

TOWN OF WINDSOR



COLORADO

Conservation Easements are effective tools to preserve significant natural, historical or cultural resources.

Conservation Easement Stewardship

Level of Service Standards

March 2013

The mission of the Parks, Recreation & Culture Department is to provide recreation and cultural opportunities for the entire community through quality programs, facilities, service and management of natural resources.

Summary

Conservation easements are an effective way to preserve land and open space for future generations without an outright purchase of land. A conservation easement might preserve working farms, natural resources, cultural or historical sites or lands with valuable attributes.

The foundation of an effective easement stewardship program is based on good working relationships with landowners. This is true for easements initiated by landowners as well as the Town of Windsor. When the Town serves as an easement holder, it has a legal and ethical responsibility to ensure that landowners comply with the terms of their conservation easements to uphold the public benefit. Since conservation easements are for public benefit, it is paramount that the public has confidence in the Town's ability to fulfill stewardship responsibilities. Communication, conservation easement deeds, good baseline inventory data, annual monitoring and perhaps management plans are effective ways to define the terms of an easement, and promote good stewardship of the public trust.

Windsor's level of service standards reflect management practices recommended and also rules established by the Colorado Division of Real Estate pursuant to Title 12, Article 61 and Title 24, Article 24 of the Colorado Revised Statutes regarding the conservation easement certification program, Colorado Open Space Alliance's (COSA) document Holding Conservation Easements: A Local Government Best Practices Handbook (2009) and guidance from the Center for Excellence of the Colorado Coalition of Land Trusts. Further materials were obtained by the National Alliance for Land Trusts and the Trust for Public Lands.

What is a Conservation Easement?

A conservation easement is a legal document which contains permanent restrictions on the use or development of a specific property. Landowners enter into a conservation easement as a voluntary act to preserve the resource values that are found on the protected land. Each easement is individually crafted to reflect the needs and objectives of the landowner and the agency receiving the easement. Public access may be granted in the original conservation easement or under a separate access easement has been granted by the owner.

The easement must be granted to a qualified conservation-oriented governmental entity (such as The Town of Windsor), or a private non-profit land trust (such as Legacy Land Trust). The process for establishing, monitoring and reporting on conservation easements is contained in this Stewardship document. However, there are three critical components in the creation of a conservation easement:

- a willing landowner (grantor)
- a qualified receiving entity (grantee)
- a property that has resource values which warrant protection

There are potential tax implications for granting a conservation easement:

- Property Taxes---in Larimer County and Weld County, agricultural property tax rates are already low and may not be affected much.
- Income Taxes-Under the current (2010) federal law, if the conservation easement is donated it may be considered a tax-deductible charitable gift, which would allow the donor to deduct a percentage of his or her adjusted gross income in the year of the gift.
- Estate Taxes-If estate taxes are due, they often are reduced because the property value has been diminished by the granting of the conservation easement.
- State Tax Credit Program-A landowner may earn a credit for State taxes (up to a maximum of \$375,000) for the donation of a conservation easement. These credits are transferable, i.e. they can be sold if the landowner cannot utilize them to reduce his/her own taxes.

Property owners should seek information from their attorneys and financial advisors regarding the legal and tax implications of establishing a conservation easement on their property!

Once a Conservation Easement is established, the landowner has certain responsibilities:

- to utilize the property in a manner that protects the conservation values
- to allow only those uses which are identified in the conservation easement as "permitted uses"
- to prevent those uses which are specifically stated as "prohibited" in the easement, or other uses which would negatively affect the conservation values.
- to allow the recipient agency to access the property at least once per year to confirm that the terms of the conservation easement are being followed.

What's the distinction between a conservation easement and land purchased outright?

- land under easement stays in private ownership and use, in accordance with the terms of the easement.
- when land is sold to a resource agency, the landowner gives up all use of the land, and it will be used for those purposes as determined by the purchasing entity e.g. parks, trails, open space.
- if purchased, the amount paid for a conservation easement will be less than that paid when the land is sold outright.

Background

The 2006 Update of the Town of Windsor Comprehensive Plan, which was adopted by the Planning Commission and accepted by Town Board, identifies several goals for long term community development where conservation easements may play a role:

- Using sound conservation practices, unique and distinctive natural features, sensitive ecosystems, critical wildlife habitats, and other unique natural resources should be conserved and preserved in a manner that assures their protection from adverse impacts.
- Community growth should respect and incorporate existing environmental constraints and opportunities to assure that new development and redevelopment will be harmonious with the area's natural and manmade environments.
- Provide for the conservation of natural resources, particularly water, and implement directives which promote a cleaner, more water-efficient, and aesthetically-appealing community.
- Community growth should include measures to protect and promote Windsor's cultural heritage and resources.

Additionally, the Comprehensive Plan establishes several policies to guide the decision making process, where again, conservation easements might play a role:

- Preserve unique, sensitive and critical natural areas such as lakes, rivers, streams, arroyos, aquifer recharge areas, ridgelines, bluffs, significant wildlife habitats (wetlands and riparian areas, native grasslands, floodplains), significant stands of plants, scenic vistas, historical areas, archeological sites and other unique landscapes. Alteration of key natural resource features necessitated by development may be offset through mitigation or replacement.
- Important wildlife species should be protected by preserving key wildlife habitat, wildlife "friendly" fencing design and working on regional programs to protect wildlife.
- Developments occurring within areas identified on the Environmental Resources and Hazards Map or other areas identified by the Town or referral agency may require special studies including: special engineering practices, wildlife and habitat surveys, resource mapping, visual simulations and/or other mitigating actions before development may proceed in areas of high environmental sensitivity. These studies will be the responsibility of the developer.
- The Town should ensure that buffer areas of limited development or no development are preserved adjacent to important natural features. Important natural features shall include; major ridgelines, lakes, ponds, streams, arroyos, Poudre River, sensitive wildlife habitats, unique vegetation areas, wetlands, wildlife corridors, historical areas and archeology sites. Minimum recommended buffer distances (measured from the edge of the natural feature):
 - Low sensitivity features: 50 feet (example - drainages, canals, ditches)
 - Moderate sensitivity features: 100 feet (example - wetlands, ridgelines, riparian areas)
 - High sensitivity features: 300 feet (example - Poudre River, waterfowl nesting areas).
 - Other natural features may require greater buffer distances.
- Preserve and promote the Community's historic resources through the Historic Preservation Commission, historic resource surveys, historic preservation planning and

incentives, and operation of the Museums and Cultural Affairs (Art & Heritage) Division. The Town should encourage public education on cultural resources through school programs, public outreach efforts, museums, cultural events and the development of a historic walking tour.

Additionally, the 2007 Update of the Parks, Recreation, Trails and Open Lands Master Plan, adopted by the Parks Recreation & Culture Board as well as Town Board, also identifies developing an Open Lands program as a goal where conservation easements may help to accomplish objectives:

Goal: Develop and articulate an Open Lands Program and Approach for the Town of Windsor to protect its natural values and allow the co-existence of wildlife and human life where appropriate and possible.

Strategies:

- Communicate previously adopted definition of Open Lands and a Level of Service Statement that are appropriate and fitting for the Town of Windsor.
- Utilize a method of evaluation for determining open lands acquisition and/or easement priorities based on the values represented by potential properties.
- Determine potential acquisitions and/or easements for evaluation.
- Consider developing an Open Space land dedication requirement.
- Determine potential funding mechanisms for open lands acquisitions.
- Enhance Open Lands management and maintenance policies and practices.
- Take a comprehensive planning approach toward Open Lands preservation in the Town of Windsor.

Implementation

Resolution 2008-59 establishes a simple process for actual acceptance of a conservation easement. Town Board is the final authority for acceptance, acting on recommendation from the Parks, Recreation & Culture Board. The following criteria is outlined in the resolution:

- The proposed conservation easement protects and preserves a community buffer, significant and desirable scenic views or trails.
- The proposed conservation easement protects and preserves the area's cultural identity, archaeological sites or agricultural heritage.
- The proposed conservation easement protects significant and desirable ecological resources, including aquatic environments, wildlife habitat and unique vegetation.

Additionally, the resolution allows for the collection of a stewardship fee as a condition of accepting the easement to allow the Town to monitor the conservation easement and to fund any future easement enforcement costs.

DOCUMENT : Resolution 2008-59

Accountability

The Town of Windsor has available a Landowner's Information Packet. The purpose of this material is to inform landowners of the process of dedicating a conservation easement, whether the easement might be acquired via donation (whereby landowners might pursue tax credits), purchase or a combination of these efforts.

DOCUMENT : Landowner Information Packet (contains Conservation Easement Stewardship Level of Service Standards, Resolution 2008-59, and other documents developed by outside agencies)

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed.

Evaluation

Before a conservation easement is presented for consideration, staff shall complete due diligence in evaluating the proposed easement acquisition, whether donation, fee simple or transfer. Staff shall consider the values of the proposed easement as outlined in the above referenced Resolution, and rate the value of the prospective property. The Town Board may provide direction via Executive Session for negotiations and acquisition.

DOCUMENT : Criteria Evaluation Checklist and Ranking; Process Flowchart

STAFF: Director of Park, Recreation & Culture, Parks and Open Space Manager, other staff as needed.

Appraisal

An appraisal shall be completed on the property by an independent third party for use by both the property owner and the Town. It may be utilized as a tool for reaching an appropriate price if the easement is purchased; or utilized by the property owner regarding tax credits. The cost of such appraisal shall be borne by the initiator of the easement, or the property owner if tax credits are sought.

DOCUMENT : N/A

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed. Outside entity.

Document Development

Staff shall involve the owner in meetings to determine their wants and needs, and the objectives of a conservation easement, resulting in a listing of reserved rights of the property owner, and both allowed and prohibited uses. When acceptable terms are reached, the easement shall be conveyed via Deed. The easement shall be in perpetuity, providing permanent protection for the stated conservation values.

Staff will also evaluate the Town's capacity to monitor and /or maintain the easement property, which may be variable depending on the terms of the easement.

DOCUMENT : Sample Deed

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, Town Attorney, other staff as needed. Outside entity.

Recommendation

Once the necessary documents have been developed, materials are presented to the Parks Recreation & Culture Advisory Board (PReCAB) for review. PReCAB would conduct a Public Hearing regarding the easement acquisition and formulate a recommendation to the Town Board, who has final authority over approval of conservation easements.

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, Town Manager, Town Attorney, other staff as needed.

Baseline Data Report

A thorough report of baseline data shall be prepared by an independent third party. In the future, this may be performed by staff if expertise is available. The cost of such study shall be borne by the initiator of the easement, or the property owner if tax credits are sought. The Baseline Data report should be completed prior to acceptance of the easement, but at the very least be completed within nine (9) months of closing.

DOCUMENT : N/A

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed. Outside entity.

Management Plan

Certain property values and certain retained rights, along with the anticipated use of the property (for example, recreational access) may require the development of a Management Plan. Such a plan should outline proposed access, development, improvement and uses in further detail than the stated rights in the deed. Management Plans be updated from time to time as needed to reflect current management practices and needs. This may be developed by staff or an outside party, before or after closing, and the cost is borne by the Town.

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed. Outside entity.

Monitoring

This practice of regularly inspecting and documenting the conditions of the easement property ensures the property is protected over time. Monitoring is essential to: build rapport with the property owner; save time and money by identifying problems early on; document violations; provide a record of property conditions in case of any necessary court action; and satisfy Internal Revenue Service requirements for tax-deductible easements. The Town of Windsor will

conduct at least one monitoring visit per year, within 12-14 months of the previous visit, when snow is not present. The process is as follows:

- Town sends letter to owners of all easement properties at the beginning of the monitoring season notifying them that a monitoring appointment will be set up.
- Staff calls the landowner or the land manager of the easement property to set up a site visit for monitoring.
- Before the site visit, staff will review the monitoring reports from previous years as well as the Easement Deed and legal description, and Management Plan (if applicable) to become familiar with rights, restrictions, condition of the property, and issues/problems related to land management.
- Gather material for the site visit including, but not limited to: camera and film, maps, surveys, aerial photos, Easement Deed, Management Plan (if applicable) and monitoring report forms.
- At the site visit, interview the owner or manager to discuss any changes that were made to the property since the previous year. Conduct phone interviews if a meeting on the property is not possible. Document on the monitoring report.
- Inspect the property. Staff has the right to inspect all of the easement property during the visit. The landowner or manager should tour the property with staff. For orientation purposes, new staff should request a guided tour of the property by the owner or manager.
- Compare current property conditions with the written observations and photos from the previous monitoring visit. Make note of any major natural or man-made changes and thoroughly document. Take new photos at established photo points and map.
- Complete the monitoring report form; sign and date two original copies of the monitoring report form, which are then sent to the landowner. The landowner is asked to sign both originals and send one back for the Town files. Record the date the monitoring report was sent and date it was returned. Follow up with landowners who fail to return the report after one month. It is essential that a signed monitoring report is filed so that the Town can prove, if necessary, that the monitoring did occur.

DOCUMENT : Monitoring checklist; Monitoring report

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed.

Reporting

A variety of reports are essential to document easements and compliance, as follows:

- Monitoring report forms are completed annually and shared with the property owner.
- Monitoring reports are stored electronically with the Department of Parks, Recreation & Culture and with PReCAB packets (typical records retention applies).
- Backup reports on CD or DVD are stored at Town Hall.
- As a certified agency, the Town shall also file monitoring and stewardship reports with the State of Colorado / Department of Regulatory Agencies / Division of Real Estate.

- Easements funded through Great Outdoors Colorado, also require monitoring and stewardship reports.
- Annual monitoring and stewardship reports are provided to the Town of Windsor Parks, Recreation & Culture Board.

DOCUMENT : Stewardship Report

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, other staff as needed.

Enforcement

Enforcing the rights of conservation easements is a critical obligation. Each deed of easement shall specify the legal arrangement between landowner and agency, however the defense of violations is borne by the easement holder. The process is as follows:

- The landowner shall be notified of the violation and requested compliance.
- Land owner and staff remove the violations, if feasible, and restore or mitigate damage.
- If restoration or mitigation is not feasible, the Town shall seek compensation for the loss of conservation values as originally outlined in the initial evaluation.
- If cooperation is not apparent, consultation with Town Manager, Town Attorney to determine course of action.
- If litigation is necessary, Town Board approves litigation funds; these would be paid from stewardship funds, if available, or Town general fund.

DOCUMENT : Enforcement Policy

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, Town Manager, Town Attorney, other staff as needed.

Amendments

In the event an easement must be amended, the proposed amendments will be reviewed by staff, presented to PRECAB and ultimately Town Board for approval.

DOCUMENT : Amendment Policy

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager, Town Attorney, other staff as needed.

Certification/Recertification

The Town of Windsor was certified as a Conservation Easement Holder by the State of Colorado in **May, 2013**. In order to fulfill the rules for such established by the Division of Real Estate, the Town will reapply annually for certification to hold easements where tax credits are claimed.

DOCUMENT: Recertification Application

STAFF: Director of Parks, Recreation & Culture, Parks and Open Space Manager.