

### Introduction

While Ohio is not unique in the United States in its population growth trend, Ohio is among the top six states in the nation in land area consumption per citizen. Ohio's land area has a total of 26.3 million acres and is one of only four states in the United States that has more than 50% of its land classified as prime farmland. Ohio has more land area than any other state in the nation, with a concentration of 16 metropolitan areas each with more than 150,000 people. Regardless of the root cause of the rapid increase in growth in Ohio's cities, the effects of these phenomena are straining the economic and environmental fabric of rural communities. These communities are now facing development and social change, in many cases beyond their capacity to effectively address the situation.

While rapid growth and sprawl may not be as pressing of an issue in Sandusky County as in other counties around Ohio, it has become a visible and "emotional" issue over the past several years, as the County faces growing residential sprawl. Mostly in the form of planning, zoning and other land-use tools, officials of the County and its various political subdivisions have used selected mechanisms by which to minimize this impact may have on the County's existing infrastructure and residents.

Currently, the public officials have used a variety of tools to ensure well-rounded development across the Sandusky County. Based on strong home authority, municipalities and, in certain instances, townships, can utilize some of the same tools to meet their unique needs of their own constituents and circumstances.

The following section discusses various land use tools that may be applicable to use in Sandusky County.<sup>1</sup> All land use mechanisms in Black are used in the Ohio; those in **BOLD BLACK** are mechanisms currently used in Sandusky County. Tools highlighted in **BLUE** indicate those used or recommended to be used without enabling Ohio legislation; those in **RED** indicate those not used in Ohio, but working effectively in other states. Two specific tools, development agreements and impact fees, are both used effectively in the County, however without enabling legislation.

### Growth, Development, and Conservation Planning Tools

There are a variety of tools that Sandusky County can pursue in their efforts to promote well rounded growth in a conservation-friendly manner. The following is a compilation of the various land use mechanisms that may be applicable to Sandusky County<sup>2</sup>:

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<sup>1</sup> The majority of the strategies referenced to in this document have been obtained from the following works: "Common Ground Work: A Practical Guide to Protecting Rural and Urban Land." DC: Institute for Environmental Education, 1993; "Planning and Zoning for Farmland Protection." Washington DC: American Farmland Trust, 1996; Arendt, Randall. Rural by Design. Chicago: American Planning Association, 1994; and "Matrix of Preservation Tools for Agricultural Lands and Open Space." Washtenaw County Metropolitan Planning Commission, 1997. Sections pertaining to Ohio were modified and updated by Glenn T. Grisdale, AICP, of Reveille Ltd.

<sup>2</sup> Based on strong home-rule authority granted to the various political subdivisions in Ohio, several mechanisms highlighted in this document may be used, although not specifically enabled by ORC or legislation.

### I. ZONING ORDINANCES AND REGULATIONS

- a) **Agricultural Zoning**
- b) **Conditional Use Zoning**
- c) **Cluster Development or Open Space Zoning**
- d) **Large Lot Zoning**
- e) **Overlay Zoning**
- f) **Planned Unit Development**
- g) **Existing-Use Zoning**
- h) **Buffer Districts and Buffer Strips**
- i) **Site Plan Review**
- j) **Development Agreements**
- k) **Urban Growth Boundaries**
- l) **Urban Service Areas**
- m) **Concurrency**
- n) **Quarter/Quarter Zoning**
- o) **Sliding Scale Zoning**
- p) **Special Planning Districts**
- q) **Performance Zoning or Impact Zoning**
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### II. INDIVIDUAL AND GROUP INITIATIVES

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- d) **Lease of Development Rights**
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#### V. SPECIAL PROTECTION AND CONSERVATION REGULATIONS

- a) **Capital Improvements Programming**
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- h) **Impact Fees and Exactions**
- i) **Transfer of Development Rights**

### I. ZONING ORDINANCES AND REGULATIONS

#### A. AGRICULTURAL ZONING

**Definition:** Agricultural Zoning is a method for protecting agricultural land use by stipulating minimum lot sizes or limitations on non-farm uses. In Ohio, agricultural activities cannot be prohibited by township or county zoning ordinances, except in a platted subdivision or an area consisting of 15 or more contiguous lots approved under section 711.131 of the Ohio Revised Code.

**Objective:** To preserve the viability of agriculture in a region by limiting the density of development and restricting non-farm uses of the land.

**Who Enacts It:** County, township, municipal governments and landowners.

**Advantages:** Agricultural zoning can help to protect rural farming areas from becoming fragmented by residential development. Residential development often leads to higher property taxes and nuisance suits filed by new neighbors unaccustomed to the noise and odors produced by agricultural operations.

**Disadvantages:** Agricultural zoning is vulnerable to change. If community attitudes or political leadership change, an ordinance could be eliminated. In order to prevent the elimination of agricultural zoning, some communities have implemented the zoning in conjunction with other farm-protection measures.

**Currently Used In Ohio:** Yes.

#### B. CONDITIONAL USE ZONING

**Definition:** Conditional Zoning is considered a special land use permit approach. It provisionally allows non-farm uses based on discretionary standards. These uses may or may not be permitted by the zoning authority. Authorities typically base their decisions on whether the use is consistent with the purposes of the zone. Standards may include:

- ✓ Whether the use is compatible with surrounding uses;
- ✓ Whether the use adversely affects environmental areas; and
- ✓ How much the use would add to public service costs.

Objective: To provide farmland protection.

Who Enacts It: County, township, and municipal governments.

Advantages: The conditional aspect of this technique sets it apart from other types of agricultural zoning.

Disadvantages: Discretionary decision-making may often lead to heightened public and court scrutiny, and zoning inconsistency, e.g., “spot” zoning.

Currently Used in Ohio: Yes

### **C. CLUSTER DEVELOPMENT OR OPEN SPACE ZONING**

Definition: Cluster Development is the grouping of houses on a property in a more concentrated manner than local zoning ordinances state in order to protect sensitive, scenic, and agricultural or other natural resources.

Objective: To protect important natural, cultural, or recreational features of the landscape while allowing for new development.

Who Enacts It: County, township, municipal governments and developers.

Advantages: This technique strikes a balance between land preservation and growth. New development pays for the protection of open space (not the local government) since the cost of preserving the open space is included in the selling price of the houses. The Cluster Development technique often makes a subdivision more profitable because the developer has to spend less money on infrastructure improvements and earns more money due to the more attractive features of the area. In many cases, the open space is owned in common by the residents through a homeowners’ association.

Disadvantages: The clustering of dwelling units may prevent adequate recharge of well water and may cause overuse of the septic system for the soil conditions under which the original density was calculated. The Ohio EPA may require the connection of public water supplies and/or the installation of sewage lines to a waste treatment facility. In some situations, the community has incurred these costs. Once water and sewage facilities are nearby, further development may follow. Another concern is that the cluster development ordinance will be changed at a later date to allow development on the land that was originally designated as open space. A conservation easement and/or deed restriction is recommended in order to protect the open space area.

Currently Used In Ohio: Yes

### D. LARGE LOT ZONING

Definition: Large Lot Zoning is a requirement mandating that each new house be constructed on a minimum number of acres.

Objective: To minimize the detrimental impacts of development by limiting the number of dwelling units that can be placed on a parcel of land.

Who Enacts It: County, township, and municipal governments.

Advantages: An effective well and septic system means that water lines and sewage treatment plants will not be needed, which saves in public operating costs. Large Lot Zoning may help maintain the viability of farming operations.

Disadvantages: Large lot as opposed to small lot zoning may raise the cost of delivery of public services, since houses that are farther apart require more roads, inefficient expenditures for public school operating, and transportation services. Large lot development may hamper efforts to preserve open space for wildlife, aquifer protection, or recreation. Large Lot Zoning may even encourage the premature conversion of farmland because it results in people purchasing more residential acreage than is needed to build a home in the zone.

Currently Used In Ohio: Yes

### E. OVERLAY ZONING

Definition: Overlay Zoning is an overlay of additional land-use restrictions on top of existing ones to protect specific resources such as reservoirs and historic districts. Common examples of overlay zones include flood plains and historic preservation.

Objective: To provide protection for specific natural or cultural resources that are not explicitly safeguarded under existing zoning regulations.

Who Enacts It: County, township, and municipal governments.

Advantages: Overlay zoning allows communities to isolate and protect specific resources that are not covered in existing zoning regulations. Overlay zones are easily adaptable to existing zoning administration.

Disadvantages: Overlay zones can be circumvented or repealed, depending on the political climate in the community. Overlay districts can be used to trigger cluster zoning, buffer strips and other performance standards. However, this approach often avoids the more difficult question of whether non-farm development should be allowed in the first place.

Currently Used In Ohio: Yes.

### **F. PLANNED UNIT DEVELOPMENT (PUD)**

Definition: Planned Unit Development is a plan similar to cluster development (or the grouping of houses on a property in a more concentrated manner), but that allows commercial units along with the dwelling units.

Objective: Planned Unit Development (PUD) allows flexible design and concentration of dwelling units in higher densities than originally zoned. This increases open space, reduces the number of roads and sewers, and stimulates creativity in development beyond the normal restriction of conventional zoning.

Who Enacts It: County, township, and municipal governments.

Advantages: Planned Unit Development focuses on infrastructure reduction and often allows compatible commercial development, such as convenience stores and offices, to be included in the overall development plan. Continuing involvement of the planning commission, with its authority to recommend deviation from conventional zoning, offers a broader range of design and construction options. PUD may also allow mixed building types and uses.

Disadvantages: In many cases, planned unit developments have been designed with self-contained sewage treatment plants. A number of these have exceeded design capacity or have been unable to meet the increasingly stringent pollution discharge requirements enforced by the Ohio EPA. If this occurs, the EPA has ordered connection to a municipal waste treatment system. The extended sewage services may then encourage development of adjacent properties, thereby defeating the objective of the PUD.

Currently Used In Ohio: Yes. ORC 303.022 and ORC 519.021 authorized counties and townships, respectively, to use PUDs. The use of PUDs in municipalities is not specifically authorized. However, Ohio court scrutiny challenging a municipality's authority to use PUDs is non-existent.

### **G. EXISTING-USE ZONING**

Definition: Existing-Use Zoning does not set up stringent requirements. It simply allows the continuation of uses for which the land is already adapted.

Objective: To keep large open areas in their current use.

Who Enacts It: County, township, and municipal governments.

Advantage/Disadvantage: Existing-Use Zoning is best suited to fairly rural areas where land uses are stable and the community supports continued agricultural use. In short, existing-use zoning helps communities maintain current land use patterns.

Currently Used in Ohio: Yes

### H. BUFFER DISTRICTS AND BUFFER STRIPS

Definition: A simple buffer area could act as a transition area between an exclusive agricultural zone and one that allows for more intensive development. For example, Buffer Districts can provide single-family homes on specified lot sizes while still permitting continued agricultural production. Buffer Strips provides a physical distance or barrier between land uses. Generally, buffers are located at the edge of where a residential development abuts farmland.

Objective: To project the long-term integrity of an agricultural district by putting physical barriers between conflicting land uses.

Who Enacts It: County, township, municipal governments and/or developers.

Advantage: Buffer districts can offer country living opportunities while minimizing the tension between commercial agriculture and suburban land uses.

Disadvantage: Development acreage can be decreased to a certain degree.

Currently Used in Ohio: Yes.

### I. SITE PLAN REVIEW

Definition: Site Plan Review requires a certain set of criteria for new development proposals. Common criteria involve landscaping, buffering, signage, lighting, access, open space, stormwater runoff, and impervious surface criteria. The set of criteria must be incorporated into the zoning codes in order to obtain final approval and the permit for the project.

Objective: To establish high design standards for new projects.

Who Enacts It: County, township, and municipal governments.

Advantages: Site Plan Review can be an effective tool to establish high design standards.

Disadvantages: Site Plan Review requires increased administrative costs.

Currently Used In Ohio: Yes.

### **J. DEVELOPMENT AGREEMENTS**

Definition: Development Agreements are contracts between the developer and a local government, where the developer provides compensation to the local government for off-site impacts such as traffic control, stormwater and other environmental impacts, etc. In exchange, the municipality agrees to approve the development proposal.

Objective: To compensate local governments for the hidden costs of certain types of development.

Who Enacts It: County, township, municipal governments and the developer.

Advantages: The agreements will help governmental entities to best maximize monetary resources and ensure overall quality of life.

Disadvantages: No statutes exist providing for development agreements in the State of Ohio.

Currently Used in Ohio: Yes- The City of Oxford (Codified Ordinances, Ch 925: 1994).

### **K. URBAN GROWTH BOUNDARIES (UGB)**

Definition: An Urban Growth Boundary is fundamentally defined as “a line on a map used to mark the separation of rural land from land on which growth should be concentrated”.

Objective: To protect open lands, to contain sprawl and to provide for an orderly and efficient transition from rural and urban uses.

Who Enacts It: Any state or local government that has regional growth management requirements.

Advantage: Urban growth boundaries are consistent with other growth management tools like concurrency. Overall, UGBs help to facilitate good citizen involvement programs.

Disadvantage: Cooperation between adjacent cities, counties, and townships is a crucial factor in the successful establishment and enforcement of these boundaries. There are some conflicts between cities and county regarding the drawing of the boundaries. If the conflicts are resolved, UGBs are often difficult to administer due to lack of expertise. Transportation is an issue that is complex and often requires further analysis.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### L. URBAN SERVICE AREAS

Definition: Urban Service Areas are the boundaries beyond which water, sewer and other urban services would not be extended and beyond which urban-level development would not be allowed.

Objective: To manage the location of development and the rate at which growth occurs.

Who Enacts It: Local governments.

Advantages: The local government has a pro-active roll in planning the community's future. Enacting Urban Service Areas helps to reduce the cost of public utilities, plans the direction of future development, and helps to minimize sprawl.

Disadvantages: Many citizens and developers would argue that local government is interceding into the rights of individuals and interfering with the free market of supply and demand.

Currently Used in Ohio: There is currently no enabling legislation to create Urban Service Areas. Local regions may decide to create urban service areas; cooperation is necessary from the appropriate jurisdictions in order to enforce it. However, this type of program has been used effectively outside the State of Ohio.

### M. CONCURRENCY

Definition: Concurrency is a governmental policy requiring the availability of public services (water, sewer, roads and schools, etc.) before a new development is approved for construction. Concurrency compares the availability and adequacy of service provisions to the timing and amount of land use demand.

Objective: To ensure that new facilities can be financed and that development and services occur simultaneously. The localities "pay as they grow" for necessary support facilities.

Who Enacts It: County and local Governments.

Advantage: Concurrency works well with other growth management tools. One of the most positive advantages includes the fact that counties are accountable. In addition, concurrency is fairly easy to implement since the citizens agree with it in principle. Concurrency works well with urban service areas, land use plans, and capital improvement plans.

Disadvantage: A primary disadvantage lies in the fact that individuals want exceptions to the concurrency rules. In addition to the requested exceptions, there are battles over property taxes. Finally, the development community is concerned about new charges and costs of new facilities.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### **N. QUARTER/QUARTER ZONING**

Definition: Quarter/Quarter Zoning is a specification that limits non-farm development to one house per 40 acres.

Objective: To protect farming activities from urban sprawl by limiting the amount of non-farm development.

Who Enacts It: Local governments.

Advantages: Quarter/Quarter zoning generally works best in rural regions that have large stretches of farmland. Compared to other zoning regulations, quarter/quarter zoning is easy to administer and inexpensive to local governments.

Disadvantages: Quarter/Quarter zoning can be altered, repealed, or not enforced. As a result, it works best when used in conjunction with other land preservation techniques and when there is considerable community support for the measure.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio, however such approach is being used in Preble County and elsewhere in Ohio. This type of program has been used effectively outside the State of Ohio.

### **O. SLIDING SCALE ZONING**

Definition: Sliding Scale Zoning is the enactment of a ratio of dwelling units to land acreage that concentrates development on smaller lots by increasing the minimum lot size for houses built on larger parcels. A scale that weighs the total size of the parcel sets the number of buildable lots allowed under this approach. Proportionally, owners of smaller parcels are allowed to split more land into lots than owner of large parcels. The following table indicates how the sliding scale approach can be used.

Sample Density Table

Maximum Number of Additional Lots Permitted:

<u>Area of Parcel of Record</u>	<u>#of Lots</u>
1 to 10 acres	2 to 5
10.1 to 20 acres	3 to 6
20.1 to 40 acres	4 to 7
40.1 to 80 acres	5 to 8
80.1 to 160 acres	6 to 9
160.1 or more	7 to 10

The technique received a significant legal boost in 1985 when the Pennsylvania Supreme Court upheld a sliding-scale ordinance prohibiting more than three dwellings on a 43-acre farm parcel because of its farmable size and the fertility of its soils. The appellate court concluded that “preservation of agricultural land is a legitimate zoning purpose and that the ordinance provisions are rationally related to that goal” and upheld minimum lot sizes greater than 10 acres.

Objective: To protect large tracts of farmland or open space from fragmentation by urban sprawl.

Who Enacts It: Local governments.

Advantages: Sliding scale zoning concentrates development where it already exists, on smaller lots. Sliding scale zoning generally works best in communities that have a variety of different parcel sizes.

Disadvantages: For the technique to work smoothly, area residents have to participate in determining the scale. Otherwise, the technique will appear to favor some residents at the expense of others, even if this was not the intent.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

**P. SPECIAL PLANNING DISTRICTS (SPDs)**

Definition: Special Planning Districts (SPDs) are the creation of new districts to regulate development in areas that contain sensitive or unique environmental, historic, architectural, or other features. These areas often require additional protection and flexibility not currently afforded by a community’s zoning ordinance. Special planning districts can replace existing zoning districts with specific development

guidelines and policies to encourage creative and sensitive site planning. These districts need guidelines in addition to existing zoning regulations because of the role they play in a community as economic generators or major transportation corridors.

Objective: To allow a greater range or mixture of compatible uses that would not be allowable in standard zoning classifications, and to require features that protect against negative impacts of incompatible land uses and environmental hazards.

Who Enacts It: Local governments.

Advantages: The establishment of an SPD often lays the groundwork for undertaking other planning projects, such as urban design, corridor or streetscape plans and special ordinances.

Disadvantages: When developed through an open process, SPDs have few drawbacks.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### **Q. PERFORMANCE ZONING OR IMPACT ZONING**

Definition: Performance Zoning is a requirement that any new development be reviewed based on its projected impact on farming, traffic flow, and stormwater management. This technique is also known as impact zoning because it evaluates prospective developments based upon their projected impact on the local region. Performance standards may govern traffic flow, stormwater runoff, impacts on wetlands, steep slopes, groundwater, visual impact, and other criteria.

In some cases, Performance Zoning is implemented using a point system, with points assigned depending on how the proposed development is projected to impact each community resource cited in the zoning ordinance. Once all impacts have been assessed, the points are added up. If the project falls within a certain range, it is approved. If it falls outside of the range, it is either conditionally approved, postponed pending revision, or it is rejected outright.

Objective: To provide protection for specific natural resources that are not explicitly safeguarded under existing regulations.

Who Enacts It: Local governments.

Advantages: Performance zoning reviews new developments based on how they will “perform,” regardless of where they are located. This gives the developer greater flexibility in drafting their site plans, since they are not told how to develop the site it, but only that their final creation must meet the performance standards. A performance zoning ordinance provides greater flexibility than traditional zoning

measures, since the land can be put to a wider range of uses as long as the standards are met. The goal is to translate processes like stormwater runoff, erosion, and aquifer recharge, which is relatively easy with the numerical standard.

Disadvantages: Performance Zoning requires more time and greater expertise to develop and administer than other zoning regulations, adding to the cost of running local government. In addition, aesthetics is not as easy to quantify as other factors.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### **R. DENSITY BONUSES AND DENSITY PENALTIES**

Definition: Density Bonuses is an offer to developers to subdivide their land into a greater number of lots for a financial incentive. Density Penalties are utilized for squandering land in large-lot plats.

Objective: To limit sprawl and protect valuable land.

Who Enacts It: Local government.

Advantages: The provision for open space is more important to the community in the long run than the additional public costs associated with the incentives. Once land has been transformed into “wall-to-wall houselots,” it is often impossible to retrofit greenways, trails, parks, and neighborhood playing fields into the established pattern. Density Bonuses can also be used to protect shorelines, ridge lands, or public road frontage from development and visual intrusion.

Disadvantages: Unless the financial incentive or penalty is substantial enough, most developers will not be willing to change from their conventional methods of development. If the financial incentives are too large, it becomes difficult to preserve much buildable land as open space. As a final disadvantage in density bonuses, there is often popular resistance to “giving” developers any extra units at all, even a modest percentage increase.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### II. INDIVIDUAL AND GROUP INITIATIVES

The common thread among all of the following land use strategies is that landowners and local citizens initiate the strategy. Individual and group initiatives requires some kind of voluntary action, many times involving a donation of the land in whole or the transfer of land ownership for a designated number of years. The objective of individual and group initiatives is to provide long-term protection of the land. The following land use strategies offer a unique cooperation between landowners, non-profit agencies, and local planning agencies. Landowners often receive tax credits or monetary compensation for participating in many of the initiatives, while local planning and non-profit agencies have the opportunity to control land use and protect valuable lands.

#### A. BARGAIN SALE

**Definition:** A Bargain Sale is the sale of a property by a private party to a land trust or government agency at a price below the appraised fair market value (FMV).

**Objective:** To provide permanent protection for land by selling it to a conservation organization at a price lower than the market value.

**Who Enacts It:** The individual landowner and either a government agency or a private conservation organization (such as a land trust).

**Advantages:** A Bargain Sale allows a landowner to place the land under the protection of a conservation organization while receiving some monetary compensation and eligibility for income and capital gains tax benefits on the percentage of the land's value that was donated. In addition, the conservation organization does not have to pay the full market value for the property. The difference between the sale price and the FMV is eligible as a deduction for federal income tax purposes.

**Disadvantages:** The landowner does not receive as much compensation as the property would bring if sold at the fair market value. Likewise, the conservation organization has to acquire a substantial amount of money in order to purchase the land.

**Currently Used In Ohio:** Yes.

#### B. CONSERVATION EASEMENTS (CE)

**Definition:** Conservation Easement (CE) is a means to set aside open fields, wooded streams, historic sites, green spaces etc. in otherwise urban areas. A CE is the transfer of land rights to a qualified recipient organization. That organization is then responsible for monitoring the land, and ensuring that the restrictions are being met.

**Objective:** To provide long-term protection of private land. A conservation easement is a versatile, legal tool that is modified to fit different situations and can protect agricultural, natural, recreational, historical, and/or cultural resources.

Who Enacts It: The individual landowner and either a government agency or a private conservation organization (such as a land trust).

Advantages: A CE protects private land by limiting or restricting potentially damaging uses of the land. An easement allows a landowner to protect valuable resources on the property while retaining ownership of the land. The owner relinquishes some or all of the development rights, while reserving the right to use the land, the right to privacy, and the right to lease or sell the land. In addition to maintaining certain rights, the landowner is eligible for state and federal income tax, capital gains tax, and estate tax. As can be concluded, the primary advantage of CE is flexibility.

Disadvantages: In order to receive tax benefits, the law requires that they donate the easement in perpetuity, which means that landowners have no legal grounds for recovering the rights granted by the easement if they later change their minds. In addition, the organization that receives easement must spend time and money enforcing it.

Currently Used In Ohio: Yes.

### **C. CONSERVATION LAND TRUSTS**

Definition: Land Trusts are a private non-profit conservation organization that works to protect some or all of the following community assets: productive agricultural and forest land, scenic and recreational resources, wildlife habitat, historic sites, open space, and ecologically sensitive areas. The organization protects the land by acquiring outright ownership by receiving conservation easements or by the transfer of ownership or easements to other conservation organizations that will ensure protection of the resources. Land trust organizations also utilize bargain sale, limited development, cooperative agreement, and outright donation techniques.

Objective: To protect natural lands and working landscapes from development.

Who Enacts It: Citizens.

Advantage: Land trusts are often more responsive than national organizations or government agencies since they are run by local citizens. Since the conservation land trusts are privately owned, they often possess a flexibility that the various political subdivisions may lack. Since these organizations are also non-profit, they do not have tax obligations. In addition, donations made to a land trust are tax deductible.

Disadvantage: Land trusts are often under funded and rely heavily on volunteer labor. The organizations without paid staff suffer from a lack of continuity. In many cases, land trusts encounter apathy on the part of the public. As a result, conservancies are forced to allocate funds to community education on how land trusts can benefit the local region.

Currently Used In Ohio: Yes (with assistance in Northwest Ohio from The Black Swamp Conservancy).

### D. LIMITED DEVELOPMENT

Definition: Limited Development entails the development of a portion of the property with the least natural or cultural significance, while protecting the area with the greatest importance. Protection can be achieved by using conservation easements or outright donations.

Objective: To finance the protection of land by developing a small portion of it.

Who Enacts It: The landowner and a conservation organization.

Advantage: Limited Development can make land preservation affordable. See also advantages of conservation easements and outright donations.

Disadvantage: From a conservation standpoint, some of the land is developed. From the economic standpoint, the owner will not reap the full development value of the property. This financial loss is offset by tax benefits of conservation easements or outright donation.

Currently Used In Ohio: Yes.

### E. OUTRIGHT DONATION

Definition: An outright donation is the transfer of land to a conservation organization in the form of a charitable gift. One form of outright donation is that of reserved life estate, which allows a landowner to donate the property to a conservation organization while retaining the right of lifetime use.

Objective: To provide long-term protection for private land by donating it to a conservation organization.

Who Enacts It: Landowners.

Advantages: Outright donations provide landowners with a mechanism for ensuring the long-term protection of their land. In addition, the donation entitles the landowner to various tax benefits.

Disadvantages: The landowner does not receive monetary compensation for the property.

Outright donations are a disadvantage to the conservation organizations since they must assume the cost of managing the land.

Currently Used In Ohio: Yes

### **F. DEED RESTRICTIONS**

Definition: Deed Restrictions can be required of new developments, or negotiated with current landowners. Such restrictions include prohibiting certain activities that may harm environmentally sensitive areas on the property.

Objective: To preserve natural features while providing options to property owners.

Who Enacts It: County and local planning agencies.

Advantages: Deed Restrictions require little administrative costs, provides incentive to property owners, and a stable way to protect natural features.

Disadvantages: Thus far, there are only small impacts on general land use patterns recorded. In addition, since the program is voluntary, local planning agencies have less control over which areas are targets. Yet another disadvantage is that deed restrictions can be temporary due to the fact that some easements have expiration dates.

Currently Used In Ohio: Yes

### **G. COMMUNITY LAND TRUSTS (CLTs)**

Definition: Community Land Trusts (CLTs) are a special type of land trust whose primary focus is to create affordable housing and to maintain its affordability over the long term. CLTs is a non-profit organization that typically acquire and hold land, but sells off any residential or commercial buildings which are on the land. This is often done by purchasing land with private funds (sometimes supplemented by public funds) and making it available at reduced or zero cost to qualified buyers. Most CLTs have in place “limited equity” policies and formulas that restrict the resale price of the housing in order to maintain its long-term affordability.

Objective: To obtain higher rates of homeownership to help stabilize and strengthen communities by providing homeownership opportunities to people who might otherwise be left out of the market.

Who Enacts It: Citizens and nonprofits.

Advantages: Many rural CLTs have been established to ensure access to land and housing for low-income people and to preserve family farms. Urban CLTs often deal with combating the negative effects of speculation and gentrification. Most community land trust focus on increasing homeownership, which sometimes includes educating potential homebuyers on establishing credit, applying for a mortgage, and maintaining a home. Many CLTs have also acted as developers of special needs housing or group homes, rental housing, and even

commercial space for lower income entrepreneurs. CLTs are independent of municipal government, therefore, free from a shifting political climate.

Disadvantages: Proposals to develop shelters and housing for low-income people often elicit Not In My Backyard (NIMBY) Syndrome. In addition, establishing and maintaining the network of funding sources can impose a significant administrative burden for the CLT. In many cases, land trusts encounter apathy on the part of the public. As a result, conservancies are forced to allocate funds to community education on how land trusts can benefit the local region.

Currently Used In Ohio: There is currently no such enabling legislation in Ohio. However, this type of program has been used effectively outside the State of Ohio.

### **III. FEDERAL AND STATE PROGRAMS**

#### **A. AGRICULTURAL DISTRICT**

Definition: Ohio Revised Code Chapter 929, Section 929.01-929.05 establishes a program of agricultural districts for the State of Ohio. An agriculture district is land that has been devoted exclusively to agriculture. A legal designation that allows qualifying farmers to defer utility assessments if farming is continued on the land. Ohio farmers are eligible if they have at least 10 acres of land that have been in agriculture for the past three years. Farmers with smaller acreage can qualify if their land generated an average of at least \$2,500 in gross farm income over the past three years. The land does not have to be contiguous, but it does have to be farmed with the same equipment and personnel.

Objective: To provide relief to farmers from nuisance suits and utility assessments.

Who Enacts It: Farmers enact it through the county auditor's office or through the city or village administration, depending on the jurisdiction.

Advantages: Agriculture districts allow farmers to defer utility assessments until they change the use of the land. The districts also give farmers legal protection against nuisance suits and provide for possible further review in the event that the local government utilizes its powers of eminent domain.

Disadvantages: If a farmer changes the land use before the five-year period has expired, or sells to a new owner who wishes to discontinue the program, a penalty will be charged amounting to 25% of the tax recoupment specified by the current agricultural use value (CAUV) method of valuing land. In addition, a farmer connecting into a utility loses the deferment provided under the program. Once the deferment is lost, the farmer must pay the utility assessment and the interest on the bond issue that financed the assessment.

Currently Used In Ohio: Yes

### **B. CONSERVATION RESERVE**

**Definition:** The Conservation Reserve program solicits bids from farmers who volunteer to convert erodible cropland to permanent vegetative cover in return for annual rental payments from the Agricultural Stabilization and Conservation Service. Fields with a predominance of erodible soil, land situated near public wellheads, and all cropland within the Great Lakes watershed are eligible for the conservation reserve program. Farmers whose bids are accepted by the ASCS can sign a 10-year contract and enroll in the program. In return, they receive rental payments of up to \$50,000 per year. Following enrollment, the farmer must develop a conservation plan and have it approved by the local Soil and Water Conservation District. Farmers, however, may not receive economic benefit from plantings while the land is under contract.

**Objective:** To protect highly erodible farmlands and adjacent waterways by paying farmers to convert cropland to vegetative cover.

**Who Enacts It:** The farmer and the U.S. Department of Agriculture's Soil Conservation Service and/or Agricultural Stabilization and Conservation Service.

**Advantage:** The conservation reserve program provides farmers with a financial incentive to protect sensitive lands.

**Disadvantage:** The land in the conservation reserve program is taken out of production for ten years. A farmer who breaches the contract forfeits all payments received for that land plus interest and must pay a liquidation penalty.

Currently Used In Ohio: Yes

### **C. CURRENT AGRICULTURAL USE VALUE (CAUV)**

**Definition:** Ohio Revised Code sections 5713.30-.98 establishes a program that permits land in agricultural use to receive a tax savings equal to "the difference between the dollar amount of real property taxes levied in any year on land valued and assessed in accordance with its current agricultural use value and the dollar amount of real property taxes which would have been levied upon such land if it had been valued and assessed for such year in accordance with Section 2, Article XXII of the Ohio Constitution." The program establishes minimum eligibility standards, as well as penalties if the land is removed from agricultural use. The Current Agricultural Use Value is a program that calculates farmland value based on soil type and product markets, rather than on development values, which reduces taxes on agricultural land. In many aspects, the CAUV program resembles the Agricultural District. Unlike agricultural districts, the CAUV program charges a one-time \$25 filing fee and requires participants to re-apply annually. If the application is accepted, a farmer pays taxes based on the agricultural value of the farm, not on its development value. Soil data, production costs, and commodity prices are used to

determine the agricultural value of participating farmland. In each county, the CAUV values are updated every three years to reflect changes in the cost of production and price of commodities.

Objective: To base farmland values on the property tax values of farmland, or its agricultural value, rather than on the speculative value of non-farm development, or development value.

Advantages: CAUV improves the economic viability of farming by reducing the economic pressure imposed by encroaching development. There has been considerable debate as to whether CAUV actually dissuades farmers from selling their land. CAUV is best used with other farmland preservation techniques.

Disadvantages: A farmer who changes to a non-agricultural use of the land while enrolled in the program or fails to reapply at the end of the year must pay a penalty equal to the tax savings received over the past three years, unless there are extenuating circumstances.

Currently Used In Ohio: Yes

### **D. FOREST TAX**

Definition: The Forest Tax is a program that reduces property taxes by 50% if the owner maintains approved forest management practices. Under the Ohio Forest Tax Law, landowners with woodland tracts of 10 acres or more in size that are certified as forest land by the state and located outside the limits of incorporated towns, cities, or villages are eligible. The land must have been managed as a woodlot, which may include commercial cutting, and cannot be used for grazing. In addition, the land cannot be currently enrolled in the Current Agricultural Use Value (CAUV) program. Before the land can be certified, the owner must demonstrate the intent to engage in forest management by completing a prescribed forest practice, such as replanting or pruning in the area.

Objectives: To provide tax relief to landowner with forested land in order to alleviate the pressures of development.

Advantages: The program provides landowners with a financial incentive to keep their land forested.

Disadvantages: The program only applies to forestland. Farmers can receive greater tax relief by enrolling in the Current Agricultural Use Value (CAUV). Finally, the program is not particularly effective as a growth management tool, due to the fact that no penalty is assessed if land is withdrawn from the program. The benefit from developing land often outweighs the financial inducement to keep the land forested.

Currently Used In Ohio: Yes

### E. SPECIAL DESIGNATION

**Definition:** Special Designation is a resource that is recognized as having natural and cultural value. Examples of special designation programs are the Ohio Natural Areas Program, the National Historic Landmark (NHL) Program and the National Register of Historic Places.

**Objective:** To draw attention to resources with natural and cultural value by providing them with special recognition.

**Who Enacts It:** Individuals may request a special designation from the state or federal government. In most cases, the individual retains ownership of the property.

**Advantages:** Advantages vary with the program. In some cases, the special recognition assists in obtaining technical, financial and management support for the resource owner.

**Disadvantages:** Disadvantages vary with the program. Of greatest concern, some designations involve legal agreements that limit the owner's use of the land.

**Currently Used In Ohio:** Yes.

### F. ENTERPRISE ZONES

**Definition:** Enterprise Zones are areas in which local governments can provide special tax and other incentives in order to promote job creation and economic development.

**Objective:** To create special tax incentives in order to promote economic development.

**Who Enacts It:** Local and County Officials.

**Advantages:** Enterprise Zones serve as an additional economic development tool for communities attempting to retain and expand their economic base.

**Disadvantages:** Some critics of enterprise zones claim that the tax incentives and abatements rob local school districts of the full stream of revenue provided by the new or expanding businesses.

**Currently Used In Ohio:** Yes

### **G. TRANSPORTATION EFFICIENCY ACT (TEA-21)**

Definition: The Transportation Efficiency Act encompasses a section that provides government funding for scenic, environmental, and historic preservation along transportation corridors. TEA allocates funds to the states to expand and maintain the federal highway system and conduct other transportation planning and improvements. Under TEA legislation, activities eligible for funding include bicycle and pedestrian facilities; acquisition of scenic easements and scenic or historic sites; scenic or historic highway programs; landscaping and other scenic beautification programs; historic preservation programs; rehabilitation of historic transportation structures; preservation of abandoned railway corridors; control and removal of outdoor advertising; archaeological planning and research; and mitigation of water pollution due to highway runoff. To access this money, organizations must have an official government sponsor.

Objective: The Transportation Efficiency Act (TEA) strives to improve transportation systems by providing special funding for scenic, environmental, and historic preservation within transportation corridors.

Who Enacts It: State and local governments.

Advantages: The TEA provides 80% of the funding for natural and cultural conservation efforts. TEA enhancements are not limited to just existing transportation rights-of-way. Projects eligible for funding include any site that is near or accessible to a road, railroad, canal, or other transportation route. A final advantage is that state transportation agencies must develop comprehensive plans with local officials.

Disadvantages: State and local governments are responsible for 20% of the cost of the project. In addition, the primary organization sponsoring the project must cover the entire cost of the project before it can recover the remaining 80% through the TEA program.

Currently Used In Ohio: Yes

## **IV. ACQUISITION PROGRAMS**

### **A. LAND AND WATER CONSERVATION FUND**

Definition: Land and Water Conservation Fund is a 50%-50% matching fund program to expand and improve public outdoor recreation areas. Each state is allocated money on an annual basis, which it can keep for state parks or share with local governments. The Ohio Department of Natural Resources (ODNR) administers the Ohio branch of the program. State and local agencies can substitute donations for their share of the project costs. For example, if someone contributes a parcel of land worth \$50,000 to ODNR for use as a nature preserve, ODNR can then apply to the Land & Water Conservation Fund for a matching \$50,000 to protect or improve the same, or another, property. All requests for funding must meet the guidelines drafted by ODNR.

Objective: To expand and improve public outdoor recreational facilities nationwide by providing matching funds to state and local governments for land acquisition and park improvements.

Who Enacts It: State, county, and local park agencies, in conjunction with the federal government.

Advantages: The Land and Water Conservation Fund helps to reduce the cost to state and local park agencies of funding new acquisitions and improvements.

Disadvantages: The program does not provide the money up-front. Local governments must first obtain approval and acquire the land or make improvements before submitting receipts for partial reimbursement.

Currently Used In Ohio: Yes

### B. OUTRIGHT PURCHASE OR SIMPLE FEE ACQUISITION

Definition: Outright Purchase is the acquisition of lakeshores, river corridors, or other lands by government organizations for the benefit of the public. This technique has been used to acquire land for public facilities such as parks, schools, or water treatment plants. However, the procedure can also be used to provide protection for sensitive lands. It can be done through the powers of eminent domain or on a voluntary basis. Outright purchase has been used to control the rate of growth through creative funding mechanisms. For example, different locals have placed a 2 % tax on real estate transfers, with all proceeds being used to purchase open space. Other locals have determined through land use studies that it is less expensive to purchase land in the surrounding development area, than to pay the infrastructure and public service costs that would result from development in the area.

Objective: To protect important resources in the community by bringing them under public ownership.

Who Enacts It: County and local governments.

Advantages: Outright Purchase provides the greatest ability to restrict harmful uses of the land. Since the land is acquired permanently, the technique is not subject to political changes.

Disadvantages: Outright Purchase is expensive since the government acquires all right to a property, not just the development rights. In addition the government assumes responsibility for the maintenance and management of the property. The technique also has the added disadvantage of removing the land from the public tax rolls.

Currently Used In Ohio: Yes.

### C: PURCHASE OF AGRICULTURAL EASEMENT (PACE) OR PURCHASE OF DEVELOPMENT RIGHTS (PDR)

Definition: A government initiative that acquires the development rights to farmland in order to keep it in agricultural use. Purchase of Agricultural Easements can be used to help maintain and preserve significant agricultural resource areas and assist agricultural communities.

Governments using these techniques generally establish a formal program with specific criteria for prioritizing acquisitions. In the case of farmland, properties are often evaluated on the basis of fertility, development pressure, or proximity to other farmland. Once the planning process is complete, voluntary participation is solicited from the landowners in the targeted areas. If landowners participate, they must sell the development rights to the land, while retaining all other rights associated with ownership (the right to lease or sell the land, and, in the case of farmland preservation, the right to sell the land).

Objective: To protect important resources by acquiring the development rights or conservation easement to the land.

Who Enacts It: Individual political subdivisions must first pass enabling legislation and develop administrative<sup>3</sup> and regulatory procedures before first adopting these programs. Lastly, if the political subdivision doesn't choose to use general funds, a revenue source must be developed either through the passage of property taxes<sup>4</sup>, additional taxes (real estate transfer taxes, sales and use/sin taxes) and revenue bonds<sup>5</sup>, or through the passage of general obligation bonds.<sup>6</sup>

County and Local governments, in conjunction with private landowners, developers, and Realtors are key actors in the implementation process. Non-profit and other charitable organizations are also authorized to participate in PACE programs.<sup>7</sup>

Advantages: PACE programs are “usually” less expensive than outright purchase and still affords considerable protection for the valuable resources. In addition, the technique allows landowners to realize some of the development value of their lands while retaining ownership. In the case of farmlands, this can bolster the local farming community by providing funds to purchase new equipment. From the

viewpoint of a local government, the land remains on the tax rolls, although at a reduced value, and the government does not incur responsibility for maintaining or managing the land.

Disadvantages: While PACE programs may be cheaper than outright purchase, the technique still costs money to implement and administer. After a general review of PACE and PDR programs across the United States, it appears that these

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<sup>3</sup> ORC 5301.691 (D)

<sup>4</sup> ORC 5705.19

<sup>5</sup> ORC 5739.026 (A) (9), 133.60 and 5739.026 (C) (2) (d)

<sup>6</sup> ORC 133.61

<sup>7</sup> ORC 5301.68, 5301.69.

Currently Used In Ohio: The passage of SB 223<sup>8</sup> enabled Ohio's political subdivisions to develop and utilize PDR programs largely due to much support across Ohio for minimizing sprawl on farmlands (as well as the Farmland Preservation Task Force recommending the creation of PDR programs). Money is currently available from the Clean Ohio fund (created as part of the \$400 million bond issued from the passage of State Issue 1 (HB 3) in 2001).

In choosing farms to protect through agricultural easements, special emphasis will be given to those with these characteristics:

- ✓ Valuable soil types, including locally unique or important soils, microclimates, or similar features;
- ✓ Farms where agricultural "best management practices" are in use;
- ✓ Local comprehensive land use plans that identify areas for agricultural protection;
- ✓ Land that is close to other agricultural lands, especially those that are protected from development pressures;
- ✓ Land that faces development pressures, but is not directly in the path of urban development.

Local governments and charitable organizations are eligible to apply for grants to purchase agricultural easements. Grants will be issued for up to 75 percent of the value of the easement. The applicant must provide matching funds for at least 25 percent of the remaining value, or the farmer can donate that portion of the value of the easement. The state grant cannot exceed \$1 million per agricultural easement.

Application awards will be selected by the director of the Ohio Department of Agriculture. The director will be advised by a 12 member Farmland Preservation Advisory Board, consisting of eight representatives of local governments, conservation agencies, farmland preservation groups, developers, land use planners, environmental protection interests, as well as one farmer from each of the four quadrants of the state. Members of the Advisory Council are expected to be appointed by approximately November 1, 2001. The Ohio Department of Agriculture must adopt rules governing the administration of the program. When the rules are in place, applications will be accepted.

#### **D. LEASE OF DEVELOPMENT RIGHTS (LDR) PROGRAM**

Definition: Lease of Development Rights works similar to the PDR program described above, however, this option allows a farmland owner to make a long-term commitment to protect their farmland from development for a set time period. The recommended minimum term for the LDR program should be no less than 30 years.

Objective: To protect important resources by acquiring the lease of development rights.

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<sup>8</sup> ORC 5301.69 (B) (1), (C) AND (E)

Who Enacts It: Enabling legislation authorizing the state and local governments to lease development rights. County and Local governments, in conjunction with private landowners, developers, and Realtors are key actors in the implementation process.

Advantages/Disadvantages: The advantages and disadvantages of the Purchase of Development Rights apply to the Lease of Development rights

Currently Used in Ohio: The Governor's Farmland Preservation Task Force recommends the creation of LDR programs.

### **E. LAND BANKING**

Definition: Land Banking is the purchase of undeveloped properties in the community in order to "deposit" the land aside where it is held until the local government decides to put it on the market.

Objective: To manage growth and protect open space in redevelopment of blighted urban areas.

Who Enacts It: Local governments

Advantages: Timing the sale of the land bank's different holdings can influence the rate and location of growth. Land Banking can also keep down the price of land by preventing private investors from creating a monopoly of the developable land. Any increase in the value of the banked lands goes back to the community when the land is finally sold.

Disadvantages: Land Banking may often meet serious political opposition from members of the community. The greatest disadvantage of Land Banking is that a large amount of capital is need to initiate the program.

Currently Used In Ohio: N/A

### **F. FARMLAND PROTECTION PROGRAM**

Definition: The Farmland Protection Program keeps productive farmland in agricultural use by assisting States, Tribes, and local government or non-profit entities in the purchase of agricultural conservation easements or development rights on prime, unique or other productive farmland or farms that have historic or archeological resources.

Objective: To preserve prime farmland and other significant natural resource areas

Advantages: The program provides monetary incentives for preserving land resources selected by local jurisdictions. Through a cooperative agreement, the Natural Resources Conservation Service (NRCS) provides up to 50% of the purchase cost for easements.

### Eligible Farmland

- ✓ Contains prime, unique or other productive farmland
- ✓ Contains historical or archeological resources listed or formally determined eligible for listing on the National, Tribal or State Register of Historic Places
- ✓ Is privately owned and is part of a working farm
- ✓ Has a pending offer for purchase of development rights or a conservation easement from a State, Tribal, or local farmland protection program
- ✓ Has a conservation plan approved or pending approval by NRCS and the local Soil and Water Conservation District
- ✓ If the land cannot be converted to non-agricultural uses because of existing deed restrictions or other legal constraints, it is ineligible for FPP.

Disadvantages: Easements are of 30 years duration or longer on eligible farmland and permanent easements are preferred. Because of this situation some property owners may find the program to limit their overall economic profitability.

Currently used in Ohio: State, Tribal, or local governmental or non-profit entities with a qualifying farmland protection program can participate. A qualifying program utilizes voluntary easements or other legal devices to protect productive farmland.

The cooperating entity provides at least 50% of the purchase cost of the easement, 25% of which may be a landowner donation of the value of the easement. The cooperating entity acquires, manages, and enforces the easement. Each year the NRCS issues a Request for Proposals, detailing the current application guidelines and priorities. The cooperating entity submits a proposal to the Ohio NRCS State Conservationist. The proposal includes:

- ✓ An overview of the State, Tribal, or local farmland protection program
- ✓ The amount and source of funds available for easement acquisition
- ✓ The policies and values used to set acquisition priorities
- ✓ A list of information on pending offers, including: parcel size and location, acres of prime farmland, easement cost and duration, and development pressure

NRCS will evaluate and prioritize the proposals and prepare cooperative agreements for those selected for participation in the Farmland Protection Program.

### V. SPECIAL PROTECTION - CONSERVATION REGULATIONS

#### A. CAPITAL IMPROVEMENTS PROGRAMMING (CIP)

**Definition:** Capital Improvement Programming is the guiding and pacing of development by the scheduling of budgetary expenditures for infrastructure. CIP provides a timetable for financing the extension of public facilities. CIP programming starts with the preparation of a five-to-ten year budget, taking into account revenues/expenditures and a projection of the improvements the community can afford. After the “utilities extension” policy has been created, developers know when and where a community plans to extend its infrastructure.

**Objective:** Capital improvement programming (CIP) is first and foremost an important management tool for budget planning for capital improvements and for replacement and maintenance costs. Secondly, by controlling investment, the community can guide where development occurs in order to protect sensitive areas.

**Who Enacts It:** County and local governments.

**Advantages:** CIP is less subject to legal challenges than zoning techniques because the authority to draft budgets is an accepted function of local governments. The courts seem to view infrastructure improvements as an orderly and cost-effective way to protect the health, safety, and welfare of the community’s residents and thus is a legitimate use of the police power exercised by local governments. In order to avoid legal challenges, local governments must use these funds for the expressed purpose for which they were collected.

Capital Improvements Programming can also be cost competitive. By protecting environmentally sensitive areas, it prevents subsequent mitigation cost which often accompany irresponsible development. Building incrementally and logically rather than haphazardly can hold down infrastructure expense. Capital improvements programming also establishes a procedure for tracking the receipt and expenditure of impact fees charged to development projects and exactions.

**Disadvantages:** CIP may not be an effective land use control mechanism if developers finance improvements themselves or if governmental entities subsidize improvements. CIPs must closely follow the state enabling legislation to minimize constitutional challenges. For example, if CIP restricts growth unfairly by setting differential utility rates, the courts may revoke it.

**Currently Used In Ohio:** Yes

#### B. COOPERATIVE AGREEMENT

**Definition:** A cooperative agreement is an agreement between two or more organizations to share in financing, managing, or maintaining a property. Cooperative agreements can take a variety of different forms, from management agreements that allow one organization to operate a facility owned by another, to exchanges or outright transfers of land from one owner to another. For example, the U.S.

Department of Defense might discover that it controls land containing a rare natural habitat that could be managed more effectively by the National Park Service.

Objective: To protect lands through cooperation with other organizations.

Who Enacts It: Conservation organizations and other government agencies/private conservation groups.

Advantages: Cooperative agreements provide organizations with a mechanism for pooling their resources.

Disadvantages: In the process of sharing resources, jurisdictional problems may arise. Cooperating organizations should be careful to spell out the details of their agreement.

Currently Used In Ohio: Yes.

### C. DEVELOPMENT (PHASED) TIMING

Definition: Development Timing is the use of public spending and permitting techniques to pace and forecast growth. Development timing depends of a variety of policies and/or regulations to build a legally defensible method for pacing and locating new development, such as capital improvements programming, public facilities ordinances, building permit limits, building unit allocation, and limits on utility construction.

Objective: To control the pace of growth so that adequate plans, public utilities, and funds are in place to schedule future development and care for environmentally sensitive lands.

Who Enacts It: County and local governments.

Advantages: New development generally requires infrastructure improvements that are too expensive for developers alone, they often become dependent upon the community to finance portions of the project. This dependence enables the community to exert significant influence on the rate and location of development. Development planning is also beneficial because it is the best way to avoid undue pressure from vested interest groups. Developers can learn well in advance of their own planning where development will be allowed or encouraged and what type will be specified.

Disadvantages: Full involvement of the community is necessary to ensure continued support for the long-range bond issue or taxing strategy that will be needed to sustain the plan.

Currently Used In Ohio: Yes.

### D. ENVIRONMENTAL IMPACT ORDINANCE

**Definition:** Environmental Impact Ordinance is an assessment of the potential harmful effects of a pending development upon the environment in order to prevent damages. The environmental impact ordinance was first implemented at the federal level through the national Environmental Policy Act (NEPA) of 1969.

**Objective:** To minimize the environmental impact of new development by providing for an environmental review of proposed projects. Some ordinances require developers to incorporate specific design features into their projects.

**Who Enacts It:** County, township, and municipal governments.

**Advantages:** Environmental impact ordinances can help to identify problems before they are created.

**Disadvantages:** Environmental reviews require a substantial degree of expertise on the part of the community planning staff, which may increase the cost of local government. In addition, such a program often applies only to government-funded projects and provides for no enforcement to ensure the harmful impacts have in fact been minimized in the final design of a project.

**Currently Used In Ohio:** Yes.

### E. MORATORIA

**Definition:** A Moratoria is a form of legal action that temporarily freezes development so that adequate planning and follow-up ordinances can be put into place. For the most part, moratoria are used to control the rate of a particular type of development, not the location. To maintain the legality of moratoria, communities must provide adequate justification for the implementation of these measures.

**Objective:** To stop community development temporarily in order to plan for growth. This includes identifying and protecting sensitive lands and other community resources.

**Who Enacts It:** County, township, and municipal governments.

**Advantages:** Moratoria can bring rampant development under control and allow local governments sufficient time to plan for growth.

**Disadvantages:** Primarily, communities that have considerable experience in managing growth should use Moratoria. If the technique is not used correctly, legal challenges may occur.

**Currently Used In Ohio:** Yes.

### F. SPECIAL DESIGNATION

Definition: Special Designation is the protection of scenic river corridors and other valuable resources through state or federal recognition and technical assistance. Examples are the Ohio Scenic Rivers Program and the National Heritage Corridor Program.

Objective: To draw attention to resources of exceptional value by providing them with special recognition and/or legal protection.

Who Enacts It: State or federal legislation establishes the programs. Government agencies then work with local communities to designate and manage the areas selected.

Advantages: Special Designation publicizes valuable resources. With this special attention, increased funding, tourism, management, and long-term protection is possible.

Disadvantages: The designation process is often time-consuming. In addition, designation provides little or no legal protection in and of itself.

Currently Used In Ohio: Yes.

### G. SUBDIVISION REGULATIONS

Definition: Subdivision Regulations are design standards for street widths, setbacks, open space, and other features to ensure livability in new subdivisions.

Objective: To protect the quality of life in new subdivisions by requiring minimum design features, including open space.

Who Enacts It: In unincorporated areas, subdivision regulations are issued and enforced by the county or the regional planning commission. In contrast, cities may control the subdivision of land within three miles of their corporate boundaries. Villages in counties without cities control subdivisions within one and a half miles of the village limits if the county has does not have subdivision regulations. In Ohio, townships have limited or no control over the subdivision of land; counties do.

Advantages: Subdivision Regulations provide for sufficient open space for traffic, utility hook-ups, emergency services access, and regulate density to prevent over-crowding and over use of resources. The subdivision regulations also ensure accurate title records and proper development standards that assist in meeting the goals and policies of the community.

Disadvantages: Considerable administrative costs are incurred to review the subdivision plans.

Currently Used In Ohio: Yes

### **H. IMPACT FEES AND EXACTIONS**

Definition: Impact Fees and Exactions are fees or infrastructure improvements required from a developer to offset the cost of new development. Impact fees require developers to pay a calculated charge based on the type of development that they plan to build and the projected impact that it will have on local public facilities. For example, if a community determines that ten acres of new parkland must be acquired for every 1,000 new residents, then it might charge developers a parks and recreation fee based on the cost of acquiring this land. Impact Fees and Exactions are legal in Ohio if a correlation exists between the impact of new development and the improvements financed or exacted using these techniques. The legal test is “whether those who pay are the ones who benefit”.

Objective: To require new development to pay for the added burden that it places on public facilities, including parks.

Who Enacts It: County and local governments.

Advantages: Public facilities grow proportionately with population growth.

Disadvantages: Developers will not want to pay the impact fees and exactions, because they will make the project more expensive.

Currently Used In Ohio: Yes. Though not enabled in many instances in Ohio, impact fees are gaining acceptance under the scrutiny of the Ohio courts. Selected court cases have addressed the use of impact fees for recreational excise tax or utility tap-ins. All decisions have revolved around two “tests”- 1) The nexus between the fee charged and the actual cost of providing the service; and, 2) The authority to impose the fee or tax.<sup>9</sup>

### **I. TRANSFER OF DEVELOPMENT RIGHTS (TDR)**

Definition: Transfer of Development Rights (TDR) is a technique for guiding growth away from sensitive resources and toward areas that can handle it through the transfer of development right from one area to another. Local Planners begin the program by dividing the community into “sending zones” and “receiving zones.” Sending zones correspond to areas that the community wants to protect from further development, while receiving zones correspond to areas that can readily accommodate new growth because they are already served by existing infrastructure such as roads, sewers, and water lines.

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<sup>9</sup> See *Englewood Hills, Inc v Village of Englewood*, 14 App(2d) 195, 198, 237 NE(2d) 621, 624 (Montgomery 1967); *Amherst Builders Assn v City of Amherst*, 61 OS(2d) 345, 402 NE(2d) 1181 (1980); and *Towne Properties v City of Fairfield*, 50 OS(2d) 356, 364 NE(2d) 289 (1977).

The TDR process begins by separating the right to develop the land from the other rights that traditionally come with property ownership, such as the right to privacy and the right to lease or sell the land. Each parcel of land in the region is assigned a specific number of development rights based on the market value or acreage of the land. These rights can then be bought or sold, just like the deed to the property.

The development rights assigned to a parcel of land in the “sending zone” permit a specified density of development on that land. Zoning regulations limit the density of development in the “receiving zones”. A developer in the receiving zone who wants to exceed this density must acquire additional development rights from the other landowners in the community. Greater densities generally make a development more profitable, so the developer has an incentive to acquire these added rights.

In turn, landowners in the “sending zones” that want to realize the development value of their property now have another option. Instead of developing their own land at the specified density, they can sell their development rights on the open market to a property holder in the “receiving zone”. Once the development rights to a parcel of land have been sold, the land can no longer be developed.

**Objective:** To guide development away from important undeveloped regions in the community and toward areas that are better able to accommodate growth.

**Who Enacts It:** County and Local governments, in conjunction with private landowners, developers, and Realtors.

**Advantages:** TDR provides a mechanism for compensating landowners that restrict development on their land by selling their development rights. If properly structured, the system can guide new development to areas that can best support it and pay for the preservation of land in areas that cannot. In addition, local governments do not have to spend funds to acquire land or development rights. In contrast to cluster zoning, which protects land parcel by parcel, TDR can help to preserve large tracts of open space in the community.

**Disadvantages:** A TDR program is fairly complex to operate and generally raises the administrative costs of local government. In addition, since TDR is a relatively new concept, questions still arise about its legality. Community involvement is critical to developing an effective TDR program since there is often opposition from residents in the receiving zone.

**Currently Used In Ohio:** The Governor’s Farmland Preservation Task Force recommends the creation of TDR programs.