

## Chapter 6: Land Conservation Program Tools

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## *Introduction*

A successful land conservation program is an intricate assemblage of components, including landowners interested in conservation, adequate finances and tools in place, conservation partners such as local non-profit organizations, and local laws and policies that support and complement conservation efforts.

A land conservation program should provide options to landowners, with a wide array of choices for differing circumstances. Some landowners are ready to conserve their lands now. Others might be able to commit to a shorter term of conservation until their circumstances for the future are clear. Many landowners would like to keep working their lands in the future (as farms or forests), but may need some assistance in doing so. The land conservation program should provide an assortment of options for landowners to meet their varying circumstances.

This chapter includes a detailed list of recommended tools to be considered for inclusion in the land conservation program. This list is followed by additional opportunities that can be used to supplement or leverage town investment (such as state and federal tax incentives and grant programs).

## *Local Tools for the Land Conservation Program*

Following is a list of recommended tools for consideration in Gardiner's land conservation program. These tools should be offered to landowners as part of a land conservation program. Each tool will require individual consideration and discussion with landowners as well as among town leaders. Likewise, through time, certain tools may become more beneficial than others, so this list should be reevaluated as circumstances change and new tools become available.

### **Purchase of Development Rights (PDR) Program**

The town could develop its own program to purchase development rights to specific properties, as well as to supplement the state and nonprofit grant programs to purchase development rights. Under PDR, the development rights of a property are purchased from willing landowners but the property otherwise can continue to be farmed or used for purposes other than development, which is restricted as part of the easement. PDR can be applied to agricultural properties as well as lands with scenic, natural, or other open space values.

The cost of PDR is determined by subtracting the value of the property for agricultural (or open space) use from the full market value of the property. This is determined through an appraisal process. The landowner continues to own the land and has the option of selling it for agricultural or open space purposes. PDR costs vary on a project-by-project basis throughout New York State, but recent projects have ranged from \$5,000 to \$10,000 per acre.

The development of a town PDR program is dependent on the establishment of a dedicated fund for the program. Many communities throughout New York State have used bond initiatives to fund PDR programs.

### **Term Easement Program**

In general, term easements provide tax abatement in exchange for protection of the agricultural, open space, or historical values of land or buildings. The easement is created for a specific period of time (for example 5 to 20 years) and the landowner's taxes are abated (for example by 30%, 50% or 80% for differing terms) for this period in compensation for the term conservation easement. Term easements are generally considered to be a short-term option to protect land. However, the term easement offers an alternative (or supplement) to a PDR or other land protection program and provides a valuable short-term option to "buy time" while finances are raised to purchase land outright or through a PDR program or other mechanism, or as community values shift.

### **Conservation Asset Management Planning**

This plan recognizes the need to protect landowner assets and fiduciary responsibilities, and embraces the important goal of protecting landowners' assets through a new, proposed innovative tool called Conservation Asset Management Planning (CAMP). The goal of CAMP is to achieve a "win-win" situation in which landowners achieve the highest value for their assets while ensuring that the town's open space goals are met. The CAMP process would include detailed land-use planning between the landowner, the town, land-use and open space planners, financial advisors, and other professionals to develop an appropriate solution. This program would be sponsored by the town.

### **Open Space Incentive Zoning**

Incentive zoning allows a landowner or developer to work with a municipality to obtain specific incentives in exchange for providing desired community amenities such as open space conservation. Incentives may include modifications to density, allowed uses, setbacks, or other zoning controls. The landowner or developer may provide, in exchange, dedicated open space, trail access, park land or potentially cash (in lieu of land) to contribute to a PDR program.

### **Transfer of Development Rights (TDR) Program**

A transfer of development rights (TDR) program uses a similar approach to incentive zoning, however under TDR, specific areas of the town have been identified as "sending" and "receiving" areas, based upon a broad open space and land-use vision. The "receiving" areas are those areas where additional density of development is desired or can be accommodated, and the "sending" areas are the areas where the land is desired to remain relatively undeveloped or conserved for its natural, agricultural, or other values. A land bank is then set up to maintain the TDR credits, which can be purchased from a sending area (this in turn creates a deed restriction of the property which limits future development) and then applied in the receiving area as a density bonus or other type of zoning incentive. Under state statute, a TDR ordinance and TDR bank can be enacted in accordance with a local comprehensive plan. A thorough analysis of the impacts of the proposed land use changes should be conducted in concert with this process. For example, the receiving district must have adequate public facilities to accommodate the increased density. A TDR program requires careful planning and a structure to administer and oversee the program.

### **Right of First Refusal**

Land owners whose circumstances do not allow for a conservation easement or other type of permanent mechanism for conservation may offer "right of first refusal" to the town or to farmers interested in their lands. The "right of first refusal" allows interested farmers to match a purchase offer when the land eventually goes up for sale. This is specifically important for farmers looking to increase contiguous land holdings.

### **Agricultural Land Reserve**

The town could protect important agricultural lands for future agricultural needs by creating an agricultural land bank or land reserve. Through this process, the town could purchase important farm lands (potentially through the right of first refusal option) and hold the lands for future needs to lease to interested farmers emerges. This type of land reserve helps to safeguard important agricultural lands until need or demand for such lands arises.

### **Lease of Development Rights**

The lease of development rights (LDR) is similar to PDR except that the town leases development rights from the land owner for a specific period of time, rather than purchasing the development rights outright. The landowner receives reduced property taxes and in some cases an annual fee for lease of the development lands from the municipality. Under this option, less up-front cash is needed by the community to protect the land. This option does not ensure permanent protection, but may be a good way to protect vulnerable agricultural lands from conversion (to development) in the short-term and could be complimented by a PDR program.

## **Town wide Build-out and Generic Environmental Impact Statement (GEIS)**

A comprehensive strategy for addressing future impacts of development on natural and open space resources (among others) is to conduct a town-wide build-out under the existing zoning ordinance and other land-use controls and assess the impacts of such a build-out through the generic environmental impact statement (GEIS).

The build-out/GEIS process is generally as follows:

1. Identify the **development potential** of the town (buildable lands under existing zoning and land-use controls)
2. Identify the **impacts of full development** of the town (build-out). Typical impact areas to address include:
  - Transportation
  - Fiscal resources (town tax base, services, etc.)
  - Recreational resources
  - Scenic and visual resources
  - Agricultural resources and rural character
  - Natural resources (water supply, air and water quality, ecology, etc.)
3. Identify **solutions to mitigate the impacts** of this build-out

The solutions developed to mitigate the impacts of development are largely borne by new development and could range from roadway improvements to alleviate traffic impacts to the creation of an open space mitigation cost to be collected for each new development unit. Through this process, the GEIS can help to fund the land conservation program and also provides an equitable process with clear guidelines for mitigating the adverse impacts of future development on the town's natural and open space resources. The GEIS pays for itself in that the cost of producing GEIS can be passed on to developers as part of a mitigation cost.

### **Design Guidelines/Standards for Gardiner’s Conservation Planning Areas**

Design guidelines for residential and other specific types of development (for example commercial corridor guidelines or hamlet design guidelines) can help landowners understand how to create development that enhances Gardiner’s open spaces and preserves the desired rural character of the town.

Design guidelines could be created for each of Gardiner’s conservation planning areas and corridors, and could take into account the special features that are desired for protection.

For example, in the “East of the Walkkill” conservation planning area, some of the major features include the historic resources of the Forest Glen/Jenkestown area, scenic views to the Ridge from Route 208, rural landscapes of working farms, large areas of unfragmented forest, and smaller areas of wetlands, to name a few. Design guidelines for this area would address all of these important values and provide concrete advice for new development in how to design for these open space amenities. For example, protecting scenic views might involve avoiding siting homes in highly visible areas such as the tops of hills or along frontage of scenic roads; it also might include using a materials and color palate that blends in to the surroundings. Maintaining large areas of unfragmented forest lands might involve careful siting of homes and other impervious surfaces (such as roads, parking and driveways) to minimize forest fragmentation.

These design guidelines should be detailed enough to provide concrete guidance, but flexible enough so that they do not negate their purpose. Illustrated design guidelines are often appreciated by landowners because they provide guidance and clarity in their project planning stages.

### **Grant Application Assistance**

The town and other partners such as non-profit organizations could offer assistance to landowners in the preparation of grant applications for state, local, and other grant programs. Grant applications can be time-consuming for landowners and often can be quickly completed by an experienced grant writer. This type of service is greatly appreciated by landowners who have busy schedules.

### **Town-Financed Conservation Easement Transaction Costs and Easement Monitoring**

The conservation easement process most often involves the need for a lawyer, appraiser, and possibly financial advisor. Once the easement is developed, the landowner may need to contribute to an easement monitoring program. Transaction costs (appraisals, attorney fees, surveys, title searches, etc.) are also associated with the easement. These costs can be prohibitive to landowner participation in a PDR program. By offering to compensate the landowner for these costs, the town may encourage broader participation and interest in the program.

## *Other State, Federal or Regional Tools*

### **State Farmland Protection Program**

The State Farmland Protection Program is administered by the New York State Department of Agriculture and Markets. The program awards grants to local governments (town or county with approved agricultural protection plan) that cover up to 75% of the cost to acquire development rights (also known as Purchase of Development Rights, or PDR) on qualifying farms. It requires a 25% local match, which can come from the municipality, landowner (who can offer a bargain sale of the 25% and use this as a tax deduction), or other partner such as a private land trust. Grant applications can be submitted either by the town or through the Ulster County Farmland Protection Program (but only one application can be submitted per project). If a proposal is submitted through the county's PDR application, the county will generally cover the appraisal costs for the project.

### **Recreational River Designation**

A stretch of the Shawangunk Kill in Gardiner, between the border of Orange and Ulster County and its confluence with the Wallkill River, has been designated as a Recreational River under the New York State Wild, Scenic, and Recreational Rivers Act of 1982. This designation affords the Shawangunk Kill some protection according to existing regulations [Article 15, Title 27 of Environmental Conservation Law (6 NYCRR Part 666)].

### **New York State Agricultural District Benefits**

New York State's agricultural districts program is a multi-faceted initiative designed to promote the continued use of farmland for agricultural production. The program's benefits include "preferential real property tax treatment (agricultural assessment and special benefit assessment), and protections against overly restrictive local laws, government funded acquisition or construction projects, and private nuisance suits involving agricultural practices." There are currently about 7,700 acres (or 27%) of lands in Gardiner in state agricultural districts.

### **State Property Tax Reductions**

The state's agricultural assessment allows owners of farmland to receive a lower land assessment if the farming operation meets certain criteria. Through this program, agricultural land is assessed for its value for agricultural production rather than for development. Landowners must apply annually (with the assessor) for the state agricultural assessment, and properties are eligible based upon acreage, gross sales and length of operation. Generally, lands that are greater than 7 acres that are actively used for agricultural production purposes for the past two years and which gross \$10,000 or more in sales are applicable for the agricultural assessment. Smaller farms or those used for other purposes such as horse farms also may qualify but with differing requirements.

### **The Forest Tax Law (480A)**

This legislation provides property tax benefits to owners of forest land who commit to a ten year forest management plan which keeps forest lands in production and provides active forest management. The maximum exemption is 80% of assessed value. The program is administered by the New York State Department of Environmental Conservation, Division of Lands and Forests. There are relatively few lands currently enrolled in this program in Gardiner and there may be opportunities to work with landowners and DEC to expand participation.

**State, Regional, and Federal Grant Programs**

There are many state, regional and federal grant programs that can be used to leverage town investment in farmland preservation, land conservation, park development, or trail development. These grant programs and sources include the Federal Land and Water Conservation Fund, the State Environmental Protection Fund, the USDA Farmland and Ranchland Protection Program, and the State Quality Communities Grant Program. Some of these grant sources that are appropriate for Gardiner’s needs are discussed in Chapter 5.