One of the purposes of the Parks and Open Space Master Plan is to identify tools that could be used to implement a citywide system of parks, trails and open space. Listed below are a variety of means that can be used to acquire land and/or protect open space. Many of the tools provide alternatives to outright purchase of land, which is often expensive in high growth communities like Thornton. Others utilize incentives related to development regulations or tax law. Many of the tools can be combined.

**CONSERVATION EASEMENT**

A conservation easement is a voluntary and permanent agreement to restrict the developability of one’s land in order to preserve conservation values. The easement can be donated by the landowner (usually with a tax benefit for the value of development that is precluded) or purchased by a public or non-profit entity. The landowner retains ownership of the land and the uses that are not restricted in the easement. The purchaser/recipient is required to make periodic inspections to assure the conditions of the easement are being applied. Like all easements, it applies to future owners of the land. A conservation easement can be very flexible, limiting development as much as the landowner desires. Since the easement restricts future development, it reduces the value of the land and can therefore be an effective means of reducing estate taxes.

**CLUSTER DEVELOPMENT**

Instead of spreading development evenly across a parcel, cluster development results in smaller lots grouped on one portion of the site leaving the rest of the land undeveloped. For example, on a ten acre tract of land zoned for one unit per acre rather than ten one-acre lots, cluster development might result in ten one-half acre lots, leaving five acres of open space. Cluster development can be implemented through zoning requirements or incentives (more units if they are clustered). Usually site plan criteria is established so the open space protects the most valuable resources: agricultural land, wildlife habitat, visible hillsides, etc. The open space is usually protected by a permanent conservation easement granted to a public agency or land trust. Currently, the Planned Unit Development ordinance allows the use of this tool.

**DEED RESTRICTIONS/COVENANTS**

For landowners that prefer not to deal with government or non-profit entities but still wish to set aside land for open space, a deed restriction or covenant may be more acceptable. Since deed restrictions and covenants are enforced by the other parties to the agreement (adjacent landowners) not by the government, enforcement is not assured and as a last resort must be done through the court system which makes it less likely. Also, the restrictions are not perpetual and do not provide tax benefits of charitable deductions, as do easements.

**RESERVED LIFE ESTATE**

Allowing the landowner to continue to use the property during their lifetime, and/or the lifetime of their immediate family, may remove a barrier to a sale or donation by making it possible to take advantage of the income while still enjoying the property.
CASH PURCHASE

Cash purchase at fair market value is one of the most common transactions between landowners and a public entity. Nevertheless, while this may yield the greatest gross return, capital gains, estate and other taxes may make other types of transactions more attractive in the long run.

Cash purchases can be made in two ways: annual budgeting, from the annual income of the entity (pay-as-you-go), or as a Bond Issue, from bonds sold to raise a large amount of capital, repaid from annual income over multiple years.

The purchase can include a variety of considerations to respond to the financial/tax circumstances of the seller.

- Bargain Sale
  A bargain sale is a combination of sale and gift to a government or non-profit entity. It enables the seller to realize income and tax benefits from a charitable gift for the difference between the fair market value and the bargain sale price.

- Charitable Gift Annuity
  For property owners that have held land for a long time with a substantial appreciation in value, there may be significant tax advantages in donating the property to a public entity in exchange for an annuity payment for retirement program.

- Installment Purchase
  An installment purchase is a purchase in multiple payments, usually over a number of years. This can benefit the seller by placing them in a lower tax bracket and usually benefits the purchaser in allowing them to spread their acquisition over more properties and time. An interest rate is built into each payment. If the purchaser is a public entity, the interest may be exempt to the seller.

- Rolling Option
  Another means to extend a purchase over a number of years is to purchase it through a series of options. An option is the right, but not an obligation, to purchase property at a specified price before a specified date. It may be used, for example, by a city that is prohibited from entering into contracts (such as an installment purchase) that would bind a future city council. To effect a rolling option purchase, the property is divided into multiple options. The purchasing entity initially pays for all the options (usually for a token price) and then exercises one of the options each year while renewing the options on the remaining parcels. Usually, the options specify that the parcels be purchased in sequence from least-attractive (for open space purposes), to most-attractive so there is incentive for the purchasing entity to complete the entire purchase and not leave the landowner with an unusable parcel at the end.

- Bridge Financing/Land Trust
  Sometimes a land trust, especially a larger one such as the Trust for Public Lands, will acquire land for a public entity and then resell it to the public entity at favorable terms. Often, the purchase price is set below market, the difference being designated as a tax-exempt donation by the seller to the land trust and/or the public entity.

DONATION OR GIFT

Over and above public-spirited citizens, landowners in special financial/tax circumstances may find charitable donation particularly advantageous for tax and estate planning purposes.
LAND EXCHANGE

Public entities occasionally have properties that are of suitable size and location to make them attractive to be traded for private lands desired for open space. Land exchanges are generally done on the basis of appraised value rather than size. Land trades can be time-consuming and complex, but can be beneficial to both the seller (no tax for an equal exchange) and the purchaser (no cash required).

PURCHASE OF DEVELOPMENT RIGHTS (PDR)

While not currently available in Thornton, PDR may be attractive to a landowner who desires to retain ownership and use of the land but does not wish to develop it. PDR is a means of compensating an owner for relinquishing the development potential of his/her land. The development potential (right) is purchased by a public entity and extinguished. The value of a development right is the difference between the value of land as farmland (or vacant land) and its value for development. For example, if a 10-acre tract of farmland (without development potential) would sell for $30,000 and the same 10-acre tract of land with development potential sell for $100,000, the difference ($70,000) would be the value of the development rights. Furthermore, if the zoning of the land (say one unit per five acres) allowed two units to be built, these two development rights would have a value of $35,000 each. As a general rule, the value of development rights range from 30% to 80% of the fair market value of the land, usually in direct proportion to the closeness of roads, utilities and other services that allow development. When development rights are purchased, the land is usually restricted from future development through a deed restriction or conservation easement granted to a non-profit organization.

TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

TDR’s are similar to PDR’s in that the seller can be compensated for relinquishing development potential, but instead of being purchased and extinguished, the development rights may be purchased by private entities and transferred to other parcels of land. To be sure the TDR’s are placed in acceptable locations, some communities formally designate “sending” and “receiving” sites for TDR’s. The “sending” sites are areas desired to remain as open space. The “receiving” sites are areas that are suitable for higher development densities.

Because of the difficulty in establishing appropriate values for the TDR’s, and of matching buyers and sellers, the most successful programs have been the result of establishing a public “bank” to buy and sell TDR’s. A TDR “bank” usually requires significant capital to initiate. To be able to sell and purchase development rights requires the creation of a formal system to record and track the transactions. Once implemented, a TDR program can be an effective means of preserving open space at little public cost, though it does require a well-managed effort to maintain the system.

ESTATE PLANNING

The combination of state and federal inheritance taxes can create obligations of 55% or more of the value of the property. Often, inheritors are required to sell the inheritance to pay the taxes. A surprising number of landowners are not knowledgeable about inheritance taxes and are unprepared for the consequences to their estate. Land trusts and other public agencies seeking to preserve open space should actively encourage landowners to seek proper assistance in estate planning. In this process, landowners will be more likely to become aware of the advantages and opportunities for charitable donations to reduce estate taxes.
LAND PRESERVATION DEVELOPMENT

A recent innovation is a special not-for-profit organization that achieves open space preservation objectives through limited development. They typically acquire a property and do limited, carefully planned development to recover the costs of the land. This approach requires specialized expertise and initial funding. Although it does result in some development, it has been found to be effective in preserving key parcels in areas where other open space tools are not workable.

INTERGOVERNMENTAL AGREEMENTS (IGA)

IGAs are a form of cooperation between governments or agencies (possible candidates for other IGAs include Westminster and Adams County). Possible topics that could be addressed in IGAs include appropriate land uses on land that have high value for open space, continuity of trails and coordination of trailheads, common open space objectives and priorities, reciprocal review of development proposals and annexation considerations, etc.

EMINENT DOMAIN

In implementing this Parks and Open Space Master Plan, the city may purchase acquisition of necessary property or property interests through the exercise of its power of eminent domain.

PUBLIC LAND DEDICATION (PLD) REQUIREMENT

One of the resources available for acquiring and developing parkland and open space is the city’s public land dedication requirement. This requirement is part of the city’s Development Code and applies to residential and commercial development at the time that the land is subdivided. It requires developers either to dedicate land and construct improvements for parks, open space, and trails or to pay a cash-in-lieu fee. The current and recommended requirements are compared in Chapter 8.

The expectation is that the public land dedication requirement is sufficient to provide the pocket parks and neighborhood level parks shown in the Parks and Open Space Plan. Changes would help provide open space areas through land or cash-in-lieu.