "pays its own way" by assuming these costs. Thus, where new development threatens to strain a community's

recreational facilities, developers might be required to dedicate a specified number of parkland acres for every 100 residents of a residential project. In the alternative, developers might pay a fee into a dedicated open space fund that would be used to purchase recreational open space land in the general vicinity of the project.

While Colorado courts have generally been sympathetic towards exactions, these programs raise two legal issues. The first issue focuses upon the authority of local governments to impose such requirements. In Colorado, authority for exactions programs springs from three sources: General home rule powers, specific statutory authorizations, and broad authority as implied from the construction of general land use planning and zoning laws. Although some argue that such programs are not authorized under Colorado law, the courts have thus far found in favor of such authority in most instances. Moreover, in situations involving home rule communities or specific types of exaction programs (municipal water and sewer development fees (C.R.S. § 31-35-402(1)(f)) and county dedications for parks, school sites, and storm drainage detention facilities (C.R.S. § 30-28-133(4)) the requisite authority is clearly in place. However, in the area of school impact fees, the Colorado Supreme Court has ruled that counties do not have the authority to assess such fees, only to require dedication of school sites at the time of subdivision.

The second legal issue examines the relationship between the development, the exaction, and the use of the dedicated resources. While the state of the law continues to evolve, the general rule holds that there must be a reasonable relationship between the required dedications or fees and an actual need generated by a project. Furthermore, the fee or dedication requirement must be roughly proportional to the need created by a development. Revenues must be segregated and earmarked for land purchase or other facilities, not commingled with general tax funds.

There may be a need in Colorado for broader enabling legislation regarding impact fees, especially for counties and non-home rule municipalities. The Colorado General Assembly has not enacted broad, inclusive impact fee enabling legislation covering a spectrum of municipal improvements as has been done in New Mexico. Consequently, local governments in Colorado have looked to either home rule authority or specific enactments of the legislature for authority. While such authority exists in many areas, some are specifically defined, and grant narrow authorizations. For example, C.R.S. § 31-35-402(1)(f) provides statutory authority for municipalities to impose water and sewer development fees. See Zelinger v. City and County of Denver, 724 P.2d 1356 (Colo. 1986). Counties in Colorado have been granted explicit powers to require dedication of property or fees-in-lieu for parks, schools sites, and storm drainage detention facilities during the subdivision approval process (C.R.S. § 30-28-133(4)(1993)) but county school impact fees are not specifically authorized. No similar provisions exist for statutory cities and towns.

Advantages:

- Where new development strains the capacities of public services and facilities, exactions, impact fees, and dedication requirements can provide an alternative means for ensuring that such growth contributes to the replenishment of these capacities.

- By alleviating fears that new development will lead to increased property taxes, exactions may reduce opposition to new development and thereby lead to relatively smooth development approval processes.

Disadvantages:

- While this general concept has become increasingly acceptable politically, dedication requirements, impact fees, and other exactions often engender strong opposition from the development community which prefers use of general property taxes, public bond issues, and traditional sources to fund infrastructure.

- The crafting and implementation of these types of exaction programs require substantial staff resources. In the initial development of the program, the government entity will have to address potential legal issues by devoting substantial resources to background studies so as to establish a firm legal basis for its program.

- Impact fees may not cover costs of needed improvements unless set at very high levels and may not be as cost-effective as tax-exempt forms of financing such as municipal bonds.

- In certain circumstances, exactions and impact fees may increase the cost of housing.

- If too onerous, may raise legal issues.

B. Adequate Public Facility and Concurrency Requirements

A second primary tool to address the cost of growth is adequate public facility ordinances. This approach is discussed above in Section IVA.

VII. SUPPLEMENTARY TOOLS

Experience in other communities demonstrates that there are several supplementary tools that can be key ingredients in a successful community growth management strategy. These are discussed below.

A. Intergovernmental Cooperation and Agreements

Without significant intergovernmental cooperation on land use issues between the county and its constituent towns, no growth management strategy can be entirely successful. For example, if the

towns desire to target growth around their borders, such a plan will not work if the county allows development to occur in unincorporated areas.

Fortunately, there is ample enabling authority in Colorado to foster such cooperation. Under Colorado statutes, "local governments are authorized and encouraged to cooperate or contract with other units of government . . . for the purposes of planning or regulating the development of land including, but not limited to, the joint exercise of planning, zoning, subdivision, building and related regulations." C.R.S. § 29-29-105(1) (West Supp. 1994). Where intergovernmental groups negotiate plans for regionally coordinated development patterns, the individual jurisdictions agree to adopt plans and implementation measures; under C.R.S. § 29-20-105, these plans then become "mutually binding and enforceable" among the parties. Additionally, local governments can form regional service authorities (RSAs) to provide a variety of services in a cooperative fashion. C.R.S. § 32-7-101 et. seq. State enabling legislation was recently enacted making easier the use of such authorities among counties and their constituent municipalities.

The broad powers available to local governments in Colorado to execute intergovernmental agreements includes joint land use planning. This power has been exercised by Aspen and Pitkin Counties to form a joint planning agency.

Similarly, the City of Boulder and Boulder County have used an intergovernmental agreement to preserve open spaces in the city's environs. One of the key aspects of the agreement provided that new development would occur only in those areas where the city and county agreed to provide urban services. This application of capital improvement policies in a regional intergovernmental agreement has effectively preserved open areas, including strategic vistas, recreational areas, and entrance corridors around the city of Boulder while directing urban development to the urbanized core of the city.

Beginning in the early 1980s, the City of Durango and La Plata County have executed a series of intergovernmental agreements relating to joint planning activities. The agreements provide for joint review of subdivision requests in designated areas and restrictions on annexation in some areas where joint land use and development plans have been adopted.

The Town of Berthoud and Larimer County in 1994 entered into an interim intergovernmental agreement in which the two jurisdictions have agreed to develop a joint land use plan for the area surrounding Berthoud. Applying some of the basic concepts of the Boulder agreement, Berthoud and Larimer have adopted joint policies seeking to direct the spread of Berthoud's growth to designated growth areas. While this interim agreement does not contain the substance of a joint land use plan, the agreement designates a joint planning area including and surrounding the town, and provides procedural mechanisms requiring the county to refer land use decisions pending in the joint planning area to the town, requiring the county to justify land use decisions that are contrary to the town's recommendations, and making the intergovernmental agreement mutually enforceable in a court of competent jurisdiction.

A recently executed intergovernmental agreement involving Boulder County and the communities of Lafayette and Erie breaks new ground in the protection of open space. The agreement helped settle lawsuits that had been filed by Boulder County and Lafayette challenging the annexation by the Town of Erie of 2,000 acres of property adjacent to the northern border of Lafayette. The agreement establishes strict density limitations on parcels within a 7,000 acre rural preservation zone--basically no density increases are allowed beyond current Boulder County zoning. Future annexation requests of any parcel within the rural preservation area must be referred to the other parties for review. Certain other lands are allowed higher densities, but are subject to use and design standards.

Another intergovernmental agreement is playing out among communities in Larimer and Weld Counties. The project, being managed by the City of Ft. Collins, has a goal of producing a regional open space plan that will identify open space and natural areas of regional significance that should be protected as well as trail linkages among communities. Another goal is to evaluate existing growth patterns and development policies in the participating communities and make recommendations for changes that will result in more compact, efficient development and more rational urban growth areas. Participating jurisdictions include, in addition to Ft. Collins, Berthoud, Evans, Greeley, Loveland, Milliken, Wellington, Windsor, Larimer County and Weld County.

Also in Larimer County, the county and the Town of Estes Park have adopted a uniform, consolidated development code that applies to all development in the Estes Valley, whether in the town or county.

Advantages:

- Intergovernmental agreements are negotiated voluntarily so that participating local governments do not feel coerced into participating. Because they are freely negotiated, they are typically easier to enforce than regional plans.

- Intergovernmental agreements can specifically address a wide variety of growth management issues.

- In negotiating intergovernmental agreements, officials of constituent localities establish a working relationship that may help address a variety of other growth management issues.

Disadvantages:

- Since they are voluntary, intergovernmental agreements may not address key growth issues or may not encompass an adequate geographic region to be effective.

- Intergovernmental agreements may not have enforcement mechanisms, making them little more than "gentlemen's agreements." They may also be revoked or not renewed by succeeding elected officials.

B. Incentives

During the public workshops, a number of people expressed the sentiment that, where possible, the county should utilize incentives to reach its land use planning goals. Other jurisdictions have adopted a variety of incentive approaches that might be useful in Park County.

1. "Sanctuaries" for Existing Land Uses

Many productive and desirable land uses encounter difficulties when new development locates nearby. The problems begin when relatively low land values in agricultural, mining, or industrial areas attract residential or commercial development. For example, in Park County, potentially valuable mining claims and ranchlands are being purchased and developed residentially. After construction, new residents find that neighboring agricultural uses emit odors and stir up dust, mining operations generate truck traffic, noise, and light. These issues lead to conflict, often involving expensive litigation, and in many cases the initial users leave the area to seek new locations to avoid such conflicts and expenses.

Where local governments wish to retain these types of uses, zoning techniques can create exclusive "sanctuaries" that prevent the encroachment of incompatible uses. "Right to operate" provisions in such sanctuary zones would essentially immunize operators engaged in certain protected uses -- farming, for instance -- against nuisance claims, rezonings, or other pressures to require changes in operations that would be detrimental to the farm. This approach has been useful in retaining various industrial uses in cities such as Baltimore, Philadelphia, Chicago, and Portland, Oregon. The approach has also been adapted for agricultural purposes, as in Minnesota's Metropolitan Agricultural Preserves Act. Under that act, farmers are protected from local regulations that would unreasonably restrain farming practices (such as hours of operation) and are insulated from urban property value assessments.

Colorado has a variation of this protection against nuisance claims. Under C.R.S. § 35-3.5-102, an agricultural operation cannot be defined as a nuisance -- "an agricultural operation is not, nor shall it become, a private or public nuisance by any changed conditions in or about the locality of such operation after it has been in operation for more than one year." Local ordinances that define agricultural operations a nuisance or provide for their abatement as a nuisance are void.

There are other incentives available to protect the commercial viability of farmland. In Southampton, New York, on the easternmost portion of Long Island, commercial farm markets are allowed as an agricultural use if a certain percentage of the produce is from that farm. Other commercial land uses such as horse boarding are defined as an agricultural use to maintain the economic viability of the area. These incentives allow farmers to produce additional income, but do not set a precedent for nonagricultural commercial uses.

Advantages:

- Where valued types of land uses generate impacts that are incompatible with other uses, sanctuaries for impact-generating uses effectively create protected "habitats" for such uses and discourage other uses from locating in the vicinity.

- Sanctuaries help resist speculative intrusions into areas with desirable land uses that might be forced out by the market.

Disadvantages:

- In establishing industrial or agricultural sanctuaries, "right-to-operate" regulations should not be drawn so rigidly as to exclude other uses. Where this occurs, and market forces render the specific protected uses less profitable or infeasible, overly exclusive regulations may eliminate alternative compatible uses, and ultimately create pressure for more intense incompatible development.

- Right-to-operate provisions may reduce agricultural or industrial land values by reducing market opportunities to convert such lands to other uses.

2. Density Bonuses

Density bonuses can be used to encourage developers to provide affordable housing, provide additional open space, or other community amenities as part of their projects. The bonus must be substantial enough to invite participation, but if the bonuses are too great, the underlying objectives are diminished. Density incentives are most likely to be effective in areas where the allowed density is already low, because greater increases can be allowed without compromising rural resources and character.

An example of an effective program is in Gallatin County, Montana, where land may be divided into 20-acre parcels without any governmental review or approval. To encourage more compact development, the county offers a program with up to a four-fold increase in house lots. To qualify for the bonus, the subdivided lots may not exceed one acre in size, and the balance of the land must be preserved as open space.

A more sophisticated program is in place in Charlevoix County, Michigan, where density bonuses can be awarded on a sliding point scale that takes into account the length of shoreline, ridgelands, or public road frontage that clustering would protect from development and visual intrusion. Additional credit is granted for various elements such as opening land for public use and buffering of existing conservation lands.

Several jurisdictions in Colorado, such as Routt and Larimer Counties, have adopted density bonuses for subdivisions that set aside substantial amounts of open space.

The opposite approach, a density penalty, is in place on the Olympic Peninsula in Callam County, Washington. The county ordinance allows developers to build under current densities (one to five units per acre) only if they use cluster techniques. Those not using clustering are subject to a new minimum parcel size of 30 acres.

Other communities have used a very similar approach for provision of affordable housing. Basically, the developer gets additional units on his land in return for reserving lots for affordable units or actually constructing the units.

Advantages:

- Rewards developers for protecting open space or providing affordable housing.
- Meets a community need without expenditure of public funds.
- Preserves open space, rural character, and sometimes specific resources such as ridgelines and road frontage.

Disadvantages:

- May not be appropriate where large-scale land preservation is preferable.
- If incentives too generous, conservation objectives diminished or site may be too densely developed and generate opposition.
- Developers design projects to qualify for bonuses and may ignore other important planning issues.