CONSERVATION EASEMENT PROGRAM POLICIES AND PRACTICES

Boulder County Parks & Open Space

Approved by the
Boulder County Commissioners
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Note: Boulder County's Parks and Open Space Department has developed the policies and practices contained within this document over the course of many years, and although many of these policies and practices have not previously been formally adopted, they do not represent newly developed policies or practices.

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Appendices

The appendices to this document constitute practices that will be updated and/or replaced periodically by the Parks and Open Space Department without formal review by the public, the Parks and Open Space Advisory Committee or the Boulder County Commissioners, unless such review is deemed appropriate for a specific issue. Flexibility is required for the appendices to ensure that the County's practices reflect any changes in best practices for local government land conservation.

1 Comprehensive Plan Elements
2 Conservation Easement Forms (Long-Form for Agricultural property; Short-Form)
3 Conservation Easement Donation Practices
4 Property Assessment for a Conservation Easement (PACE) Form
5 Landowner Information Packet
6 Letter Agreement Form
7 Donation Acknowledgment Letter
8 Monitoring Notice Letter
9 Stewardship Tracking Database
10 Conservation Easement Violation Practices
11 Conservation Easement Amendment Practices, with Reserved and Permitted Rights Practices
12 Practices for Adding a New Development Right
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14 Dispositions of Land Practices (Including BLM Sliver Parcels)

Executive Summary

Boulder County (the "County") has long been a leader among local governments in Colorado and across the nation in efforts to protect open space. Since 1976, when Boulder County acquired its first conservation easement, the County has provided leadership to other local government open space efforts along the Front Range of Colorado and beyond. The number of conservation easements in Boulder County's program exceeds the number held by all but the largest local government open space programs and land trust organizations in the country. Boulder County quite simply wouldn't be the same without its fee simple open space holdings or its conservation easements and other restrictive interests, all of which have had an immense impact on shaping the look and feel of Boulder County today.

This Conservation Easement Policy has been written to compile all of the policies and practices that guide acquisition and stewardship of the County's conservation easements. While these policies and practices are longstanding, some have not previously been summarized in writing.

This compilation is intended to guide the 'next generation' of Boulder County staff in continuing to administer and improve the County's conservation easement program, which plays an integral role in making Boulder County a special place to live.

Questions or comments about this document should be directed to:

Conservation Easement Program
Boulder County Parks and Open Space Department
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Longmont, CO 80503
(303) 678-6200

I. Introduction

A. Scope

The purpose of this document is to compile all of the policies and practices that guide Boulder County's acquisition and stewardship of conservation easements. These policies and practices closely follow guidance from 'best practices' developed for local government open space programs in Colorado and from the Land Trust Alliance's national standards and practices, to the extent those standards and practices are applicable to local governments. Boulder County's Parks and Open Space Department ("POS") uses the framework of these policies and practices to maintain the public benefits afforded by County-held conservation easements. POS also applies these policies and practices to the County's other real estate interests that restrict property uses, such as deed restrictions, as appropriate.

B. Document Development

POS has developed the policies and practices contained within this document over the course of many years, and although many of these policies and practices have not previously been formally adopted, they do not represent newly developed policies or practices. These policies and practices apply consistent standards and fair treatment to all properties encumbered by County-held conservation easements, while preserving the County's discretion to consider variations among properties, fact specific circumstances and the unique terms of individual conservation easements. To maintain high program standards and usefulness of this document for POS and landowners:

- POS will only update the narrative portion of this document (which constitutes the formally adopted policy) by obtaining approval from the Board of Boulder County Commissioners ("Commissioners" or "County Commissioners"). When narrative changes represent more than just detail or minor clarification, i.e., when changes involve new policies, POS will also seek input from the public and the Parks and Open Space Advisory Committee ("POSAC") before POS staff requests County Commissioner approval.
- POS will update the practices contained in the appendices periodically on an as-needed basis without formal review by the public, POSAC or the Commissioners, unless POS deems such review is appropriate for a specific issue. Flexibility is required for the appendices to ensure that POS' practices reflect any changes in best practices for local government land conservation.

C. Writing Team

Janis Whisman (Real Estate Division Manager) was the primary author of this document, with assistance from Jan Burns (Former Real Estate Division Manager), Jennifer Dziuvenis (Stewardship Specialist), Emily Greenwood (Stewardship Specialist), Rich Koopmann

(Resource Planning Division Manager), Brad Milley (Resource Specialist), Conrad Lattes (Assistant County Attorney), Jesse Rounds (Resource Planner) and Ron Stewart (Parks and Open Space Department Director).

II. Mission, Vision and Goals

A. Boulder County's Comprehensive Plan

Boulder County's Comprehensive Plan ("Comp Plan") was first officially adopted by the County Commissioners in 1978 and was last amended in 1999. Portions of the Comp Plan are currently undergoing revision to reflect accomplishments to date and refine future plans. The County's conservation easement program fulfills a variety of Comp Plan goals, most specifically those that are listed in Appendix 1.

B. Parks and Open Space Department Mission

POS' mission is: "To conserve natural, cultural and agricultural resources and provide public uses that reflect sound resource management and community values." Conservation easements help accomplish all aspects of this mission, and the public receives benefits from conservation easement properties, such as scenic enjoyment and protection of agricultural lands and wildlife habitat. Private properties covered by conservation easements typically do not offer public access, but the public has access to a few properties encumbered by County-held conservation easements, e.g., if the properties are jointly owned with municipalities.

C. Conservation Easement Program Mission

Boulder County's conservation easement program has three distinct aspects to its mission: 1) acquire new conservation easements to preserve significant lands as open space; 2) fulfill all of Boulder County's legal responsibilities relating to the County's conservation easement program; and 3) work collaboratively among County departments and cooperatively with landowners to adhere to the purposes, terms and conditions of each conservation easement to protect the subject property's conservation values and resources.

D. Conservation Easement Program Vision

Boulder County's conservation easement program contributes significantly to maintaining the rural character of Boulder County, providing scenic open space for the public, continuing agricultural uses, protecting important historic and cultural features and protecting relatively natural habitat, such as forest land, wetlands, riparian corridors and other wildlife habitat.

E. Conservation Easement Program Goals

Goals for the County's conservation easement program include, but are not limited to:

- Protecting natural resources, agricultural lands and scenic open spaces that meet Comp Plan goals and POS goals;
- Managing uses in designated areas to protect open space values for public benefit; and
- Reducing density and development where additional development is incompatible with Comp Plan and POS goals.

III. Program Summary

A. Conservation Easement Program History and Background

Boulder County acquired its first conservation easement in 1976 and maintains an active easement acquisition program today. The County has acquired conservation easements using a variety of methods, including market price sales, bargain sales, donations and dedications pursuant to land use regulations. Funding sources for County open space purchases include dedicated open space sales and use taxes, County general fund revenue ("General Fund" money), Colorado lottery proceeds ("Conservation Trust Fund" money), state and federal grants, and funds from partner municipalities and local interest groups, such as the Eldora Land Preservation Fund.

Boulder County's conservation easement program includes conservation easements held by the County over private property and property owned by other local governments. In some instances, the County and one or more local governments jointly hold conservation easements over private property. Sometimes when the County has acquired open space jointly with municipal partners, the County and partners have conveyed reciprocal conservation easements. In other situations where Boulder County has acquired fee title to an open space property with funding assistance from a municipality, Boulder County has granted conservation easements over the property to the municipal partners. These practices add layers of protection that further dedicate the property for open space. Boulder County's conservation easement program also includes restrictive covenants and other deed restrictions held by the County.

B. Program Funding

Boulder County is fortunate to have a variety of funding sources available to use for conservation easement acquisitions and stewardship.

1. Acquisition Funding

Three open space sales and use taxes ("Sales Taxes" or "Sales Tax") have been approved by County voters that total 0.60%. This source serves as the primary means of funding the County's conservation easement purchases. The Sales Tax ballot language restricts the use of Sales Taxes for open space interests within the territorial limits of Boulder County. Boulder County may also use General Fund money and/or Conservation Trust Fund money to acquire interests in land within the County.

In limited instances, the County acquires a conservation easement interest or acts as a funding partner to help another organization acquire a conservation easement over land outside Boulder County. Boulder County limits its open space activities outside the County to strategic areas (such as the area between Boulder Creek and the St.

Vrain River) or to areas that are important to partnering local governments. The County Commissioners have the discretion to authorize an allocation of General Fund money and/or Conservation Trust Fund money for these transactions.

The County actively seeks partner and grant funding to help leverage County funds for conservation easement acquisitions. Several municipalities in Boulder County and adjoining counties that share an interest with the County in preserving open space often partner with Boulder County in acquiring conservation easements. Boulder County also periodically receives matching funds from grant sources, such as the Great Outdoors Colorado Trust Fund ("GOCO"), which distributes a portion of Colorado Lottery proceeds, and the US Natural Resources Conservation Service ("NRCS"), which distributes federal dollars through its Farm and Ranchland Protection Program to protect significant agricultural land.

2. Stewardship Funding

Boulder County is fortunate to have a dedicated source of funding from the Sales Taxes for conservation easement stewardship activities. While most of the Sales Taxes are set to expire over the next two decades, a 0.05% portion of the Sales Taxes will remain in perpetuity to fund maintenance costs of the County's open space program, which costs include conservation easement stewardship. If this funding were ever deemed insufficient, the County could also use General Fund Money to cover stewardship costs. For these reasons, Boulder County does not require landowners who grant conservation easements to the County to provide the County with stewardship endowment funds. This is unlike land trusts, which typically must require endowment funds that then earn interest to cover stewardship costs.

C. Current Program Statistics

At the end of 2016, the County's conservation easement program included approximately 959 properties, and that number continues to grow. In rounded numbers, about 138 of those properties are owned by Boulder County and are encumbered by conservation easements that have been granted to municipalities or land trusts. Boulder County, by itself or jointly with one or more municipal partners, holds conservation easements over the remaining 821 properties. Of those 821 properties, approximately 110 are encumbered by conservation easements that have been fully or partially donated to the County. The remainder have been purchased or acquired through regulatory means. Altogether, approximately 40,000 acres are subject to conservation easements held by the County, representing about 39% of Boulder County's current open space holdings. Approximately 21,000 acres are agricultural land and 19,000 acres are mountainous land. These numbers do not include county fee lands that are subject to conservation easements held by municipalities or other third parties.

IV. Conservation Easement Acquisition Process

A. Project Selection

Boulder County acquires new conservation easements and restrictive interests in land in a variety of ways that are outlined in the Comp Plan. These are the primary methods used:

1. Conservation Easements and Restrictions Originated by POS

POS Real Estate Division staff ("POS staff") negotiates all new conservation easement acquisitions involving donations, bargain sales or market price purchases. Potential projects arise from POS staff's outreach to owners of land that POS has targeted as strategic priorities for possible open space acquisitions. The Comp Plan initially established open space priorities using information from a 1976 open space handbook that outlined the County's open space program. The Comp Plan has since incorporated information from a 1984-1985 map of current and proposed open space and a 1994-1995 Open Space mapping and prioritization project that was done by the Boulder County Nature Association. The plans are refined using data from the Colorado Natural Heritage Program ("CNHP"), annual requests that Boulder County solicits and obtains from municipalities in Boulder County, POSAC and County Commissioner recommendations, and POS' biology, ecology, real estate and agricultural resources staff. Acquisition projects also arise on an ad-hoc basis from realtors and landowners who contact POS about potential open space properties.

a. Purchased Conservation Easements and Other Restrictive Interests

Boulder County commonly purchases these types of conservation easements either at full market price, or at a bargain sale price:

Long-Form Conservation Easements – The County uses a long-form style of conservation easement over large properties or selected undeveloped portions of properties to protect specific features, such as wetlands and riparian areas or other natural resources that have significant conservation value. A long-form conservation easement for agricultural properties is included in Appendix 2 as an example. Boulder County also uses this type of conservation easement in the very rare instances when Boulder County converts fee ownership in an open space property to a conservation easement interest by trading the underlying fee interest to a neighbor in exchange for money and/or a conservation easement or fee simple interest in the neighbor's property, resulting in additional land being protected for open space. If a long-form conservation easement is purchased at a bargain sale price and if the landowner has conservation intent and donative intent, POS staff ensures that

this style of conservation easement is used, because it contains restrictions that meet state and federal standards that may qualify a donation for tax benefits.

Short-Form Conservation Easements – Boulder County uses a short-form style of conservation easement when the County has an interest in controlling the development and uses of the parcel, but the property is relatively small and does not possess the same conservation values protected by the long-form conservation easement. An example short-form conservation easement form is also included in Appendix 2. These conservation easements focus on restricting square footage and preventing annexation and subdivision of the property, rather than on protecting natural conservation values, so the conservation easement terms are more limited and the form is shorter. This style of conservation easement does not contain restrictions that meet state and federal standards to qualify a donation for potential tax benefits.

Boulder County uses short-form conservation easements in these situations:

- If a landowner desires to retain a residence, but wants to sell the adjoining farmland. In these situations, Boulder County may create a new legal parcel around existing structures as part of the transaction. The County requires the conservation easement to go into effect at the same time the County creates the new parcel and buys the farmland.

- If a landowner desires to sell the entire property. Boulder County may buy the whole property, but then sell off the residence and related structures in a new legal parcel. This is commonly done, because the County typically prefers not to own and manage the residential portion of the property. The County requires the conservation easement to go into effect when the County sells the residential area as a new parcel.

- If a landowner wants to sell the entire property, but Boulder County cannot afford to buy all of it. In rare instances, Boulder may reduce the cost of the acquisition by leaving one or more development rights intact and designating them to the same number of new parcels that are created from vacant land. Using this method, the County can protect the significant areas of the property for open space, direct where the remaining development occurs, and allow the landowner to retain the parcels for sale on the open market as house lots. The County requires the conservation easements to go into effect when the County creates the new parcels and buys the farmland.

Restrictive Covenants, Deed Restrictions, and Other Restrictive Interests – Boulder County employs a variety of restrictive covenants and other deed restrictions when neither the long-form nor short-form conservation easements are appropriate, but when the County wants to have some control over the land. For example, the County requires restrictive covenants to be recorded against a residential property that is being tied to an adjacent vacant open space parcel protected by a County-held conservation easement, so that the two properties must then be sold together. These types of restrictions do not meet state and federal standards to qualify for potential tax benefits.

b. Donated Conservation Easements

POS adheres to the practices described in Appendix 3 for potential donations of conservation easement interests, and those conservation easements follow the long-form conservation easement format described above. POS staff also reviews proposed donation projects against criteria contained in the Property Assessment for a Conservation Easement ("PACE") form, which is contained in Appendix 4. This form helps POS analyze how well a proposed project meets Comp Plan goals, POS goals and conservation easement program goals, all of which are designed to provide significant benefit to the public. POS staff discusses the project among themselves and with the POS Director before pursuing a conservation easement project. Boulder County declines to accept the donation if a project does not score highly enough on the PACE form, match POS' practices for donated interests and meet POS staff's expectations for a project that advances the County's open space program goals.

If the landowner has conservation intent and donative intent, and if the conservation easement contains restrictions that meet state and federal standards, these conservation easement donations may qualify for tax benefits. Boulder County may decline a conservation easement donation if POS staff determines the landowner does not have donative intent, if the easement does not have a conservation purpose serving a goal of the county's open space program, or if the project appears to be fraudulent. Further, if POS feels a conservation easement does not have donative intent and/or donative value, POS will ensure that the project documentation clearly states that Boulder County will not recognize the donation and will not sign any forms claiming tax benefits. If it appears that the landowner has both conservation intent and donative intent, but POS staff believes an aspect of the project will cause it to be disqualified for tax benefits, POS staff will alert the landowner to the potential issues. If the issues cannot be resolved, Boulder County may decline the easement, or the County may accept it after forewarning the landowner and documenting the County's refusal to recognize donation value and sign tax

forms described above. In some situations, the project could be appropriate for the County's TDC or TDR programs described below, in which case, POS staff will suggest that the landowner consider asking Boulder County to accept the conservation easement under one of those programs – neither of which qualifies the landowner for tax benefits.

2. Transferable Development Right (TDR) Conservation Easements

The Commissioners have assigned POS the responsibility to administer Boulder County's Transferable Development Right ("TDR") program, which is defined in the Comp Plan and also in Boulder County's Land Use Code ("Code"). The Code allows the County to create two TDRs for each 35-acre parcel if the landowner agrees to protect the property with a conservation easement granted to the County. This "two-per-35" rule does not mean that two houses may be built on the parcel; rather, one house may be built and one TDR may be transferred for use on a different property, or two TDRs may be transferred if no house is built on the subject property. Additional TDRs may also be available for transfer if the landowner holds significant water rights and agrees to tie them to the subject property.

If the landowner desires to participate in the TDR program and the Commissioners have approved TDRs for the property, the subject parcel becomes a 'sending site'. TDRs are removed from the sending site by the recording of the conservation easement. The TDRs are transferred to 'receiving sites', which are specific parcels that the County separately designates as appropriate for development at a greater density than the statutory density of one residence per 35-acre parcel. Developers must receive approval from the County's Land Use Department ("Land Use") to develop receiving sites and must relinquish to the County the required number of TDRs, which depends upon the amount of approved development.

POS staff evaluates the number of TDRs for which a property is eligible and seeks approval for the TDRs from the Commissioners at a public hearing. (The public hearing process is described in Sections IV.G and IV.H of this document.) The County requires the landowner to grant a conservation easement over the property concurrently with issuance of any approved TDRs.

Because these conservation easements are required for parcels from which TDRs are created, landowners who grant them do not qualify for tax benefits, and the County does not award any compensation to the landowner, other than to issue the TDRs, unless POS determines that the property has significant additional conservation values beyond the defined attributes that are required for issuing the TDRs. If this occurs, POS may negotiate to protect those additional values and the County may compensate the landowner or recognize donation value, as described in Section IV.C.

3. Conservation Easements and Restrictions Originated by Land Use

In addition to conservation easements initiated and handled by POS, Boulder County also receives conservation easements over land in conjunction with regulatory processes administered by Land Use. POS staff does not conduct PACE reviews of these projects, since the conservation easements originate during Land Use review of one of these three regulatory processes:

a. Transferable Development Credit (TDC) Restrictive Covenants and Conservation Easements

The Code allows the County to offer transferable development credits ("TDCs") to landowners who are willing to severely restrict or eliminate residential development on their properties in perpetuity. TDCs are available to any willing landowner in all areas of Boulder County, including for properties within NUPUDs or other County subdivisions. The TDCs are created at the same time that a restrictive covenant is recorded against the property to reflect the development limitations required of landowners who receive TDCs, and the landowner is then able to sell the TDCs on the open market to landowners who desire to build more than a certain threshold amount of residential floor area. In 2009, TDCs are required to build more than 6,000 square feet of residential floor area, and the Land Use approval process involves comparing the proposed total amount of development to other properties in the neighborhood. (These terms and concepts are defined and further described in the Code.) Land Use, rather than POS, administers restrictive covenants entered into through the TDC program.

The TDC program is also authorized to award bonus credits if properties have significant conservation values, as determined by POS. If a landowner desires to receive the awarded bonus credits, a long-form conservation easement is recorded against the property that reflects the development restrictions and the property's conservation values when the standard and bonus TDCs are created. POS administers these conservation easements.

Because these restrictive covenants are required for parcels from which TDCs are created, landowners who grant them do not qualify for tax benefits, and the County does not award any compensation to the landowner, other than to issue the TDCs.

b. Regulatory Conservation Easements

Land Use staff periodically discusses conservation easements with landowners in conjunction with landowners' proposals to develop their properties. For

example, conservation easements may be appropriate when the proposed development constitutes the most development Boulder County would like to see occur on a property or when riparian corridors or other specific areas of a property should reasonably be protected for open space purposes. If the County grants discretionary approval of a development plan with the condition that a conservation easement be granted, the landowner does not qualify for tax benefits. If the County does not require a conservation easement but a willing landowner grants one, the County acknowledges this donation.

Such an easement may qualify for tax benefits if the conservation easement is not required, if nothing is granted to the landowner in exchange for the grant of the conservation easement, if the landowner has conservation intent and donative intent, and if the conservation easement is written with language that meets state and federal requirements.

c. Rural Subdivisions (NUPUDs) and Other County Subdivisions

Land Use staff requires conservation easements on new rural subdivisions (called non-urban planned unit developments, or "NUPUDs") in accordance with the Code. For NUPUDs, the Code allows the landowner to receive additional density above the statutory density of one residence per 35-acre parcel, requires that development be clustered, and permits no more than 25% of the original acreage to be developed so that at least 75% of the original property is left as open space. The open space land is designated for private ownership and is legally separated into outlots that are platted within the subdivision. When land to be designated for open space is not contiguous with the subdivided property, non-contiguous non-urban planned unit developments ("NCNUPUDs") occur. These processes are used primarily in the plains portion of Boulder County, where the land is designated for continued agricultural use. The NUPUD and NCNUPUD processes were very popular in the late 1970's through the 1990's, but now that very few large divisible properties are left in Boulder County, the NUPUD and NCNUPUD subdivision processes are rarely used today.

A handful of outlots that are associated with other County subdivision processes are also subject to conservation easements. For example, some outlots within TDR receiving sites that have been subdivided into TDR planned unit developments ("TDR PUDs") are also encumbered by conservation easements.

Because these easements are required as a condition of the subdivision

approval, they do not qualify for tax benefits, and Boulder County does not award additional compensation to the landowner beyond what is approved for the related subdivision development.

4. Conservation Easements Originated by Intergovernmental Agreements (IGAs)

Boulder County frequently enters into intergovernmental agreements ("IGAs") designed to preserve land for open space. Municipalities and government agencies are partners in these IGAs; for example, several municipalities and the Northwest Parkway Highway Authority have agreed to preserve land along the Northwest Parkway for open space. IGAs are also used to define areas that municipalities plan to annex and develop, areas that serve as buffers around municipalities and land to be set aside for water treatment facilities (including open ponds). IGAs are also used to designate the ownerships to result from partner open space projects. The County and its partners commonly use conservation easements as a means of turning the agreements made in IGAs into permanent land protection.

Because these easements are required as a condition of the applicable IGA, they do not qualify for tax benefits, and Boulder County does not compensate the partners with rights or other consideration beyond what is agreed upon in the IGA.

B. Project Phasing

Boulder County periodically agrees to enter into phased conservation easement transactions. The County's practices on phasing are consistent with 'best practices' in the land conservation industry, and the County does not participate in any abusive phasing schemes, such as those that abuse Colorado's conservation easement tax credit program or federal tax deduction regulations. If Boulder County agrees to phase a project, it ensures that each phase has independent conservation purpose and protects the property's conservation values. This is particularly important if potential tax benefits are involved, since each phase must meet state and federal regulations to stand on its own as providing significant public benefit. Boulder County uses option agreements to ensure that the County has the ability to purchase the conservation easement in each phase if the landowner decides not to donate the conservation easement, thereby ensuring the entire project is completed. For example:

- Sometimes the landowner requests phasing for tax reasons. Their tax reasons may be related to income taxes, inheritance taxes, etc., and not just to Colorado's conservation easement tax credit, which limits the amount of credit that can be claimed each year. Boulder County may accommodate a landowner's requests if it makes sense for the subject property, but the County's decision and reasons for agreeing to phasing are never driven by the landowner's tax needs.

- Boulder County may phase a project when insufficient funding exists to purchase

a conservation easement over an entire property at once. For example, the County and landowner may agree to protect the riparian corridor of a property in the first phase and the property's uplands in a second phase.

- Sometimes the County may lease a conservation easement interest over the property and make regular payments to the landowner until the full purchase price for a permanent conservation easement has been paid.

- In other situations, the County may agree to create several separate conservation easements, depending on what makes sense for the land. For example, if a landowner has property with more than one house on it, the property can be conserved by multiple conservation easements that designate one house for each conserved parcel. The County and landowner may agree to complete the separate conservation easements at the same time or at different times.

C. Tax Benefits

The County will not agree or recognize that a donation has occurred if the County has paid what it believes to be fair market value for the conservation easement, or if the County is requiring a conservation easement as part of a land use process. For the County to recognize donation value in a conservation easement transaction, the County must agree to do so in writing before a transaction has been completed. This occurs in the letter agreement for a full donation, or in the purchase or option agreement for a bargain sale purchase or in the land use docket resolution, if the conservation easement was generated by a land use process overseen by Boulder County's Land Use Department. If the County has not agreed in writing to recognize donation value, the County will not sign any state or federal forms claiming tax benefits.

POS staff discusses this topic with landowners several times before Boulder County accepts conservation easements to convey the County's position on potential tax benefits for the subject transaction, to understand the landowners' expectations, and to ensure that the conservation easements are written appropriately if tax claims will be made. POS staff's conversations and written materials all stress that Boulder County does not guarantee the qualification of the conservation easement for tax credit purposes, and that landowners should obtain independent legal, financial and tax advice in advance of making a donation and that Boulder County is not giving, and cannot give, them such advice. POS staff addresses this topic in at least these ways, and repeated conversations are typically had on the topic when tax benefits are potentially available:

- POS staff discusses the topic verbally at first to ensure that landowners understand that potential tax benefit claims can be complex due to state and federal qualifying requirements, restrictions and limitations. POS staff also informs landowners that

potential pitfalls exist.

- POS staff provides landowners with the information packet included as Appendix 5, which gives landowners information about the County's processes and basic information about potential tax benefits.

- The project agreement (i.e., the letter agreement, or the offer letter and the option agreement or purchase agreement if the County is contributing funds to the project) repeats that Boulder County is not giving advice to landowners and that they should obtain independent legal, financial and tax advice before proceeding. If Boulder County has agreed to recognize conservation easement donation value via a land use docket resolution, no separate POS-generated project agreement exists.

- The County requires landowners to certify in writing at closing their acknowledgment that Boulder County has strongly encouraged the landowner to obtain independent legal, tax and financial advice prior to completing the donation and that neither the County, nor any of its employees, agents or attorneys, has made any representations as to the fair market value of the conservation easement or the tax treatment to be accorded to this donation or to any proceeds thereof by the Internal Revenue Service under the Internal Revenue Code or by the officials of the State of Colorado under Colorado law, and the County has strongly encouraged the landowner to obtain independent legal, tax and financial advice well in advance of completing the donation.

- Finally, the County's letter to the landowner acknowledging the donation repeats these advisements.

D. Evaluation of Private Interests

POS staff evaluates each project to determine that no private benefit or private inurement would occur as a result of the transaction. If that appears to be possible, POS staff renegotiates the terms of the transaction to remove all possibility of those private interests occurring. The sole exception to this practice occurs when the landowner may receive private benefit from the enhancement to his/her property that adjoins the property going under conservation easement. That enhancement value is addressed by the appraisal. The existence of enhancement does not necessarily thwart the donation, unless the enhancement value that would be added to the landowners' interest in the adjacent property exceeds the value of the conservation easement donation.

E. Ethics – Conflicts of Interest and Insider Transactions

Boulder County has officially adopted policies outlining how the County will handle potential conflicts of interest. These sections of Boulder County's Personnel & Policy

Manual describe specific policies regarding conflicts of interest:

• Section II.9	Conflict of Interest
• Section I.6	Eligibility for Membership on County Boards and Commissions
• Section II.23	Ethics in Government
• Section XI.12 and XI.13	Purchasing Policies and Procedures

County policy specifies that the County will not participate in any transaction, including sales, purchases, or transfers of real or personal property, for or from an employee or elected official or their immediate families, nor will orders be given to any firm in which s/he holds a responsible position or significant financial interest, without the approval of the County Commissioners. Under Boulder County's policy on related party disclosures, transactions that are so approved may need to be disclosed in the County's annual financial report.

POS also applies the concepts within these County policies to all real estate transactions, including conservation easement donations and acquisitions. An individual POS staff member does not participate in negotiations with landowners with whom the staff member has a prior or existing relationship. POS also avoids negotiating real estate transactions involving insiders, including employees of any County department, and that any proposed transaction does not give a private benefit to the insider that is more valuable than the conservation easement. In circumstances where this is unavoidable, POS ensures that the public is given notice of the conflict and that the conflict is discussed during the public review and approval process. The County Commissioners consider the conflict before deciding whether or not to proceed with the proposed transaction. All commissioner decisions are documented by minutes (for hearings) or approval memos (for meetings) that are maintained in the County Commissioner's office.

F. Historic Preservation

Many properties in Boulder County have been evaluated for their historic significance, so POS staff reviews all written information that is available and also consults with POS and Land Use historic preservation staff to evaluate whether or not a property has historic features that should be preserved. In some instances, input from the Historic Preservation Advisory Board ("HPAB") has already been obtained when an historic site survey was done, or is obtained if a property seems to have historically-significant features. Features include historic buildings, significant mining ruins, natural areas having significance to Native Americans, archaeological evidence of pioneer use, etc. POS staff uses this information to draft specific conservation easement language geared toward protecting the property's historic features.

G. Parks and Open Space Advisory Committee (POSAC) Recommendation

POS staff presents all projects involving an acquisition price (i.e., everything but fully donated conservation easement interests) to POSAC at one of its monthly meetings. POSAC is a citizen advisory board that advises POS and the Commissioners on acquisitions and other matters relating to the County's open space program. POS staff gives the public prior notice of POSAC agendas and invites the public to attend and comment. For each project, POS staff provides POSAC with a detailed memo plus a verbal and visual presentation and asks POSAC for a recommendation to the Commissioners to approve the project. POSAC offers the public an opportunity to comment on the project before voting on whether or not to recommend the project to the Commissioners for approval.

H. County Commissioner Approval

Approximately 10-14 days after a project has been reviewed by POSAC, POS staff presents the project to the Commissioners. Boulder County gives the public prior notice of the Commissioners' agenda and invites the public to attend and comment. POS staff gives the Commissioners a detailed memo plus a verbal and visual presentation that includes a report on the POSAC recommendation (whether in favor of or against the project) and any concerns POSAC has about the project. POS staff then describes any changes to the project that address any major concerns POSAC had and requests Commissioner approval of the project. The Commissioners offer the public an opportunity to comment on the project before voting. County Commissioner approval is necessary to pursue the project.

I. Financial and Asset Management

As described above, POS receives formal Commissioner approval of all acquisition expenditures. POS also follows an annual budget that the Commissioners formally approve and which contains funding for conservation easement stewardship staff and activities. Boulder County's finances are audited once a year by an independent qualified accounting firm that has no financial or other interest with Boulder County, and open space transactions are included in the audit. Auditors check to confirm that staff follows the County's defined financing practices.

1. Contract Routing

For real estate transactions, POS staff works closely with POS' Administration Division and other County departments, including Finance, Risk Management and the County Attorney's Office, to assure that all of the County's financial and asset management requirements are met. POS staff routes all legally binding contracts through the Division Manager, POS Director, Finance, Risk Management, and the County Attorney's Office. POS staff can present contracts to the County Commissioners for signature only after those individuals and departments have given approval for the project.

2. Funding Process

After contracts have been signed by the County Commissioners, POS staff conducts the due diligence review process described in Section V.E herein. When due diligence has been completed to the County's satisfaction, POS staff requests project funding from POS' Administration Division staff, who serves as the primary liaison with the Finance Department, to pay the bills of Phase I and survey consultants, title companies, and ditch companies as appropriate and to ensure required funding arrives at closing. Payment practices follow the County's finance policies, which include specific practices on revenue policies, fiscal policies, purchasing policies and practices, budgetary fiscal control and the like.

V. Project Documentation

A. Letter Agreement

When POS staff has reached verbal agreement with the landowner to acquire a conservation easement and the easement will be donated to Boulder County, POS staff presents the landowner with a letter agreement describing the proposed transaction. For a conservation easement to be fully donated, the letter agreement follows the form included in Appendix 6, and an initial draft of the conservation easement is included as an exhibit. The letter agreement sets forth the general terms and conditions associated with the project, including the required due diligence review process, environmental hazards and other representations and warranties, the documents necessary to accomplish the project, whether or not potential tax benefits may exist, and an admonition to landowners to obtain independent legal, financial and tax advice before proceeding. The draft conservation easement follows the long-form conservation easement in Appendix 2 (or a similar one for mountainous land), is appropriately tailored to the property and proposed transaction and contains all of Boulder County's required language. The draft is reviewed and approved by the assigned Assistant County Attorney before POS staff attaches it to the letter agreement.

Once POS staff and the landowner agree upon the terms of the letter agreement and conservation easement, the landowner signs the letter agreement and POS staff presents the letter agreement to the County Commissioners for approval and signature. (Conservation easements that will be fully donated are not presented to POSAC and instead are presented directly to the County Commissioners for formal approval.) The County then begins the public approval process described in Sections IV.G and IV.H and the due diligence review process described in Section V.E.

B. Offer Letter or Letter of Intent

When POS staff has reached verbal agreement with the landowner to acquire a conservation easement and Boulder County will contribute funds to the acquisition, POS staff presents the landowner with an offer letter, also called a letter of intent, describing the proposed transaction. The offer letter contains information similar to the letter agreement form included in Appendix 6 and all of the information described in Section V.A.

The landowner and POS land officer agree upon the offer letter and its exhibits, and both sign it. These letters are not binding on either the landowner or the County, but the County relies on them to begin the public approval process described in Sections IV.G and IV.H and then to begin the due diligence review process described in Section V.E.

C. Purchase Agreement or Option Agreement

When an offer letter or letter of intent is used indicating that Boulder County will contribute funds toward purchasing the conservation easement interest, after it has been signed, POS staff drafts a purchase agreement or option agreement tailored to the situation. When fully signed, this agreement becomes binding on both parties. The agreement sets forth all of the terms and conditions associated with the project, including the required due diligence review process, inquiry into environmental hazards and other representations and warranties, and other documents necessary to accomplish the project. The agreement repeats the admonition to landowners to obtain independent legal, financial and tax advice before proceeding. The agreement also contains an updated draft of the conservation easement, which has been further tailored to the property and project. The draft agreement is reviewed and approved by the assigned Assistant County Attorney, and then it is presented to the landowner for signature, followed by routing through various County departments as described in Section IV.I.1 and finally by the County Commissioners' signatures. The County is not legally bound to undertake the project until the agreement has been signed by the Commissioners, and the Commissioners do not sign the agreement until the project has first undergone public presentations to POSAC and to the Commissioners and has received approval by the Commissioners, as described in Sections IV.G and IV.H. If Boulder County has agreed to accept a conservation easement via a land use docket, that agreement is memorialized in the docket resolution and a separate project agreement is generally not done.

D. Conservation Easement Drafting

Once the Commissioners have approved a project, POS staff revisits the latest draft of the conservation easement and refines it to ensure the conservation easement is tailored to the property and to the details of the proposed transaction and to ensure that it reflects any changes in terms required by the Commissioners. This drafting process can be short and simple or lengthy and complex, depending upon the details of the property and proposed transaction. POS staff obtains review and approval of the final conservation easement from the assigned Assistant County Attorney and the landowner in advance of closing.

E. Due Diligence Review

POS staff (land officers and paralegals) and the Assistant County Attorney work together to complete standard real estate due diligence steps for each transaction. POS staff with specific expertise in real estate transactions are responsible for the primary review, and the assigned Assistant County Attorney participates in the due diligence review process to ensure that transactions are legally sound and protect the County's interests. The principal steps include the following:

1. Title Commitment Requirements

Once the letter agreement or letter of intent has been signed, POS staff orders a title

commitment for the subject property and obtains copies of all vesting deeds and documents evidencing title exceptions. POS staff reviews the information for accuracy and applicability to the subject property and works with the title company to obtain any necessary changes. POS staff also recognizes the conditions precedent to closing and discusses them with the landowner to ensure the landowner understands the documents that must be produced at closing. POS requires the landowner to pay off any existing mortgages or to obtain subordinations from mortgagees so that the recorded conservation easement will remain on the property even if the mortgage is foreclosed. POS also requires that any other liens or encumbrances that would threaten the perpetual nature of the conservation easement are released, subordinated, or addressed in a manner so that the conservation purposes protected by the conservation easement will be preserved in perpetuity. POS also requires the title company to delete the standard mechanic's lien exception and ensure that property taxes have been paid up to the year of closing. (Since POS is only acquiring a conservation easement interest, property owners are not required to pay anticipated property taxes at closing.)

2. Mineral Rights

POS staff helps landowners understand the need for and obtain a mineral remoteness report if the project involves a donation component and the title commitment identifies mineral rights that have been severed from surface ownership. If a report does not indicate the remoteness finding required by state and federal regulations, POS encourages the landowner to reconsider the donation and re-consult with legal, financial and tax advisors before proceeding.

POS staff also reviews leases for oil and gas rights, gravel rights, and other mineral interests to be certain the County finds the condition of mineral rights ownership acceptable. POS staff uses the review processes described in the Mineral Development and Land Conservation handbook that was published by the Colorado Coalition of Land Trusts in 2008. When a property is subject to an oil and gas lease, Boulder County still prefers to protect it for open space than to decline doing so, unless the leasing rights are so extensive that little of the surface would be left intact. The County also prefers to acquire open space interests in land affected by previous gravel mining, rather than allow the land to be developed for other uses. When possible, Boulder County prefers to protect such properties after the reclamation activities have been completed.

3. Survey Requirements

Except for mountain properties where surveys are prohibitively expensive, whenever Boulder County will contribute funds to the acquisition, and on a case-by-case basis for donations, POS staff orders an ALTA survey of the subject property. POS staff

works with the landowner and surveyor to address any issues that arise, and once the survey has been finalized, POS staff provides it to the title company so that the title company is prepared to remove the standard title exception relating to ALTA surveys from the title policy to be issued following closing.

4. Phase I Environmental Hazards Assessment Requirements

For all conservation easement acquisitions, whether or not Boulder County will contribute funds to the project, POS staff orders a Phase I environmental hazards assessment of the subject property. POS staff participates in the site visit done by an environmental consultant conducting the Phase I environmental assessment when possible and works with the landowner to resolve any issues of concern. POS requires any recommendations in the Phase I report to be addressed prior to closing, or that funds be held in escrow until they are addressed to POS' satisfaction.

5. Water Rights Requirements

POS staff works with the landowner, ditch companies, and state water engineer's office to ascertain all water rights associated with a subject property. POS staff uses the review processes described in the Water Rights Handbook for Colorado Conservation Professionals that was published by the Colorado Water Trust in 2005. Boulder County requires all conservation easements to tie any water rights to the subject property for use on the property in perpetuity. The County also takes the added step of requiring private landowners to grant Boulder County an undivided percentage interest in all of the water rights. (Boulder County requires an undivided 50% interest or more when the County contributes funds to the project and an undivided 5% interest when the conservation easement is being donated. The County prefers a significant percentage interest, but accepts the smaller percentage in donation situations.) The County then ties its interest in the water rights back to the property via a restrictive covenant running with the land and water rights in perpetuity. This 'belt-and-suspenders' approach to protecting water rights enhances the assurance that they will remain available for use on the property into perpetuity.

6. TDRs

POS staff evaluates proposed transactions to identify whether or not the subject property is eligible for TDRs, depending on the amount of land, development and water rights associated with the property. The conservation easement identifies not just how many development rights are being removed from the property or retained for use on the property, but also explicitly stating that all TDRs (if any exist) that are not needed for the retained development rights are removed from the property by the conservation easement.

7. Appraisals or Other Documentation of Fair Market Value

For all easement transactions that will involve donation value, POS ensures that landowners obtain appraisals that meet the requirements of state and federal law. POS staff informs potential donors that they are responsible for ordering, obtaining and paying for a qualified appraisal from an appraiser who follows state and federal requirements in preparing appraisals of conservation easements involving potential donation value.

POS staff requires the landowner to provide POS with a copy of the appraisal or draft appraisal prior to closing. If not even a draft appraisal is available by closing but the landowner indicates a need or expectation as to a specific donation value, POS staff works with the landowner and appraiser to obtain a preliminary estimate of value. If even a preliminary estimate of value is not available, POS staff advises the landowner to consider the potential pitfalls of not knowing the estimated value before proceeding with the donation. If POS staff is concerned about the landowners' expectations being unreasonable, before accepting the donation, Boulder County will advise the landowner in writing what the County believes is reasonable and POS staff will again encourage the landowner to seek appropriate legal, financial and tax advice before proceeding. If POS staff is concerned about the estimate of value or any content of the appraisal or draft appraisal, POS staff immediately alerts the landowner and the appraiser and works with them to resolve the issue. If POS has significant concerns about any preliminary value estimates or the values contained in the appraisal or draft appraisal, Boulder County will not participate in the transaction.

POS staff obtains final, signed copies of these appraisals for POS' acquisition files and for use in conjunction with Boulder County's signing of tax forms, which is done in accordance with Section IV.C and Section V.I.4. POS staff reviews the appraisals when they are received and notifies the appraiser and landowner of any issues found during the review so the issues can be addressed well before the landowner presents tax forms to the County for signature. POS staff reviews the appraisals to ensure that the accuracy of the physical and legal description of the property, the conservation easement terms, the ownership of the property, and the intended use of the appraisal report. POS staff also reviews the appraisal to ensure that there are no significant errors affecting the credibility of the appraisal. If the appraisal is not presented to the County until the tax forms are due, POS staff works cooperatively with the appraiser and landowner to resolve any issues as quickly as possible.

For projects not involving donation value, POS commonly orders appraisals when doing a joint project with a municipality, when POS staff and the landowner cannot reach agreement on the purchase price, and when the available information does not

provide POS staff with confidence of a conservation easement's fair market value. POS staff, which has an in depth knowledge of land and water values in Boulder County, uses sales comparison information for properties with similar location, features, water rights and encumbrances. POS staff also considers the impact the proposed transaction may have in enhancing the landowner's remaining property and how that reduces the value of any donation.

For a variety of reasons, POS does not order an appraisal for every conservation easement the County will purchase. If the conservation easement will cover a house lot as a condition of the deal, the conservation easement's value may already be considered as part of the County's purchase price for acquiring fee title to the adjacent agricultural land. If the County is purchasing just the conservation easement interest, the County may have enough sales data from other independent appraisals obtained for similar transactions and from recent purchases to evaluate the fair market value of the new conservation easement project.

8. Miscellaneous Due Diligence Matters

POS staff addresses any other due diligence matters that arise during review of the foregoing documents or that relate to details contained in the purchase agreement, option agreement or letter agreement. For example, if Boulder County is selling a small parcel of land (a "BLM Sliver") that was formerly owned by the US Bureau of Land Management, POS staff follows the practices described in Appendix 14 to ensure that the BLM Sliver is tied to the buyer's adjacent land.

9. Due Diligence Issues

POS staff follows any issues that arise during the due diligence process to resolution, or final outcome if resolution cannot be achieved. Boulder County does not accept any conservation easement when issues arise during the required due diligence review process that are not resolved to the County's satisfaction.

F. Baseline Documentation Reports

Boulder County completes baseline documentation reports at the time of closing for any conservation easement transaction involving donation value. The County also completes baseline documentation reports at the time of closing for any conservation easement POS has negotiated to purchase, if the property has conservation values similar to those recognized by the State of Colorado and the Internal Revenue Service. All baseline documentation reports for new conservation easement projects contain an acknowledgment page that a POS land officer signs on Boulder County's behalf. (The County Commissioners have delegated authority for signing administrative closing documents to employees holding a land officer job classification.) POS staff also requires the landowner to sign the report at closing.

Alternatively, if the restrictions primarily restrict activities that do not relate to any natural features – for example, if the easement primarily restricts square footage allowances on a 'house lot', rather than to preserving natural features, County Assessor data and Land Use data constitute the baseline information for the project.

Boulder County generally employs one of two methods for developing baseline documentation reports. POS staff typically write the reports, or sometimes, the County hires consultants to prepare reports for properties that have significant natural resource values or seeks input from POS' natural resource staff. The reports contain photographs, aerial maps, and information gathered from the acquisition files, POS staff's knowledge of the property's natural resources, specific knowledge and expertise from the consultant and/or the department's science staff (particularly biology, plant ecology and weed management staff), and numerous layers of scientific mapping data available in ArcGIS, such as CNHP data. If an outside consultant prepares the baseline report, POS staff reviews the document to ensure that it is consistent with county policies and procedures.

Baseline documentation reports typically contain the following kinds of information:

- Landowner's name and contact information
- Property location and general description (for identification)
- Directions to the property and access instructions
- County Assessor parcel information
- Property details, geographical setting, hydrology, and geology
- Local open space planning designations
- Conservation purposes and values
- Conservation easement rights and restrictions (including a copy of the conservation easement and any amendments)
- Water rights information (if any)
- Mineral rights ownership status and past, current or future mining activity (if any)
- Hazardous materials
- Property encumbrances
- Existing structures and improvements
- Vegetation and wildlife resources
- Historic ownership and uses
- Current uses and management
- Adjacent land uses
- Management plans (NRCS plan, forest management plans, etc.)
- Owner's goals and intended future uses
- Weed management issues
- Management recommendations
- Preparation methods and authors

- Acknowledgement signatures
- Maps produced in GIS – vicinity, aerial photo, surveys, soils (for agricultural land), irrigation systems, wetlands (if any), rare plants and other important vegetation (if any), locations of buildings and other developed features, and photo points
- Photographs of the property, including mapped items and anything else that is representative of the property's baseline condition

If the baseline documentation report ever needs to be updated, POS staff documents the update in a separate document that is preserved in the conservation easement holder's records.

G. Management Plans

POS staff encourages landowners to complete management plans at closing if possible or promptly thereafter. Once the plans have been completed, landowners and a POS land officer sign them. (As previously mentioned in Section V.F, the County Commissioners have delegated authority for signing administrative closing documents to employees holding a land officer job classification.) Management plans are updated periodically, particularly when POS staff's enforcement efforts identify land management issues needing attention that are not adequately addressed in the current version of the plan.

H. Closing Documents

POS staff and the Assistant County Attorney work together and with title companies, the landowners and any involved attorneys and contractors to prepare closing documents needed for each conservation easement transaction. POS staff and the Assistant County Attorney prepare documents that the County and landowner will need to sign, such as deeds and transfer requests for the water rights, and instructions and requirements for the title company for conducting the closing, recording the conservation easement and other recordable documents immediately following closing, and issuing the final title policy immediately thereafter. (Although POS requires these steps to be taken by the title company, and the title company always agrees to accomplish them, some title companies are better than others at follow-through. POS staff must often press the title company to ensure these steps are completed, as described in Section V.I regarding post-closing matters.) POS staff prepares any TDR certificates that may be associated with the project and obtains the authorizing signature from the Director of the Land Use Department and the Chair of the Board of County Commissioners prior to closing. The title company prepares settlement statements, affidavits for deleting the standard mechanic's lien exception, and other documents required by the title company for the closing.

After the Assistant County Attorney has approved the closing documents, POS staff obtains the County Commissioners' signatures on all documents that will be recorded, and acknowledges donated value using the letter in Appendix 7 that meets the requirements of

Treasury Regulation §1.170A-13(f)(2). The POS land officer handling the deal and the Assistant County Attorney attend the closing, and the POS land officer signs the settlement statements. (As previously mentioned, the County Commissioners have delegated authority for signing administrative closing documents to employees in a land officer job class.)

I. Post-Closing Matters

POS staff works diligently to complete the following post-closing matters:

1. Closing Binder and Closing Memo

Immediately following closing, POS staff prepares a binder of all closing documents for the County Attorney's Office. The closing documents also become part of the acquisition file that is kept at POS' office. POS staff also prepares a closing memo describing the project in detail and sends the memo to all POS staff, plus staff in the County's Assessor, Clerk and Recorder, Commissioners, County Attorney, Finance, Land Use and Risk Management Departments and to the City of Boulder, since the County coordinates closely with the City of Boulder on open space projects.

2. Original Recorded Documents and Follow Up

POS staff also prepares a list of documents requiring POS follow up to ensure that they have been recorded and handled properly. The County Attorney's Office receives all original recorded documents from the Clerk and Recorder's Office, and POS receives copies for its acquisition files.

3. Title Policies

At closing, POS requires the title company to sign a form acknowledging the County's requirement that the title policy be issued immediately. Some title companies neglect at times to issue the final policy, even though they agree to do so and POS pays the policy fee at closing, so POS staff typically must persevere for months or years after closing to obtain the policy. POS staff and the Assistant County Attorney review title policies for accuracy against the instructions given to the title company at closing.

4. Tax Forms

POS staff receives and processes landowners' tax forms in accordance with state and federal law and the general practices described in Section IV.C. POS staff does not present the forms for County Commissioner signature if Boulder County has not agreed in writing to recognize donation value in the transaction. POS staff also does not present the forms for signature unless the forms have been appropriately completed, signed by the appraiser and provided to POS with all required documentation, including a copy of the final appraisal if it has not yet been presented to POS. POS staff also provides landowners of donated interests with copies of Boulder County's Colorado Form DR 1299, as required by state law CRS §§ 24-33-112

et seq. If the fair market value estimates in the appraisal do not match the values asserted on the tax forms, POS staff immediately notifies the landowner and works with the landowner to correct the forms before having them signed by the County Commissioners.

5. Water Rights Certificates

For all conservation easement transactions in which water rights ownership changes, POS staff obtains new issuances of water rights share certificates, or in the case of Northern Colorado Water Conservancy District ("NCWCD") rights, POS staff registers the transfer with NCWCD by filing a notice of lien. Obtaining new certificates can take an extremely long time, because while some ditch companies accomplish this very quickly, other ditch companies take several months or more. If a stock certificate has been lost, the process can be very lengthy, since a replacement certificate can typically only be issued after a bond is posted and a waiting period ends. POS staff perseveres, sometimes years, to obtain the new certificates. In instances in which a ditch company never issues the certificates, POS staff confirms at least that the transfer has been recorded in the ditch company's official records.

J. Safe Recordkeeping

The following project files at POS, the County Attorney's Office, and the County Clerk and Recorder's Office are separately backed up, stored and archived according to the County's records retention and storage policies, which dictate keeping the information permanently.

1. Acquisition Files

POS maintains detailed acquisition files for each transaction, which include all signed agreements, due diligence (title commitment, title exception documents, title policy, Phase I report, survey, maps, historic site survey, if any, and appraisal, if any), closing documents, finance documents, documents evidencing the public review process and formal County Commissioner approval, correspondence and background information relating to the transaction. The files are kept in POS' main file room, which is a locked location at POS' office to which only County staff has access. When a member of the public asks to view a file, Stewardship Team Members supervise the viewing to ensure the files remain intact. The Boulder County Attorney's Office receives all originals of closing documents, scans them into electronic format and creates a closing binder from printed copies. (County staff then has access to the closing binder electronically, which minimizes the need to use the hard copy files.) The originals are stored in the County vault or are archived off-site, with the exception that recorded purchase agreements are kept in safe storage in the County's Finance Department. Electronic copies of all closing documents are backed up and stored off-site, and recorded documents are also kept in separate electronic files at the County Clerk and Recorder's Office.

2. Baseline Documentation Reports

Baseline documentation reports containing the information described in Section V.F are kept in multiple locations. Hard copies are kept in POS' main file room, and separate from the acquisition files described above. A second set of hard copies are kept in a separate location with the stewardship team's "Grab-n-Go" field files described in Section VI.B.3, which are also in a locked location available only to County staff. Electronic versions of these reports, including signed acknowledgment pages, are made available to staff to minimize the need to access the hard copies.

3. Management Plans

Hard copies of management plans are kept in the stewardship team's "Grab-n-Go" field files described in Section VI.B.3, which is also a locked location available only to County staff. Electronic versions of these plans, including signatures, are made available to staff to minimize the need to access the hard copies.

VI. Conservation Easement Stewardship

A. Landowner Relationships

POS stewardship team members work hard to develop and maintain strong working relationships with owners of properties encumbered by County-held conservation easements. POS staff initiates contact with landowners and also acts as liaison for POS and other County departments with landowners who have questions about the conservation easements covering their land. In particular, POS staff helps landowners understand the land use review and approval processes landowners must complete before constructing new buildings. POS staff also assists landowners in negotiating with oil and gas companies regarding drilling operations and related issues that affect their properties.

For conservation easements that had a donation component, POS staff sends annual letters notifying the landowner of that year's impending site visit, inviting the landowner to participate in the site visit and asking landowners for any updates on their uses of the property. POS staff also sends notice letters to other landowners whose properties are scheduled for monitoring in the given year. (Please see Section VI.B.5 for an explanation of the annual and rotational monitoring schedule that POS staff uses.) These notice letters also share information about management assistance that is available, such as advice on noxious weed control, since POS has a noxious weed control team that is available to landowners who desire assistance, and encourage landowners to call the POS stewardship team with any questions. POS sends letters containing the POS stewardship team's contact information to all landowners of properties that have been newly encumbered by conservation easements. An example letter is included as Appendix 8. This facilitates interaction and helps landowners remember to check with POS regarding what uses are allowed or prohibited on their respective properties.

B. Monitoring Activities

POS fulfills Boulder County's responsibilities to monitor County-held conservation easements, and does so in the following described fashion.

1. Stewardship Team Responsibilities.

In 2012, POS has two staff members dedicated to the conservation easement stewardship team ("POS Stewardship Staff" or "Stewardship Team Members"). POS Stewardship Staff are entirely dedicated to the County's conservation easement program, but monitoring is only one aspect of their responsibilities. POS Stewardship Staff also help negotiate new conservation easement donations and acquisitions and manage follow-up duties to obtain the required water rights certificates for all conservation easement projects. Other duties assigned to POS Stewardship Staff include answering questions from the public and landowners about easement-

encumbered properties, evaluating development requests from landowners for compliance with conservation easement terms, working with municipalities on issues relating to joint conservation easement projects, addressing all suspected violations, handling amendment requests from landowners and maintaining the stewardship tracking database and stewardship files. In addition, the Real Estate Division Manager and all other Real Estate division staff members invest significant time to stewardship team responsibilities, for example, by completing new conservation easement acquisitions, handling amendment requests, consulting on monitoring issues, resolving violations, maintaining stewardship data and handling special stewardship projects.

2. Stewardship Tracking Database.

When a new conservation easement is acquired, POS Stewardship Staff enters the project into the stewardship tracking database. The general contents of the database are described in Appendix 9. POS Stewardship Staff uses this database to track and report on all of POS' activities related to managing the County's conservation easements.

3. Stewardship "Grab-n-Go" Field Files.

POS Stewardship Staff maintains a field stewardship file for each conservation easement property that can be used on a moment's notice to answer questions or monitor a particular easement (hence, Stewardship Team Members refer to them as "Grab-n-Go" files). These Grab-n-Go files contain the following items:

- Conservation easement and any amendments
- Baseline documentation report (if applicable; see Section V.F)
- Water rights information (if any)
- Management plan
- Landowner contact information
- County Assessor parcel information
- POS correspondences regarding easement stewardship
- Land Use decisions on regulatory land use applications and associated County Commissioner resolutions (if any)
- Violation issues (if any) and their resolution
- Monitoring reports
- Aerial photographs
- Vicinity and property maps produced in GIS
- Plat maps (if applicable)
- Any other information POS Stewardship Staff deems helpful for monitoring

4. Site Visits.

POS Stewardship Staff conducts detailed monitoring visits of all properties encumbered by County-held conservation easements. POS Stewardship Staff uses a variety of equipment, including Grab-n-Go files, digital cameras, binoculars, and global positioning system ("GPS") units to identify property boundaries and photo points. POS has advanced GPS units that allow POS Stewardship Staff to use aerial photography and GIS data to identify on-the-ground locations. POS Stewardship Staff uses radios for safety in remote areas. Boulder County holds a few conservation easements over mining claims that are in very steep and rugged terrain that is difficult to access, so POS Stewardship Staff monitors those properties by using aerial photographs and by viewing them from as close a location as possible where staff can get a view of the property. The County also holds a few conservation easements that do not give the County a legal right of access to the property, but these are commonly adjacent to County-owned property, so POS Stewardship Staff monitors those properties from the neighboring County-owned property and from public roads.

5. Annual and Rotational Schedules.

POS' Stewardship Staff monitor an average of 250 conservation easement properties each year, which completes core monitoring duties and leaves time for staff's other duties described above. As required by CRS §§ 24-33-112(1)(d)(II), POS Stewardship Staff conducts annual monitoring visits to all properties involving a donation component to the conservation easement transaction. POS Stewardship Staff also conducts annual monitoring visits to properties that involved grant funding if annual monitoring was a condition of the grant. For all other County-held conservation easements, POS Stewardship Staff conducts monitoring visits on a rotational schedule. The rotational schedule is revised as needed to monitor properties immediately when enforcement issues arise. This rotational schedule provides adequate monitoring of conservation easements acquired by regulatory means or by full purchase with Sales Taxes or General Fund money, particularly since POS staff also reviews referral packages that arise periodically from Land Use applications made by landowners of easement-encumbered properties. This rotational schedule complies with state law, since CRS §§ 24-33-112(1)(d)(II) only requires annual monitoring of easements that have a donation component.

6. Beneficial Use of Water Rights

POS Stewardship Staff evaluates each property during the monitoring visit to ensure that water rights are being put to beneficial use on the property. In addition to that regular on-the-ground monitoring, POS has strong working relationships with all ditch companies operating in Boulder County. Boulder County holds significant water rights that afford the County the ability to interact with the ditch companies

whenever issues arise with respect to the ownership and use of water rights on open space properties the County owns in fee and on properties encumbered by County-held conservation easements. POS staff members attend ditch company meetings and serve on ditch company boards as Boulder County's representatives. POS also has a water resource specialist whose job includes identifying and resolving issues concerning the County's water rights by monitoring state reports and ditch company reports about water rights usage, maintaining working relationships with ditch companies, district water commissioners and the state engineer, and notifying other POS staff if an issue arises (such as nonpayment of assessments or lack of usage), including the POS stewardship team if the property involved is encumbered by a County-held conservation easement. If the landowner is not paying assessments, if it appears that water rights are not being used, or if POS learns of any potential abandonment issue, POS Stewardship Staff works with the landowner to address the issue immediately. POS works with the assigned Assistant County Attorney to pursue legal action as needed to preserve the affected water rights for continued use on the encumbered property.

7. Oil and Gas Activities.

POS Stewardship Staff regularly researches the Colorado Oil and Gas Conservation Commission's website for any new pending permit applications for properties encumbered by County-held conservation easements. If a new pending permit application is identified, POS Stewardship Staff contacts the landowner to help the landowner determine whether or not the production company has the legal rights to do what it is proposing and involve the County in any negotiations for surface use agreements, so that any new oil and gas activity on the property is compliant with the conservation easement's terms.

8. Monitoring Reports.

POS Stewardship Staff prepares a written report for every monitoring visit to a conservation easement property. The report contains information about the property visited, who conducted the visit, who else participated, what landowner notice was required and given, concerns or issues that arose before or during the visit and how they were handled, changes the landowner foresees and/or that the POS staff person observed since the previous site visit, wildlife observed, whether or not water rights exist and are being put to beneficial use, whether or not an NRCS plan exists and is being followed, current uses of the property, adjacent property issues (if any), property condition, an aerial map of the property and photo points, photographs taken during the visit, and notes of any follow-up needed. The preparer then prints the report and provides the hard copy to the Real Estate Division Manager or other qualified designee, such as the other POS Stewardship Staff member, for review, comment and signature. The assigned POS Stewardship Staff person also enters notes

into the stewardship tracking database, follows up as needed to resolve issues, and archives the monitoring report and photographs.

9. Land Use Referrals

Boulder County Land Use staff refers land use applications to the POS Stewardship Staff if the matter involves a property encumbered by a County-held conservation easement. Applications and dockets include site plan review applications for new homes, additions or outbuildings, replat and exemption plat dockets that propose moving property boundaries, applications from oil and gas companies for new drilling permits, applications from water districts for new pipelines, etc. POS Stewardship Staff reviews each application for compliance with the terms of the conservation easement and replies formally back to Land Use staff with a 'referral response'. Land Use staff then ensures that any approval of the application remains compliant with the conservation easement. If an application is not compliant with the conservation easement, it is denied or put on hold to give the applicant the opportunity to attempt to resolve the issue with POS. As further described below, POS follows the practices outlined in Appendix 11 to evaluate amendment requests.

C. Conservation Easements Over Properties Owned by Boulder County

POS generally does not monitor conservation easements that Boulder County has granted to third parties over properties the County owns in fee. The third party is typically a municipality, and it is that third party's responsibility to monitor the property for compliance with the conservation easement. Properties covered by grant-funded conservation easements are an exception, and in those cases, Boulder County typically monitors its own activities annually (or as required by the funder) and the third party monitors periodically, but not annually. For example, the third party may monitor the property every third year.

Boulder County manages these properties for public use, for leasing to an agricultural producer, or as wildlife habitat that is not open to the public. POS Stewardship Team Members do, however, manage any issues relating to these conservation easements, such as amendment issues or third-party right-of-way requests. POS uses the same practices when evaluating these issues as it does when the County holds the conservation easement, because the preservation of County-owned fee properties is equally important to Boulder County's open space program.

D. Enforcement and Violations

Boulder County has significant resources available to it to enforce County-held conservation easements. POS Stewardship Staff first works diligently with landowners to resolve issues in a mutually agreeable fashion by following the practices outlined in Appendix 10. If that is not possible, POS Stewardship Staff refers the violation issue to the Assistant County

Attorney, who pursues the matter, and if necessary, pursues resolution through litigation.

For conservation easement violations that also violate the Code, POS Stewardship Staff refers the matter to Land Use staff, who seeks to enforce the Code and rectify the violation, and if necessary, refers the matter to the Assistant County Attorney assigned to enforce Code violations, who similarly pursues resolution of the issue through litigation.

E. Amendments

When considering requests from landowners to amend the terms of conservation easements, POS follows the specific practices outlined in Appendix 11. These practices are designed to maintain Boulder County's conservation interests in the property and to avoid giving private benefit or private inurement to the landowner or third parties. Additionally, POS Stewardship Staff collaborates with Land Use staff to ensure that a proposed amendment would not violate County land use regulations, and in some situations, a Land Use process is also required before a conservation easement can be amended. For example, an amendment that changes the size of an NUPUD outlot covered by a conservation easement requires approval through a replat or an exemption plat process. POS also adheres to the practices outlined in Appendix 12, which explain that Boulder County will not add units of density to properties except in very limited circumstances, and in those instances, the County requires monetary compensation from the landowner for the diminution in the fair market value of the County's conservation easement interest caused by any increase in density allowed.

F. New Easement Requests

POS follows a specific policy when considering requests to allow access easements over properties encumbered by County-held conservation easements. The policy and practices are outlined in Appendix 13. The policy is designed to maintain Boulder County's interest in the property, and to avoid giving private benefit or private inurement to the landowner or third parties. The policy and practices incorporate the same factors of consideration that POS considers for requests to amend conservation easements, plus factors that evaluate whether the County's consent is required before the new requested easement can be granted and how much of the landowners' compensation, if any, the County is entitled to receive. (Boulder County requires compensation in situations where the new requested easement would devalue the County's conservation easement interest in the property.)

G. Assignments

In some instances when municipalities in Boulder County assist the County in acquiring conservation easement interests, Boulder County may assign part of its holding interest to partner municipalities. These situations, which occur fairly rarely, are negotiated at the time the transaction occurs, but the assignments themselves may not occur until the partner municipality has completed its financial contributions to the project.

If the need arose for the County to own the underlying fee simple interest in a property, Boulder County would first assign away its conservation easement interest to a qualified organization. Very few properties encumbered by County-held conservation easements are of a size and kind that Boulder County would be interested in owning as fee open space land, so the County seldom experiences an assignment situation.

Since Boulder County is a governmental subdivision, it does not anticipate needing to assign its conservation easement interests to a third party for a 'going-out-of-business' event. If that were to occur, or if the County were to decide to divest itself of its conservation easement interests, the County would work cooperatively with municipal open space programs in Boulder County to determine which conservation easement interests should be held by which municipality. Assignment decisions will be deferred until the need arises, so that IGAs can be developed that would encompass all of the County's current open space holdings at the time. This plan is favorable over the idea of developing IGAs now that would require amendment later and that could erroneously be interpreted to mean that Boulder County is not committed to its open space program. Nearly every municipality in Boulder County has an active open space program or the beginnings of an open space program with current open space holdings, so if Boulder County were to need to assign away its conservation easement interests, the likelihood of those interests continuing into perpetuity is very strong.

H. Safe Recordkeeping

The following stewardship files are separately backed up, stored and archived according to Boulder County's records retention and storage policies for each department involved in generating the records. The County's policies dictate keeping the information permanently.

1. Recorded Amendment Documents

The Boulder County Attorney's Office receives all originals of amendment documents. The originals are stored in a County vault or are archived off-site, and the electronic copies are backed up and stored off-site. All recorded documents are also kept in separate electronic files at the County Clerk and Recorder's Office. The County Attorney's Office adds copies to the original acquisition closing binder and the County's acquisition files. These amendment documents are also made available to staff electronically to minimize the need to access the hard copies.

2. Grab-n-Go Files

The stewardship team's "Grab-n-Go" field files described in Section VI.B.3 are kept in multiple locations. Hard copies are kept in the Stewardship Team's work area, which is locked and available only to County staff. When a member of the public asks to view a file, Stewardship Team Members supervise the viewing to ensure the files remain intact. The safety of these "Grab-n-Go" files is enhanced by the fact that the files are not used by anyone outside of the stewardship team. Electronic copies of

their contents are available to staff, minimizing the need to use the hard copy files.

VII. Dispositions of Land

The following disposition processes apply primarily to fee interests, but the Sales Tax language requirements would also apply to any disposition of conservation easement interests acquired with Sales Tax. Except for situations involving eminent domain by an entity whose condemnation authority overrides Boulder County's conservation easement interest (e.g., for widening roads), Boulder County has never disposed of a conservation easement acquired with Sales Tax and does not foresee doing so.

Once an open space interest in land has been acquired, Boulder County undergoes a specified public process before the County can sell, transfer or dispose of that asset. POS staff follows the criteria and process outlined in Appendix 14 when considering potential dispositions. The process includes public meetings before POSAC and the County Commissioners in accordance with Sections IV.G and IV.H, and also includes prior written notice to all adjacent landowners so their input regarding the transaction can be solicited before the public meetings occur. In addition, if the open space land was acquired with Sales Tax, the Sales Tax language requires notice to be published in the official newspaper of the County and of each city and incorporated town within Boulder County. The notice must be published at least 10 days in advance of the public hearing and a 60-day waiting period after County Commissioner approval before the sale, transfer or disposal can occur. In accordance with the Sales Tax language, proceeds from the sale, transfer or disposal must be used on future open space acquisitions. POS staff performs additional steps for small parcels of land formerly owned by the BLM ("BLM Slivers") to ensure the BLM Slivers are tied to the buyer's adjacent land, and those steps are also included in Appendix 14.

Boulder County undertakes this process very infrequently and only after careful consideration of the potential detriment and benefits to fulfilling the County's open space goals. Examples of when the County might undertake this process are:

- Condemnation events involving eminent domain, such as when the State of Colorado may require additional road right-of-way to widen a state highway. In these instances, the County does not receive a conservation easement over the property taken. The County invests the proceeds from these events in other open space acquisitions.

- Properties with open space values that the County believes would be better managed by a private landowner. In these instances, the County sells the property to the landowner for fair market value, subject to a conservation easement that the County retains over the property.

Appendix 1 –
Comprehensive Plan Elements

The following list of goals specifically support Boulder County's conservation easement program. Additional goals in the County's comprehensive plan apply, but more indirectly.

Capitalized terms below are defined in the Comprehensive Plan itself.

Comprehensive Plan Elements	
Open Space	
2.01	The county shall identify and work to assure the preservation of Environmental Conservation Areas, critical wildlife habitats and corridors, Natural Areas, Natural Landmarks, significant areas identified by [the] Boulder Valley Natural Ecosystems Map, historic and significant archaeological sites, and significant agricultural land.
2.02	Significant natural communities, rare plant sites, wetlands, and other important stands of vegetation, such as willow carrs, should be conserved and preserved.
3.01	Where necessary to protect water resources and/or riparian habitat the county shall ensure, to the extent possible, that areas adjacent to water bodies, functional irrigation ditches and natural water course areas shall remain free from development (except designated aggregate resource areas). The county may preserve these open corridor areas by means of appropriate dedication during the development process, reasonable conditions imposed through the development process, or by acquisition.
3.02	Where appropriate the county shall continue to acquire parcels of land or right-of-way easements to provide linkages between public lands.
3.03	To the extent possible, the county shall protect scenic corridors along highways and mountain road systems. The county may preserve these scenic corridor areas by means of appropriate dedication during the development process, reasonable conditions imposed through the development process or, by acquisition.
3.04	Areas that are considered as valuable scenic vistas and Natural Landmarks shall be preserved as much as possible in their natural state.
5.01	Boulder County shall, in consultation with affected municipalities, utilize open space to physically buffer Community Service Areas, for the purpose of ensuring community identity and preventing urban sprawl.
5.02	The county shall utilize Intergovernmental Agreements with one or more municipalities to encourage the preservation of open space lands and the protection of the rural and open character of the unincorporated parts of Boulder County.

5.03	The county shall encourage use of Transfer of Development Rights (TDR) to preserve and protect rural character, open space, scenic features, and environmental resources.
5.04	The county shall use its open space acquisition program to preserve agricultural lands of local, statewide, and national importance. Where possible, purchase of conservation easements, purchase of development rights, or lease-back arrangements should be used to encourage family farm operations.
Agriculture	
1.01	It is the policy of Boulder County to promote and support the preservation of agricultural lands and activities within the unincorporated areas of the county, and to make that position known to all citizens currently living in or intending to move into the area.
1.02.01	In instances where the county desires to purchase an interest as a means of protecting lands which have agriculture as their primary value, the purchase of development rights shall be preferred over fee simple purchase; however, the county should be willing to pursue other types of purchase arrangements when preferred by the landowner.
1.03	It is the policy of Boulder County to encourage the preservation and utilization of those lands identified in the Agricultural Element as Agricultural Lands of National, Statewide or Local Importance and other agricultural lands for agricultural or rural uses. The *Boulder County Comprehensive Plan Agricultural Element Ma*p shall include such lands located outside of the boundaries of any municipality or the Niwot Community Service Area.
1.11	The county shall encourage that water rights historically used for agricultural production remain attached to irrigable lands and shall encourage the preservation of historic ditch systems.
1.12	The county shall continue to discourage the fragmentation of large parcels of agricultural land and to encourage the assemblage of smaller parcels into larger, more manageable and productive tracts.
Cultural Resources	
1.02	Significant archaeological and historic sites and structures acquired by the county both in unincorporated and incorporated areas, shall be documented, protected, preserved, and where appropriate, restored.
Environmental Resources	
1.03	Acknowledging our responsibility to ensure that naturally occurring ecosystems and their native species populations continue to exist and flourish in Boulder County, Boulder County will develop conservation and recovery plans for priority Species of Special Concern.
1.04	Scenic vistas shall be preserved as much as possible in their natural state.

1.06	Boulder County shall work in partnership with private land owners and nongovernmental organizations to protect, conserve, and restore designated environmental resources using a variety of tools.
1.07	Boulder County shall use its open space program as one means of achieving its goals for protecting environmental resources.
1.08	Boulder County shall encourage all private landowners to seek assistance from appropriate governmental and non-governmental entities to protect Boulder County's environmental resources.
3.02	Boulder County shall encourage the removal of development rights from ECAs through transfer, donation, acquisition, trade, or other incentives.
3.05	Boulder County shall encourage and participate with the appropriate public entities and private land owners in the development of coordinated management plans to conserve, preserve and restore the environmental resource values of ECAs.
4.03	Boulder County shall coordinate with local, state, and federal agencies and municipalities, as well as with willing private landowners, to protect natural resource values within Natural Landmarks and Natural Areas. This may include: identification of specific resources of concern including scenic values; recommendations for long-term management; mitigation of existing or foreseen impacts; or protection through acquisition of land interest.
Sustainability	
Goal 6	The preservation and viability of the increasingly precious resources of open and rural lands, whether devoted to agriculture, forestry, open space, or plant and wildlife habitat, as well as the sustainability of uses the provide for the long-term preservation of such lands, should be fostered and promoted through innovative regulatory and acquisition programs, public-private partnerships, and public education, outreach and participation.
Goal 10	The county's rich and varied natural features, scenic vistas, ecosystems, and biodiversity should be protected from further intrusion, disruption, consumption and fragmentation.
Policy A(1)	A new voluntary transferable development rights (TDR) program for unincorporated properties, including those located in unincorporated mountainous (forestry zoned) portion of the county, may be developed and included into the Boulder County Land Use Code. The program may consider the use of tractions of TDRs to achieve the goals of the Boulder County Comprehensive Plan.
Policy A(2)	This TDR program should consider facilitating the attainment of any or all of the following objectives: • Preserving vacant lands identified in the Comprehensive Plan as having

	significant environmental, agricultural, visual or cultural values; • Maintaining the character of established rural communities; • Avoiding or reducing the fragmentation and disturbance of important ecological and environmental areas including but not limited to significant plant and wildlife habitats, wetlands and riparian areas, and Environmental Conservation Areas; • Avoiding development in hazardous areas; • Providing incentives for the promotion and retention of a diverse housing stock; • Protecting and securing scenic corridors and vistas; • Promoting the county's goals of achieving sustainable land uses and reducing the impacts of the built environment; and • Encouraging the voluntary participation of landowners.
Policy A(3)	The TDR regulations should be crafted with a focus on preserving vacant, rural, and environmentally sensitive lands, mitigating the impacts of the built environment, and providing incentives to property owners to participate in the program.
Policy A(6)	TDR incentives for landowners to voluntarily build smaller, lightly impacting homes or structures on vacant lands should be considered as part of the countywide TDR program.
Policy A(9)	In establishing this new TDR program, the county, through an open public process, will develop criteria for establishing sending and receiving sites. Criteria for making such determinations may be incorporated into the Land Use Code and should take into consideration the following attributes: • Status as a legal building parcel • Physical characteristics and constraints of the property • Status as a platted subdivision lot • The presence of resources, values or features designated through the Boulder County Comprehensive Plan on the property • Location as an enclave within or adjacent to the BCCP-designation Environmental Conservation Areas, United States Forest Service or other publicly held lands, or land with a conservation easement protecting them from further development • Legal access to the property • Location of the property with respect to existing development, including location in an existing rural community or platted subdivision
Policy A(10)	The county should continue to engage in conversations with its municipalities about their continuing and expanded participation in the county's TDR programs through consideration of options such as a) designating additional potential

receiving sites; b) requiring a TDR component for new residential or other development within existing corporate limits or on lands proposed for annexation; c) providing additional county TDR bonuses to landowners who sell their TDRs to developments within municipalities or on municipally-designated receiving sites; or d) in other ways that further both the county's and municipalities' interests in maintaining a distinct difference between municipal and rural areas.

Appendix 2 –
Conservation Easement Forms

Boulder County periodically updates the forms in this Appendix and reserves the right to do so with each transaction. Boulder County selects which form is appropriate to use, in the county's sole discretion, and tailors the form to the subject property and obtains legal review of the draft before sending it to the landowner for review. For example, whenever there is donation value or grant funding, the long-form conservation easement is used because the short-form does not meet local, state and federal requirements.

DEED OF CONSERVATION EASEMENT IN GROSS

THIS DEED OF CONSERVATION EASEMENT IN GROSS ("Easement") is entered into this _____ day of _____, 20___, by and between _____ ("Grantor"), and the County of Boulder, a body corporate and politic ("Grantee") (collectively, the "Parties").

RECITALS

A. Grantor is the sole owner of approximately ____ acres of land in Boulder County, Colorado legally described on Exhibit 1 and generally depicted on the map attached hereto as Exhibit 2 (the "Land"). **If applicable:*[Grantor also holds an undivided _____ percent (___%) interest in: _____ shares of the _____ Ditch Company] [**be sure you list the name as it's listed on the water certificate itself, e.g., some ditch companies have _____ "Ditch and Reservoir Company" as their name**] and solely owns **Or if applicable*: [owns an undivided _____ percent (___%) interest in: **List other named water rights*], along with any and all other water and water rights, ditches and ditch rights, reservoirs and reservoir rights, ponds and pond rights, springs and spring rights, wells and well rights, underground water rights, both tributary and non-tributary (including any and all inchoate non-tributary groundwater rights), whether decreed or not, on, underlying, appurtenant to or at any time used on or in connection with the Land (the "Water Rights"), which are necessary for protecting the conservation values of the Land.*] Grantor is conveying this Easement over and across the Land *[add if applicable: and Water Rights, which are collectively referred to herein as the "Property"].

**Add this paragraph if you're doing an amended and restated CE, and also change the title of the document and the name of the document in the first paragraph accordingly, and renumber the remaining recitals.*

B. This Easement shall supersede and replace in its entirety that certain Deed of Conservation Easement in Gross (the "Original Conservation Easement") that encumbers the Property and that is recorded in the real estate records of Boulder County, Colorado, on _____, at Reception #_____, except that the effective date of the Original Conservation Easement shall remain in full force and effect.

**Complete this paragraph with whatever details suit the subject property. Describe the property generally but completely:*

B. The Property is primarily *[*open ranchland, crop land, etc.*] that is used to *[*grow hay, alfalfa, and row crops*]. *[Or if mountain property not used for any agriculture, substitute: contains ***[**e.g., pine forests on moderate south-facing slope, a basic description of what kinds of habitat are found there – try to make this paragraph with whatever details suit the subject property. Describe the property generally but completely.] The Property is an important part of the productive agricultural *[Or if mountain property not used for any agriculture, substitute: mountain] land *[Add if appropriate: and remaining wildlife habitat for [**List species**] in Boulder County and along the Front Range. The Property contains outstanding natural resources, including these plant communities: [**List species**]. *[Add if agricultural land: The Property also contains approximately _____ acres of *[irrigated crop] land containing high quality,

productive soils and ____ acres of *[*describe habitat, e.g. meadow/sagebrush ecotone and dry upland sagebrush*] containing outstanding natural resources. *[The United States Department of Agriculture's Natural Resources Conservation Service ("NRCS") has designated approximately ____ acres of the Property's soils as being Prime Farmland, approximately ____ acres as being Farmland of Unique Farmland, and approximately _____ acres as being Farmland *[or Ranchland] of State and Local Importance.] **ALSO ADD these sentences if appropriate:* *[The Property's upland *[Or if mountain property not used for any agriculture, substitute: meadow] areas provide seasonal dryland *[Or if mountain property not used for any agriculture, substitute: natural] pasture that provides significant feed and winter range resources for agricultural activities *[Or if mountain property not used for any agriculture, substitute: wildlife] in Boulder County.] *[Add if appropriate: The Property has been a family *[farm] **Or* [ranch] for more than ___ years and plays an important role in the agricultural history and culture of Boulder County, Colorado.] These features and the significant natural, environmental, *[Add if appropriate: agricultural,] scenic, open space and wildlife habitat attributes of the Property constitute the Property's primary conservation values (the "Conservation Values").

C. This Easement has multiple purposes, including preserving and protecting the Property's significant open space values due to its wildlife habitat *[Add if appropriate: and agricultural farmland attributes, continuing the Property's agricultural use], protecting its water resources, [**Include if the property contains agricultural uses: agricultural resources,**] and preserving and protecting the Property's open space values for scenic enjoyment by the public and the grant of this Easement is being made pursuant to clearly delineated government conservation policies that yield a significant public benefit. This Easement has the following primary conservation purposes ("Conservation Purposes"):

**Delete only the subparagraphs below that are not applicable for the subject property, and modify the remaining subparagraphs to tailor them - in detail - for the subject property. Not all of the 4 main categories or multiple subcategories will apply to every property. Note that some of this language is convoluted (especially in the historic category #4), but it's straight from the Treasury Regulations, so modify only the details and not the underlying language or sentence structure. Also leave in the Treasury Reg. references within the paragraphs that apply to the subject property even if the CE is not being donated or bargain sold, for program consistency and also because those regulations are solid supports for the County's open space program and strong reasons for doing the CE.*

1. Outdoor Recreation or Public Education. This Easement preserves land areas for outdoor recreation by, or the education of, the general public and is consistent with Treasury Regulations §1.170A-14(d)(1)(i) and §1.170A-14(d)(2).

2. Relatively Natural Habitat. This Easement preserves land areas for relatively natural habitat and is consistent with Treasury Regulations §1.170A-14(d)(1)(ii) and §1.170A-14(d)(3), because:

a. The property includes relatively natural habitat and its conservation will protect local and regionally significant terrestrial natural communities. The Property's [**include what is applicable: irrigated pastures, OR meadows,] drainages and natural areas contribute to the ecological viability of nearby protected lands.

b. **If Reservoir/Ditch/Creek*: [The _____ Reservoir/Ditch/Creek and its surrounding banks and riparian habitat have ecological importance as wildlife and fisheries habitat for **Describe details that are applicable to the Property, e.g.* [aquatic and terrestrial wildlife species, including small mammals, migratory waterfowl, and resident birds, and also serves as a nesting, roosting and feeding area for bald eagles, osprey and other raptors.]

c. Protecting the Property from *[additional] development will keep the Property in a relatively natural condition; whereas, development of the Property in excess of that permitted by this Easement would have an adverse effect on the Property's Conservation Values and the ecology of the area.

3. Open Space. This Easement preserves open space pursuant to a clearly delineated federal, state, or local governmental policy, or for the scenic enjoyment of the general public and yields a significant public benefit, and so is consistent with Treasury Regulations §1.170A-14(d)(1)(iii) and §1.170A-14(d)(4), because:

a. Scenic Public Enjoyment. The Property is prominently visible from, and provides scenic enjoyment to the general public from, *[*Colorado State Highway __/ Boulder County Road __,/ the adjacent _____ Boulder County open space/ _____ city open space/ _____ federal land*]. **If applicable:* [With the recording of this Easement, the Property and all adjacent open space together constitute _____ acres of contiguous *[*agricultural land, open space, and wildlife habitat*]. The Property and these other agricultural and open lands together give the immediate area its high-quality scenic, *[Include if the Property contains agricultural features: pastoral,*] and open character.

b. Clearly Delineated Government Policies.

i. As set forth in the Boulder County Comprehensive Plan adopted by Grantee ("Comprehensive Plan"), the Property is within the *[____ *Environmental Conservation Area, etc., as applicable*]. The Comprehensive Plan declares that it is the policy of Boulder County to encourage preservation of land *[Include if the Property contains agricultural features: for agricultural uses*] to protect its open space character, wildlife habitat and scenic qualities. Boulder County recognizes the public benefit to be served by such preservation, as described in the Comprehensive Plan, which defines functions of open space to include: urban shaping between or around municipalities or community service areas, and buffer zones between residential and non-residential development; preservation of critical ecosystems, natural areas, scenic vistas and areas, fish and wildlife habitats, natural resources and landmarks, outdoor recreation areas, cultural, historical and archaeological areas, linkages and trails, access to public lakes, streams and other useable open space lands, and scenic and stream or highway corridors; conservation of natural resources, including, but not limited to forest lands, range lands, agricultural lands, aquifer recharge areas, and surface water; and protection of designated areas of environmental concern. In addition,

the Comprehensive Plan contains specific sections on environmental resources, open space, agricultural lands, and historic and cultural resources that define specific policies to protect open space in Boulder County.

ii. As set forth in the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement ("Super IGA"), to which Grantee is a party, it is the policy of Boulder County to protect the environment, preserve the rural character of Boulder County, and minimize the negative impacts of development on areas surrounding the municipalities in Boulder County. **Use the next 2 sentences for properties in a rural preservation area.* The Super IGA designates Rural Preservation Areas that contain *[Include if the Property contains agricultural features: significant agricultural land and other*] land suitable for protection as open space or as community buffers. The Property is designated as being within a *[Rural Preservation Area, or within a Municipal Influence Area (if within a municipal influence area, be sure that the municipality is OK with us accepting a CE and hopefully add some language about their approval, etc.*] under the terms of the Super IGA. **For properties within a municipal influence area, use this language and delete all of the foregoing language in this paragraph.* [The *[City of Longmont, Town of Erie, etc.] has agreed with Grantee that the purposes of protecting the Property as open space are important to its citizens and has granted approval for Grantee to acquire this Easement.]

[Delete this subparagraph if the Property contains no agricultural uses or features:]

iii. The Property is assessed for local property tax purposes as agricultural land due to its history of being used for hay, pasture and cattle production], and the State of Colorado recognizes the importance of preserving lands in agricultural uses by mandating a lower assessed valuation for agricultural lands in Colorado, pursuant to Colorado Revised Statutes §§ 39-1-101, et seq.

iv. Colorado Revised Statutes §§ 38-30.5-101, et seq., provide for the establishment of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, *[Include if the Property contains agricultural features: or for agricultural *]. . . or other use or condition consistent with the protection of open land, environmental quality or life-sustaining ecological diversity."

[Delete this subparagraph if the Property contains no agricultural uses or features:]

v. The statutes governing the Colorado Department of Agriculture (C.R.S. §§ 35-1-101 et seq.) support the purposes of this Easement by providing, in part, that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products."

vi. The statutes governing the Colorado Division of Wildlife and Colorado Parks and Outdoor Recreation (Colorado Revised Statutes §§ 33-1-101 et seq.) provide that "it is the policy of the State of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors," and that "it is the policy of the state of Colorado that the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors of this state."

[Delete this subparagraph if the Property contains no agricultural uses or features:]

vii. The Conservation Purposes of this Easement are recognized by the NRCS' Agricultural Conservation Easement Program outlined in Title II, Subtitle D, Section 2301 of the Agricultural Act of 2014, Public Law 113-79, 16 USC § 3835, and 7 CFR Part 1468, et seq., authorizes the Agricultural Conservation Easement Program under which the Secretary of Agriculture, acting through the NRCS on behalf of the Commodity Credit Corporation, facilitates and provides funding for the purchase of conservation easements the purpose of which is "protect the agricultural use and future viability, and related conservation values, of eligible land by limiting nonagricultural uses of that land."

4. Historic Land or Structure. This Easement preserves a historically important land area **AND/OR* [a certified historic structure] and is consistent with Treasury Regulations §1.170A-14(d)(1)(iv) and §1.170A-14(d)(5), because:

**Always use this subparagraph a for a donation on the basis of historic land or a historic structure, or stop the deal entirely if you have already deleted the other three conservation values in this Recital, because if this paragraph does not apply to the situation, a donation solely for this purpose won't qualify for tax benefits*.

a. Public Enjoyment. The Property **Add if any historic structures:* [and its historic structure(s)] *is/are **pick and complete one of these clauses:* [visible to the general public from Colorado State Highway ___/Boulder County Road ___,] **Or* [not visible to the general public from a public way, but this Easement gives the general public regular opportunities to view the Property's historic characteristics and features, as described herein].

**Include this subparagraph b only if it applies*:

b. Significant Land Area. The Property contains an independently significant land area that includes related historic resources that meet the National Register Criteria for Evaluation in 36 CFR 60.4 (Pub. L. 89-665, 80 Stat. 915).

**Include this subparagraph c only if one of the sentences applies:*

c. Registered Historic District. The Property contains land within a registered historic district **ADD if applicable*: [and buildings that can reasonably be considered as contributing to the significance of the district]. **OR use this sentence instead*: [The

Property contains land, including related historic resources, adjacent to a property listed individually in the National Register of Historic Places, but not within a registered historic district, and the physical and environmental features of the land contribute to the historic and cultural integrity of the Property.]

**Use this subparagraph d only if the property contains an historic building, structure or land area – the Treasury Regulations' inclusion of "land area" here is presumably for land areas that don't meet the requirements of subparagraph b (i.e., lands that are independently significant), and which are similar to one of the subparagraph c criteria (i.e., within a registered historic district), but that are also certified by the Sec/Interior:*

d. The Property contains a building, structure or land area which is listed in the National Register or which is located in a registered historic district and is certified by the Secretary of the Interior (pursuant to 36 CFR 67.4) to the Secretary of the Treasury as being of historic significance to the district.

D. The Property's significant Conservation Values, *[Include if the Property contains agricultural features: agricultural attributes, present and continued agricultural use,] open space, wildlife habitat and scenic values **Add if appropriate:* [, historical, outdoor environmental education and/or low-impact, passive recreational values] and this Easement's Conservation Purposes described above are of great importance to Grantor and Grantee, provide significant public benefit to the people of Boulder County and of the State of Colorado, and are worthy of preservation.

E. The current use of the Property is for **Describe current uses* [agriculture, wildlife habitat and open space purposes]. Grantor desires to continue responsible agricultural practices and use the Property in such a manner that protects the Property's Conservation Values.

F. Grantor and Grantee intend to preserve the Property in its present form and prevent development of the Property**Add if the CE allows any more/new development:* [, except as provided for in this Easement]. Grantor and Grantee further intend to confine uses of the Property to activities that are consistent with the purposes of this Easement and to prohibit and prevent any uses of the Property that would substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values, or that otherwise would be inconsistent with the purposes of this Easement.

G. This Easement's Conservation Purposes are intended to be consistent with C.R.S. §§ 38-30.5-101, et seq., which provide for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado, and Grantee is a governmental entity statutorily authorized to be a grantee of conservation easements, as set forth in C.R.S. §§ 38-30.5-104(2).

**Include this recital H if the CE involves donated value and a potential claim for a state tax credit and/or a federal tax deduction.*

H. This Easement's Conservation Purposes are intended to be consistent with § 170(h) of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury regulations adopted pursuant

thereto (the "IRS Code"), and Grantee is a "qualified organization" as defined under subparagraph (3) of said section.

I. Grantor desires to *[sell] **Or, if a full donation:* [donate] a conservation easement interest in the Property to Grantee, along with the right to preserve and protect the Property and its Conservation Values in perpetuity **Add if a bargain sale project*: [for a bargain sale price]. **If CE involves donated value:* [Grantor intends for this **Add if a bargain sale project:* [partial] donation to qualify as a charitable gift under the IRS Code and C.R.S. §§ 38-30.5-101, et seq.] **If doing an amended and restated CE, use this sentence instead:* **[**Grantor desires to grant and convey to Grantee an amended and restated conservation easement interest in the Property to Grantee, along with the right to preserve and protect the Property and its Conservation Values in perpetuity.]

J. Grantee desires to *[purchase] **Or* [purchase for a bargain sale price] **Or* [accept the donation of] *Or [accept] a conservation easement interest in the Property from Grantor to ensure preservation and protection of the Property and its Conservation Values in perpetuity for the agricultural uses, environmental conservation, open space, wildlife habitat and scenic values they serve. **If CE involves donated value, add:* [By accepting this Easement, Grantee agrees to honor Grantor's intentions stated herein and to preserve and protect the Property and its Conservation Values in perpetuity for the benefit of current and future generations.] **If doing an amended and restated CE, start the paragraph with this lead-in clause instead:* Grantee desires to accept an amended conservation easement interest in the Property to ensure preservation and protection of the Property and its Conservation Values in perpetuity for the agricultural uses, environmental conservation, open space, wildlife habitat and scenic values they serve.]

K. Grantor and Grantee acknowledge that this Easement is a restrictive document by nature, and as such, this Easement does not grant any rights to Grantor that Grantor did not have prior to the granting of this Easement.

NOW, THEREFORE, **Use if project is NOT a donation or bargain purchase:*[in consideration of the sum of _____ DOLLARS ($_____.00),] **Or* [for good and valuable consideration, the receipt of which is hereby acknowledged,] the foregoing Recitals, and of the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Colorado, Grantor does hereby voluntarily **Add if donation:* [donate,] **Or add if bargain sale:* [bargain sell,] grant and convey to Grantee, its successors and assigns, and Grantee hereby accepts, a perpetual Conservation Easement in Gross, an immediately vested interest in real property defined by C.R.S. §§ 38-30.5-101, et seq. and consisting of the rights and restrictions hereinafter enumerated, over and across the Property.

1. Purpose. The purpose of this Easement is to preserve and protect the Property and its Conservation Values in perpetuity for public benefit and for the Conservation Purposes described in the Recitals listed above and incorporated herein.

2. Affirmative Rights Conveyed. The affirmative rights and interests conveyed to Grantee by this Easement are the following:

2.1. To preserve and protect the Conservation Values of the Property in perpetuity.

2.2. To require that the Property be managed consistent with Section IV of the NRCS Field Office Technical Guide applicable for Boulder County, Colorado ("NRCS Technical Guide") and the Management Plan (as defined in the "Management Plan" Paragraph below).

2.3. To enter upon the Property upon prior reasonable notice to Grantor, to inspect and enforce this Easement and the Management Plan (as defined in the "Management Plan" Paragraph below), in a manner that shall not unreasonably interfere with the proper uses being made of the Property at the time of such entry and that is in accordance with the "Grantee's Right of Entry" Paragraph herein.

2.4. To prevent, remove or eliminate any activity on or use of the Property that violates the terms of this Easement or is otherwise inconsistent with the purposes of this Easement.

2.5. To require the restoration of such areas or features of the Property that may be damaged by any use inconsistent with the terms of this Easement.

*U*se this paragraph if water:*

2.6. To enter the Property and undertake any and all actions reasonably necessary to continue the historic use of the Water Rights, if Grantor notifies Grantee that Grantor cannot use the Water Rights on the Property in any given year or if Grantee reasonably believes abandonment of the Water Rights is occurring. Such actions by Grantee may include, but are not limited to, entering the Property to irrigate and maintain ditches, headgates, diversions or other structures, paying ditch company assessments and fees, filing a lien on the Property to ensure that Grantor reimburses Grantee for any amounts paid by Grantee to maintain the Water Rights, plus ten percent (10%) interest through the date of reimbursement, using the Water Rights on another property and any other actions necessary or appropriate to put the Water Rights to beneficial use, in Grantee's sole discretion. Grantee shall have the right to vote the shares in any given year where Grantor fails to pay the assessment and Grantee has paid the assessment to prevent the respective rights from being sold. Grantee may also undertake any and all actions reasonably necessary to administratively prevent abandonment or forfeiture of the Water Rights and shall have the right to seek reimbursement from Grantor for any assessments Grantee has paid after Grantor has failed to pay an assessment.

2.7. To participate in negotiating any surface use agreement between the Grantor and any owner or lessee of mineral rights. For any oil or gas leases in effect as of the date of this Easement, Grantor shall notify Grantee when beginning negotiations of surface use agreements or any other agreements with the lessee regarding any new oil and gas operations on the Property, primarily so that Grantee may help ensure that none of the Property's Conservation Values are substantially diminished, materially impaired, or adversely impacted by the operations, but also so that Grantee may share in payments to

be made by lessee for its operations on the Property, since any operations by lessee will impair the Property's Conservation Values that are protected by this Easement, regardless of whether any such payments are due and payable by lessee pursuant to an agreement or pursuant to an award of damages resulting from lessee's use of the Property.

2.8. To be consulted with prior to, and provide a recommendation to approve or deny, any application for zoning change, annexation to a municipality, variance to or exemption from the land use regulations of the controlling jurisdiction, right-of-way vacation, building permit, grading permit, or other permit pertaining to a use of the Property that is regulated by a governmental authority and not otherwise provided for in this Easement. Grantor shall provide a copy of any such application in advance of its filing to the Boulder County Parks and Open Space Department ("POS"), as Grantee's designated manager of this Easement. If POS declines to recommend approval of an application due to its noncompliance with the terms of this Easement, Grantor may not proceed with its application until Grantor modifies it to become compliant. Grantor shall provide POS with notice of any scheduled meetings or hearings related to any application at least ten (10) days in advance of the scheduled date. POS shall have the opportunity to participate in any discussions with or hearings before any local government department, board or commission, including the Boulder County Board of County Commissioners. The County's status as owner of an interest in the Property shall not require any financial or legal responsibility for the Property except as specifically set forth in this Easement.

2.9. To review and approve or deny applications from Grantor for uses neither expressly granted nor specifically prohibited by this Easement but that may be conducted in a manner consistent with the purposes of this Easement and protection of the Property's Conservation Values. Approval, if granted, shall be by action of the Board of County Commissioners of Boulder County and recorded in the office of the Boulder County Clerk and Recorder.

2.10. The right of first refusal in any proposed sale of the Property, except for any transfers of the Property among family members or into a family member's estate. In the event Grantor desires to sell the Property and receives a bona fide offer for such sale, the Property shall be offered to Grantee who shall have a first right of refusal for such offered fee simple interest upon the same terms and conditions as the bona fide offer or for an amount and terms equally acceptable to Grantor. Written notice of such bona fide offer shall be given to Grantee, which shall have thirty (30) days from the date of receipt of the written notice to accept such offer, and if not accepted, the sale may be made to such third party purchaser. This interest shall not terminate if Grantee has been offered the first right of refusal for the Property and declines to exercise its right, whether once or numerous times.

2.11. The ownership of any and all development rights now or hereafter associated with the Property **If Seller is retaining rights to build any structures, we need to specifically exclude that here, we need to specifically exclude those development rights in what are being given to the County, so add this – and do not reword it or it causes problems in juxtaposition with other language in the CE*: [except structures permitted in

the "Permitted Uses and Practices" Paragraph of this Easement] including, without limitation, all rights, however designated, that may be exercised pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, or any similar development variable on or pertaining to the Property. **ADD if any value of the CE is being donated*: [All such developments rights are hereby removed from the Property and may not be used on the Property or transferred to any other property for use in any way.]

3. Permitted Uses and Practices. Grantor and Grantee intend that this Easement shall confine the future use of the Property to agricultural uses *[substitute for 'agricultural uses' if the Property is mountain property: Passive Recreation (as defined herein below) *] and other related or compatible uses described herein. The following uses and practices are permitted under this Easement and are not inconsistent with the purposes of this Easement, provided that they are conducted in a manner that does not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values:

3.1. **If any value of the CE is being donated and the landowner wants to qualify for the 100% federal deduction or related 5-year (or 15-year, if reinstated by congress) carry forward, this language must be added as a first sentence in this paragraph*: [The Property shall remain available for agricultural production.] Continuation of agricultural uses, including but not limited to evolving agricultural practices, that are consistent with the NRCS Technical Guide and the Management Plan and with the Boulder County land use regulations in effect at the time of use, as those regulations apply to the Property, are allowed. The agricultural activities shall not result in the degradation of any surface or subsurface waters or the Property's Conservation Values. Except as otherwise prohibited in this Easement, Grantor may conduct non-commercial feeding by seasonally confining Grantor's livestock and other animals into an area for feeding, lease pasture for grazing livestock or other animals owned by others, or feed on a seasonal basis livestock or other animals owned by others than Grantor.

3.2. On the date of this Easement, these agricultural accessory structures exist on the Property totaling ____ square feet above grade: **List accessory structures and their sizes, i.e.* [one barn (___ square feet), one shed (____ square feet), etc.] *OR **[Replace the foregoing sentence with this sentence:* On the date of this Easement, the Property is vacant.] The existing accessory structures total _____ square feet. Grantor shall have the right to construct, maintain, repair and replace agricultural accessory structures on the Property for non-residential uses, provided that the total square footage of all agricultural accessory structures, shall not exceed _____ square feet.

**Delete this subparagraph if no residences are allowed on the Property.*

3.3. Grantor shall have the right to construct, maintain, repair and replace one *[*If a house already exists on the property, replace the foregoing word "one" with "the existing"]* single-family residential dwelling, garages (attached and/or detached) and all other structures that Boulder County Land Use regulations consider as being accessory to the residence, except for accessory residential dwellings which are not allowed, and provided that the single-family residential dwelling, including covered porches, garages,

and all other residential structures shall not exceed *[_____] square feet. This square footage allowance shall not guarantee Boulder County Land Use approval for this much square footage, regardless of the fact that Boulder County land use regulations allow this square footage allowance to be a factor in rebutting Article 4-806 (Site Plan Review Standards) of the current Boulder County Land Use Code.

3.4. All structures permitted under this Easement shall be located within the approximately *[____]-acre building envelope generally depicted on Exhibit 3. These restrictions are created for the express purpose of maintaining the rural character of the Property.

3.5. Maintenance, repair and use of all roads existing on the Property as of the date of this Easement, provided that they are maintained only as reasonably necessary for the uses permitted on the Property and provided that the roads are maintained substantially in their present condition without being improved.

3.6. Installation, maintenance, repair, removal, relocation and replacement of utility mains, lines and underground facilities for the exclusive purpose of providing utility services to the Property for the uses permitted by this Easement, provided that any such activities shall not substantially diminish, materially impair or adversely impact any of the Property's Conservation Values.

3.7. Development and maintenance of such water resources on the Property as are reasonably necessary for irrigation and the agricultural uses conducted thereon pursuant to the terms hereof; provided, however, that the development and use of such water resources shall be done in a manner that does not substantially diminish, materially impair or adversely impact any of the Property's Conservation Values. Permitted activities shall include installation, maintenance, repair, removal, relocation and replacement of agricultural irrigation facilities serving the Property, including ditches, pipes, water diversion structures, stock ponds, and pivot sprinklers and associated ponds, subject to the Management Plan described in this Easement. Any such activities shall be conducted in accordance with all water rights laws and regulations.

3.8. Use of agrichemicals, including but not limited to, fertilizers and pesticides, but only in those amounts and with that frequency of application necessary to accomplish reasonable agricultural purposes. Such use shall not contaminate surface and ground water or diminish the Property's Conservation Values. Grantor shall control all noxious weeds to the extent reasonably possible and according to the provisions of Title 35 of the Colorado Revised Statutes and/or the administrative rules and regulations promulgated by the Commissioner of Agriculture of the State of Colorado or by the Board of County Commissioners of Boulder County.

3.9. Cutting and removal of live trees and shrubs, consistent with ecological principles and conservation forestry management, to control any imminent threat of disease or insect infestation, to simulate natural ecological processes to prevent wildfires

and to remove invasive non-native species, and cutting and removal of dead, diseased or downed trees and shrubs that present a safety hazard.

3.10. Control of predatory and problem animals by the use of selected control techniques whose effect shall be only upon specific animals or species that have caused or are likely to cause damage to crops, livestock or other property. Such control techniques shall not have detrimental impacts upon water quality and the continued permitted uses of the Property. The use of leg-hold traps is prohibited.

3.11. With the exception of commercial hunting, which is prohibited, use of the Property for hunting by Grantor and Grantor's non-paying invited guests to the extent that harvesting of game from the Property is not inconsistent with game management objectives and the Management Plan. For the purpose of this provision, Grantor and Grantee agree that Grantor may request and rely upon an opinion from the Colorado Division of Wildlife defining the quantity of game which can be harvested from the Property in any year consistent with generally accepted principles of game management.

3.12. Use of the Property for low-impact and Passive Recreation (as defined herein below), scientific and/or outdoor environmental educational activities which are: (1) occasional in nature; (2) limited to Grantor and Grantor's invited guests; and (3) that do not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values.

3.13. Except for the interest in the Water Rights that Grantor has conveyed to Grantee by deed, certificates of ownership, or this Easement, Grantor specifically retains: (1) all right, title, and interest in and to all tributary and non-tributary water, water rights, well and well rights, and related interests in, on, under, or appurtenant to the land; and (2) all right, title, and interest to subsurface oil, gas, and other minerals; provided, however, that the mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited upon or within the Property.

3.14. Grantor retains the right to apply to Grantee for permission to conduct other uses and activities on the Property that are neither expressly granted nor specifically prohibited by this Easement but which may be conducted in a manner consistent with this Easement and that do not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values. Approval, if granted, shall be in Grantee's sole discretion and shall be accomplished by action of the Board of County Commissioners of Boulder County and recorded in the office of the County Clerk and Recorder.

3.15. Grantor retains the right to maintain, repair, rebuild, or if destroyed, reconstruct or replace existing fences. Fencing may be constructed by Grantor in new locations as reasonably necessary or reasonably advantageous to the permitted uses of the Property. Any new fencing shall be compatible with the movement of wildlife through and across the Property and consistent with guidelines of the Colorado Division of Wildlife or with the recommendation of Boulder County Parks and Open Space wildlife

resource staff. All new or replacement fencing shall comply with all requirements of the Boulder County land use regulations in effect at the time of construction.

4. Prohibited Uses and Practices. The following uses and practices are inconsistent with the purposes of this Easement and shall be prohibited upon or within the Property:

4.1. The change, disturbance, alteration or impairment of the Conservation Values of the Property, except to engage in generally accepted open, non-intensive agricultural activities and except as otherwise allowed herein.

**Use this subparagraph if no structures are permitted on the property:*

4.2. Construction of any structures on the Property. For the purposes of this Easement, structures shall mean a combination of materials forming any edifice, building or man-made formation of any kind, excluding any yard and play equipment, gates or an individual sewage disposal system that serves the Property's permitted uses, if allowed under this Easement, and any retaining walls, platforms or decks that lie not more than thirty (30) inches above the Property's natural grade, excluding railings.

**Or use this subparagraph b. if Paragraphs 3.2 and 3.3 indicated that structures already exist on the property:*

4.2. The construction, reconstruction, or replacement of any residences or other structures, except as provided in the "Permitted Uses and Practices" Paragraph hereof. Accessory residential dwellings are not allowed on the Property. If any current or future structures and/or the site are determined to be of historic significance by the Boulder County Historic Preservation Advisory Board, no alteration, including demolition, shall be made to the exterior of the structures without Grantor first obtaining written approval from Grantee. For the purposes of this Easement, structures shall mean a combination of materials forming any edifice, building or man-made formation of any kind, excluding any yard and play equipment, gates or an individual sewage disposal system that serves the Property's permitted uses, if allowed under this Easement, and any retaining walls, platforms or decks that lie not more than thirty (30) inches above the Property's natural grade, excluding railings.

4.3. More than one principal use on the Property at any given time, as the concept of "principal use" is used in Boulder County land use regulations.

4.4. Any use not expressly permitted as a use-by-right by the Boulder County land use regulations as they apply to the Property, including but not limited to community or institutional uses, golf courses, helicopter pads, and airstrips.

4.5. Any uses that may be consistent with Boulder County land use regulations as they apply to the Property, but which are inconsistent with the preservation and protection of the Conservation Values of the Property, including but not limited to Active Recreation (as defined herein below), intensive agriculture, agribusiness, commercial, industrial, institutional, community significant, lodging, open mining, retail, office, business, personal services, transportation, utility, public service, and warehouse uses,

and home events of any kind, whether or not a fee is charged or a financial donation is requested or allowed.

4.6. The construction, placement or erection of any sign or billboard without the prior written consent of the Grantee, except for signs of less than twenty (20) square feet that are consistent with Boulder County land use regulations, and that only advertise the Property or agricultural products produced on the Property for sale or that limit access to the Property, such as signs announcing 'private property' or 'no trespassing'.

4.7. The construction of any permanent fences that prevent the passage of and/or injure wildlife without the express written consent of Grantee, which consent shall be in Grantee's sole discretion.

4.8. The dumping or accumulation of trash, ashes, garbage, waste or other unsightly or offensive material on the Property, including but not limited to hazardous chemicals; provided, however, that equipment and machinery used on the Property for the permitted uses and that products and by-products produced on the Property may be placed or stored on the Property, so long as such placement or storage is consistent with public health standards, all applicable government laws and regulations, and sound management practices.

4.9. Any division of the Property (whether or not a subdivision as defined by state law) without the prior written consent of Grantee. Without the prior written consent of Grantee or by operation of law, Grantor may not convey any portion of the Property constituting less than the entire Property, as said conveyance would constitute an impermissible division of the Property under this Easement. If Grantee does approve a division of the Property, or if the Property is divided by operation of law, all terms of this Easement shall attach to each subdivided portion of the Property and shall survive any division.

4.10. The conveyance of any new access easement or other right-of-way, the paving of any roadway or otherwise covering any portion of the Property with concrete, asphalt or any other paving material, the resurfacing, widening, grading or any other improvement of any roadway that would provide easier vehicular access than that which exists at the time this Easement is granted, or the construction of any new trails or roadways without the prior written consent of Grantee, which consent shall be in Grantee's sole discretion. **Select the appropriate sentence*: [The Property does not contain any roadways as of the date of this Easement.] *OR* [As of the date of this Easement, the Property contains only these roadways: _____, all of which are generally depicted on Exhibit 2.] Likewise, the Property may not be used to provide vehicular access to any other property, whether owned by Grantor or a third party, without the written consent of Grantee, which consent shall be in Grantee's sole discretion. If Grantee consents to any right-of-way, paving, or new roadway, any such permitted right-of-way, paving, or roadway shall be constructed so as to minimize the impact on the Conservation Values of the Property.

4.11. Construction of new utility transmission mains, lines, or other utility facilities on the Property, whether underground or above ground, without the prior written consent of Grantee, which consent shall be in Grantee's sole discretion, except as allowed under any existing utility easements, or under any additional utility easements that may be established pursuant to an exercise of eminent domain, or as is necessary to conduct any of the permitted uses of this Easement. Any such permitted utility transmission lines or facilities shall be constructed so as to minimize any adverse impacts on the Conservation Values of the Property. Notwithstanding the foregoing, the erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in The Federal Telecommunication Act of 1996 shall be prohibited.

4.12. The degradation, pollution or draining of any surface or sub-surface water on the Property.

4.13. The transfer, encumbrance, lease, sale, or other separation from the Property of any surface or sub-surface water rights that are appurtenant to the Property.

**Use this paragraph if water, and renumber the remaining subparagraphs*:

4.14. Grantor shall not interfere with, impede, delay or otherwise prevent water that has historically crossed the Property to serve other properties from crossing the Property, even if said crossing is not memorialized by written easement. Grantor shall retain, reserve the right to use, and use the Water Rights in current or future agricultural production on the Property, and shall not transfer, lease, sell, or otherwise separate the Water Rights from the Property; provided, however, that in the event Grantor cannot use the Water Rights on the Property in any given year, Grantor shall notify Grantee, and Grantee may exercise its rights to put the Water Rights to beneficial use, as described in Paragraph *2.6 of this Easement. When requested by Grantee, Grantor shall provide Grantee with evidence that the Water Rights are being beneficially used on the Property including, but not limited to, copies of reports filed with or produced by district and state water officials proving water diversions and water usage, and copies of any reports confirming crop production. If Grantor receives notice of abandonment of any component of the Water Rights, Grantor shall notify Grantee in writing within thirty (30) days of receiving such notice, and Grantor shall act affirmatively and shall cooperate with Grantee in taking any and all actions reasonably necessary to defend use of the Water Rights on the Property to prevent abandonment or forfeiture.

4.15. **Add this introductory clause only if oil and gas leases exist, but if leases do not exist, delete just this introductory clause and not the entire paragraph*: [Except for any oil and gas leases which are in effect as of the date of this Easement which may allow for the drilling of future wells on the Property and except with respect to mineral rights not owned by Grantor,] The mining or extraction of geothermal resources, soil, sand, gravel, rock, oil, natural gas, fuel, other hydrocarbons or any other mineral substance shall be prohibited upon or within the Property. Grantor shall not transfer, lease or

otherwise separate the geothermal resources, soil, sand, gravel, rock, oil, natural gas, fuel, other hydrocarbons or any other mineral substance from the Property.

4.16. The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually that is used and maintained for the purpose of feeding and fattening livestock for future commercial sales.

4.17. Grading, contouring, berming, reshaping, or otherwise altering the topography of the Property for non-agricultural purposes, including without limitation, the movement, excavation or removal of plants, plant material, soil, sand, gravel, rock, peat or sod, without the prior written consent of Grantee, and then any such activity conducted for agricultural purposes may only occur to such an extent that does not substantially diminish, materially impair, or adversely impact any of the Property's Conservation Values.

4.18. Removal, alteration, impairment, modification, or adverse change to any ditch, creek, stream, river, stream channel, riparian corridor, wetland, pond or lake edge, except as otherwise permitted in this Easement and except to the minimal extent necessary for a ditch company to maintain its ditches or for Grantor to beneficially use the Water Rights on the Property.

4.19. Except as used in the normal course of conducting any permitted activities, use of motorized vehicles, including motorcycles, motorized bicycles or tricycles or all-terrain vehicles, except on roads or trails existing as of the date of this Easement.

5. Grantee's Approval. Whenever this Easement requires that Grantor obtain Grantee's approval of any activity on or use of the Property, Grantee's determination regarding Grantor's application for approval shall not be unreasonably withheld or delayed. If Grantee's approval is required, Grantee shall grant or withhold its approval in writing within forty-five (45) days of receipt of Grantor's written request therefore unless a different time period is specified herein for the matter in question or unless the requested activity requires approval under Boulder County's land use regulations, in which case the timing specified in those regulations shall apply. Failure to respond within the 45 days does not constitute approval. If Grantee denies Grantor's application for approval of an activity or use, Grantee shall provide Grantor with the reason(s) for such determination in its written notice to Grantor. If a reasonable modification of Grantor's proposed use or activity would render the proposal consistent with the purpose of this Easement, Grantee shall specify, in its written notice to Grantor, any required modifications.

6. Baseline Report. To establish a complete inventory of the present conditions of the Property and its Conservation Values as of the date of this Easement to enable Grantee to properly monitor future uses of the Property and ensure compliance with the terms hereof, Grantee has prepared or caused to be prepared an inventory of the Property's relevant features and conditions ("Baseline Report"). Grantor shall sign the Baseline Report, Grantee shall provide

Grantor with one copy of the Baseline Report, and Grantor shall give Grantor's copy of the Baseline Report to any subsequent owner of the Property. Grantor has allowed Grantee, or Grantee's designated agent, access to the Property to conduct necessary studies in developing the Baseline Report, which access did not unreasonably restrict or interfere with normal agricultural operations and other uses permitted under this Easement. The Baseline Report includes aerial photographs depicting various areas of the Property, a variety of maps showing important aspects of the Property, and other information important for establishing the Property's condition as of the date of this Easement. The Parties acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's use or the physical condition of the Property subject to this Easement, the Parties may use the Baseline Report and all other relevant or material documents, surveys, reports, and other evidence to assist in resolving the controversy.

7. Management Plan. Grantor recognizes the importance of good resource management and stewardship of the Property to preserve and protect the Property's Conservation Values. For that reason, Grantor shall operate and manage the Property in accordance with widely recognized management practices that preserve and protect the Property's Conservation values and in accordance with a management plan that is designed to protect the Property's Conservation Values ("Management Plan"). The Management Plan shall be prepared by Grantor and accepted by Grantee contemporaneously with this Easement and shall be updated at least every five years. The Management Plan shall also incorporate the provisions of any current Soil and Water Conservation Plan and Grazing Management Plan prepared by the local Soil Conservation District and any other provisions designed to protect the Conservation Values of the Property.

**USE this paragraph if appropriate, and renumber the remaining paragraphs*:

8. Wetlands. Grantor and Grantee hereby agree the protection of wetlands on the Property is of the utmost importance. **If Grantor is already taking steps to protect wetlands, state what they are and that Grantor will continue with those steps, i.e.*: [Grantor shall be responsible for maintaining the existing fencing around the wetland/riparian areas so as to exclude any and all livestock and other domestic animals from the wetland/riparian areas.] In the event that restoration or enhancement of wetlands is desirable, Grantee may carry out such projects at its own expense, after consultation with Grantor, and in a manner that does not interfere with Grantor's use of the Property outside the wetland areas. Except as set forth in this paragraph **Add if appropriate*:[and the following paragraph regarding the Riparian Corridor], Grantor shall have the full use and enjoyment of the wetlands so long as said use and enjoyment is not detrimental to the wetlands and associated uplands.

**USE this paragraph (or portions thereof) if appropriate, and renumber the remaining paragraphs*:

9. Riparian Corridor. Grantor and Grantee hereby agree that protection of the *[_____] Creek corridor (which shall be defined as 100 feet on each side of the centerline of *[_____] Creek as it flows through the Property, hereinafter referred to as the "Creek Corridor"), and its natural riparian, wildlife and environmental qualities is of the utmost importance.

9.1. The Creek Corridor shall be protected from degradation by livestock and other animals, and no plowing, cultivation, or similar earth-disturbing activity may occur within the Creek Corridor, unless the Grantor receives prior written approval from the County for such activities as part of an effort to maintain or enhance the natural habitat of the Creek Corridor.

9.2. Grantor shall make reasonable efforts to remove all non-native invasive species from the Property and particularly from the Creek Corridor, including Russian olive trees and tamarisk, and to prevent their reoccurrence.

9.3. Grantor agrees to make every reasonable effort to maintain and if necessary, repair and restore the Creek Corridor and its vegetation, and to control any activities that would be detrimental to the natural riparian, wildlife and environmental qualities of the Creek Corridor. **Remove this language if it's not applicable to the subject property*: [Grantee agrees to perform a comprehensive inspection, inventory and analysis of the condition of the Creek Corridor as a part of the Baseline Report. Based on that analysis, Grantor and Grantee shall develop, by mutual agreement, a set of management guidelines for the Creek Corridor as part of the Management Plan.] In the event, and at any time, that restoration or other improvements are necessary to maintain the riparian, wildlife or environmental qualities of the Creek Corridor, except as such restoration might be required by the Restoration paragraph of this Easement, Grantor and Grantee shall incorporate a mutually agreed upon plan for such improvement into the Management Plan. If the cost of such improvements would not be part of the normal and usual cost of Grantor's management of the Property, Grantee agrees, to the extent resources are available to do so, to participate financially in implementing the plan for such improvements, or, in the alternative, to delay such improvements until Grantor and Grantee have the resources to perform the necessary work on the Creek Corridor. Grantor shall not be required to expend financial resources, in excess of normal management expenses for the Creek Corridor, for improvements to the Creek Corridor.

**INSERT the following two subparagraphs only when significant riparian values would dictate the County wanting the power to enter and fix problems*:

9.4. Upon 48 hours prior notice to Grantor, and at reasonable times, Grantee's staff, or authorized agents working with or for Grantee, may conduct field studies and monitor wildlife in the Creek Corridor, and notwithstanding any of the provisions set forth herein, may implement stream and vegetation enhancement projects, at Grantee's expense, solely to improve the riparian, wildlife and environmental qualities of the Creek Corridor.

9.5. Grantor agrees that if Grantor is unable to control activities that are detrimental to the Creek Corridor and fencing is necessary to protect the Creek Corridor, as determined by Grantee in Grantee's sole discretion, Grantee shall have the right to fence the Creek Corridor, at Grantee's sole expense. Under the terms of this Easement, no structures, other than fencing, shall be permitted in the Creek Corridor. Grantor shall have the full use and enjoyment of the Creek Corridor other than as restricted by the provisions of this Easement.

10. Grantee's Right of Entry. Grantee shall have the right to enter upon the Property at reasonable times, upon forty-eight (48) hours prior notice to Grantor, to monitor and enforce compliance with the terms and covenants of this Easement and to remove or eliminate any conditions or operations which violate the same, except that no such notice shall be required in the event Grantee reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement. If Grantee determines that immediate entry is necessary, Grantee shall make a reasonable attempt to notify Grantor. No further right of access, entry or possession is conveyed hereby.

11. Restoration. Should any prohibited activity be undertaken on the Property, Grantee shall have the right to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity.

12. Enforcement Rights of Grantee. If Grantee has given written notice to Grantor of a possible violation of any term, condition, covenant, or restriction contained in this Easement, upon receipt of such written notice, Grantor shall immediately discontinue any activity that could increase or expand the alleged violation while the activity is being disputed. Grantor shall either: (1) restore the Property to its condition prior to the violation; or (2) provide a written explanation to Grantee of the reason why the violation should be permitted. If the condition described in clause (2) above occurs, both parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved, Grantor and Grantee shall attempt to resolve the difference through mediation with a mutually acceptable mediator or by other means of alternative dispute resolution. If Grantor does not respond to Grantee's written notice within thirty (30) days after the date of Grantee's written notice of the alleged violation to Grantor, or if Grantor and Grantee are unable to resolve the dispute within those thirty (30) days, Grantee, at its discretion, may institute a suit to enjoin such violation by temporary and/or permanent injunction, for damages for breach of covenant, for equitable relief requiring restoration of the Property to its condition prior to the violation, or for such other action as Grantee deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement; provided, however, that any failure to so act by Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. Notwithstanding the above-stated requirements in this paragraph, when Grantee reasonably believes an ongoing or threatened imminent activity violates this Easement, Grantee may, in its sole discretion, take immediate legal action, including, but not limited to, filing a civil action to seek a temporary restraining order and/or injunctive relief or may enter the Property to remove or eliminate any conditions or operations that violate the terms and covenants of this Easement. Grantee shall also have the right to require Grantor to restore the Property to its condition prior to the violation and may seek formal court action to ensure such restoration.

13. Costs of Enforcement. If a violation by Grantor is determined to have occurred, any reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation any reasonable attorney fees and costs and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In addition, if Grantor is required to restore any portion of the Property

affected by a prohibited activity to the condition that existed prior to the undertaking of such prohibited activity, those costs shall also be borne by Grantor.

14. Waiver. Enforcement of the terms of this Easement shall be at the sole discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver. Grantor hereby waives any defense of laches, estoppel, or prescription, including any defenses available under C.R.S. §§ 38-41-119, et seq.

15. Maintenance, Costs and Taxes. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind relating to the operation, upkeep, and maintenance of the Property, including weed control and maintenance of adequate comprehensive general liability insurance coverage, and Grantor hereby indemnifies Grantee therefrom. In addition, Grantor shall remain responsible for, and agrees to pay before delinquency, any and all real property taxes and assessments levied by competent authority on the Property **ADD if water rights*:[and Grantor agrees to pay any and all water carriage fees/ditch assessments levied by the ditch companies or other competent authority relating to the Water Rights]. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor; provided, however, that if a mechanic's lien is asserted against the Property, Grantee shall not claim that Grantor has violated the terms of this paragraph, so long as Grantor is making reasonable efforts to resolve the dispute and discharge the lien. Grantee is authorized, but in no event obligated, to make or advance any payment of taxes, upon three (3) days' prior written notice to Grantor, in accordance with any tax bill procured from the appropriate authority, without inquiry into the validity of the taxes or the accuracy of the tax bill, and the obligation created by such payment shall bear interest until paid by Grantor at the lesser of two (2) percentage points over the prime rate of interest from time to time charged by a bank selected by Grantee or the maximum rate allowed by law.

16. Permits and Applicability of Other Laws. Grantor is solely responsible for obtaining any applicable governmental permits for construction or any other activities permitted hereunder, including any permits required under Boulder County land use regulations. Nothing herein shall be construed to supersede or exempt the Property from the application of laws and regulations affecting land uses on the Property or to permit any activity otherwise prohibited by existing or future laws and regulations imposed by any federal, state or local government or governmental agency having jurisdiction over the Property, or to prohibit the imposition of further land use restrictions by Grantor or by operation of law and all such uses shall be conducted in accordance with such laws and regulations. **This Easement does not grant any rights to Grantor that Grantor did not have prior to this Easement, and this Easement does not grant Boulder County's approval for any use regulated by Boulder County land use regulations; therefore, all uses permitted under this Easement remain subject to all Boulder County land use regulations in effect at the time that the use occurs, and all required permits and approvals must be obtained in advance.**

17. Indemnity. Grantor shall indemnify and hold harmless Grantee and its employees, agents and contractors from any and all claims, demands, causes of action, suits, actions, penalties and damages, including reasonable attorney's fees, arising from or connected with the use of the Property or any environmental condition arising on the Property for personal injury, loss of life, or damage to property sustained, in or upon the Property or arising out of the use of the Property or any environmental condition arising on the Property, and from and against all costs, attorneys' fees, expenses and liabilities incurred in and about any such claims, the investigation thereof or the defense of any action or proceedings brought thereon, and from any judgments, orders, decrees, or liens, resultant therefrom by virtue of the use of the Property or any environmental condition arising on the Property. By requiring this right to indemnification, Grantee in no way waives or intends to waive the limitations on liability which are provided to Grantee under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. Grantor's indemnification obligations under this paragraph shall not be affected by any authorizations Grantee may provide to Grantor with respect to the Property.

18. Grantor's Environmental Warranty. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances, materials or wastes on, at, beneath, or from the Property. "Hazardous Materials" means any petroleum, petroleum products or byproducts, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, substances or wastes, toxic substances or chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment. Grantor warrants that it is in compliance with and shall remain in compliance with all applicable environmental laws, including but not limited to, any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, requirements or common law imposing standards of conduct or liability concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or any time hereafter be in effect and pertaining to the Property. Grantor further warrants that there are no notices by any governmental authority of any violation or alleged violation of, alleged or actual non-compliance with, or any liability under any environmental law relating to the operations on or conditions of the Property.

19. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conservation Values of the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

20. No Public Access. Nothing contained herein shall be construed as affording access to the general public over any portion of the Property.

21. Real Property Interest and Grant in Perpetuity. Grantor acknowledges that this Easement constitutes a real property interest immediately vested in Grantee, and the covenants as set forth herein shall run with the land in perpetuity.

22. Condemnation. If Grantor receives notice of condemnation or the threat of condemnation of all or a portion of the Property, Grantor shall immediately notify Grantee in writing. If, as a result of condemnation or a threat of condemnation, this Easement is terminated or extinguished, in whole or in part, and any portion of the underlying Property is sold, exchanged or involuntarily converted or taken for public use, Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award. Grantee's share of the proceeds shall be based on the ratio between this Easement's fair market value of the portion of the Property being taken and the unrestricted fair market value of the portion of the Property being taken as of the date of the taking **OR, if donation or bargain sale, Treasury Regs require us to use instead*: [as of the date of this Easement]. **Or use this sentence instead, if the appraisal is complete when you're finalizing the draft CE:* [Grantee's share of the proceeds shall be equal to *[___]%, which is the ratio of the value of this Easement to the unrestricted fair market value of the Property as of the date of this Easement.] Grantee shall use any such proceeds in a manner consistent with the Conservation Purposes of the Easement.

23. Amendment. If circumstances arise under which an amendment would be appropriate, Grantor and Grantee may jointly amend this Easement, except that any such amendment shall be consistent with the purposes of this Easement. Any such amendment shall not affect this Easement's perpetual duration, shall not affect the qualification of this Easement under any applicable laws, **Add if a donation*: [shall not confer a private benefit to the Grantor or any third party greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)), or result in private inurement for a board member, staff or contract employee of Grantee,] shall not permit additional development currently prohibited by this Easement, and shall not substantially diminish, materially impair, or adversely impact any of the Conservation Values of the Property. Any such amendment shall be by action of the Board of County Commissioners of Boulder County and must be in writing, signed by all parties and recorded in the office of the Boulder County Clerk and Recorder.

24. Assignment. Grantee may assign the Easement with or without Grantor's consent, provided that Grantee requires, as a condition of such transfer, that the Conservation Purposes of the Easement continue to be carried out, that the assignee agrees to assume the responsibilities imposed on Grantee by this Easement, and that an assignment may be made only to an organization qualified at the time of transfer as an eligible donee under the *[IRS Code] *OR if the CE does NOT involve donated value and a potential claim for a state tax credit and/or a federal tax deduction*: [Internal Revenue Code of 1986, as amended, and the U.S. Treasury regulations adopted pursuant thereto (the "IRS Code")] and C.R.S. §§ 38-30.5-101 et seq., as amended.

25. Extinguishment and Termination. In giving this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes in circumstance shall not be deemed to justify the termination or extinguishment of this Easement. In addition, the inability of Grantor, or Grantor's heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

25.1. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction determining that such circumstances exist. Each party shall promptly notify the other when it first learns of such circumstances.

25.2. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, and the purposes to which these proceeds may be put, shall be determined, unless otherwise provided by Colorado law at the time, in accordance with the provisions set forth in the "Condemnation" Paragraph herein.

26. Severability. If any of the provisions of this Easement are held to be invalid or unenforceable, then the remaining balance of this Easement shall be deemed severable and held to be in full force and effect.

27. Grantor's Warranty of Title. Grantor warrants that Grantor has good and sufficient title to the Property, that Grantor has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement, and Grantor hereby promises to warrant and forever defend the title to this Easement against all and every person or persons lawfully claiming by, through, or under Grantor, the whole or any part thereof, except for the rights-of-way, easements, restrictions, covenants, agreements, and mineral reservations of record at the time of the execution of this Easement.

28. Annexation. Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the prior written consent of Grantee. Any such consent shall be by action of the Board of County Commissioners of Boulder County and be recorded in the office of the Boulder County Clerk and Recorder.

29. Notices. Within sixty (60) days after a change of Grantor's address, Grantor shall provide Grantee with written notice of any change of address. Whenever notice is required to be given hereunder, it shall be in writing and may be emailed, mailed, faxed or hand delivered to the party entitled thereto, and if mailed, it shall be done by registered or certified mail, return receipt requested. If mailed, said notice shall be effective and complete as of the date of mailing. If

emailed, faxed or hand delivered, said notice shall be effective and complete upon completion of the email, fax or hand delivery. Until changed by notice in writing, notice shall be given as follows:

To Grantee:
The Director
Boulder County Parks and Open Space Department
5201 St. Vrain Road
Longmont, Colorado 80503
Fax Number: 303-678-6179

With a copy to:
The Boulder County Attorney's Office
P.O. Box 471
Boulder, Colorado 80306
Fax Number: 303-441-4794

To Grantor:
_____
_____
Fax Number: _____
Email: _____

30. Subsequent Liens on the Property. No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinated to this Easement and shall encumber the entire Property.

31. No Forfeiture. Nothing contained herein shall result in a forfeiture or reversion of Grantor's title in any respect.

32. Joint Obligation. If more than one owner owns the Property at any time, the obligations imposed by this Easement shall be joint and several upon each of the owners.

33. Non-Merger. No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the Parties expressly state that they intend a merger of estates or interests to occur.

34. No Enforcement Rights by Third Party Beneficiaries. This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and Grantee and their respective successors and assigns for the purposes set forth herein, and does not create any enforcement rights or responsibilities in any third parties.

35. Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs,

successors, representatives, and assigns, and all persons who may hereafter acquire an interest in the Property.

36. Termination of Rights and Obligations. A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

37. Terms. The following terms are hereby defined for the purposes of this Easement:

37.1. The terms "Grantor" and "Grantee", and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor's heirs, personal representatives, executors, successors and assigns and the above-named Grantee and its successors and assigns, respectively.

37.2. The term "Passive Recreation" shall consist of non-motorized outdoor recreation that emphasizes enjoyment of the Property's open space features, involves little or no installation of equipment or development on the Property except as may be permitted by this Easement, has little or no impact on the Property's Conservation Values, and does not create new trails or new features on the Property unless otherwise permitted by this Easement. Examples of passive recreation include, but are not limited to, hiking, snowshoeing, cross-country skiing, photography, bird-watching or other nature observation or study, and if specifically designated in this Easement, bicycling, horseback riding or fishing.

37.3. The term "Active Recreation" shall mean any recreation that is not passive recreation. Active recreation shall also consist of any form of motorized recreation and recreation that requires development of facilities, including athletic fields, buildings or other structures used for recreational activities, skate parks and other areas built of concrete or other paving material, dog parks and similar uses. Examples of active recreation include, but are not limited to, football, soccer, baseball, softball, lacrosse, basketball, tennis, cycling venues such as velodromes, and indoor or outdoor racquetball courts or climbing gyms.

38. Liberal Construction. This Easement shall be liberally construed in favor of protecting the Property's Conservation Values and to effect the purpose of this Easement and the policies and purpose of C.R.S. §§ 38-30.5-101, et seq. If any provision in this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**USE this paragraph only for donations and bargain sales, and renumber remaining paragraphs*:

39. Interpretation. If any reserved right of Grantor under this Easement is found to not be in compliance with § 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder, such provision shall be interpreted and applied in such a manner as to be in compliance with § 170(h) of the Internal Revenue Code, and any regulations promulgated thereunder; provided, however, nothing in this paragraph shall permit Grantor to divide,

subdivide or partition the Property, or make any use of the Property or undertake any activity or development on the Property otherwise prohibited by this Easement. It is the intention of this paragraph to require that any restriction herein be interpreted no less strictly than necessary to be in compliance with § 170(h) of the Internal Revenue Code, any regulation promulgated thereunder, and no less strictly than as specifically provided herein.

40. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the "Amendment" Paragraph herein.

41. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

42. Exhibits. All references to exhibits herein shall incorporate such exhibits by their reference.

43. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Facsimile signatures shall be acceptable to and binding upon the Parties.

44. Recording. This Easement shall be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

45. Property Sale. **Grantor shall provide a copy of the Easement to the proposed buyer or transferee of the Property at least thirty (30) days prior to closing**. Grantor agrees that reference to this Easement shall be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the Property (including a leasehold interest). Failure to provide the copy or make the reference as described in this paragraph shall not invalidate any transfer or conveyance of the Property, but shall not limit Grantee's right to reasonable remedies afforded at law.

46. Notice to County of Transfer of Property. **Grantor shall give written notice to Grantee of the transfer of the Property and the name, address, and telephone number of the buyer or proposed transferee within ten (10) days after closing**. Failure to provide notice pursuant to this paragraph shall not invalidate or limit this Easement or any transfer or conveyance of the Property.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Easement as of the date set forth above.

GRANTOR:

_____
**

_____
**

State of *Colorado
County of *Boulder

The foregoing Deed of Conservation Easement in Gross was acknowledged before me this ___ day of _____, 201__ by _____, as _____ of _____.

_____
(Notary Official Signature)

NOTARY
S E A L

_____
(Commission Expiration)

GRANTEE:

COUNTY OF BOULDER,
a body corporate and politic

By: _____
[Commissioner Name], Chair

By: _____
[Commissioner Name], Vice Chair

By: _____
[Commissioner Name], Commissioner

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by [Commissioner Name], Chair, [Commissioner Name], Vice Chair, and [Commissioner Name], Commissioner, of the Board of County Commissioners of Boulder County, Colorado.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

EXHIBIT 1

Legal Description

EXHIBIT 2

Property Map

EXHIBIT 3

Building Envelope

**This form is not used if the CE is being donated, because it does not meet state and federal regulations for donated CEs.*

DEED OF CONSERVATION EASEMENT IN GROSS

This Deed of Conservation Easement in Gross (the "Easement") is granted by _____ ("Grantor") on the _____ day of _____, 20___, to the County of Boulder, a body corporate and politic ("Grantee") (collectively, the "Parties").

A. Grantor is the sole owner of approximately ____ acres of land in Boulder County, Colorado, described on Exhibit 1 and generally depicted on Exhibit 2 (the "Land") ***If water:* [**and certain water rights necessary to the continuation of agricultural production**]**. Grantor is conveying this Easement interest in the Land to Grantee **if water:* [, along with an undivided _____ percent interest in: *[*list water rights*] (the "Water Rights") (collectively,] the "Property").

B. The Parties acknowledge that the Property has significant scenic, open space, agricultural, rural character and environmental values.

C. The Parties intend to preserve the Property in its present condition for residential and agricultural uses and to prohibit further development on the Property, except as expressly permitted in this Easement.

NOW, THEREFORE, in consideration **add if the County is paying for the CE*: **[**of the sum of _____ Dollars ($_____) and] of the mutual covenants contained herein Grantor does hereby convey to Grantee a perpetual Conservation Easement in Gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and consisting of the rights hereinafter enumerated, over and across the Property.

The terms and conditions of this Easement are as follows:

1. Purpose. It is the intention of Grantor and Grantee to preserve the Property for its **if historic structures*: **[**historical,**]** scenic, open space, agricultural, rural character and environmental qualities.

2. Use and Development of the Property. It is the intention of Grantor and Grantee to limit the uses of the Property under this Easement, in perpetuity, to the following uses, as they are defined in Boulder County's land use regulations on the date of this Easement: residential uses involving only one single-family residence, one home occupation, and open agricultural uses, such as growing crops and keeping livestock and horses. No more than ____ animal units may be kept on the Property at the same time. No accessory dwelling units shall be allowed.

3. Construction of Buildings and Other Structures. The development of the Property shall be limited to one single-family residential dwelling and structures accessory to residential

and open agricultural uses, as further restricted by the limitations of this paragraph. Except as permitted herein, Grantor shall not erect any new structures of any kind on the Property.

Use this subparagraph if there are no structures on the Property now:

[3.1. At the time of the execution of this Easement, there are no structures of any type on the Property. Grantor may construct and then expand, remodel or replace one single-family residential dwelling, provided that the total square footage of the residential floor area, including the house, basement, any attached or detached garage, and any separate residential accessory structures, shall not exceed _____ square feet.]

Use this subparagraph if there IS already a residence on the property, and be sure to include a total for all residential structures and a second total for all accessory structures:

[3.1. At the time of execution of this Easement there *[is/are] _____ structures on the Property. The Property contains ***modify the following to name the Property's structures and their square footages, i.e.:*** [one single-family residential dwelling consisting of approximately ____ square feet and a garage consisting of approximately ____ square feet, for a total of approximately _____ square feet of residential square footage on the Property. Grantor may expand, remodel or replace the single-family residential dwelling, provided that the total square footage of the residential floor area, including the house, basement, any attached or detached garage and any separate residential accessory structure shall not exceed _____ square feet.

Always use this subparagraph:

3.2. *Insert this first sentence if appropriate:* *[The Property also contains these agricultural accessory structures: a barn consisting of approximately _____ square feet, a one-story wooden barn consisting of approximately ____ square feet, a chicken coop consisting of approximately ____ square feet, and a shed consisting of approximately ____ square feet, which together consist of a total of approximately _____ square feet.**]** Grantor may construct, expand, remodel or replace agricultural accessory structures consistent with the permitted uses of this Easement, provided that the total square footage of the agricultural accessory structures on the Property shall not exceed _____ square feet at any given time.

Always identify a building envelope if the house lot is larger than 2 acres:

3.2. All structures permitted under this Easement shall be located with the approximately _____-acre building envelope generally depicted on Exhibit 2.

Use this subparagraph is the Property contains historic or potentially historic structures:

3.4. If any current or future structures and/or the site are determined to be of historic significance by the Boulder County Historic Preservation Advisory Board, no alteration, including demolition, shall be made to the exterior of the structures without Grantor first obtaining written approval from Grantee.

Always leave in these last three subparagraphs:

3.5. For the purposes of this Easement, structures shall mean a combination of materials forming any edifice, building or man-made formation of any kind, excluding any yard and play equipment, gates or an individual sewage disposal system that serves the Property's permitted uses, if allowed under this Easement, and any retaining walls, platforms or decks that lie not more than thirty (30) inches above the Property's natural grade, excluding railings.

3.6. Solar panels and other structures associated with renewable energy systems which serve permitted uses on the Property shall not count toward the square footage limitations in this paragraph, but are permissible only to the extent permitted by Boulder County land use regulations.

3.7. Grantor and Grantee acknowledge that this Easement is a restrictive document by nature, and as such, this Easement does not grant any rights to Grantor that Grantor did not have prior to the granting of this Easement. **The construction, remodel or replacement of any structure permitted in accordance with this Easement shall be subject to all Boulder County land use regulations in effect at the time that the proposed construction, remodel and/or replacement is to take place, and all required permits and approvals must be obtained. This Easement does not grant Boulder County's approval for any development within the limits established in this Easement, if any, or for any activity regulated by Boulder County land use regulations.**

4. Subdivision. The Property shall be held as one unit, and any division of the Property (whether or not a subdivision as defined by state law) is strictly prohibited. Grantor may not convey a portion of the Property as said conveyance would constitute an impermissible division of the Property under this Easement. If the Property is divided by operation of law, all terms of this Easement shall attach to the land and shall survive any division.

5. Annexation. Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the consent of Grantee. Any such consent shall be by resolution of the Board of County Commissioners and be recorded in the office of the Boulder County Clerk and Recorder.

6. Mining. ***Use this introductory phrase only if existing oil and gas lease/s*: **[**Except for any oil and gas leases which are in effect as of the date of this Easement which may allow for the drilling of future wells on the Property,**]** the mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance shall be prohibited upon or within the Property. Grantor shall not transfer, lease or otherwise separate the soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance from the Property.

7. Telecommunications. The erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in The Federal Telecommunication Act of 1996 is strictly prohibited.

8. Conveyance of Right-of-Way. The conveyance of any right-of-way or the construction of any roadways is strictly prohibited without the written consent of Grantee, which consent shall be in Grantee's sole discretion. Any such permitted roadways shall be constructed so as to minimize the impact on the purpose of this Easement.

9. Utilities. Except as allowed under any existing utility easements, or under any additional utility easements that may be established pursuant to an exercise of eminent domain, or as is necessary to conduct any of the permitted uses of this Easement, no new utility transmission lines or other utility facilities shall be constructed or allowed on the Property, without the written consent of Grantee, which consent shall be in Grantee's sole discretion. Any such permitted utility transmission lines or facilities shall be constructed so as to minimize the impact on the purpose of this Easement.

**Use this paragraph if the Property has Water Rights*:

10. Water Rights. Grantor shall not transfer, encumber, lease, sell, or otherwise separate any surface or sub-surface water rights from the Property. Grantor may enter the Property and undertake any and all actions reasonably necessary to continue the historic use of the Water Rights, if Grantor notifies Grantee that Grantor cannot use the Water Rights on the Property in any given year or if Grantee reasonably believes abandonment of the Water Rights is occurring. Such actions by Grantee may include, but are not limited to, entering the Property to irrigate and maintain ditches, headgates, diversions or other structures, paying ditch company assessments and fees, filing a lien on the Property to ensure that Grantor reimburses Grantee for any amounts paid by Grantee to maintain the Water Rights, plus interest through the date of reimbursement, using the Water Rights on another property and any other actions necessary or appropriate to put the Water Rights to beneficial use, in Grantee's sole discretion. Grantee may also undertake any and all actions reasonably necessary to administratively prevent abandonment or forfeiture of the Water Rights.

11. Upkeep, Maintenance, Costs and Taxes. Grantor agrees to bear all costs of operation, upkeep, and maintenance of the Property and does hereby indemnify Grantee therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Property ***add if water rights*: [and Grantor agrees to pay any and all water carriage fees/ditch assessments levied by the ditch companies or other competent authority relating to the Water Rights.]

12. Indemnity. Grantor shall indemnify and hold harmless Grantee from any and all claims, suits, actions, damages and causes of action arising from the use of the Property or any environmental condition arising on the Property for personal injury, loss of life, or damage to property sustained, in or upon the Property or arising out of the use of the Property or any environmental condition arising on the Property, and from and against all costs, attorneys' fees, expenses and liabilities incurred in and about any such claims, the investigation thereof or the defense of any action or proceedings brought thereon, and from any judgments, orders, decrees, or liens, resultant therefrom by virtue of the use of the Property or any environmental condition on the Property arising out of actions by Grantor or persons under Grantor's direction or control, or with Grantor's acquiescence. By requiring this right to indemnification, Grantee in no way

waives or intends to waive the limitations on liability which are provided to Grantee under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*

[USE THIS NEXT PARAGRAPH ONLY IF THE COUNTY WANTS TO OWN THE PROPERTY SOME DAY.**]**

13. First Right to Purchase. Grantee shall have the first right to purchase the Property [**** IF WATER:** along with any or all of the Water Rights**] and mineral rights appurtenant to the Property. In the event Grantor desires to sell the Property and receives a *bona fide* offer for such sale, the Property shall be offered to Grantee who shall have a first right to purchase such offered fee interest for the same terms and conditions as the *bona fide* offer or for an amount and terms equally acceptable to Grantor. Written notice of such *bona fide* offer shall be given to Grantee who shall have thirty (30) days from the date of receipt of the written notice to accept such offer, and if not accepted, the sale may be made to such third party purchaser.

14. Grant in Perpetuity. This Easement and the covenants as set forth herein shall run with the land and be binding upon the Parties thereto, their heirs, successors, representatives, and assigns, and all persons who may hereafter acquire an interest in the Property. It is intended that this Easement and any other interests created under this Easement vest immediately.

15. Severability. If any provision of this Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

16. Amendment of Easement. If circumstances arise under which an amendment would be appropriate, Grantor and Grantee may jointly amend this Easement, except that any such amendment shall be consistent with the purposes of this Easement and its conservation principles. Any such amendment shall not affect this Easement's perpetual duration, shall not permit additional development currently prohibited by this Easement, and shall not impair the purposes of this Easement. Any such amendment shall be recorded in the Office of the Boulder County Clerk and Recorder.

In giving this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, or Grantor's heirs, successors or assigns, to conduct or implement any or all of the uses permitted under this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

17. Grantor's Warranty of Title. Grantor warrants that Grantor has good and sufficient title to the Property, that Grantor has good right, full power, and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this Easement, and Grantor hereby promises to warrant and forever defend the title to this Easement against all and every person or persons lawfully claiming by,

through, or under Grantor, the whole or any part thereof, except for the rights-of-way, easements, restrictions, covenants, and mineral reservations of record at the time of the execution of this Easement.

18. Grantor's Environmental Warranty. Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorney's fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws by Grantor or persons under Grantor's direction or control, or with Grantor's acquiescence.

19. Notices. Whenever notice is required to be given hereunder, it shall be in writing and may be faxed or delivered to the party entitled thereto or mailed to the party entitled thereto, by hand delivery or by registered or certified mail, return receipt requested. If faxed or hand delivered, said notice shall be effective and complete upon completion of the fax or hand delivery. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

To Grantee:	The Director Boulder County Parks and Open Space 5201 St. Vrain Road Longmont, CO 80503 Fax number: 303-678-6179
With a copy to:	The Boulder County Attorney's Office P.O. Box 471 Boulder, Colorado 80306 Fax number: 303-441-4794
To Grantor:	[**Name**] [**Address**] Fax Number: [**]

20. Subsequent Liens on Property. No provisions of this Easement shall be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing is subordinated to this Easement.

21. Successors. The covenants, terms, conditions and restrictions of this Easement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors, representatives, and assigns, and all persons who may hereafter acquire an interest in the Property.

22. Termination of Rights and Obligations. A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Easement or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

23. Condemnation. In the event of condemnation of all or a portion of the Property, Grantee shall be entitled to a share of the proceeds of the condemnation award, based on the value of this Easement at the time of the taking.

24. Grantee's Right of Entry. Grantee shall have the right to enter upon the Property at reasonable times, upon forty-eight (48) hours prior notice to Grantor, to monitor and enforce compliance with the terms and covenants of this Easement and to remove or eliminate any conditions or operations which violate the same, except that no such notice shall be required in the event Grantee reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a violation of this Easement. If Grantee has determined that immediate entry is necessary, a reasonable attempt shall be made to notify Grantor. No further right of access, entry or possession is conveyed hereby.

25. Enforcement. In the event of a violation of any term, condition, covenant, or restriction contained in this Easement, after thirty (30) days' notice of violation to Grantor, Grantee may institute a suit to enjoin by temporary and/or permanent injunction such violation, or for damages for breach of covenant, or may take such other action as it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement; provided, however, that any failure to so act by Grantee shall not be deemed to be a waiver or a forfeiture of the right to enforce any term, condition, covenant, or purpose of this Easement in the future. Notwithstanding the above-stated requirements in this Paragraph, when Grantee reasonably believes an ongoing or threatened imminent activity violates this Easement, Grantee may, in its sole discretion, take immediate legal action including, but not limited to, filing a civil action to seek a temporary restraining order and/or injunctive relief.

26. Costs of Enforcement. If a violation by Grantor is determined to have occurred, any reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation any reasonable attorney fees and costs, and any reasonable costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor.

27. Waiver. Enforcement of the terms of this Easement shall be at the sole discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

28. Restoration. Grantor further intends that if any prohibited activity is undertaken on the Property, Grantee shall have the right to cause the restoration of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such prohibited activity. In such case, the cost of such restoration shall be borne by Grantor.

29. Interpretation. This Easement shall be liberally construed in favor of this Easement to effect the purpose of this Easement and the policies and purpose of C.R.S. §§ 38-30.5-101 *et seq.*

30. Exhibits. All exhibits to this Easement are incorporated herein by their reference.

31. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the Amendment Paragraph herein.

32. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

33. Counterparts. This Easement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Faxed signatures shall be acceptable to and binding upon the Parties.

34. **Property Sale. Grantor shall provide a copy of the Easement to the proposed buyer or transferee of the Property at least thirty (30) days prior to closing. Grantor agrees that reference to this Easement shall be made in any subsequent deed, or other legal instrument, by means of which Grantor conveys any interest in the Property, including a leasehold interest.**

35. **Notice to County of Transfer of Property. Grantor shall provide written notice to Grantee of the transfer of the Property and the name, address, and telephone number of the buyer or transferee within ten (10) days after closing. Failure to provide notice pursuant to this paragraph shall not invalidate any transfer or conveyance of the Property.**

IN WITNESS WHEREOF, Grantor has executed this instrument on the date set forth in its acknowledgement intending that this instrument be effective as of the date set forth above.

GRANTOR:

_____

State of *Colorado
County of *Boulder

The foregoing instrument was acknowledged before me this ___ day of _____,

20___ by _____.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

IN WITNESS AND ACCEPTANCE WHEREOF, Grantee has caused its name to be hereunto subscribed the day and year first above written.

COUNTY OF BOULDER,
a body corporate and politic

By: _____
[Commissioner Name], Chair

By: _____
[Commissioner Name], Vice Chair

By: _____
[Commissioner Name], Commissioner

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by [Commissioner Name] Chair, [Commissioner Name], Vice Chair, and [Commissioner Name], Commissioner, of the Board of County Commissioners of Boulder County, Colorado.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

EXHIBIT 1

Legal Description

EXHIBIT 2

Property Map

Appendix 3 –
Conservation Easement Donation Practices

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

CONSERVATION EASEMENT DONATION PRACTICES

For Evaluating a Potential Donation of a Conservation Easement to Boulder County

Boulder County encourages landowners to consider donating conservation easements to the County to protect property from further development. In certain circumstances, Boulder County may pay for a portion of the conservation easement in what is called a "bargain sale," whereby only a portion of the conservation easement is donated and a portion of the conservation easement is paid for by Boulder County.

Donation Value

A full or partial donation of a conservation easement may meet the requirements of Section 170(h) of the Internal Revenue Code of 1986, as amended, and may be eligible for tax benefits if all Internal Revenue Service and/or the State of Colorado requirements are met. Boulder County must agree in writing before a transaction has been completed to recognize donation value in a conservation easement transaction, or the County will not sign the landowner's tax forms.

Boulder County's acceptance of a conservation easement is based on the County's local open space program goals; however, even if Boulder County accepts a donated conservation easement and agrees in writing to recognize donation value, the County expressly does not guarantee that the transaction has donation value or that the donation will receive tax benefits. The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement. Once granted, a conservation easement is permanent and extremely difficult to release. Please be advised that there may be adverse legal and other consequences if the grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit. Termination is only possible if the grantor can prove to a court of competent jurisdiction that circumstances have arisen that render the purpose of the conservation easement "impossible" or "impracticable" to accomplish. This is a difficult test to prove and is only met in very rare situations.

Variable Factors. Boulder County considers many variables in determining whether or not to accept a donated conservation easement, including if the donation will protect significant conservation values for open space. Boulder County will examine the following factors in deciding whether or not the County should accept a conservation easement donation and will make each decision on a case-by-case basis.

Conservation values that Boulder County finds significant are identified in a variety of written sources, including the County's Comprehensive Plan, documentation of the County's transferable development rights programs, and intergovernmental agreements between Boulder County and municipalities within the County. These criteria constitute just part of

the analysis; decisions on whether to accept a conservation easement donation will depend on the combination of these factors:

- ***How Well the Property Meets Boulder County's Open Space Definition*** – The Boulder County Comprehensive Plan defines open space to be lands "intentionally left free from future development, and in which it has been determined that it is, or may in the future be, within the public interest to acquire an interest in order to assure their protection."
- ***How Well the Property Exhibits Functions of Open Space*** – The Boulder County Comprehensive Plan defines these "functions of open space" that contribute significantly to a property's conservation value:
    - ***Urban Shaping*** – Properties between or around municipalities or community service areas, and buffer zones between residential and non-residential development.
    - ***Preservation*** – Properties containing critical ecosystems; natural areas; scenic vistas and areas; fish and wildlife habitats; natural resources and landmarks; outdoor recreation areas; cultural, historic and archaeological areas; linkages and trails; access to public lakes, streams and other useable open space lands; and scenic and stream or highway corridors.
    - ***Conservation of Natural Resources*** – Properties including but not limited to forest lands, range lands, agricultural lands, aquifer recharge areas and surface water.
    - ***Designated Areas of Environmental Concern*** – Properties in multiple ownership, where several different preservation methods (including other governmental bodies' participation or private ownership) have already been used. These lands will generally not be considered for control by the County open space program, provided sufficient evidence exists that these lands are to be preserved in a natural state.
- ***Ecological Values*** – To what extent does the property meet one or more of the foregoing functions of open space, e.g., does the property contain valuable ecosystems and land suitable for wildlife habitat?
- ***Property Location*** – Is the property adjacent to other protected properties or state or federal lands that constitute open space? Is the property visible from a public roadway or property open for public use? Is the property within an area identified in the Boulder County Comprehensive Plan, an intergovernmental agreement, or other approved planning document as having important conservation values? Does the property lie in an area desired for protection?
- ***Property Size*** – Is the property of sufficient size to keep its conservation values intact and provide public benefit, even if surrounding properties are developed? (Size is not the determining factor, however, it will weigh in with the other issues in determining whether significant conservation values can be protected.)
- ***Development Potential*** – Will one or more development rights be extinguished by donation of the conservation easement? If so, is the property located in an area where it is appropriate to limit development? For example, although the property may be a legal building lot, developing it may adversely impact the property's conservation values. Conversely, is development of the property appropriate? For example, does the property

lie within a subdivision and have no conservation value besides eliminating its development? (If the latter is true, a conservation easement may not be appropriate.)

- ***Cultural Resources*** – Does the property contain significant historical or archeological resources that are important to Boulder County's heritage?
- ***Property Condition*** – Is the property in good condition with no significant environmental hazards, or is there a problem with its condition? (For example: Has the property been used for a dump site? Does it have large areas of contaminated soil? Does the property have surface disturbance from previous mining activities?)
- ***Cost*** – Will the public benefits of protecting the property for open space outweigh the costs associated with accepting and holding the conservation easement (reviewing due diligence and dealing with pre-closing issues, monitoring the property annually, legally defending the conservation easement, etc.)?
- ***Miscellaneous*** – What other factors positively or negatively influence the decision, for example, is surface mining for sand, gravel or minerals common in the area, or is the general area being drilled for oil/gas wells to the extent that those activities will impact the property's conservation values?

Disqualifying Factors. Boulder County will decline to accept a conservation easement donation if the County believes that the proposed transaction does not have conservation value, will not provide a significant public benefit, and/or does not meet the County's legal due diligence requirements. Boulder County will also decline to accept the donation if a project appears to involve any type of fraud, including but not limited to tax fraud. Boulder County may decline to accept the donation or if a project presents negative public perception issues.

Process. The Boulder County Parks and Open Space Department (POS) will evaluate the property using the foregoing criteria and any other factors deemed relevant. (In instances where POS does not support the proposed donation, POS may at its discretion present the project for approval upon the landowner's request, but POS will recommend not accepting the donation.)

Parks and Open Space Advisory Board Approval
If Boulder County pays for any portion of the value of the conservation easement, POS makes a recommendation to the Boulder County Parks and Open Space Advisory Board (POSAC) and asks that POSAC recommend the acquisition to the Boulder County Commissioners.

Commissioner Approval
POS makes a recommendation to the Boulder County Commissioners on whether or not to accept the donation, and the Commissioners will make the final determination.

Legal Due Diligence
During its consideration of accepting a conservation easement donation, Boulder County will conduct due diligence review to ensure the donation meets all requirements (county, state and federal). These and other questions will be researched during the legal due diligence process:

- Do any of the easement's terms, such as rights to be reserved by the landowner, diminish the property's conservation values or compromise the County's ability to enforce their protection?

- Does the environmental hazards assessment ("Phase I report") show any hazardous conditions that would be unacceptable to the County?
- Does the title commitment show any title exceptions that could jeopardize the perpetual nature of the conservation easement? (If so, all such title exceptions must be removed; for example, landowners must work with any mortgage companies to have mortgages subordinated to the conservation easement at closing, or Boulder County will not accept the donation.)
- Does the landowner own the minerals? If not, are they willing to pay for a mineral remoteness letter from an expert to determine whether or not the property meets the state/federal requirement that the likelihood of mining is 'so remote as to be negligible'? (Such letters are required by the Internal Revenue Service and the State of Colorado for donations if the mineral estate has been split from the surface estate.)
- Could any title exceptions irreparably damage the property's conservation values, for example, have the mineral rights been severed from surface ownership in an area likely to be surface mined or drilled in such a way as to impact the property's conservation values?
- Is the landowner willing to sign the baseline documentation report at closing?
- Has the landowner provided Boulder County with a copy of the property appraisal? (POS requires the landowner to provide POS with a copy of the appraisal or draft appraisal prior to closing and with a final, signed copy of the appraisal for POS' files.)
- Does the appraisal meet the requirements for a 'qualified appraisal' as defined by Treasury Regulations promulgated by the Internal Revenue Service? Does the appraiser who conducted the appraisal meet the qualification requirements for completing the specific type of appraisal needed for conservation easement donations? (By law, donors are responsible for ordering and obtaining a qualified appraisal from an appraiser who follows the Internal Revenue Service's requirements in preparing appraisals of conservation easements involving potential donation value.
- Does the appraisal contain any substantial errors or issues that cause the value estimates to be unreasonable? (If POS staff is concerned about any content of the appraisal or draft appraisal, including value estimates, POS staff immediately alerts the landowner and the appraiser and works with them to correct the appraisal. If POS has significant concerns about the value estimates contained in the appraisal or draft appraisal, Boulder County will not participate in the transaction.)

Please also note that:

- Conservation easement properties remain in private ownership and the landowner is responsible for all rights, responsibilities and costs of managing the property.
- Boulder County monitors properties encumbered by conservation easements to fulfill its rights and obligations under the terms of the easement.
- The public does not have access to private properties encumbered by conservation easements, unless the landowner has expressly agreed to it in the conservation easement or other legal document.

Last updated 12-16-15

Appendix 4 –
Property Assessment for a Conservation Easement (PACE) Form

Property Assessment for a Conservation Easement

(POS staff will complete this PACE form, which is intended for internal use only.)

This point system is based on the County's CE Donation Practices; see that separate document for more information. This is designed to be a tool to guide decision-making, and POS may consider any other factors staff deems important for deciding whether or not a specific property fits Boulder County's conservation easement program. Even if the County accepts a donated conservation easement, the County expressly does not guarantee that the donation will receive tax benefits, and landowners should obtain independent legal, financial and tax advice before donating an easement or any easement value.

Property Name: _____ Form Completed By: _____

Open Space Functions from the Boulder County Comprehensive Plan and/or other Plan Documents (including IGAs and TDR programs)

Criteria	Description	Points Possible	Score
1. Urban Shaping	PROS: • Is the property designated as potential open space or for rural preservation within any municipality's plan, IGA, or TDR agreement? • Or does the BCCP designate the property as 1) proposed open space; or 2) existing trail, trail corridor or potential trail alignment? • Or does the property potentially provide a buffer zone between or around municipalities or community service areas (i.e., is it outside of a municipal development IGA), or between residential and non-residential development?	**+5**	
	CONS: • Is the property within an existing subdivision? • Or if the property isn't within an existing subdivision, is the property surrounded by property that is or will be developed, so protecting the property will not contribute to urban shaping?	-5	
	Urban Shaping Score (potential is +5 points):		
2. Preservation	PROS: • Does the BCCP designate the property as 1) Open Corridor – Streamside; 2) Open Corridor – Roadside; 3) Natural Area; and/or 4) Natural Landmark; 5) part of the foothills/mountain backdrop; and/or 6) significantly visible for the general population (i.e., from a public road, public land, etc.)? • Or does the property not meet the foregoing criteria but contributes to the rural character, scenic quality, or scenic vista of Boulder County, or contain a prominent ridgeline, lake, etc.?	**Up to +15**	
	CONS: • The property does not contribute to – or its development would not significantly impact – the scenic quality of Boulder County.	+0	
	Preservation Score (potential is +15 points):		
3. Conservation of Natural Resources	*Forest Land* – For land in the mountains or foothills, does it contain: PROS: • An old growth forest or a Champion tree • Or potential old growth (mature trees over 150 years old); diverse mosaic area; appropriate tree placement for elevation (climax species); historically undisturbed forest with high forest health (absence of insects, disease, crowding)	**+5**	
	CONS: • Does the property lack any potential old growth areas?	+0	
	Forest Land (potential is +5 points):		

	OR Agricultural Land – For land in the plains, does it contain: PROS: • Are more than 75% of the property's soils designated unique or of National, Statewide or Local Importance; prime land or irrigated with a capability classification greater than II; and will abundant water remain tied to the land?	**+5**	
	• Are more than 50% of the property's soils designated unique or of National, Statewide, or Local Importance; prime land or irrigated with a capability classification greater than III; and will sufficient water remain tied to the land; or is it high potential dry cropland?	or +4	
	CONS: • Are some, but less than 50% of soils designated as unique or of National, Statewide, or Local importance; or is the land irrigated with a capability classification lower than III; or is less than adequate water available; or is it marginal potential dry cropland? • Do none of the soils fall into the categories listed above?	+2 +0	
	Agricultural Land (potential is +5 points):		
		AND	
	Vegetation – Does the property contain: PROS: • 1) Known presence of threatened or endangered species, or a state listed species of concern; 2) CNHP plant rank of G1 or S1; designated in the BCCP as 3) a Significant Natural Community, 4) a Rare Plant Area, or 5) a Significant Riparian Corridor ? • Undisturbed plant community; outstanding example of native plant community or significant plant association; high degree of diversity in a riparian area or wetland; designated as a Stream Habitat Connector in BCCP; CNHP plant rank of G2, S2, or S3? • Any riparian or wetland areas (may include ditches) having high restoration potential for native habitat; CNHP plant rank of S4? • Or well-managed crops or grass cover, with few weeds?	**Up to +10**	
	CONS: • Preponderance of non-native plants, except crops and/or large areas infested with noxious weeds • Little or no vegetation, distressed vegetation, highly disturbed soil, high erosion potential, lacking topsoil • Surface mines, overburden piles or gravel pits, with no plans for remediation to be done soon • High disturbance from non-native trees, insects/disease, etc.?	**Down to -10**	
	Vegetation (potential is +10 points):		
		AND	
	Wildlife – Does the property contain: PROS: • 1) Known presence of threatened or endangered species, or a state listed species of concern; 2) CNHP wildlife rank of G1 or S1; designated in the BCCP as a 3) Critical Wildlife Habitat; or 4) Overland Habitat Connector • Known recent presence of breeding raptor or waterfowl nests or maternity bat roosts; CNHP wildlife rank of G2, S2 or S3 • Habitat for uncommon native wildlife or known migration corridor for common native wildlife; CNHP wildlife rank of S4 • Habitat for common wildlife but not in an Environmental Conservation Area	**Up to +10**	
	CONS: • Wildlife habitat not contiguous with other wildlife habitat and largely surrounded by developed land • Degraded habitat that is not contiguous to healthy habitat	**Down to -10**	
	Wildlife (potential is +10 points):		

	Conservation of Natural Resources Score (potential is +25 points):		
4. Designated Area of Environmental Concern	PROS: • Is the property designated in the BCCP as an Environmental Conservation Area, and if so, is it reasonable to assume that another jurisdiction will <u>not</u> protect it?	**+5**	
	CONS: • If the property is designated in the BCCP as an Environmental Conservation Area, is it reasonable to assume that another jurisdiction <u>will</u> protect it? • Or is the property <u>not</u> designated in the BCCP as an area of environmental concern?	+0	
	Designated Area of Environmental Concern Score (potential is +5 points):		
	Total Potential BCCP Criteria Score:	**+50**	

POS Variable Factors – Other Criteria Defined by the Parks and Open Space Department			
1. Location	PROS: Is the property adjacent to – • Large, County-managed open space, or does it provide a critical link for a County-managed trail corridor or other public access? • Large existing non-County managed open space or other protected land, or provide a critical link for non-County trail corridor or other public access? • Smaller existing open space or other protected land, or to anticipated open space?	**+10** +8 +5	
	CONS: • Is the property not adjacent to existing or anticipated open space or protected land?	+0 to -5	
	Location Score (potential is +10 points):		
2. Size	PROS: Is the property • > 321 acres • 160-320 acres • 81-159 acres • 35-80 acres	**+10** or +8 or +6 or +4	
	CONS: Is the property • 6-34.99 acres • 0-5 acres	+2 +0	
	Size Score (potential is +10 points):		
3. Development Potential	PROS: • Boulder County has determined that the property is buildable and that it has ____ building rights. ___ right/s will be relinquished. • Is the threat of development imminent?	**+5/right (up to +15)** and **+5**	
	CONS: • Will any development rights be retained, and if so, will they negatively impact the property's conservation values? • Is the property not reasonably developable under current Land Use Code standards (no access; severe slope; not a legal building lot; development rights already used; etc.), or is development otherwise unlikely? • Will all or most of the surrounding properties be developed (or are they already), and will that negatively impact the property's conservation values over time?	-5 and/or -5 and/or -5	
	Development Potential Score (potential is +20 points):		

4. Cultural Resources	PROS: • Does the property contain outstanding, highly significant, or unique historical or archaeological resources? • Does the property contain any known historical or archaeological resources? • Is the property located within an Archaeological Sensitive Area, or does it have cultural features that would make preserving the property important for preserving the County's cultural heritage?	**+5**	
	CONS: • Does the property <u>not</u> appear to contain any cultural, historical or archaeological resources?	+0	
	Cultural Resources Score (potential is +5 points):		
5. Property Condition	PROS: • Is the property in good condition with no significant environmental hazards or other issues, including: weeds; prairie dogs; cleanup and/or demolition of structures needed; liability/safety; fencing?	**+3**	
	CONS: • Is the property in bad condition, and/or does the property have significant environmental hazards or other issues with its condition?	-3	
	Property Condition Score (potential is +3 points):		
6. Cost	PROS: • Is the cost of due diligence reasonable relative to the benefits of protecting the property?	**+2**	
	CONS: • Is the cost of due diligence <u>un</u>reasonable relative to the benefits of protecting the property?	-2	
	Cost Score (potential is +2 points):		
	Total POS Factors Score:	**+50**	
	Plus the Total Potential BCCP Criteria Score (from p. 2):	**+50**	
	Total Property Score:	**+100**	

1. Based on the foregoing information, does it appear that the proposed donation would meet the requirements for the landowner to obtain either state tax credits or federal tax deductions? (The requirements are contained in of Section 170(h) (4)(A) of the Internal Revenue Code of 1986, as amended.)

❑ No ❑ Yes

If yes, circle any/all categories that apply:

1) Outdoor recreation or education of the public
2) Natural habitat for fish, wildlife, plants or similar ecosystem
3) Open space (including farmland or forestland)
   a. Scenic enjoyment by the public, or
   b. Pursuant to a clearly delineated government conservation policy that yields a significant public benefit
4) Historically important land area or certified historic structure

2. Should Boulder County accept this donation (i.e., does the project still have value to Boulder County's open space program and provide public benefit, even if it might not qualify for state or federal tax benefits?

❑ No ❑ Yes

Explain and/or provide any pertinent details: _____

_____

_____

_____

_____

_____

Appendix 5 –
Landowner Information Packet

Boulder County

Parks and Open Space

5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • www.BoulderCounty.org

Letter to Landowners

Dear Landowner:

This packet contains information you might find helpful in evaluating whether or not you would like to ask Boulder County to consider holding a conservation easement over your property. This packet is intended only to give you an overview of the County's conservation easement program, and is not in any way intended to be a promise (implied or otherwise) that Boulder County might accept a conservation easement over your property. The information in this packet includes:

1. Brochure outlining Boulder County's conservation easement program, which focuses on protecting the rural areas of Boulder County;
2. Document describing several options for preserving property through Boulder County's conservation easement and open space programs;
3. Document explaining the County's conservation easement donation practices;
4. Document describing the process that would be undertaken to complete a conservation easement transaction with Boulder County;
5. Document explaining the County's Expanded TDR Program (or TDC Program); and
6. State of Colorado's FYI 39 publication relating to state tax credit requirements.

Here also are links to a few tax credit broker's websites, for more information on the state tax credit:

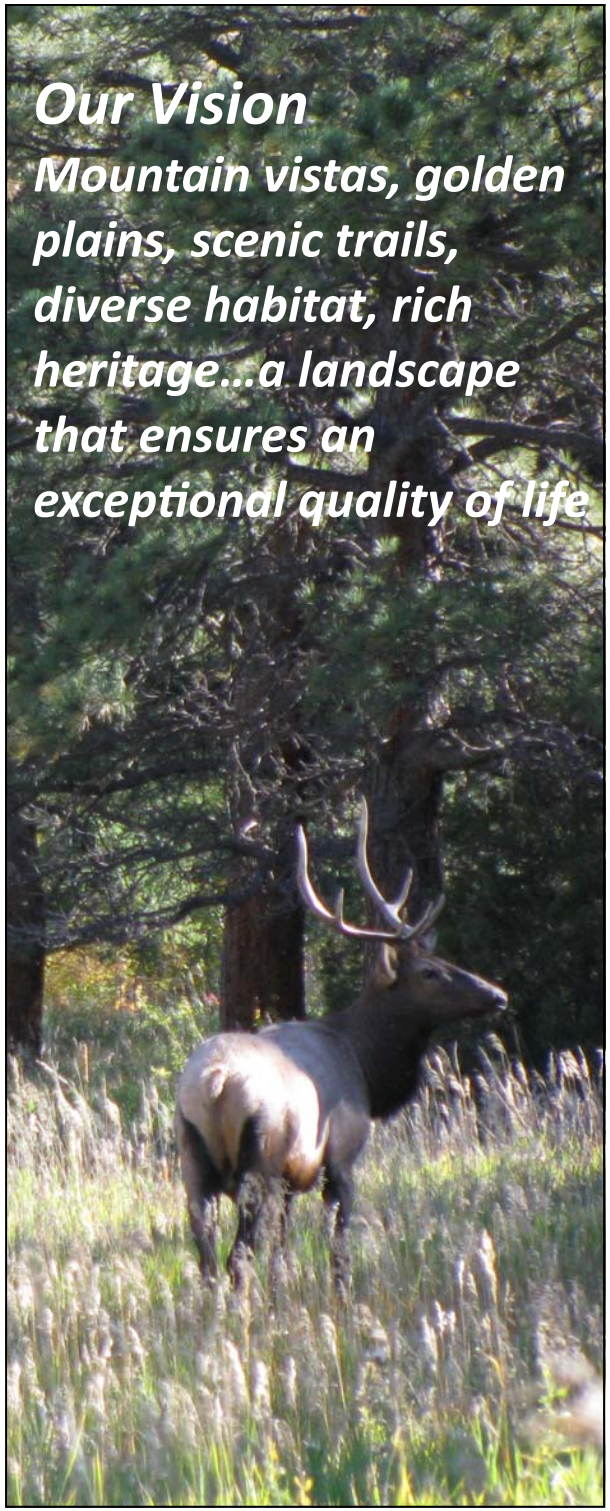
- http://www.taxcreditexchange.com
- http://www.taxtransfer.net
- http://www.taxcreditconnection.com

This information highlights certain aspects of doing a conservation easement transaction, but by no means provides all of the information you would need to evaluate whether or not a conservation easement is right for your property. Boulder County's acceptance of a conservation easement is based on the County's local open space program goals, and may also meet the requirements of Section 170(h) of the Internal Revenue Code of 1986, as amended; however, even if Boulder County accepts a donated conservation easement and agrees in writing to recognize donation value, the County expressly does not guarantee that the transaction has donation value or that the donation will receive tax benefits. ***The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement.*** Once granted, a conservation easement is permanent and extremely difficult to release. Please be advised that there may be adverse legal and other consequences if the grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit. Termination is only possible if the grantor can prove to a court of competent jurisdiction that circumstances have arisen that render the purpose of the conservation easement "impossible" or "impracticable" to accomplish. This is a difficult test to prove and is only met in very rare situations.

If you are interested in talking with me further about the possibility of placing a conservation easement on your property to be held by Boulder County, please don't hesitate to call me. I would be happy to explore the idea with you.

Sincerely,

Janis Whisman
Real Estate Division Manager
Direct line: (303) 678-6263
jwhisman@bouldercounty.org



Boulder County's Conservation Easement Program

Colorado continues to experience sustained and significant growth. Projections indicate that several million people will live here by 2030. Boulder County contains many desirable features – its magnificent views and geography are among the reasons so many people live here to enjoy "the good life".

Boulder County has wisely been working since the 1970's to preserve the reasons people want to live here. Boulder County is now a national leader in using land use planning to manage growth and protect natural resources through land conservation. County citizens have generously taxed themselves since 1993 to protect the natural habitat, scenic views, community buffers and other open space in Boulder County. To date, Boulder County has invested more than $150 million to acquire nearly 100,000 acres of open space for its citizens to enjoy in a variety of ways.

A conservation easement is a voluntary agreement by a landowner to protect a property's important conservation values, limit development and specify allowable uses on the property. Conservation easements granted to Boulder County require Boulder County to monitor the property for compliance with conservation easement terms. Conservation easements are usually perpetual and remain in effect when the property is transferred to a new owner.

Boulder County holds conservation easements over more than 40,000 acres. These involve more than 800 private properties, including:

- Agricultural properties that help preserve working farms and ranches;
- Mountain properties that protect significant natural habitat;
- Properties that preserve scenic open space and buffers around municipalities; and
- Rural properties that preserve natural areas, agricultural land, historically important buildings and pastoral character.

Properties in Boulder County may be eligible for one of the following programs. County staff visit the property to assess its conservation values and work with landowners to negotiate, obtain approval by the Boulder County Commissioners, draft, obtain and review legal documents, and close the transaction. This typically takes several months, particularly for donations, because state and federal regulations require the landowner to obtain a detailed appraisal of the property.

1. Conservation Easement Donation

Landowners may donate conservation easements over land with significant conservation value. Landowners *may* be eligible for tax benefits and should obtain expert tax advice *before* donating.

2. Conservation Easement Purchase

In very limited circumstances when Boulder County believes properties have exceptional conservation values, Boulder County may purchase a conservation easement.

3. Transferable Development Right (TDR) or Credit (TDC) Conservation Easement

Some properties may qualify under one of these County programs to 'send' development rights or credits to other qualifying properties. When this occurs, Boulder County receives a conservation easement over the sending property.

4. Non-Urban Planned Unit Development (NUPUD) Conservation Easement

Some properties may qualify for this process. Contact the County's Land Use Department (303-441-3930) for information.

Boulder County Parks and Open Space

After a landowner grants a conservation easement to Boulder County, the landowner remains the land manager, and Boulder County has no rights or responsibilities to manage the property. Boulder County views its role as a partnership with landowners, and Boulder County's conservation easement program staff can be a great resource for landowners who have questions about managing their property and what uses are allowed after the easement has been granted.

For more information, please contact:

Conservation Easement Program Staff
Boulder County Parks and Open Space
5201 St. Vrain Road
Longmont, Colorado 80503
(303) 678-6266

Boulder County's Conservation Easement Program

Boulder County

Parks and Open Space

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303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

OPTIONS FOR PRESERVING PROPERTY

(A Description for Landowners)

Boulder County's acceptance of a conservation easement is based on the County's local open space program goals, and may also meet the requirements of Section 170(h) of the Internal Revenue Code of 1986, as amended; however, even if Boulder County accepts a donated conservation easement and agrees in writing to recognize donation value, the County expressly does not guarantee that the transaction has donation value or that the donation will receive tax benefits. The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement. Once granted, a conservation easement is permanent and extremely difficult to release. Please be advised that there may be adverse legal and other consequences if the grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit. Termination is only possible if the grantor can prove to a court of competent jurisdiction that circumstances have arisen that render the purpose of the conservation easement "impossible" or "impracticable" to accomplish. This is a difficult test to prove and is only met in very rare situations.

The attached document describes a few important details about potential options that landowners may have for preserving their properties and describe generally how each program might work for a particular property. Boulder County reserves the right to determine whether or not a particular property might be suitable for Boulder County's open space program. Boulder County does not guarantee the accuracy of this information, and landowners should only act after first obtaining their own professional and qualified legal, financial and tax advice. Many details can affect the potential benefits landowners may or may not receive, and landowners can jeopardize potential benefits by not following specific requirements when completing transactions, so the landowner should be well-informed by professionals before undertaking a conservation easement transaction.

Last updated 8-26-19

Deb Gardner *County Commissioner* **Elise Jones** *County Commissioner* **Matt Jones** *County Commissioner*

Conservation Easement

1. Conservation Easement (CE) Full or Partial Sale – Boulder County *sometimes* considers buying conservation easements over properties that significantly contribute to the County's comprehensive plan. This is done at the County's discretion, and is fairly rare.

2. Conservation Easement (CE) Full or Partial Donation – Donor must meet all requirements, including the intent to preserve the property. (In other words, landowners cannot get tax credits or deductions unless they initially have the donative intent.) *The following is provided only as general information and is not reliable; each donor should obtain legal, financial and tax advice for up-to-date regulations and specific details that apply to their situation.*

Donation Detail	***Potential State Tax Credit***	***Potential Federal Tax Deduction***
Owner	Must be a Colorado resident, a legal entity established in Colorado (such as an LLC),	Must be a legal US entity; cannot be a non-profit organization (since they don't pay income taxes)
Credit/Deduction (based on CE Value, which is a portion of the property's full value)	75% of the first $100,000 in CE value, then 50% of your remaining donation up to $1,500,000 per year for an overall cap of $5 million per donation	100% of the CE value
Claim credit against:	Credit against Colorado state income tax due [Credits are not taxable by the state. Credits can be used by the donor, or sold for cash to buyers who use them for their income tax burdens. Tax credit brokers are currently paying donors 82-83 cents on the dollar.]	Deduction that reduces adjusted gross income (AGI), thereby reducing tax burden [Federal taxes are due on state tax credits claimed, used or sold the same year. Also, the IRS has taken the position state credits are ordinary income and not capital gains.]
Amount claimable each year:	Up to full amount of tax owed	Up to 50% of AGI, or 100% of AGI if donor is a qualified farmer or rancher
Use credit by:	Year of donation plus 20 years (21 years total)	Year of donation plus 15 years (16 years total)

3. Conservation Easement (CE) Trade for Transferable Development Credits (TDCs) – Trade must meet all TDC program requirements. No state tax credits or federal deductions are available for transactions done under this program.

TDC Trade Detail	***Mountains***	***Plains***
Vacant property, or	5 TDCs	10 TDCs
Developed property	2000 square feet = 2 TDCs 1500 square feet = 3 TDCs 1000 square feet = 4 TDCs	[same as for mountain properties]
Value	Sales are listed on this website: https://www.bouldercounty.org/property-and-land/land-use/planning/transferable-development-credits-tdc/marketplace/	
Potential tax benefits (state or federal)	$0 (CE is traded for TDCs and is not donated.)	$0 (CE is traded for TDCs and is not donated.)

Fee Title

1. Full or Partial Sale – Boulder County sometimes considers buying properties that significantly contribute to the County's comprehensive plan. This is done at the County's discretion, and is fairly rare.

2. Fee Donation – Donor must meet all requirements. *The following is provided only as general information and is not reliable; each donor should obtain legal, financial and tax advice for up-to-date regulations and specific details that apply to their situation.*

Donation Detail	***Potential State Tax Credit***	***Potential Federal Tax Deduction***
Owner	N/A	Must be a legal US individual or entity; cannot be a non-profit organization (since they don't pay income taxes)
Credit/Deduction (based on full fee value)	N/A ($0)	100% of the fee value
Claim credit against:	N/A	Federal tax due on adjusted gross income (AGI) [Note: Federal taxes are due on state tax credits claimed, used or sold the same year. Also, the IRS has taken the position this is ordinary income and not capital gains.]
Amount claimable each year:	N/A	Up to 30% of AGI (regular charitable deduction rules apply)
Use credit by:	N/A	Year of donation plus 5 years (6 years total)
Use credit before:	N/A	N/A

3. Fee Trade for Transferable Development Credits (TDCs) – Trade must meet all requirements. No state tax credits or federal tax deductions are available for transactions done under the County's transferable development program.

TDC Trade Detail	***Mountains***	***Plains***
Vacant property, or	7 TDCs	12 TDCs
Value	Sales are listed on this website: https://www.bouldercounty.org/property-and-land/land-use/planning/transferable-development-credits-tdc/marketplace/	
Potential tax benefits (state or federal)	$0 (Fee is traded for TDCs and is not donated.)	$0 (Fee is traded for TDCs and is not donated.)

Boulder County

Parks & Open Space

5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

BOULDER COUNTY'S CONSERVATION EASEMENT PROCESS

(A Description for Landowners)

Boulder County's acceptance of a conservation easement is based on the County's local open space program goals, and may also meet the requirements of Section 170(h) of the Internal Revenue Code of 1986, as amended; however, even if Boulder County accepts a donated conservation easement and agrees in writing to recognize donation value, the County expressly does not guarantee that the transaction has donation value or that the donation will receive tax benefits. The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement. Once granted, a conservation easement is permanent and extremely difficult to release. Please be advised that there may be adverse legal and other consequences if the grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit. Termination is only possible if the grantor can prove to a court of competent jurisdiction that circumstances have arisen that render the purpose of the conservation easement "impossible" or "impracticable" to accomplish. This is a difficult test to prove and is only met in very rare situations.

Note also that taking a project from inception to closing requires approximately 3-4 months, and sometimes more or slightly less, depending upon how quickly project details come together. This is intended to be only a representation of how deals come together; details vary on a case-by-case basis.

A. Initial Information *(takes about 1-3 weeks)*

1. Boulder County collects information from the landowner about the property and what the landowner desires for the conservation easement to accomplish.

   - This requires a site visit and several conversations with the landowner.
   - The County asks questions relating to the land itself (acreage, features, uses, etc.), potential restrictions to be placed on the property through the conservation easement (the size, number and type of buildings, whether or not the residential building right will be extinguished, any water rights used on the property, etc.), the landowner's motivation for protecting the property through a conservation easement, and other relevant topics.

2. The County reviews the potential projects with other County staff at the Parks and Open Space Department.

   - County staff review photographs taken during the site visits and the property details gathered from the landowner, as well as public information obtained from other sources, such as whether or not the property constitutes a legal building lot.
   - County staff evaluates the proposed conservation easement for its relevance in meeting County goals for its open space program.

3. The County tells the landowner the results of the initial County staff discussion and whether the County is interested in pursuing the conservation easement.
   - If the property has not yet been determined to be a legal building lot, County staff helps the landowner request this evaluation from the County's Land Use Department.
   - If the property is not a legal building lot, any value the landowner has to sell or donate via a conservation easement can be greatly diminished.

4. If the property has any water rights, the landowner provides the County with copies of any water share certificates and documentation of other water rights with the property (such as springs or ponds).

5. If the project involves an anticipated donation for which the landowner desires tax benefits, the landowner must order and pay for a specific kind of appraisal. Pursuant to federal treasury regulations described in USC 26 §170, it is the donor's responsibility to obtain the appraisal.
   - The appraisal must meet state and federal requirements of a "qualified appraisal" (defined at USC 26 §170, particularly §170(f)(11)). The appraiser must have a specific kind of experience valuing conservation easement interests, and the appraisal must be done in accordance with the Uniform Standards of Professional Appraisal Practice. These specialized appraisals can be very expensive, due to all of the requirements the appraiser must meet in being eligible to conduct the appraisal and in completing it under specific guidelines.
   - Appraisals can take months to complete, so the County encourages the landowner to order this as soon as possible.
   - The appraisal must have an effective date (or "date of value") within 60 days prior to the intended closing. For this reason, appraisers may initially prepare appraisals in draft status and complete them within the 60-day window prior to closing.
   - The appraisal needs to be completed prior to closing. In limited situations, the County may agree to accept the conservation easement after seeing a draft of the appraisal and before the appraisal has been finalized and signed by the appraiser.
   - If POS staff is concerned about any content of the appraisal or draft appraisal, including value estimates, POS staff immediately alerts the landowner and the appraiser and works with them to correct the appraisal. If POS has significant concerns about the value estimates contained in the appraisal or draft appraisal, Boulder County will not participate in the transaction.
   - Boulder County must be provided with a copy of the final appraisal for its files.

B. Letter Agreement and Conservation Easement *(takes about 3-4 weeks)*

6. If the County is willing to proceed, the County drafts an agreement for the landowner outlining all of the potential restrictions that would be placed on the property through the conservation easement.
   - This agreement also outlines all of the conditions that would need to be satisfied before the County would accept the conservation easement, e.g., title, environmental hazards, representations and warranties expected from the landowner, etc.
   - This agreement also contains a draft of the conservation easement, showing the landowner the restrictions that the conservation easement would contain.
   - The agreement and conservation easement will be drafts, and if the County Attorney does not review them before they are sent to the landowner, they must be reviewed and revised as required by the County Attorney before the County can sign them.

7. The landowner reviews the draft agreement and draft conservation easement, and the County staff person negotiates additional terms or changes needed.

8. If the landowner and the County agree on the terms of the potential transaction, the landowner signs the agreement and returns it to the County staff person.

   - ***The landowner should seek independent legal, financial and tax advice before signing the agreement, to ensure that the contemplated project meets all of his or her needs. (Boulder County cannot provide legal, financial or tax advice and makes no representations, implied or otherwise, as to the tax treatment a transaction may receive.)***

C. County Approval *(takes about 6-8 weeks)*

9. County staff schedules the project for review by the County's Parks and Open Space Advisory Committee (POSAC) and prepares a memo and map outlining the proposed transaction.
   - Note that the County does not have POSAC consider full donation projects (where the County does not pay any purchase price), so those projects skip this step.
   - POSAC meets on the third Thursday of every month at 6:30 p.m. The landowner is invited to attend and may help answer questions (if needed), but County staff does the formal presentation and typically handles any questions.
   - The agenda and staff memos for these meetings are prepared before mid-month, and timing of when a project is scheduled for POSAC is dependent on when the County receives the signed agreement from the landowner. It is possible that a project will have to wait until a following month to be scheduled for POSAC review.

10. Assuming POSAC gives a positive recommendation for the project, County staff schedules the project for consideration by the County Commissioners.
    - This typically occurs 10-14 days after the POSAC meeting.
    - The landowner is invited to attend and may help answer questions (if needed), but County staff does the formal presentation and typically handles any questions.

11. The County Commissioners sign the agreement.
    - The County is not committed to the transaction until this occurs, and even then, its commitment is limited by the terms of the agreement.

D. Due Diligence *(takes about 4-8 weeks; is done in conjunction with the steps in Section C)*

12. If the landowner is anticipating donating the conservation easement or any of its value and has not yet ordered an appraisal, the landowner should order one at this point.
    - If a landowner delays in ordering the appraisal, the appraisers qualified to value a conservation easement transaction may be booked through the end of the year, necessitating a delay to the following calendar year.

13. The County orders a title commitment, and if one cannot be issued using the existing legal description, the landowner may be required to order and pay for an ALTA survey.

- The landowner will receive a copy of the title commitment, and will be required to help resolve any title issues that are unacceptable to the County. For example, a lack of a legal right of access to the subject property is an issue that can rarely be overcome. (Legal access differs from physical access. If an owner has no legal access to a property, County staff will explain further why it is an issue and will help the landowner understand how the issue might be resolved.)

14. If a survey is not required for title reasons, the County may order a survey at its expense.

15. The County also orders a "Phase I" environmental hazards assessment.

- The environmental hazards assessment requires another site visit, which will be done by the professional hired by the County to perform the assessment.
- The landowner will receive a copy of the Phase I report.

16. The County drafts any other documents needed for the transaction, including a management plan for the property, and shares those drafts with the landowner for review and comment.

17. The County also prepares the baseline report, which may require another site visit for additional photographs and property documentation, and shares a draft with the landowner for comment.

E. Closing Preparation *(takes about 2-3 weeks)*

18. Assuming approval by the County Commissioners has occurred, County staff double-checks that all due diligence items have been completed and received, and gives final drafts of all documents, including the baseline report, to the landowner for review.
    - The landowner should give the County a copy of the appraisal or draft appraisal now, if that has not yet been done.

19. County staff schedules the conservation easement and any other documents that need County signature for County Commissioners' signatures at a regularly scheduled business meeting.

20. County staff, the title company and the landowner work together on final closing details.
    - For example, the title company prepares settlement statements so that Boulder County can order funds for closing.
    - Also, if the grantor of the conservation easement is an entity, the landowner must provide sufficient authority documentation to the title company at closing or in advance.

F. Closing *(takes part of 1 day)*

21. Closing occurs and the title company sends the conservation easement and other pertinent original documents for recording.

G. After Closing *(takes some time periodically)*

22. The County or title company sends the water share certificates (if any) to the ditch company along with the related transfer documents. Boulder County will procure the new water share certificate(s) and give the original(s) to the landowner after keeping copies for its files.

23. The landowner provides the County with a copy of the final appraisal.

24. The landowner is still obligated to cooperate with the County if any errors or omissions occurred during the transaction that now need correction.

25. County staff has the County Commissioners sign any tax documents related to the transaction, IF the County has agreed in writing that the transaction involved a donation and IF the County finds no substantial issues with the appraised value of the donation.

26. The County begins its responsibility to monitor the property for compliance with the conservation easement.

27. The landowner and the County work together on any issues that arise over time.

Last updated 1-22-19

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

BOULDER COUNTY'S TDC PROGRAM

(A Summary for Landowners)

These are some of the details of Boulder County's Expanded TDR Program. Please consult www.BoulderCountyTDCclearinghouse.org for complete and updated information.

Site Plan Review (SPR)	• Established in 1993 in response to increased development in the mountains; applied also to the plains in 1994. • Needed to minimize effects of poor access, steep slopes, erosion problems, and wildfire hazards in mountains; on plains, to limit impacts on agricultural lands and the rural character of open areas.
BuildSmart	• Effective May 1, 2008. • Requires mandatory measures regarding deconstruction of existing structures, recycling and reuse of construction waste, energy efficiency and conservation, carbon emissions, and indoor water conservation. Those requirements will address the ongoing effects of larger homes in terms of energy use, but BuildSmart does not address the use of materials and resources to build larger homes, or the effect of larger homes on the character of neighborhoods.
SPR Updates	• Effective August 8, 2008. • SPR regs amended to define neighborhoods and 125% presumption (approvals limited to 125% of square footage of median house size in neighborhood, unless overcome) • Changed definitions relating to 'floor area' to match the way the building division and Assessor's office counts square footage • Modifid SPR waiver thresholds • Defined visibility criteria for Peak-to-Peak Scenic Corridor Area
New TDC Program	• Effective August 8, 2008. • Defined 6,000 square feet as the countywide threshold for properties in the unincorporated county. • The 'threshold' is a measure of total residential floor area that includes houses, garages, basements, and residential accessory structures, but does not include covered porches. (Note that no maximum house size limitation exists.) • Establishes the County Assessor's records as the authority for square footage calculations. • Defined a new term, transferable development credit (TDC). • Requires the purchase of TDCs to build residences over the 6,000 square-foot threshold. • Allows owners of vacant land or residences smaller than 2,000 square feet to sell development credits.
Safe Harbors	• TDC regulations identify several "safe harbors" for the types of applications that will not be subject to these new regulations. • Complete SPR applications that were received by Land Use by 9/7/07 are not subject to these new regulations, regardless of when the home is built, so long as the SPR approval does not expire. • Approvals that have vested rights under state statute will be exempt until their vested rights expire plus an additional three-year exemption period. • Projects approved for a specific house size. • Development up to 9,000 square feet in an approved TDR/PUD subdivision • Developments having a complete building permit submitted prior to the 8/8/08 (the effective date of the TDC regulations).

<table>
<tr>
<td>Effect of New TDC Program on SPR Process</td>
<td>

Still required for new homes or homes with additions in excess of either 1,000 square feet or that will have a total square footage greater than 125% of the median size in the defined neighborhood, and for <u>any</u> addition or new construction on properties encumbered by conservation easements (CEs).
Evaluation criteria in the Land Use Code include analysis of compatibility with the neighborhood (“neighborhood” is a subdivision with more than seven lots, the mapped town sites of Allenspark, Eldora, Eldorado Springs, Gold Hill, Raymond and Riverside, or the area within 1500 feet of the subject property).
If a home above the appropriate threshold were approved through Site Plan Review, the property owner would then have to obtain the required number of development credits to build that home

</td>
</tr>
<tr>
<td>Other Details of New TDC Program</td>
<td>
Building above the 6,000 square foot threshold

A sliding scale determines the number of TDCs needed to build additional floor area.

<table>
<tr><th>Number of square feet</th><th>Number of Credits</th><th>Total Additional Square Footage</th><th>Total Credits for Additional Square Footage</th></tr>
<tr><td>1st 500</td><td>1</td><td>500</td><td>1</td></tr>
<tr><td>2nd 500</td><td>1</td><td>1000</td><td>2</td></tr>
<tr><td>3rd 500</td><td>2</td><td>1500</td><td>4</td></tr>
<tr><td>4th 500</td><td>2</td><td>2000</td><td>6</td></tr>
<tr><td>5th 500</td><td>3</td><td>2500</td><td>9</td></tr>
<tr><td>Each additional 500 square feet</td><td>3</td><td></td><td></td></tr>
</table>

Fractional TDCs are not recognized or valid.

Selling TDCs

Established different scales to determine the number of TDCs available to sell, depending on whether the property is in the mountains or plains and whether it is vacant or developed.
Mountain Area includes the area west of CO 93 from its intersection with the south county line to the City of Boulder, west of the City of Boulder city limits, west of US 36 from the City of Boulder to CO 66, and west of the St. Vrain Supply Canal from CO 66 to its intersection with the north county line.
Plains Area - rest of the county.

</td>
</tr>
<tr>
<td>Other Details of New TDC Program (continued)</td>
<td>
Developed Parcels
<table>
<tr><th>Developed Parcel Residential Floor Area</th><th>Number of TDCs Available</th></tr>
<tr><td>2000 square feet</td><td>2 TDCs</td></tr>
<tr><td>1500 square feet</td><td>3 TDCs</td></tr>
<tr><td>1000 square feet</td><td>4 TDCs</td></tr>
</table>
Vacant/Undeveloped Parcels
<table>
<tr><th>Vacant Properties</th><th>Mountains</th><th>Plains</th></tr>
<tr><td>Conservation Easement</td><td>5 TDCs</td><td>10 TDCs</td></tr>
<tr><td>Sale in Fee</td><td>7 TDCs</td><td>12 TDCs</td></tr>
</table>

The County’s Parks and Open Space Department can award up to 5 <u>bonus credits</u> for significant conservation values on a property.

</td>
</tr>
</table>

	• Properties must have legal access and a building lot determination from Land Use to qualify to sell TDCs. • Properties with mortgages on them must have the mortgages subordinated to the deed restriction or conservation easement that will restrict the property after the TDCs are sold/removed.
County's Role	• County established the TDC Clearinghouse (i.e., hired a 3rd party) to facilitate the process. • County placed 60 TDCs into the Clearinghouse available for sale at $10,000 each (price will be adjusted as market dictates). • The County may buy TDCs at some point in the future, depending on market conditions.
TDC Clearinghouse	• Development credits (TDCs) may be purchased either from the Clearinghouse, which is run by a third party, or through private market transactions between buyers and sellers. • The Clearinghouse will sell credits to individuals who want to deal directly with the County, register private transactions and provide the necessary documentation to facilitate these transfers. • The Clearinghouse will conduct the process for sellers and buyers.
TDC Determination Process	• Submit a TDC Determination Application Form to the County's Land Use Department. • The County Land Use and Transportation Departments will generally review the TDC Determination Application within 10-20 business days. • Requesting bonus credits will extend the determination process, because review by the Parks and Open Space Department may require a site visit to the property and additional information.
TDC Buying and Selling Processes	• Sellers and buyers can register their interest with the TDC Clearinghouse. • When sellers are ready to proceed, a title commitment must be provided to the TDC Clearinghouse for review. The TDC Clearinghouse will determine if there are any mortgages or deeds of trust encumbering the property that need to be subordinated and if there are any other title issues to resolve prior to issuing TDCs. • Title review should take approximately 5-10 business days from submission of required documentation. If you need to subordinate a mortgage or deed of trust, the lender response may delay issuance of your TDC Certificates. • The TDC Clearinghouse will draft the restrictive covenant or conservation easement that will encumber the property following the sale of TDCs. A conservation easement will be required to protect properties with significant conservation values, whether or not bonus credits are awarded. The conservation easement will need to be tailored to suit the property, and this will extend the process. • After the conservation easement or restrictive covenant is signed, and all other requirements are satisfied, the TDC Clearinghouse will issue the TDC Certificates. • The TDC Certificates can then be sold, and those sales must be reported to the Clearinghouse. • The Clearinghouse will track sales of TDCs to establish market information that will be made public.

Last updated 10-16-12

This document is outdated with respect to Who Can Claim the Credit (some nonprofits are now eligible) and Credit Computation sections. Boulder County expects the Colorado Department of Revenue to update this document, but does not know when the update will be published.

FYI Income 39
Gross Conservation Easement Credit

OVERVIEW
An income tax credit is available for tax years beginning on or after January 1, 2000, for the donation of a perpetual conservation easement in gross on real property located in Colorado. The credit is based on the fair market value (FMV) of the easement. [§39-22-522, C.R.S.] The donation must be made to a governmental entity or a charitable organization that is exempt under section 501(c) (3) of the Internal Revenue Code of 1954, as amended, and that was created at least two years prior to receipt of the easement. [§38-30.5-104(2), C.R.S.] The donation must also qualify as a charitable contribution for federal income tax purposes [Internal Revenue Code section 170(h)].

DEFINITION
Conservation easement in gross is a right of the owner of the easement to prohibit certain acts with respect to the property in order to maintain the property in a manner that will preserve its value for recreation, education, habitat, open space, or historical importance. See §38-30.5-102, C.R.S. for a complete definition.

WHO CAN CLAIM THE CREDIT
Taxpayers qualified to claim the gross conservation easement credit (including transferees of these credits) are:
- Colorado resident individuals,
- C corporations,
- trusts,
- estates,
- members of pass-through entities who receive the credit from such entity, regardless of whether such members are Colorado residents.

A limited liability company with only one member will generally be disregarded for federal tax purposes (IRS Regulation §301.7701-3) as well as state tax purposes. [§39-22-104 (1), C.R.S.] Therefore, a sole member is not a "member of a pass-through entity" and does not qualify as a "taxpayer" for the conservation easement credit unless the member can otherwise satisfy the definition of a "taxpayer" (as a Colorado resident individual, C corporation, trust, or estate).

CREDIT COMPUTATION
- For donations made in tax years beginning on or after January 1, 2007, the credit cannot exceed $375,000 (50% of the first $750,000 FMV of the donation).
- For donations made in tax years beginning on or after January 1, 2003 through December 2006, the credit cannot exceed $260,000 (100% of the first $100,000 FMV, plus 40% of the next $400,000 FMV of the donation).
- For donations made in tax years beginning on or after January 1, 2000 through December 31, 2002, the credit cannot exceed $100,000 (100% of the first $100,000 FMV).

The total amount of credit claimed by:
- a married couple, regardless of whether they file jointly or separately,
- all members of a pass-through entity, which makes a donation,
- all tenants in common, joint tenants, or other similar ownership groups that donate a gross conservation easement on jointly owned land

is limited to the $375,000, $260,000, or $100,000 amounts above.

ANNUAL LIMITS ON CREDIT
General Rule
In general, the credit a taxpayer can utilize is limited to the net tax liability reported during the tax year. Excess credits may be carried forward for a maximum of 20 years from the year the credit is originally claimed. The credit may not be carried back to a prior tax year.

Surplus Rule
The general rule is expanded to allow taxpayers, but **not** transferees of such credits, to receive a partial refund of the credit if state revenues are in excess of certain thresholds. Taxpayers are limited in the amount of the credit they can utilize in any given tax year if they claim an income tax refund created by this credit. For tax years beginning on or after January 1, 2000, but before January 1, 2003, this limit is $20,000 per donation per tax year. This limit increases to $50,000 for donations made in tax years beginning on or after January 1, 2003.

Because the tax attributes of a credit are generally determined by the laws as they exist in the year the credit is created, the increase in the limitation to $50,000 does not apply to donations made prior to January 1, 2003, even if the credit from such donation is carried forward to tax years beginning on or after January 1, 2003.

Status of Surplus
The gross conservation easement credit is not refundable and is limited to the net tax liability for tax years 2002 through 2004 and 2006 through 2011. The State of Colorado did not have a budget surplus for the years ending June 30, 2002, June 30, 2003, June 30, 2004 or June 30, 2011, and as a result of Referendum C that passed at the November 2005 statewide election; there was not a budget surplus refund for the years ending June 30, 2006 through June 30, 2010. The credit was refundable for tax years 2000, 2001, and 2005.

Multiple Taxpayers
If the credit generated by a donation is claimed by more than one taxpayer and any of those taxpayers files for a refundable credit, then the aggregate credit utilized by all the taxpayers is limited to $50,000 ($20,000 for pre-2003 credits.) This includes:

- A married couple, regardless of whether they file jointly or separately,
- All members of a pass-through entity, which makes a donation,
- All tenants in common, joint tenants, or other similar ownership groups that donate a gross conservation easement on jointly owned land,
- A taxpayer who donates an easement and one or more transferees of that credit.

For taxpayers in such a group to be able to file for a refundable credit, it will be necessary for someone to coordinate the manner in which the credit is utilized by all taxpayers involved or to restrict the credit utilized by the taxpayers to each individual's net tax liability. Failure to do this may result in the credit being over claimed by the taxpayers/shareholders/members, which would result in an assessment against those taxpayers.

Example: Husband and wife donate a conservation easement in 2001 valued at $50,000 on land they own as joint tenants. Husband and wife file separate income tax returns. Wife's Colorado income tax liability is $10,000 and she utilizes $20,000 of the credit (including a $10,000 refund). Husband cannot utilize a conservation easement tax credit for 2001.

Example: A limited liability company makes a donation in 2001 of $60,000 and allocates the credit equally among each of the three members. One member's Colorado income tax liability is $10,000 and requests another $10,000 of the credit to be refunded. The two other members have Colorado income tax liability of $8,000 and $9,000, respectively. The other two members cannot utilize a credit for 2001 because the aggregate amount of credit utilized by all taxpayers who hold a credit generated by the donation is limited to $20,000 if a refund is requested by any taxpayer in the group. The other two members can carry forward their credit.

Example: Taxpayer A donates a conservation easement in 2005 valued at $500,000. Taxpayer A sells $210,000 of credit to Taxpayer B. Taxpayer A utilizes a $50,000 credit with a 2005 tax liability of $6,000. Taxpayer B cannot utilize any of the $210,000 credit in 2005 because Taxpayer A filed for a refundable credit of $50,000, the limit for 2005.

Surplus Determination
The state determines in October or November of each year whether there are sufficient excess revenues to permit this refund. During the fiscal year the Governor's Office of State Planning and Budgeting periodically prepares revenue projections.

2011-2013 Limitation Rule
For tax years beginning during 2011 through 2013, the aggregate gross conservation easement credit that can be generated by all Colorado taxpayers is limited to $22 million for 2011 and 2012 and $34 million for 2013. Any taxpayer donating a conservation easement during those years must apply to the Division of Real Estate for a tax credit certificate in order to claim the credit on an income tax return. If the maximum amount of credits has already been approved for the tax year, the Division of Real Estate may issue a tax credit certificate for a future year and that credit may be claimed on the that future year tax return. Any credit based on a donation made during these years will require a credit certificate indicating the tax year in which it may be used. [§39-22-522(2.5) C.R.S.]

CHARITABLE DEDUCTION REQUIREMENT
If a charitable contribution is not allowed because the donation does not meet the requirements of a qualified conservation contribution under the federal laws and regulations of section 170(h) of the Internal Revenue Code, then the Colorado gross conservation easement credit is not allowed for the donation of the easement. [§39-22-522(2), C.R.S.]

Examples of when a gross conservation easement credit is not allowed include:
- The contribution is not made exclusively for conservation purposes,
- The property is already protected by its ownership by a 501(c)(3) organization,
- The donation is made to an unqualified organization.

If a charitable contribution qualifies as a charitable contribution under federal laws and regulations but the deduction is not utilized on the federal return (for example, the taxpayer's income and/or other deductions limit the charitable deductions claimed, a trust's governing instrument does not provide for the charitable deduction) the Colorado gross conservation easement credit is still allowed for the donation of the easement.

FEDERAL DEDUCTION ADDBACK
If a charitable deduction is claimed on the federal income tax return for any donation upon which this credit is also claimed, the amount deducted from federal taxable income must be added back to taxable income to determine the taxpayer's Colorado taxable income. [§§39-22-104(3)(g) and 39-22-304(2)(f), C.R.S.]

NOTE: If the federal deduction for this donation exceeds the amount of the credit created by the donation, "addback" only an amount equal to the credit including any credit transferred to another taxpayer or carried forward to future tax years.

Example: A taxpayer donates a conservation easement in 2002 valued at $440,000. A credit of $100,000 is claimed in 2002, $15,000 of which is used on the 2002 tax return with $85,000 carried forward to 2003. Assuming the 2002 federal charitable contribution deduction claimed is greater than $100,000, the amount added to taxable income in 2002 will be $100,000.

High Income Taxpayers For tax years 2009 and prior, itemized deductions were limited if a taxpayer's federal adjusted gross income (AGI) was above an annual limit. For 2009 the limit was $166,800 ($83,400 if married filing separately). Use this worksheet to determine the amount of conservation easement contribution deduction to addback to taxable income on Form 104 for those years.

1. Enter the amount from line 11 of federal itemized deduction worksheet* $ _____
2. Enter the amount from line 3 of federal itemized deduction worksheet $ _____
3. Amount on line 1 (above) divided by amount on line 2 (above) _____%
4. Amount of charitable deduction for the easement donation from federal Schedule A $ _____
5. Amount on line 4 multiplied by percentage on line 3 $ _____
6. Amount on line 4 minus amount on line 5 $ _____
7. Smaller of line 6 or the credit generated by the donation.

The amount on line 7 above is the amount to enter as an addition to taxable income on Form 104.
* The federal "Itemized Deductions Worksheet" can be found in the Schedule A instructions of the federal 1040 instruction booklet.

Example: John Smith Jr. has $167,238 in total federal itemized deductions for 2009. Of that, $18,916 is not to be included in the computation (not subject to phase-out). After subtracting the amount not subject to phase-out from his total federal itemized deductions, $148,322 is subject to phase-out. John's conservation easement deduction on federal Schedule A is $105,000 and he claimed a gross conservation easement credit of $52,500.

John's Federal Adjusted Gross Income:	$440,908
Threshold Amount	$166,800
Excess	$274,108

Amount of Itemized Deductions NOT Allowed $274,108 x 3% x 2/3 = $5,482
Amount of Itemized Deductions Allowed $167,238 - $5,482= $161,756
John's federal "Itemized Deduction Worksheet" would look like this:
Line 1: $167,238 (total itemized deductions)
Line 2: $18,916 (deductions not subject to phase-out)
Line 3: $148,322 (deductions subject to phase-out)
Line 4: $118,658 (80 percent of line 3)
Line 5: $440,908 (federal adjusted gross income)
Line 6: $166,800 (federal threshold)
Line 7: $274,108 (excess income over threshold)
Line 8: $8,223 (3 percent of amount on line 7)
Line 9: $8,223 (smaller of line 4 or line 8)
Line 10: $2,741 (Line 9 divided by 3)
Line 11: $5,482 (Line 9 minus line 10)
Line 12: $161,756 (allowable itemized deductions for federal income tax purposes)

John's conservation easement deduction addback to taxable income would be computed as follows:
1. $5,482 - Federal itemized deductions phased out (the amount from line 11 of the federal itemized deduction worksheet)
2. $148,322 - Federal deductions subject to phase-out (the amount from line 3 of the federal itemized deduction worksheet)
3. 3.696%: $5,600 divided by $148,322 [Amount on line 1 (above) divided by amount on line 2 (above)].
4. $105,000 - John's charitable deduction associated with the conservation easement credit claimed
5. $3,881 - Amount of conservation easement deduction disallowed for federal income tax purposes (amount on line 4 multiplied by percentage on line 3)
6. $101,119-Amount of charitable deduction allowed for federal purposes(amount on line 4 minus amount on line 5)
7. $52,500- Amount of charitable deduction to be added back on Colorado return (smaller of line 6 or the credit claimed).

Charitable deduction ceilings
There is a federal ceiling on the amount an individual may deduct each year as a charitable contribution. If the deduction of the conservation easement contribution is limited by this federal ceiling, then the Colorado addback will also be limited to the amount of the contribution actually deducted after any 50% or 30% limitation. However, any contribution carried forward and claimed in a future year would still be subject to the Colorado addback in the year the contribution is actually deducted.

2011-2013 Limitation Rule
The charitable deduction addback for any credit claim that is delayed due to the 2011-2013 limitation of $22 million for 2011 and 2012 and $34 million for 2013 must still be reported beginning in the year of the donation even if the credit claim is delayed to a later year.

TRANSFERRING THE CREDIT
Taxpayer
A taxpayer can transfer all or part of a credit to a "transferee" who meets the definition of a taxpayer who can claim the credit. [§39-22-522(7), C.R.S.] The taxpayer cannot transfer a credit, which has been used by the taxpayer to offset tax or to claim a refund.

Pass-through entity
A partnership, S corporation or other similar pass-through entity may not purchase a credit. A pass-through entity is a qualified taxpayer eligible to pass a credit to its members only when it "donates a conservation easement as an entity." [§39-22-522(1), C.R.S.]
A pass-through entity can directly transfer a credit if:
1. Each partner, shareholder or member consents to the transfer, and
2. Each partner, shareholder or member could, under the restrictions of the law, have claimed and transferred their pro rata share of the credit directly. [§39-22-522(4)(b), C.R.S.], and
3. The partners, shareholders or members have not yet filed Colorado tax returns and utilized a portion of the credit, sold a portion of the credit, or carried the credit forward to a future year. Once these actions have occurred, any remaining credit must be sold by each individual taxpayer rather than at the entity level.

A pass-through entity must transfer the credit or distribute the credit to its members for the year the donation is made. The entity cannot carry forward a credit to future tax years.

Multiple transfers
A credit can be transferred only once. A transferee,to whom a credit is transferred, cannot, thereafter, transfer the credit to another. For donations made during tax years prior to January 1, 2003, the minimum amount of credit that can be transferred to any one taxpayer is $20,000. For donations made in tax years beginning on or after January 1, 2003, the donor can transfer all or any portion of the credit.

Nonrefundable
A transferred credit utilized by a transferee can never exceed the net tax liability reported on the tax return.

Written statement
Both the donor and transferee must file with their return the DR 1305 setting forth detailed information for EACH credit. A donor must report transfers of the credit on the DR 1305 filed with tax return for the tax year toward which the transferee will be initially applying the credit. For example, if a credit is transferred April 10, 2009 for a transferee to be applied against the transferee's 2008 liability, the donor must report this transfer on the DR 1305 filed with their 2008 return, not the DR 1305 filed with their 2009 return, despite the transfer occurring during that year.

Federal Deduction Addback
The transferor of the credit is required to addback the full amount of the gross conservation easement credit even though part or all of the credit is transferred to another taxpayer.

Disallowed credit
If a taxpayer sells a conservation easement credit to another taxpayer and that credit is later disallowed in an audit, the transferee will be held liable for the disallowed credit that was utilized plus penalty and interest. [§39-22-522(9), C.R.S] All protest rights regarding a transfer item adjustment reside with the donor of the easement or the transferor of the credit who is considered the tax matters representative in all matters with respect to the credit. For additional information regarding the tax matters representative, see Regulation 39-22-522, paragraph 3(j). [§39-22-522 (7)(i), C.R.S.]

Timing
On or after June 7, 2005, a transferee of a conservation easement credit must purchase the credit by the due date of the income tax return, not including extensions, on which the credit will be utilized. Prior to June 7, 2005, a transferee of a conservation easement credit must have purchased the credit prior to the end of the tax year to be able to utilize the credit during that tax year. A purchased credit cannot be utilized or carried back to an earlier tax year than allowed by these rules. [§39-22-522(7)(g), C.R.S.]

Deceased Taxpayer
Upon the death of a taxpayer the gross conservation easement credit passes to the decedent's estate. If the decedent is the donor of the easement, the estate may use the credit to offset income tax owed by the estate or may transfer some or all of the credit according to the transfer rules. If the decedent is a transferee of the credit, the estate may use the credit to offset income tax owed by the estate but may not transfer the credit. [§39-22-522(7)(h), C.R.S.]

Income from the sale
The Federal Tax Court determined that the gross conservation easement credit is a capital asset with no basis and that the holding period begins at the time the credit is granted. Therefore, the gain from the sale of the credit must be included in federal taxable income,, which is then subject to Colorado income tax. Colorado taxpayers can claim a Colorado capital gains subtraction if they held the credit for at least five years prior to its sale. See, FYI Income 15 (Colorado Capital Gains Subtraction) for qualifications and limitations on this subtraction.

Nonresidents of Colorado
A nonresident of Colorado may sell a credit received from a pass-through entity. This income is sourced to Colorado and is included in Colorado income on the nonresident's Colorado income tax return. [§39-22-109(2)(a)(V), C.R.S.]

State Income Tax Deduction
The Internal Revenue Service National Office has issued a Technical Assistance Memorandum for Area Counsel, Small Business/Self-employed, Area 5 (No. 200126005, release date 6/29/01) stating that individual taxpayers who purchase for value a conservation easement credit as transferees will not lose their federal deduction for state income taxes when they apply the credit to their Colorado income tax liability.

LIMITS ON MULTIPLE CREDITS

Donors

A credit is earned from the qualifying donation of a conservation easement. Only one credit may be earned and claimed each year by the donor of an easement. If the entire credit is not applied against tax in the year the credit is claimed, any unused portion of the credit may be carried forward for up to 20 years.

- Multiple credits may not be earned in one year from multiple donations, even if the donations are made by different pass-through entities, or if one or more of the credits are transferred to other taxpayers.
- Additional credits may not be earned by a taxpayer during any year to which a prior gross conservation easement credit is being carried forward. This is true whether the credit is being carried forward by the taxpayer, or by the transferee who purchased the credit from that taxpayer.
- Additional credits may not be purchased by a taxpayer during any year in which the taxpayer generates a gross conservation easement credit from the donation of an easement.
- Additional credits may not be purchased by a taxpayer during any year to which a prior gross conservation easement credit, that the taxpayer generated, is being carried forward. This is true whether the credit is being carried forward by the taxpayer, or by a transferee who purchased the credit from that taxpayer.

Example: ABC Company claims a $75,000 gross conservation easement credit during 2000. The credit is utilized as follows: 2000 - $30,000, 2001 - $20,000, 2002 - $24,500, 2003 - $500

In 2003, the company donates another easement that would qualify for the credit. However, since the $75,000 credit is not fully utilized until the year 2003, no additional gross conservation easement credit may be claimed for the 2003 donation. If another donation were made in 2004, that donation would qualify for the credit.

2011-2013 Limitation Rules

For any credit claim that is delayed due to the 2011-2013 statewide limitations of $22 million for 2011 and 2012 and $34 million for 2013,the limits on multiple credit claims will be applied to both the year of the donation and the year the credit is allowed to be claimed. The carry forward period will be applied based on the year the credit is allowed to be claimed, not on the year of the donation.

Example: An easement donation occurs in 2011, and the tax credit certificate allows the credit to be claimed on the 2012 tax return. For 2011, the taxpayer must not have any other credits being used or carried forward, including on transferee returns. If the taxpayer makes another easement donation in 2012, a credit would not be allowed for that donation, even if the Division of Real Estate would have waitlisted the credit to 2013. Because the first credit is still available for use in 2012, no additional credit can be claimed in 2012, either on a tax return or on an application to the Division of Real Estate. If the credit is not fully used on the 2012 return, the remaining credit can be carried forward for 20 years through tax year 2032.

Multiple year agreements

A taxpayer can agree to make a series of annual donations in order to maximize the amount of gross conservation easement credit claimed. Each donation must qualify within the limitations of the law in effect at the time donation is made. There are several issues that must be considered to maximize the tax credit available within the constraints of the annual credit limitation.

1. The portion of the property on which the conservation easement is donated must be clearly identified each year.
2. The donation of the conservation easement must qualify as a federal charitable deduction in the year the credit is claimed.
3. The land must be re-appraised for each donation since future appraisals of the remaining property may be affected by prior conservation easements on adjoining land.
4. The entire credit created in a prior year must be completely utilized against Colorado tax, either by the donor or the taxpayer(s) who purchases a credit from the donor, before the donor can claim another easement donation that will qualify for a gross conservation easement tax credit.
5. If the IRS determines that one or more of the donations made pursuant to the agreement constitutes a single donation, then the department will also treat the donations as one donation.
6. Each donation must stand on its own merits and can not rely on future donations to meet the requirements of a qualified donation.

Transferees

For tax years beginning on or after January 1, 2003, there is no limit to the number of transferred conservation easement credits a transferee can utilize for any tax year.

For tax years beginning prior to January 1, 2003, a transferee of a credit can utilize only one credit per year. A transferee cannot purchase a new credit until the tax year after which a previously purchased or claimed credit was utilized in full.

PART-YEAR RESIDENTS AND NONRESIDENTS OF COLORADO

Part-year residents may claim the credit only if the donation is made while they were a Colorado resident.

Nonresident individuals of Colorado cannot claim the gross conservation easement credit for a donation they have made or for a credit they have purchased.

The portion of the credit apportioned to nonresident members of a pass-through entity however, can be used to offset the tax liability of the nonresidents. This is because there is no residency requirement for members of a pass-through entity. The credit must be allocated to the entity's partners or shareholders in proportion to the partners' or shareholders' distributive shares of income from such entity.

If a credit is claimed by a Colorado resident who later moves to another state, any carryover credit can still be utilized by that taxpayer if they continue to have a Colorado tax liability despite being a nonresident of Colorado.

DOCUMENTATION

DR 1305

Colorado Gross Conservation Easement Credit Schedule (DR 1305) must be attached to any Colorado income tax return that claims or utilizes a gross conservation easement credit. This includes:

- A taxpayer who utilizes the credit to offset a tax liability during the tax year,
- The donor of the easement in the year of the donation (including a pass through entity and its shareholders, partners, or members) who sells the entire credit rather than utilizing the credit,
- A taxpayer who is not utilizing the credit to offset tax, but is carrying the credit forward to the following year,
- A taxpayer who is not utilizing the credit to offset tax, but has transferred the balance of the credit to another taxpayer during the tax year.

This does not include a taxpayer whose credit is waitlisted by the Division of Real Estate to a later year.

A transferee must attach to their DR 1305 a copy of the appraisal summary. An executive summary, summary of salient facts or other document including general information from the appraisal such as the appraiser's name, the valuation methodologies employed and the before and after values of the property may be submitted to satisfy this requirement.

DR 1303

The donor(s) of a gross conservation easement claiming the credit must attach a Colorado Gross Conservation Easement Donor Schedule (DR 1303) to the Colorado income tax return that initially claims a gross conservation easement credit. A copy of a pass through entity donor's DR 1303 must be attached to each of its shareholders', partners' or members' returns. The form includes a sworn affidavit from the entity that holds the conservation easement in gross. A summary of a qualified appraisal (federal Form 8283), a recorded deed including reception number, , and the appraisal and appraiser affidavit submitted to the Division of Real Estate must be attached to the DR 1303.

If the taxpayer is a member of a pass-through entity that donated the easement, they may choose not to include the attachments if, and only if, the pass-through entity previously filed a return including them .

If the taxpayer is filing an income tax return electronically, then they must attach the DR 1303 and attachments in an electronic file, or mail paper copies separately at the time of filing to Colorado Department of Revenue, Conservation Easement Section, Denver, CO 80261-0005.

DR 1304

The donor(s) of a gross conservation easement claiming the credit must submit a Colorado Gross Conservation Easement Public Information Schedule (DR 1304) for the year of donation separately from the Colorado income tax return. This includes a pass through entity and its shareholders, partners or members, but not transferees of the credit. This form includes information that will be released to the public. This form should be filed online at *www.revenue.state.co.us/easementinformation/form*

To view public information from the DR 1304s filed with the Department of Revenue, visit the Department of Revenue Web site at *www.TaxColorado.com.*

DR 1299

Every charitable organization or governmental agency that accepts a conservation easement in gross in Colorado for which a credit is claimed must file a Colorado Gross Conservation Easement Holders Submission of Information (DR 1299). The report must be filed each year in which a credit generating easement is accepted and prior to both April 15th of that year and the date of donation. The organization must include in the report the total number or easements it holds as of the date of filing and separately list the number of acres encumbered by such easements except for those properties for which the sole conservation purpose is historic preservation. Federal agencies that accept easements are exempt from this filing requirement.

DR 1299 must be filed with the Department of Revenue and Division of Real Estate. Copies of the form are available to the public from the Department of Revenue or Division of Real Estate.

WATER RIGHTS

A gross conservation easement that encumbers water rights will qualify for the credit only if it is a perpetual donation. If a conservation easement donation includes revocable water rights that do not qualify for a federal charitable contribution, then the donation would not qualify for the Colorado tax credit. [§38-30.5-103, C.R.S.]

FYIs provide general information concerning a variety of Colorado tax topics in simple and straightforward language. Although the FYIs represent a good faith effort to provide accurate and complete tax information, the information is not binding on the Colorado Department of Revenue, nor does it replace, alter, or supersede Colorado law and regulations. The Executive Director, who by statute is the only person having the authority to bind the Department, has not formally reviewed and/or approved these FYIs.

Boulder County includes the Donation Practices document here. That document is already included as Appendix 3 to the Conservation Easement Policy, so a second copy is not provided in this location.

Appendix 5 –
Landowner Information Packet

Boulder County includes any brochures it has from tax credit brokers here. Those brochures are not published by Boulder County, so copies are not included here.

Appendix 6 –
Letter Agreement Form

Boulder County's CE Donation Letter Agreement Form
Boulder County periodically updates this form and reserves the right to do so with each transaction. Boulder County tailors this form to the subject property and obtains legal review of the draft before sending it to the landowner for review.

**This agreement will be re-printed on County letterhead and dated the day that Boulder County staff presents it to the county commissioners for their signatures*

*[*Date*]

*[*Name*]
*[*Address*]

Re: _____

Dear _____:

Thank you for your interest in donating a conservation easement to Boulder County (the "County") over an approximately _____-acre parcel of land located in Section _____, Township _____, Range _____, 6th P.M. (the "Property") the legal description of which is attached hereto as Exhibit A. The Property is generally depicted on the map attached hereto as Exhibit B. Your generous contribution to the County's open space program will preserve the Property in perpetuity. The County is willing to accept your offer to donate a conservation easement, subject to the following conditions in this letter agreement ("Agreement"). In this Agreement *[*insert legal name of grantor*] are hereafter referred to as "Grantor". The County and Grantor are collectively referred to as the "Parties".

In consideration of the recitals, promises, payments, covenants and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, the Parties agree as follows:

1. Grantor will donate a Deed of Conservation Easement in Gross to the County substantially in the form attached hereto as Exhibit C, over the Property (the "Conservation Easement"). The donation will not close until the final language in the Conservation Easement has been agreed upon by both Parties. In conjunction with the Conservation Easement, Purchaser agrees to obtain a subordination agreement from any lender in the form of Exhibit D.

2. By donating the Conservation Easement, Grantor agrees to relinquish all rights to develop the Property, *[except that Grantor may keep and repair, remodel, or replace the existing _____ on the Property that consists of approximately _____ square feet, subject to the terms of the Conservation Easement].

3. Grantor will provide copies of any existing engineering and/or survey work related to the Property to the County upon the execution of this Agreement. If the existing engineering and/or survey work is not acceptable to the County, the County may at its sole expense contract for a survey of the Property prior to closing.

4. The County will be responsible for any expenses related to the ordering of a title commitment and/or a title insurance policy insuring the County's conservation easement interest in the Property. Title to the Property will be merchantable in Grantor, and the title commitment and/or title insurance policy will contain no exceptions other than:

4.1. taxes and assessments for the current year; and

4.2. rights-of-way, easements, restrictions, covenants, and mineral reservations of record which are acceptable to the County; and

4.3. a mortgage or deed of trust held by a lending institution chartered to conduct business in the State of Colorado will be acceptable as a title exception if, and only if, such lender will subordinate its lien rights to the rights and claims of the County obtained under the Conservation Easement.

Grantor will execute an affidavit concerning mechanic's liens and take all steps necessary to obtain the deletion of the standard pre-printed exceptions on the County's title policy. Should title not be merchantable in Grantor, or if the title commitment includes exceptions which are not acceptable to the County (even though such exceptions would not make the title unmerchantable), a written notice of the defects will be given to Grantor by the County within fifteen (15) days after the receipt of the title commitment and any exception documents referenced therein. If Grantor has not corrected such defects within one hundred twenty (120) days after receipt of the notice of defects, the County, at its option, may accept the donation of the Conservation Easement, notwithstanding the defects, or may, upon written notice to Grantor, declare this Agreement terminated and the Parties will be released herefrom.

5. Closing will take place on _____, 20___, at a mutually agreeable time in the office of the title company issuing a title policy to the County, or on another date and at a time and place agreed to by the Parties.

5.1. At the closing of this Agreement, Grantor will deliver to the County the following:

a. A fully good and sufficiently executed and acknowledged Conservation Easement, free and clear of all liens, tenancies and encumbrances, except those set forth in paragraph 4 above.

b. Documents acceptable to the County and the title company evidencing the authority of Grantor to execute this Agreement and to convey the Conservation Easement to the County.

c. All instruments, certificates, affidavits, and other documents necessary to satisfy the Requirements listed on Schedule B-1 of the title commitment.

d. A building lot determination letter from the Boulder County Land Use Department that the Property has at least ____ building right(s) associated with it, unless the letter has previously been produced.

e. Any other documents required by this Agreement to be delivered by Grantor to the title company or reasonably required by the County or the title company in connection herewith.

6. Grantor hereby represents and warrants to the County that as of the date of the signing of this Agreement:

6.1. Grantor has received no notice of and has no other knowledge of any litigation, claim or proceeding pending or currently threatened which in any manner affects the Property; and

6.2. Grantor has received no notice and has no other knowledge of any current, existing violations of, or pending investigations into violations of, any federal, state or local law, code, ordinance, rule, regulation or requirement affecting the Property; and

6.3. Grantor has the full right, power and authority to grant the Conservation Easement over the Property to the County as provided herein; and

6.4. Each and every document, schedule, item and other information delivered or to be delivered by Grantor to the County hereunder, or made available to the County for inspection hereunder, will be true, accurate and correct; and

6.5. Grantor has not entered into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Property that may result in liability or expenses to the County upon the County's acquisition of the Conservation Easement over the Property; and

6.6. There are no special assessments which now burden or encumber the Property and there are no special assessments currently proposed as to the Property; and

6.7. The execution and delivery of this Agreement and the performance of all of the obligations of Grantor hereunder will not result in a breach of, or constitute a default under, any agreement entered into by Grantor or under any covenant or restriction affecting the Property; and

6.8. There are no leases, tenancies or rental agreements relating to the Property, or to any part thereof, which conflict with the terms of the Conservation Easement; and

6.9. Grantor has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way or claim of

possession not shown by record, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property; and

6.10. To the best of Grantor's knowledge, no part of the Property has ever been used as a landfill, and no materials have ever been stored or deposited upon the Property which under any applicable governmental law or regulation would require that the Property be treated or such materials removed from the Property prior to the use of the Property for any purpose which would be permitted by law, but for the existence of said materials on the Property; and

6.11. To the best of Grantor's knowledge, no underground storage tank, as that term is defined by federal statute or Colorado statute, is located on the Property which under applicable governmental law or regulation would require such underground storage tank to be upgraded, modified, replaced, closed or removed; and

6.12. To the best of Grantor's knowledge, Grantor has not caused or permitted the release of any hazardous substance on the Property. The terms "hazardous substance" and "release" as used herein will have the same meaning and definition as set forth in Paragraphs (14), (22) and (23), respectively, of Title 42 U.S.C. Section 9601; provided, however, that the term "hazardous substance" as used herein also will include "hazardous waste", as defined in Paragraph (5) of 42 U.S.C. Section 6903.

Grantor shall, at the time of closing, certify to County in writing that the above and foregoing representations and warranties remain true and correct as of the date of closing. If the representations and warranties of Grantor as set forth and provided for herein are not true and correct as of the date of the closing of this Agreement, the County shall have the right to terminate this Agreement or to accept the donation, in the County's sole discretion. Grantor agrees that if it is discovered that the above and foregoing representations and warranties were not true and correct at the time they were made, Grantor will indemnify County and hold it harmless from and against claims for any and all liabilities, costs or damages, including, but not limited to attorney fees, suffered by or claimed against the County as a result of the breach.

7. At all reasonable times during the term of this Agreement, the County will have access to the Property for the purpose of conducting tests, studies and surveys thereon, including, without limitation, environmental audits, soil and subsoil tests. The County may have performed, at its option and/or expense, the following inspections:

7.1. Soil and percolation tests;

7.2. Inspections for asbestos, PCB's, underground tanks, or other hazardous substances;

7.3. Any other tests and/or studies deemed necessary by County that do not materially damage the Property.

The County may, at Grantor's expense, obtain a Phase I environmental audit and/or survey of the Property. The Phase I environmental audit and/or survey must be satisfactory to the County, in its sole discretion. If the Phase I and/or survey is/are not satisfactory to the County, the County will, within 15 days of the receipt of the Phase I and/or survey, give Grantor written notice of the defects. If Grantor has not corrected such defects within 120 days of receipt of the notice, the County, at its option, may accept the donation notwithstanding the defects or may, upon notice to Grantor in recordable form, declare this Agreement terminated, and the Parties will be released herefrom.

8. If any underground tank/s is/are located on the Property, Grantor will have the option of removing said tank/s at Grantor's expense prior to the closing of this Agreement. In the event Grantor elects not to remove such tank/s, the County can elect (a) to proceed to accept the donation of the Conservation Easement over the Property, or (b) choose to terminate this Agreement. If any underground tank/s is/are removed prior to closing pursuant to this paragraph, Grantor will provide at the time of closing of this Agreement, an affidavit, subscribed and sworn to by a registered professional engineer licensed in the State of Colorado and approved by the County, stating that the Property meets all applicable federal, state and local laws, regulations, and standards regarding such sites, including without limitation, the following standards:

8.1. No more than 75 parts per million total petroleum hydrocarbons in the soil using an analytical test/s that are standard in the industry for the detection of specific compound mentioned herein.

8.2. No more than 10 parts per million total petroleum hydrocarbons in ground water, other than drinking water, using an analytical test/s that are standard in the industry for the detection of the specific compound mentioned herein.

8.3. The BTEX (benzene, toluene, ethylbenzene and xylene) and the petroleum contaminants in the ground water will not exceed the maximum contaminant levels for these components in the ground water as set forth by the state water quality provisions in effect at the time of the execution of this contract.

9. Grantor hereby agrees that if Grantor retracts the offer to donate a conservation easement over the Property or otherwise terminates this Agreement, Grantor will reimburse the County for any costs the County has reasonably incurred in connection with this Agreement, including the cost of staff time invested in the project. The County will provide Grantor with copies of any invoices justifying costs it has incurred and an invoice for staff time, and Grantor shall pay all invoices within thirty (30) days.

10. Grantor shall not assign any rights and obligations hereunder unless the County first consents thereto in writing, which consent shall not be unreasonably withheld. The County may assign its rights to acquire all or a portion of the Conservation Easement or any interest in the Conservation Easement, without the consent of Grantor and Grantor shall cooperate in executing appropriate documentation for the transfer of all or part of the Conservation Easement, or any interest in the Conservation Easement to any assignee of the County, so long as Grantor

incurs no increased expense or liability exposure and so long as the assignee complies with all of the provisions of this Agreement.

11. Grantor agrees not to encumber or burden the Property or any part thereof, without the consent of the County, so long as this Agreement is in effect.

12. Grantor acknowledges that neither the County, nor any of its agents or attorneys, has made any representations as to the fair market value of the Conservation Easement or the donation thereof. Grantor further acknowledges that neither the County, nor any of its agents or attorneys, has made any representations as to the tax treatment to be accorded to this donation or to any proceeds thereof by the Internal Revenue Service under the Internal Revenue Code or by the officials of the State of Colorado under Colorado law. ***The County does not provide legal, financial or tax advice, and landowners should consult qualified independent professionals to obtain independent legal, financial and tax advice before proceeding with donating an easement.*** Once granted, a conservation easement is permanent and extremely difficult to release. Please be advised that there may be adverse legal and other consequences if the grantor terminates a conservation easement that was created or conveyed in expectation of receiving a tax credit. Termination is only possible if the grantor can prove to a court of competent jurisdiction that circumstances have arisen that render the purpose of the conservation easement "impossible" or "impracticable" to accomplish. This is a difficult test to prove and is only met in very rare situations.

13. Grantor may seek to pursue tax benefits associated with the donation of Grantor's interest in the Property to the County. The Internal Revenue Service and the State of Colorado each require the Grantor to obtain an appraisal of the fair market value of the donation if Grantor decides to claim tax benefits for the donation. Grantor shall provide the County with a full copy of the final signed appraisal that Grantor will rely on for tax purposes and complete copies of all relevant tax documents before the County will sign any tax forms acknowledging receipt of the donation. County shall reasonably cooperate with Seller to provide documentation necessary to apply for tax benefits, except that County shall have the right, in its sole discretion, not to sign any tax documents if County reasonably believes the value being sought is more than the actual donation value, or to note on Grantor's tax forms the County's objection to the appraised value. If the appraisal is not satisfactory to Grantor, Grantor may terminate the transaction, and each party shall pay its own transaction costs.

14. This Agreement contains the entire contract, understanding, and agreement between the Parties and supersedes all prior understandings, warranties, representations, and letters of intent, all of which are by execution hereof rendered null and void.

15. The Parties agree that, except for such of the terms, conditions, covenants and agreements hereof which are, by their very nature fully and completely performed upon the closing of the transactions herein provided for, all of the terms, conditions, representations, warranties, covenants and agreements herein set forth and contained shall survive the closing of any donation transaction herein provided for and shall continue after said closing to be binding upon and inure to the benefit of the Parties, their successors and assigns.

16. A condition of the Conservation Easement shall be a grant to the County of a right of first refusal regarding any proposed sale of a fee simple interest in any or all of the Property or any water rights associated with the Property, except for a sale to any individual who is a family member or company that is owned or controlled by one or more family members. In the event Grantor desires to sell a fee simple interest in any or all of the Property and receives a bona fide offer for such sale, the fee simple interest shall be offered to the County, which shall have a right of first refusal as to whether to purchase such offered fee simple interest for the same terms and conditions as the bona fide offer or for an amount and terms equally acceptable to the Grantor. Written notice of such bona fide offer shall be given to the County which shall have thirty (30) days from the date of receipt of the written notice to accept such offer, and if not accepted, the sale may be made to such third party purchaser.

Pursuant to §§15-11-1102(1)(a), (b), C.R.S., if the right of first refusal conveyed to the County under the Conservation Easement does not vest within 90 years after the date of execution of the Conservation Easement by the Parties, the right of first refusal shall automatically be severed from the remainder of the interests conveyed therein and shall automatically terminate.

17. Whenever notice is required to be given hereunder, it shall be in writing and may be faxed, hand delivered or mailed to the party entitled thereto. If faxed or hand delivered, said notice shall be effective and complete upon completion of the fax or hand delivery. If mailed, said notice shall be sent by registered or certified mail, return receipt requested, and shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice will be given as follows:

To the County:	Director, Boulder County Parks & Open Space 5201 St. Vrain Road Longmont, CO 80503
With copy to:	The Boulder County Attorney's Office P.O. Box 471 Boulder, CO 80306
To Grantor:	*[*Name*] *[*Address*] E-mail: _____

18. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which will constitute one and the same Agreement. Facsimile signatures on this Agreement will be acceptable to and binding upon all Parties. All documents referenced herein are incorporated by their reference and made a part hereof.

19. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of Colorado.

20. This Agreement will be recorded in the office of the Clerk and Recorder of Boulder County, Colorado.

21. If any part of this Agreement is found, decreed or held to be void or unenforceable, such finding, decree or holding will not affect the other remaining provisions of this Agreement which will remain in full force and effect.

The Parties have executed this Agreement on the dates set forth in their respective acknowledgments intending that this Agreement be effective as of the day and year first above set forth.

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Elise Jones, Chair

By: _____
Deb Gardner, Vice Chair

By: _____
Matt Jones, Commissioner

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by Elise Jones, Chair, Deb Gardner, Vice Chair, and Matt Jones, Commissioner, of the Board of County Commissioners of Boulder County, Colorado.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

GRANTOR:

_____
*[*Name*]

_____
*[*Name*]

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

EXHIBIT A

Legal Description

EXHIBIT B

Map of Property

EXHIBIT C

Deed of Conservation Easement

Appendix 7 –
Donation Acknowledgement Letter

*[*use if CE donation*]*[*print on BOCC letterhead*]

*[*date of closing*]

*[*name(s) and address of Grantor*]

Re: _____ Property

Dear _____:

Boulder County gratefully accepts and formally acknowledges your generous gift of a conservation easement over *[*describe property, acreage and location*], as described in the attached legal description. Your property *[*list the reasons we are grateful to accept their donation, such as location to other protected lands, scenic values, wildlife habitat values, etc.*]. Your donation will further the County's efforts to preserve natural lands and habitat and will expand the currently protected area in *[*property location, such as town or area*]. In addition, this donation fulfills goals of Boulder County's comprehensive plan and other local policies as described in the recitals of the conservation easement.

We sincerely appreciate your contribution to the County's Open Space program.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY

By: _____
[Name of Commissioner], Chair

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by **[Name of Commissioner]**, Chair of the Board of County Commissioners of Boulder County, Colorado.

_____
(Notary official signature)

NOTARY
S E A L

_____
(Commission expiration)

- Boulder County does not and cannot make any determination or guarantee, implied or otherwise, regarding this donation's fair market value or potential eligibility for tax benefits. Please also note that Boulder County will require you to provide the County with a full copy of the final signed appraisal of the Property and complete copies of all relevant tax documents before the County will sign any tax documents acknowledging receipt of the donation.

*[use one of these next two statements:]
- Boulder County did not provide any goods or services in consideration of this donation. This statement is made to comply with Treasury Regulation §1.170A-13(f)2.

Or

- Boulder County paid for incidental costs and fees customarily paid by purchasers in Boulder County, one-half of the costs of the Mineral Remoteness Report, ALTA survey, Baseline Inventory Report, and Phase I environmental hazards report, and one-half of the cost of the closing fee. All of these amounts are shown on the settlement statement for the closing. Boulder County did not otherwise provide any goods or services in consideration of this donation This statement is made to comply with Treasury Regulation §1.170A-13(f)2.

Appendix 8 –
Monitoring Notice Letter

Parks & Open Space

5201 St. Vrain Road, Longmont, Colorado 80503

303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

[date]

[Landowner Name]
[Street Address]
[City, State, Zip Code]

Re: Conservation Easement Over "Property Name, Street Address" Property

Dear [Landowner Name],
The Conservation Easement Program is pleased to announce the start of the [year] conservation easement monitoring season. We are delighted to be the stewards of the conservation easement or similar type of interest* over your property described above. More than 845 other privately-owned properties are conserved by conservation easements in the county and surrounding area and make up 40% of Boulder County's open space. It's participating landowners like you, working hard to manage their conserved land, who contribute to the rural character and open space values of Boulder County.

As you may know, your conservation easement permits the county to access your property for the purpose of monitoring its current condition and ensuring that uses are consistent with the terms described in your conservation easement. Please consider this letter as notice that we plan to conduct a monitoring visit to your property sometime this year. If you would like to join us for the visit, please contact either of us listed below. We will gladly arrange to meet you on site or take time to talk with you on the phone. If we don't hear from you, we will assume that you have no concerns and we will complete our monitoring visit this year with no further notice. If you will not be joining us for the visit, please let us know if you have any special instructions that we should be aware of (e.g., if your property is behind a locked gate).

We strive to build and maintain positive working relationships with each landowner and we hope that you will consider us a helpful resource. Please let us know if you have any questions or concerns about this year's monitoring visit or about your conservation easement in general. In the future if you are interested in replacing this letter with an email just send us a message at either email address listed below. We can't thank you enough for choosing to own and care for conserved land in Boulder County and we look forward to working with you this year.

Sincerely,

Melissa Arnold
Conservation Easement Program Manager
Office: (303) 678-6266
marnold@bouldercounty.org

Liz Northrup
Conservation Easement Stewardship Specialist
Office: (303) 678-6253
enorthrup@bouldercounty.org

** The restrictions over your property may be specified in a document such as a restrictive covenant or a deed restriction but for the sake of simplicity in this letter we will refer to it as a conservation easement*

Deb Gardner *County Commissioner* **Elise Jones** *County Commissioner* **Matt Jones** *County Commissioner*

Appendix 9 –
Stewardship Tracking Database

POS also maintains physical records that include baseline documentation reports, monitoring reports, photographs, maps, due diligence documents, acquisition records, etc. – those items are stored in a variety of secure locations, and are therefore, not part of the database.

The Stewardship Tracking Database contains approximately 200 fields that POS stewardship staff uses to track and report on these kinds of activities related to Boulder County's conservation easements and other restrictive interests:

Information important to tracking the interests:

- Identifying Information (Location, Size, Restriction Type, Acquiring Process, Donation and Grant Funding Components, Address, Parcel Numbers, etc.)
- Holders
- Recording Information
- Landowner Contact Information
- Water Rights Information (if any)
- Conservation Purposes
- Residences and Other Building Restrictions

Information important to tracking staff activities:

- Baseline Documentation Reports (Status, Signature Dates, etc.)
- Management Plans (Due Dates for Updates, etc.)
- Monitoring Data (Directions to Property, Notice Requirements, Issues to Investigate, Staff Monitoring Assignments, Annual Monitoring Records)
- Action Items (Responsibilities, Deadlines, Status Notes)
- Land Use Dockets (if any) (Application Details, Referral Due Dates, etc.)
- Amendments (if any) (Date Requested, Status, etc.)
- Violations (if any) (Issues, Status, Resolutions, etc.)

Appendix 10 –
Conservation Easement Violation Practices

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

CONSERVATION EASEMENT VIOLATION PRACTICES

For Evaluating Potential Violations of a Conservation Easement Held by Boulder County

Boulder County follows these general guidelines in determining whether or not an issue is a potential violation of a County-held conservation easement, and if so, how the County will enforce the conservation easement. Boulder County endeavors to enforce the conservation easement interest in a manner that protects the property's conservation values and the conservation easement's purposes, including the public benefits derived from the easement. Boulder County addresses each matter on a case-by-case basis, and since each situation presents different facts, the necessary factors to consider may vary from one situation to another and these general guidelines may be modified to fit the subject situation. POS reserves the right for Boulder County to consider and address each situation individually in the County's sole discretion, and no County action or inaction on a specific issue establishes a binding precedent for resolution of any other issue, regardless of perceived similarities.

Potential Violations Are Minimized

The Boulder County Parks and Open Space Department (POS) minimizes the potential violation of conservation easements held by Boulder County through education and relationships. POS answers questions whenever anyone calls inquiring about a conservation easement held by Boulder County, and these conversations establish working relationships with landowners and others interested in a conserved property. POS also reaches out to sellers and their realtors when POS learns of an encumbered property listed for sale. POS helps landowners (who may be sellers), buyers, realtors, title companies, ditch companies and general inquirers to understand the real property restrictions contained in conservation easements. POS regularly meets with potential buyers and assists realtors, title companies and ditch companies in preserving Boulder County's conservation easement interests in properties.

Boulder County's modern conservation easements require landowners to notify potential buyers that a property is encumbered by a conservation easement. Some of Boulder County's older conservation easements do not have this notification language, but many interested buyers still learn about conservation easements encumbering properties by visiting Boulder County's Land Use Department (Land Use). Modern conservation easements also require landowners to notify Boulder County before properties are sold, which gives Boulder County the opportunity to educate buyers about conservation easement limitations. If a seller neglects to tell POS about a property changing hands, POS still learns of new owners when checking ownership records for upcoming monitoring visits and begins establishing working relationships with the new owners.

Violations Are Pursued to Resolution

Boulder County has adequate resources (financial, staff, etc.) to pursue and resolve violations using enforcement actions appropriate to the situation. If a potential violation

Deb Gardner *County Commissioner* **Elise Jones** *County Commissioner* **Matt Jones** *County Commissioner*

occurs, Boulder County considers the following factors and any additional factors Boulder County deems necessary to evaluate and resolve the situation**.**

Discovery and Initial Evaluation
POS takes initial steps to determine the extent of the issue. These are done as quickly as possible so that any emergency actions that may be necessary can be taken promptly.

1.1 Issue Identification. POS gathers as much information as possible from the initial source or sources. Potential violations can be found during site visits, review of aerial photography, conversations with county staff, landowners, buyers, realtors, neighbors, etc.

1.2 Initial Assessment. POS quickly makes an initial assessment of whether an issue is a potential violation by comparing the facts of the situation to the conservation easement terms. If staff determines that no violation has occurred, staff reports back to the person who alerted POS to the issue to explain why the issue is not a violation, and no further action is taken. If staff determines a violation appears to have occurred, staff makes an initial determination of the severity of the violation by comparing reported facts to the conservation purposes of the County's conservation easement and assessing the degree of damage that the violation has caused and/or may cause, and whether the situation requires action.

Detailed Investigation and Assessment
POS conducts a detailed investigation of the issue to confirm a violation has occurred and to identify its severity. POS does this as quickly as possible, but there is no deadline because it is important to gather all necessary facts about the situation, unless the resources protected by the easement are in imminent danger of irreparable harm, in which case, the following steps are done immediately.

2.1 Investigation. POS staff contacts the landowner to discuss the situation and confirm facts. POS attempts to contact the landowner first by phone, but if a landowner is unavailable within a reasonable period of time, POS sends an e-mail or letter to the landowner requesting an opportunity to discuss the situation and obtain more details from the landowner. Presuming that the landowner replies, POS staff gathers and documents all available facts from the landowner, typically during a site visit to observe and take photographs of the situation. POS staff also gathers and documents facts from other sources as appropriate, including neighbors and any other complainants, the County Assessor's Office and Land Use. Facts are also taken and documented from the conservation easement language, information contained in the property's baseline documentation report and/or from other sources that establish the property's prior condition, monitoring reports, maps and aerial photographs of the property's current and prior conditions, photographs documenting the differences between the property's former and current condition, title reports, etc.

2.2 Severity Assessment. POS evaluates the issue by comparing the confirmed facts to the conservation purposes and other terms of the County's conservation easement. POS assesses the degree of damage the violation has caused and/or may cause, and whether the situation requires action. For example, the severity of violations can be:

1. *No Actual Violation*. Sometimes what initially appears to be a violation may turn out not to be one after the foregoing investigation has been done. POS documents this for the file.

2. *Technical*. Technical violations have no tangible physical impact, and as such, typically do not require action or immediate action. For example, POS may learn that a landowner failed to obtain a building permit for a building that is allowed under the terms of the conservation easement and that was placed in an approved location. This may violate terms requiring land use approval, but the conservation easement purposes remain intact. POS may make a note to discuss this with the landowner at the next opportunity, but may not necessarily take action at the time of discovery. As another example of a technical violation, POS may learn that a landowner failed to notify Boulder County of a new address or that a property changed hands, but no enforcement action may be needed because Boulder County learned about it when researching owner contact information for notice of upcoming monitoring visits.

3. *Minor*. Minor violations are not central to the conservation purposes of the conservation easement and have no negative impacts to the property's conservation values, or they may affect more central conservation purposes but only minimally impact the property's conservation values. These may not require action if the property's conservation values are not permanently damaged. For example, a landowner may hold an allowed wedding on a property where foot and vehicle traffic from visitors causes grass vegetation to be trampled. This would be a violation since conservation easements aim to protect vegetation, but it would only be a minor violation if the grass recovers rather quickly. Action might be required if the use is ongoing and continued use would negatively impact the property's conservation values, since that could change the violation from having a minimal, transitory impact to having a more serious long-term impact.

4. *Moderate*. Moderate violations affect central conservation purposes of the easement and have an immediate negative impact on the property's conservation values or the potential for long-term negative impacts, but they may be reversible or easy to mitigate. These may require quick enforcement action, but may not require immediate or emergency action. For example, POS may identify noxious weeds in a corner of a property and learn that a landowner is not controlling them in accordance with local and state laws. POS addresses the issue with the landowner in person or via letter to provide advice for controlling the specific noxious weeds found on the property and then monitors the situation to see if the impacted area increases. If it does, and especially if a landowner is unresponsive, POS notifies Land Use for issuance of a zoning violation letter and Land Use follow-up. POS may find it necessary to enter a property to control the weeds if their expansion threatens the property's conservation easement values. In that case, the violation becomes a major or severe violation, because the impacts to the property's conservation values appear to be significant and permanent.

5. *Major or Severe*. Major or severe violations affect central conservation purposes of the easement, have significant negative impacts on the property's conservation values, are difficult to mitigate or reverse, and are potentially permanent. Major violations require action; severe violations may require immediate, emergency action; and both types may require sustained action over time. Example of major violations include construction of residences or other buildings that are not allowed by the terms of a conservation easement, construction of allowed

buildings outside of a designated building envelope in areas that negatively impact the property's conservation values, or cutting of vegetation or other activities that destroy conservation values.

6. *Undeterminable*. It is possible that a situation may not clearly be either an allowed use or a violation of the conservation easement. This may be due to insufficient information about the issue, in which case, POS continues to pursue the necessary information so a severity assessment can be made. If the conservation easement language is so ambiguous that a determination cannot be made, POS discusses the language with legal counsel before deciding how to proceed.

2.3 Legal Consultation. POS may seek legal consultation on minor, technical and moderate violations, but POS staff typically handles those without need for legal counsel, because most issues that arise have occurred before and POS staff has previously obtained adequate legal advice for resolving them. An exception would occur with issues or fact patterns that differ enough from past situations that POS staff decides that additional advice is needed. In those instances and for major and severe violations, POS consults with its assigned assistant county attorney/s in the Boulder County Attorney's Office. Land Use and its assigned attorneys also participate in these discussions if the conservation easement violation also violates county zoning or land use regulations. Litigation attorneys also participate in these discussions to help assess the clarity of the conservation easement language with respect to the violation. Staff collectively determines what actions Boulder County should take to address the violation and preserve Boulder County's conservation easement interest in the property.

Enforcement Actions

As mentioned above, a minor or technical violation may not require any enforcement. When enforcement is necessary, POS identifies appropriate enforcement actions in an expeditious manner that allows Boulder County adequate time to make informed decisions about appropriate enforcement. No two violations present exactly the same fact patterns, so specific enforcement actions may be varied, as appropriate to the given situation.

3.1 Notification to Funders. If the conservation easement was obtained with grant funds, POS notifies the grant funder/s, because notice is typically required by the terms of the conservation easement. Notification is typically required as soon as POS has confirmed a violation has occurred. POS then keeps the grant funder/s informed as to how the violation gets resolved.

3.2 Written Notice to Landowner. POS notifies the landowner of the violation in the manner POS deems appropriate to the severity of the violation. For minor or technical violations, POS may have already discussed the matter with the landowner verbally and may not follow up in writing. POS follows up in writing for other violations, even though POS has already discussed the issue with the landowner. POS prefers to maintain positive working relationships with landowners by interacting informally as much as possible, so POS may first send written notice by e-mail or regular mail, rather than by certified mail. If those efforts fail to garner the landowner's cooperation, or if POS deems it otherwise appropriate, POS uses the formal notice provisions of the easement to generate an appropriate response. If POS has given notice to the landowner, but the landowner is unresponsive, POS may repeat the notice one or more additional times. If a conservation easement violation also violates county zoning or land use regulations,

POS and the Boulder County Land Use Department work together to notify the landowner in writing about the violations.

3.3 Mitigation and Correction. Even after written notice is given, POS attempts to work with the landowner to resolve the situation amicably and restore the property to its former condition. POS works with the landowner to identify ways to mitigate impacts and negotiate a resolution that best preserves the property's conservation values and the conservation easement's purposes.

3.4 Additional Legal Consultation and Other Staff Discussions. POS reconvenes with legal counsel and other Boulder County staff as needed to determine staff's recommendations for appropriate enforcement actions. POS may also inform the Boulder County Commissioners of the issue and staff's recommended resolution. This is done in an executive session set aside pursuant to Colorado law for real estate transaction issues and legal advice.

3.5 Public Process, Including Public Input. If the situation cannot be resolved simply by POS and the landowner coming to agreement on the terms of the conservation easement, approval from Land Use or the Boulder County Commissioners via a public process is likely required, in which case the public is given opportunity to comment. Land Use handles notification of adjacent property owners and receipt of their comments for all land use review processes, and POS handles this when Land Use is not involved. Published documents prepared for Land Use processes or public hearings describe the issues and staff's recommended solutions. The public is encouraged to comment within the Land Use referral or public hearing process by contacting staff ahead of time and/or attending public hearings. If members of the public choose to comment through news and social media, Boulder County typically does not respond and instead lets the public record reflect Boulder County's approach to resolving the violation.

- Violations may involve the Land Use Department for zoning enforcement, POS works closely with the landowner and Land Use to ensure resolution occurs. This often takes several months or longer, because Land Use' enforcement processes take time and the landowner may need to apply for approval via one or more land use processes that take time to complete.
- Violations may require direction from the Boulder County Commissioners at a public hearing. If a public hearing is necessary, POS notifies adjacent landowners and informs them of the issue so they can participate in the hearing if they desire to do so. POS staff then presents staff's recommendation regarding the matter to the Boulder County Commissioners, and the Commissioners decide how the issue should be resolved.

3.6 Enforcement Decision. Boulder County makes an enforcement decisions that is most appropriate for the situation. Resolutions can include, but are not limited to:

- *No Action*. Legal counsel may advise that Boulder County not enforce an issue. For example, enforcement may not be appropriate if a use is not allowed by the conservation easement but existed on the property before the conservation easement went into effect and the use was not properly described in the easement or baseline documentation report.
- *Restoration*. In some cases, the violation can be corrected and the property can be restored to its prior condition, thereby protecting the property's conservation values and

preserving the conservation easement purposes. For example, debris dumped on the property can often be removed without causing any long-term impacts to the property.

- *Mitigation*. Sometimes the damage caused by the violation needs to be mitigated by creating enhanced conservation values elsewhere on the property or by replacing the damaged property in a manner that affords equal or more valuable public benefits.
- *Payment for Damages*. If the property cannot be restored and no other resolution that preserves or enhances the public benefits is found, the landowner may be required to pay damages and costs to Boulder County in recognition that the property's conservation values have been permanently damaged.

Final Actions

4.1 Documentation. POS finishes documenting the violation if it has not already been adequately documented during the foregoing steps. POS also documents the resolution in a manner appropriate to the situation and notifies any grant funder/s of the resolution. POS may issue a compliance letter about the violation having been rectified; however, POS does not issue letters acknowledging full compliance with the conservation easement terms once the resolution has been implemented due to the fact that other activities on the property may not be in compliance with conservation easement terms. In situations requiring clarification, POS may issue a letter interpreting the conservation easement language, issue a license allowing a use that is not prohibited but not well defined in the conservation easement, or enter into a letter agreement with the landowner to clarify the parties' intent for uses of the property. POS may also determine that an amendment to the conservation easement is necessary, in which case, POS follows its amendment practices described in a separate document. An amendment to the baseline documentation report may also be required.

4.2 Mediation and/or Litigation. If the steps described above do not resolve the violation, or if POS deems a violation to require immediate action to prevent additional damage to the property, POS may refer the matter to the Boulder County Attorney's Office to pursue enforcement of the conservation easement by legal means, such as injunction, temporary restraining order or other remedy for relief.

Appendix 11 –
Conservation Easement Amendment Practices, with Reserved and Permitted Rights Practices

Boulder County

Parks and Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

AMENDING CONSERVATION EASEMENT PRACTICES

For a Request to Amend a Conservation Easement Held by Boulder County

Note: This process also applies to requests for Boulder County's permission to conduct an activity not specifically prohibited or permitted in the conservation easement.

These steps describe general guidelines for how the Boulder County Parks and Open Space Department (POS) addresses requests to amend conservation easements held by Boulder County and other county-held restrictions on private property uses, as well as requests for permission to conduct an activity not specifically prohibited or permitted in the conservation easement. POS may add, remove or otherwise modify process steps or any factors of consideration as it deems appropriate for a particular request. This document also describes the background and purpose for these guidelines, general information, POS' amendment philosophy, and evaluation factors POS considers when evaluating requests for amendments and/or permission.

Application Process

1. Initial Request

Anyone in POS who receives a request from a landowner to amend a conservation easement or grant permission for an activity should direct the landowner to alert the Conservation Easement Program (CE Program) about the potential request for an amendment or permission. The CE Program staff person attempts to reach the landowner to obtain a verbal description of the amendment request, to convey the details of these guidelines to the landowner, and to offer any relevant assistance.

2. Written Request and Fees

The landowner must submit a written and detailed request to the Conservation Easement Program Manager, Boulder County Parks and Open Space Department, 5201 St. Vrain Road, Longmont, CO 80503. An application form is attached and should be used so that the written request includes this required information:

- Landowner's name, address, telephone number(s), and e-mail address (if any);
- A description of the proposed amendment or requested approval for an activity and how the amendment or permission would meet the guidelines specified herein and not result in any damage to the subject property and its conservation values;
- A property map illustrating the property's current and proposed features;
- Other supporting documentation requested by POS or that the landowner feels would be helpful in evaluating the request; and
- A check to cover a non-refundable fee of $500, which is applied to the first ten hours of staff review time. (POS will not review requests that do not include the $500 fee.) [Note that POS may also bill the landowner for other costs, including County staff time spent reviewing the request at the rate of $50/hour, or at a rate as may otherwise be set by the Board of County Commissioners (BOCC). POS

may waive the initial fee and hourly fees if POS, in its sole discretion, determines that the request will benefit the County's conservation easement interest in the property.]

POS may also require the landowner to pay for other work, for example, if a survey and/or on-the-ground construction, reclamation or restoration would be needed in connection with reviewing or implementing the proposed amendment or request for permission. POS may also require the landowner to compensate adjacent owners for any damages to crops, landscaping or property. In its sole discretion, POS may require the landowner to deposit funds to cover these costs into an escrow account with specific requirements for dispersal of the funds, and/or to purchase a bond to ensure that required work would be completed.

3. County Review Process

By merely accepting an application, POS creates no obligation other than to review the request and provide a response in writing to the landowner. POS reviews requests for amendment and/or permission in the following manner:

3.1 Comparison to Conservation Easement Terms. CE Program staff compares the request to the conservation easement, considering things such as:

- Does the easement allow the proposed use, but require Boulder County's consent/approval? (If so, Boulder County will process the request and may consent to the proposed use without an amendment to the conservation easement being necessary.)
- Does the request propose a use that is not specifically permitted or prohibited? (If so, Boulder County will process the request and may issue a discretionary approval of the proposed use.)
- Does the request comply with or contradict the property's allowed uses and other terms and conditions of the easement, and if so, how? [Section 3-203(A)(1)(a) of the Boulder County Land Use Code requires the County to be a co-applicant if a proposal for land use approval is located on property over which a conservation easement has been granted, the application shall include: i) a signature from the conservation easement holder consenting to the proposal being processed under the Code, or ii) a written statement from the easement holder(s) indicating that, in the opinion of the easement holder(s), the proposal, if approved and commenced or constructed, would not conflict with the terms of the easement. If POS identifies a conflict, Boulder County considers the request in its proprietary capacity as co-owner of the surface rights before the Land Use Department can process regulatory review of the request. This is typically done by POS or as a discussion item at a regularly scheduled BOCC business meeting; a public hearing is held only if POS deems it necessary.]
- Does the easement give the County the right to be a co-applicant on any application for zoning change, annexation, variance or exemption from the Land Use Code, right-of-way vacation, building permit, grading permit or other permit pertaining to a use of the Property that is regulated by a governmental authority, or otherwise require County consent or approval for the proposal? (Consideration of County consent or approval can likewise be achieved as a discussion item at a business meeting.)
- Does Boulder County's Land Use Code require a regulatory use application with formal review? (If so, the Land Use process may need to occur concurrently, so all potential

Land Use approvals, easement amendments, conditions, and permissions or denials occur in conjunction with one another.)

- Does the easement allow amendments? If so, under what circumstances?

3.2 Additional Information is Obtained. CE Program staff obtains any additional information needed from the landowner, e.g., through requests for additional documentation and/or a site visit to photograph the area to be affected by the amendment; and re-consult with POS staff, funders, etc. as appropriate. If there are grantees in addition to Boulder County (i.e. a municipality or land trust), contact the other grantees and determine whether the other grantees have a position with respect to whether the amendment should be permitted.

3.3 Evaluation of Amendment Request. CE Program staff discusses the request with any grant funders (such as Great Outdoors Colorado or the Natural Resources Conservation Service), entities or other individuals as required by the conservation easement. CE Program staff also discusses the request with the land officer who completed the easement transaction (if s/he is still available), the Real Estate Division Manager, the POS Director, POS' County Attorney, and other POS staff as needed, such as staff with expertise in agricultural and/or wildlife resources, plant ecology, weeds, etc.. POS may also consult with the BOCC in an executive session set aside for real estate transaction issues and legal advice.

3.4 Landowner Commitment. If POS supports the request, CE Program staff sends the landowner a letter of intent for the landowner to sign documenting the changes that POS will present to the BOCC. CE Program staff also sends the landowner a bill for staff time spent to date on the request. POS may elect not take the matter through the public process unless the landowner signs the letter of intent and pays for staff time spent to date.

3.5 BOCC Grants or Denies the Request. If POS supports the amendment or request for permission, CE Program staff prepares a recommendation for referral of the request to the BOCC at a business meeting, or at a public hearing if POS determines a hearing is needed.[1] The landowner may attend and speak on behalf of the proposal. Approval of the request, if granted, is solely at the discretion of the BOCC. If POS does not support the amendment or request for permission, the CE Program staff informs the landowner in writing.

3.6 POS Documents the BOCC Decision. If the BOCC approves the request and an amendment to the conservation easement is required, the CE Program staff person works with the landowner to prepare and record the amendment. Boulder County may require subordination of existing

1 If a public hearing is required, Boulder County publishes notice in the local newspapers at least 10 days in advance of the hearing date and also mails notice of the hearing to all landowners adjacent to the property. If staff deems it warranted, notices are also mailed to any other landowners within 1500 feet of the subject property. In any case where the affected open space land has been purchased with open space sales tax funds, the review, public notice, hearing and conveyance of any interest in real property by Boulder County must comply with all the requirements of the Sales Tax Resolutions. Boulder County may require that the landowner requesting the amending pay the cost of the public notice required by the Sales Tax Resolutions, publication of the notice "in the official newspaper of the County and of each city and incorporated town within the County...." , in which case a flat fee of $150 will be charged to the landowner that must be paid to POS in advance of the publication. *If a notice fee is required, the landowner must pay the fee plus the cost of any accrued staff time to POS before the Boulder County Commissioners will address the topic at a public meeting or hearing. If no notice fee is required, staff time costs are collected before Boulder County signs and records any amendment.*

mortgages to the original conservation easement and the amendment. Boulder County will not sign the amendment or record it until the landowner has fully paid for staff time and costs.

Background and Purpose

POS recognizes that, from time to time, it will receive requests to amend conservation easements held by Boulder County and administered by POS, or requests for permission to conduct an activity that is not specifically prohibited or allowed under the terms of the conservation easement.

General

1. Applicability. These guidelines apply to requests for any amendment to a conservation easement held by Boulder County. POS administers a variety of conservation easement types, including easements restricting development altogether or limiting the size of residences and other buildings, and easements that protect conservation values recognized by the Internal Revenue Service and the Colorado Department of Revenue as providing public benefit.

2. Limitations. These guidelines in no way imply or assure that an amendment request will be approved. If approval is granted, such approval is the result of the County's consideration and action only in its proprietary role as owner of a partial interest in the subject real property. Such approval does not replace any review and approval that is required under the Boulder County Land Use Code or other applicable regulations; the County reserves all rights of review and approval as would normally be exercised by the County in its regulatory capacity. In addition, any other Boulder County policy regarding resource preservation and protection, especially as they are declared in the Boulder County Comprehensive Plan and in open space management plans or baseline documentation reports, are in no way diminished or otherwise altered by these guidelines.

3. Approval. POS reviews all amendment requests and forwards all proposals for consideration by the Boulder County Board of Commissioners. POS may recommend approval or denial of the request, and even if POS recommends approval of the amendment, approval by the Board is required. Approval of any proposed amendment is solely at the discretion of the Board and is not guaranteed.[2]

4. No Precedent. POS may find it appropriate to make different determinations in seemingly similar situations, because each amendment request, its associated conservation easement language, and the subject property collectively present a unique set of facts for consideration. Therefore, POS reserves for Boulder County the right to address each situation individually in its sole discretion, and approval or denial of an amendment request does not establish binding precedent for any other amendment request.

Amendment Philosophy

POS makes every reasonable effort to evaluate amendment requests as consistently and fairly as

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2 Boulder County has determined that amendments to conservation easements do not meet the threshold requirement of Resolution Nos. 93-174, 99-111, 2000-13, 2004-86 and 2007-80 (the "Sales Tax Resolutions") requiring that any proposal to convey an interest in any real property purchased with proceeds of the open space sales tax undergo an extensive public notification and hearing process that may also require approval of the voters of Boulder County if they wish to petition for a special election. Even so, Boulder County may require a specific amendment request to undergo any or all such steps, in the County's sole discretion.

possible, while also upholding the County's responsibility to protect in perpetuity the public investment and public benefit provided by conservation easements. When evaluating amendment requests, POS will consider state and federal regulations and other important factors, and will strive to uphold broadly accepted standards and practices for land conservation. With this in mind, the County does not routinely approve amendments. Boulder County will only consider amendments that, in Boulder County's sole discretion:

1. Cannot be handled by the County granting limited or general permission (pursuant to the terms in the conservation easement) for the requested use; and

2. Have a net beneficial (or no less than neutral) effect on the property's conservation values and on the conservation easement's purposes, such as by adding new restrictions or protecting additional land, thereby preserving or enhancing the conservation easement's existing public benefits, serving the public interest and being consistent with POS' mission and goals; and

3. Strengthen the conservation easement and Boulder County's ability to protect the property's conservation values, uphold the easement's conservation purposes, enforce the conservation easement, and meet the County's open space program goals; and

4. Fulfill any agreements previously specified in the conservation easement and any other documents indicating the original grantor's intent or complying with funding requirements; and

5. Remedy any inability of the landowner to conduct allowed uses, such as by moving a defined building envelope if engineering constraints dictate the need; and

6. Comply with all applicable federal, state and local laws and legal doctrines, such as charitable trust, fraudulent solicitation, consumer protection, or fiduciary and common law protections; and

7. Clarify any ambiguous language, particularly indistinct language about allowed and prohibited uses; and/or

8. Correct errors and oversights, for example, to correct a legal description or include an exhibit page inadvertently omitted from recording; and, if applicable,

9. Acknowledge the condemnation of any portion or all of the property by a public agency (note that Boulder County does not generally condemn property).

And which do not:

1. Affect the perpetual duration of the conservation easement or the qualification of the conservation easement under any applicable laws, including CRS § 38-30.5-101 *et seq.*;

2. Conflict with the requirements of the grantor or any entity that funded the acquisition of the conservation easement, whether by full purchase or by bargain-sale or full donation with resulting tax credits and/or deductions for the granting landowner;[3]

3 including the Colorado Department of Revenue's requirements for Colorado's tax credit program, Internal Revenue Code Section 170(h) and its associated Treasury Regulations, Great Outdoors Colorado, the Natural Resources Conservation Service, Boulder County and other funding agencies or organizations. Where only Boulder County funds were used to acquire the easement and the grantor did not receive any tax benefit, the County may grant the amendment and require cash payment to compensate the County for a reduction in easement value.

3. Present a conflict of interest that cannot be adequately addressed;

4. Provide impermissible private benefit to the landowner or another individual, rather than incidental private benefits that are unavoidably the result (e.g., by enhancing property values for adjacent unrelated landowners), or provide private inurement to POS or County staff;[4]

5. Jeopardize Boulder County's 'qualified holder' status under State of Colorado and IRS regulations or undermine the public's confidence in the County as a holder of perpetual conservation easements;

6. Conflict with any of the following:

    a. Boulder County's obligations under any grant agreements for funding used to acquire the interest;

    b. Laws and legal doctrines, such as charitable trust, fraudulent solicitation, consumer protection, or fiduciary and common law protections;

    c. State of Colorado certification rules and regulations, and related conservation industry standards;

    d. Boulder County land use regulations, the Boulder County Comprehensive Plan, the Parks and Open Space Department's mission and goals, including goals for conservation easements Boulder County holds and for the County's ability to steward and defend conservation easements;

7. Negatively impact the property's conservation values or other protected properties (regardless of what entity holds the protecting fee or conservation easement interest) or impact those values in ways that cannot be adequately restored or reclaimed;

8. Cause issues for neighboring properties that cannot be resolved, mitigated or otherwise adequately addressed;

9. Add development density to the subject conservation easement property or properties or modify setbacks, etc. for added flexibility in the location of development (with very limited exceptions, e.g., where POS determines that the property's conservation values would be improved by trading the right to build a small house so the landowner can live on a large property and manage it better, in exchange for the County receiving important improvements to the conservation easement, such as consolidating a several-parcel property with several conservation easements into one parcel with one conservation easement);

10. Set an undesired precedent or present objectionable issues that could undermine the public's confidence or result in negative public perception of the proposed change; or

11. Present any other issues that Boulder County finds objectionable that cannot be reasonably mitigated.

<u>Evaluation Factors</u>

The burden of proof is on the landowner to show that the request will not damage the affected property's conservation values, impact the conservation easement purposes or reduce the easement's public benefits. In addition to the guidelines described in the Amendment

4 See IRS Reg. 1.170A-14(h)(3)(i) and 1.501(c)(3)-1(c)(2).

Philosophy section above, POS considers a variety of other factors when evaluating the amendment request, including but not limited to the following factors, which are not listed in any order of priority:

1. The process that created the conservation easement, e.g., by donation, purchase or bargain sale, exaction or regulatory means, dispute settlement, reservation, etc.

2. The conservation easement's purposes, the property's conservation values that the easement is intended to protect, and integrity of the conservation easement in perpetuity;

3. Whether or not the proposal conflicts with Boulder County Comprehensive Plan and/or Boulder County Land Use Code;

4. The reasonableness of the amendment request and its appropriateness for the property, including the property's current condition and potential impacts to:

   a. physical features, such as slope, grade, drainage, revegetation, etc.;

   b. visual features of the property, screening, and effect on view sheds;

   c. adjacent properties and rights to quiet enjoyment;

   d. wildlife, plant communities (both temporary impacts and fragmentation of ecosystems), and/or archaeological, historic, or cultural resources;

   e. agricultural operations on the property and any financial impact due to loss of crop revenue or permanent loss of land;

5. Whether or not any negative potential impacts could be sufficiently mitigated;

6. The degree to which all funding requirements and statutory and federal regulations would be satisfied by the amendment;

7. The effect that the proposed amendment would have on the conservation easement's fair market value;[5]

8. Any consideration being given to Boulder County in exchange for the amendment, such as placing additional land under conservation easement for open space; and

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5 POS will determine the effect on fair market value on a case-by-case basis, and may require the landowner to pay for an independent real estate appraisal. POS will decide in its sole discretion whether a full narrative appraisal is required, or whether a letter of opinion or restricted use appraisal report will suffice. POS may also obtain a separate appraisal at its own discretion and expense, and/or POS may consider any other factors, including but not limited to the original fair market value and cost of the conservation easement, facts and values in similar transactions, etc. In some circumstances the County may accept consideration other than cash, such as an exchange or conveyance of land or water rights; a donation of a conservation easement on land or building site in exchange for the amendment. Acceptance of non-cash consideration is at the sole discretion of the Board of County Commissioners.

9. Effects on the County's ability to fulfill its responsibility to be a good steward of the subject conservation easement and other County-held conservation easements, effects on conservation easements held by other entities in Boulder County, the County's relationships with landowners, and any other impact the proposal may have on Boulder County's stewardship of conservation easements.

Examples of Boulder County's Requirements for Conservation Easement Terms and Conditions

(An approval condition to update your conservation easement to today's standards will require these types of terms and conditions. New language will be tailored to fit your property, situation and county approvals and conditions. This list is not an exhaustive list and is only meant to give a general idea of the types of terms that Boulder County's current conservation easement form includes.)

1. Limit the property to 'open agriculture' uses, such as grazing, growing crops and keeping animals, as such uses are consistent with the Boulder County land use regulations in effect at the time of use.
2. Restrict the total size of agricultural accessory buildings.
3. Prohibit residences, including accessory dwelling units (except that single-family residences that legally existed on the date of the original conservation easement may remain).
4. Require a management plan and/or baseline report for the property.
5. Create building envelopes that keep the majority of the property open, undisturbed and undeveloped.
6. Tie water rights to the property so they are never be sold, transferred or leased from the property. (This assures the land remains agriculturally productive in perpetuity. The County will require an undivided ownership interest in the water, and that undivided interest is tied back to the land so that the landowner retains use of the water, along with all voting rights and responsibility to pay the assessments. This arrangement does not allow the water to be used by the County but insures that the County is notified if any issues arise related to these shares in the future.)
7. Protect the property's conservation values, such as riparian areas, wetlands, reservoirs, ditches and creeks that are important for wildlife and fisheries habitat.
8. Protect historically significant structures.
9. Include any additional restrictions determined by Boulder County's Land Use Department during any land use regulatory review process that may be required.
10. Affirm the county's right to enter the property for monitoring purposes only, with reasonable notice.
11. Require consultation with Boulder County regarding mineral rights or mineral leases being exercised.
12. Prohibit incompatible uses, including but not limited to:
    - Subdivision and annexation
    - Weddings and home events of any kind
    - Other uses that may be consistent with Boulder County land use regulations as they apply to the Property, but which may be detrimental to protecting the property's conservation values, including but not limited to active recreation, intensive agriculture, agribusiness (such as feedlots), commercial (including commercial hunting), industrial, institutional, community significant, lodging, open mining, retail, office, business, personal services, transportation, utility, public service, and warehouse uses
    - Mining, except for mineral rights severed or leased before the original conservation easement
    - Use of hazardous chemicals on the property, except for agricultural use (e.g., to control weeds)
    - Other uses that would damage the property's conservation values, such as pollution and/or drainage of surface and sub-surface water
    - Off-road use of motorized vehicles, except in the normal course of conducting permitted activities
    - Utilities and access through the property to serve other properties
    - New roads, paving and trails
    - Topography changes for non-agricultural uses
    - Fencing, unless wildlife-friendly
    - Signs greater than 20 square feet in size

APPLICATION TO
AMEND A CONSERVATION EASEMENT
HELD BY BOULDER COUNTY

*** Only the landowner may submit this application, because only the landowner has the ability to amend the conservation easement if Boulder County approves an amendment.***

1. Landowner's Name: _____
   Contact Person (if landowner is a company): _____
   Address: _____
   _____
   Phone Number(s): _____
   Fax Number: _____
   E-Mail: _____

2. Please attach a detailed written description of the proposed amendment. Please be sure to include in your description an explanation of how the amendment would meet Boulder County's guidelines for amending conservation easements without resulting in any damage to the subject property and its conservation values (see the guidelines for more detail). Please include any additional information that Boulder County has requested or that the landowner feels would be helpful in evaluating the request.

3. Please attach a map or drawing of the property that illustrates the proposed amendment.

4. Please enclose a check to cover a non-refundable fee of $500, which will be applied to the first ten hours of staff review time. (POS will not review requests that do not include the $500 fee.) [Note that POS may also bill the landowner for other costs, including County staff time spent reviewing the request at the rate of $50/hour, or at a rate as may otherwise be set by the Board of County Commissioners. POS may waive the initial fee and hourly fees if POS, in its sole discretion, determines that the requested amendment will benefit the County's conservation easement interest in the property.]

_____

I am enclosing the following information (note that all is required), and I hereby agree to pay Boulder County at the rate of $50/hour to process this amendment request. I agree to pay all amounts due relating to this amendment request before any amendment is finalized.

- ❑ $500 check (see #4 above)
- ❑ Written description explaining the amendment request
- ❑ Map illustrating the amendment request

Signed: _____ Print Name: _____

Submit this application, maps, $500 check (made out to "Boulder County"), and other documentation to:

Conservation Easement Program Manager
Boulder County Parks and Open Space Department
5201 St. Vrain Road • Longmont, Colorado 80503 • (303) 678-6200 • Fax: (303) 678-6179

Appendix 12 –
Practices for Adding a New Development Right

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • www.BoulderCounty.org

PRACTICES FOR CONSIDERING NEW DEVELOPMENT RIGHTS ON A CONSERVATION EASEMENT PROPERTY

For a Request to Amend a Conservation Easement to Allow a New Development Right

Guidelines

The Boulder County Parks and Open Space Department ("POS") may consider requests to amend conservation easements to add a development right for a single family residence only on very large properties where POS believes the on-site presence of the owner would improve stewardship of the property. Boulder County will not grant a new development right if private benefit and private inurement will occur. POS may find it appropriate to make different determinations in seemingly similar situations, because each request, its associated conservation easement language, and the subject property collectively present a unique set of facts for consideration. Therefore, POS reserves for Boulder County the right to consider and address each situation individually in its sole discretion. Approval or denial of a request to add a development right does not establish binding precedent for any other request. Two potential house sizes may be allowed:

1. A residence up to 1,800 square feet may be allowed pursuant to Boulder County's land use regulations, which allow accessory dwelling units for agricultural purposes.

2. A residence greater than 1,800 square feet and up to a maximum of 6,000 square feet, typically including all 'residential floor area' as that term is defined in Boulder County's land use regulations, may be allowed if Boulder County determines, in its sole discretion, that a residence larger than 1,800 square feet is appropriate for the subject property.

In each circumstance, Boulder County will charge the landowner a fee for allowing a new residence on the property, and the fee will be commensurate with the fair market value of the right being awarded to the landowner. For example, the fee for allowing an agricultural accessory dwelling unit will be one-half of the value of a transferable development right in the area of the County closest to the subject property, and if the development right can be used more broadly than just for an agricultural worker's dwelling, the fee will be equivalent to the higher fair market value of that right.

Process

All aspects of POS' Administrative Guidelines for a Request to Amend a Conservation Easement Held by Boulder County shall apply to requests for development rights. Please see that document for more information that describes the application process and all related considerations.

Last updated: 12-16-15

Appendix 13 –
New Easement Practices and
Policy on Requests for Easements Into, Over or Across
County Open Space Lands

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

NEW EASEMENT PRACTICES

For Evaluating Requests to Allow New Easements Over Properties Encumbered by a Conservation Easement Held by Boulder County

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Boulder County considers many variables in determining whether or not to allow new easements over properties encumbered by a County-held conservation easement. Boulder County will address each matter on a case-by-case basis, and no County decision for a specific request shall establish a binding precedent for any other request.

Evaluation Factors

1. *Policy:* Boulder County will apply its Dispositions of Land Practices and Policy for Easements Across County Open Space.

2. *Amendment Guidelines:* Boulder County will also consider the factors that are described in the County's administrative guidelines for requests to amend conservation easements, because those guidelines contain factors that are also important for requests to allow new easements over properties encumbered by County-held conservation easements.

3. *Variable Factors:* Boulder County will consider the following variable factors in making a determination of such requests. Decisions on whether or not Boulder County will allow a new easement will also depend on any additional information Boulder County deems appropriate to consider.

- **Conservation Easement Terms** – Does the conservation easement contain language giving Boulder County the right to give or withhold consent for new easements across the property? Has the landowner's right to grant new easements been restricted by any requirements to obtain consent, permission or approval from Boulder County before granting the new easement?
- **Potential Impacts (Negative or Positive)** – What is the potential impact of the proposed new easement to the property's conservation values and the purposes of the conservation easement – are they negatively affected by the proposed easement? (Note that new easements generally cannot be completely reclaimed and restored, so they result in diminished productivity of agricultural land. Forested land may experience similar negative impacts.) Will the new easement improve the landowner's ability to use the land for uses allowed by the conservation easement, or enhance those uses in any way?
- **Potential Need for an Amendment** – Would an amendment to the conservation easement be needed to make the request compliant with other terms of the conservation easement? How would such an amendment affect the property's conservation purposes and values (as evaluated using the County's administrative guidelines for conservation easement amendments)?

Consent and Compensation
If a landowner, whose property is subject to prior encumbrance (including a conservation easement), makes a conveyance of subsequent easement interest that does not interfere with the rights granted in the prior encumbrance, Boulder County as grantee of the prior encumbrance is not entitled to deny or grant consent or to compensation for the subsequent conveyance.

If instead the language of the conservation easement confines the Grantor to enumerated uses and does not affirmatively permit the Grantor to grant rights of way or utility easements to third parties, the landowner cannot grant new easements without Boulder County's prior written consent. Boulder County may deny the request, or in the alternative, Boulder County may grant its consent for the new easement with one or more conditions.

If Boulder County determines that the new easement will harm the County's conservation easement interest, as one condition of giving consent for the new easement, Boulder County requires that the landowner must divulge how much the landowner will be paid for the new easement and share that amount with Boulder County. The proceeds must be divided between the landowner and the County in the rough proportion of the value that the conservation easement interest represents to the value of the property as a whole.[1] Boulder County requires this condition, because Boulder County cannot allow the County's relative interest in the property to diminish[2] while the landowner benefits (thereby increasing the fair market value of the landowner's remainder interest in the property) from Boulder County consenting to the new proposed easement.

Staff Review
The Boulder County Parks and Open Space Department (POS) will evaluate the request using the foregoing criteria and any other factors deemed relevant. POS staff will consult with the Boulder County Attorney's office to confirm staff's findings. POS staff will notify the landowner of the County's position and send a written response to the landowner pursuant to the notice requirements in the conservation easement. POS staff will work cooperatively with the landowner to resolve the issue that gave rise to the request in a way that is compliant with the conservation easement, if that is possible.

Commissioner Approval
If the County's consent is required by the conservation easement, POS staff will make a presentation to the Boulder County Commissioners describing POS' position on the matter and recommending whether or not to grant consent. POS staff may also suggest conditions if the Commissioners decide to grant consent. The Commissioners will make the final determination.

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[1] The standard method of valuation of conservation easements is set forth in the Treasury Regulations at 26 CFR § 1.170A-7(c). The value of the conservation easement is the difference between the fair market value of the land unencumbered and the value as encumbered by the conservation easement. Boulder County's conservation easement interests typically require this percentage to remain the same with the passage of time, although the fair market value of both the Grantor's and Grantee's interests will change over time. Boulder County will evaluate the terms of the conservation easement to determine if the percentage is set forth in the easement, or if it must be determined by appraisal or other method at the time of the request.

[2] It is contrary to § 170(h) of the Internal Revenue Code of 1986, as amended, and the corresponding U.S. Treasury regulations and also to Boulder County's fiduciary duty to its citizens (the public) to allow the County's relative interest in the property to diminish.

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

POLICY AND PRACTICES FOR REQUESTS FOR EASEMENTS INTO, OVER OR ACROSS COUNTY OPEN SPACE LANDS

(adopted by Boulder County on June 5, 2003)

The following policy and related practices describe how Boulder County handles requests for access to and easements into, over or across County open space. The Parks and Open Space (POS) Department's practices that further implement the policy are shown in *italics*.

PURPOSE: This policy ("Policy") is to establish in written form the application requirements, review criteria and review process for requests for easements into, over or across Boulder County open space.

APPLICABILITY: This Policy and process applies to requests for temporary or permanent easements over or across county open space lands. This Policy does not apply to requests for temporary access for recreational, research, or educational purposes; these requests are administered under Resolution No. 2003-61, Parks and Open Space Rules and Regulations, or its successor. The Policy does not apply to access to irrigation ditches and associated water control facilities to which access is already protected and assured by the constitution and statutes of the State of Colorado. **Boulder County will not grant legal access to property for which no legal access currently exists.**

> *Practice: This document also applies to for temporary use of open space, which if approved, is granted by temporary license or permit, rather than by easement.* ***Private use of open space is not allowed, so Boulder County does not grant private parties any kind of permission to use open space.***
>
> *Many county open space properties have ditches, utilities and roads running through them or along their edges. Ditch and utility companies, the county's Transportation Department and the Colorado Department of Transportation have legal rights to maintain their interests. POS honors those rights, and requires them to obtain temporary permission for work outside the areas they have historically used. Condemning agencies may also take new portions of county open space or county-held conservation easement properties for widening roads, running new utility lines and other public utilities. The county works collaboratively with condemning agencies to save the time and expense of a formal condemnation process and may accommodate a request without a court order; however, so that open space interests are best protected, the county requires the agency to issue a formal 'notice of intent to acquire' before the county begins the collaborative process. A different process is used with the county's Transportation Department, since POS and the Transportation Department are part of the same legal entity, but POS still ensures open space resources are protected. The county can sometimes convince these agencies to take less property or disturb less of the surface. As much as possible, POS requires reclamation and restoration to protect open space resources.*

LIMITATIONS: This policy in no way implies or assures that an application will be approved. Approval, if granted, is the result of the county's consideration and action only in its proprietary role. Such approval does not replace any review and approval that is required under the Boulder County Land Use Code or other applicable regulation; the county reserves all rights of review and approval as would normally be exercised by the county in its regulatory capacity. An application, if approved or denied, establishes no precedent for any other application. Conveyance of any

interest in real property requires approval of the Board of County Commissioners and, except as limited by restrictions on the conveyance of an interest in open space lands and by Resolution Nos. 93-174, 99-111, and 2000-13 (the "Sales Tax Resolutions"), is solely at the discretion of the Board. The Sales Tax Resolutions require that any proposal to convey an interest in any real property purchased with proceeds of the open space sales tax must be subject to an extensive public notification and hearing process and may require approval of the voters of Boulder County if they wish to petition for a special election.

GENERAL OPEN SPACE POLICY: Open space is defined in the Boulder County Comprehensive Plan as "lands...being intentionally left free from future development...." It is the county's policy to maintain its open space lands in a natural state. Except for passive recreational uses and associated facilities deemed compatible with preservation and other open space management objectives, usually declared in a publicly reviewed and County Commissioner-approved management plan, it is the county's policy to limit or even prohibit other human intrusions. Boulder County's existing policies regarding resource preservation and protection, especially as they are declared in the Boulder County Comprehensive Plan and in open space management plans, are in no way diminished or otherwise altered by adoption of this document.

Boulder County recognizes that from time to time, requests will be submitted to the Parks and Open Space Department for permanent or temporary easements across County open space lands. (Temporary easements are generally defined as being of limited duration, almost always less than one year.) The county desires to define the process for submittal of such requests for access and to outline the evaluation criteria which will be used in determining 1) the appropriateness of the easement, 2) whether or not there is any public benefit which might be derived from it, 3) impacts of the easement on the affected open space land, and 4) whether or not these impacts can be sufficiently mitigated. In all cases the applicant is responsible for demonstrating that the requested use will not result in any damage to the affected open space and/or to the open space values of that property.

In order to evaluate easement requests consistently and fairly, the following process has been established.

> *Practice: Boulder County also uses the following application and review process when considering any request to use open space for non-open space purposes, even when the request is for temporary permission and is not a request for an actual easement.*

<u>Application Process</u>

1. Application and Application Fee

The applicant shall submit a request for access on Application Form A-100 (copy attached), or similar form provided by the Parks and Open Space Department, to the Real Estate Division Manager, Boulder County Parks and Open Space Department, 5201 St. Vrain Road Longmont CO 80501 **along with a non-refundable application fee of $100.00 (a check in that amount should be made out to Boulder County). The $100.00 fee will be applied to the first two hours of staff time in processing the application; the applicant will be billed for staff time at the rate of $50/hour for County staff time, or as set by the Board of County Commissioners.** Incomplete applications will be returned to the applicant along with their application fee; the fee and form may be resubmitted when complete.

> *Practice: POS can often accept requests that are not on Form A-100, as long as the written request provides the same or more information. POS may accept requests by email and may agree to process a request and obtain payment for staff time later. If POS elects to do this, POS then requires payment for staff time prior to issuing the necessary license or permission document.*

2. Evaluation Factors

Boulder County will only approve easements that have a public benefit or promote the mission of the Parks and Open Space Department, including particularly, the preservation of private and public

agricultural uses and wildlife protection. The burden of proof is on the applicant to show that the request will not damage the affected open space or the open space values of that property. Parks and Open Space staff will consider the following information in evaluating requests for easements. The information **is not** listed in any priority order.

Practice: In addition to the following factors, POS considers any and all factors it deems relevant when contemplating access and easement requests. Boulder County considers each situation on a case-by-case basis, follows restrictions in the open space sales and use tax resolutions[1] and makes other decisions in its discretion. A decision for one situation does not establish a binding precedent for any other situation.

POS works with the agency to protect as much of the property's natural resources and open space values as possible, while still satisfying the agency's legal rights and meeting its needs.

Purpose of easement

Property interest consideration/conflicts:
- Impact on other easements, if applicable
- Concerns of adjacent or other ownership interests
- Any restrictive covenants that may encumber the open space lands

Physical considerations:
- Length and width of easement
- Current condition of proposed easement route
- Visual impact of proposed easement
- If the easement involves new construction or reconstruction of existing roads describe: slope, grade, drainage impacts, revegetation, screening, mitigation, etc.

Natural and cultural resource considerations:
- Impacts to wildlife and/or plant communities (both temporary impacts and fragmentation of ecosystems)
- Impact on archaeological/historic/cultural resources
- Introduction of invasive species

Open space management concerns:
- Estimated average number of vehicle trips per day or year
- Effect on public use and enjoyment of the open space property i.e. trail corridors, proximity to picnic areas
- Noise impacts
- Impact on agricultural operations: lessee, livestock, ditch easements, irrigation systems, any financial impact on lease due to loss of crop revenue or permanent loss of land from the lease.
- Seasonal appropriateness

Other considerations:
- Conflicts with Boulder County Comprehensive Plan and/or Boulder County Land Use Code-
  The public benefit derived from granting the easement OR the consideration given for the easement (for example: additional land for open space in exchange for the easement; a conservation easement on the residential lot which the easement serves)

[1] The open space sales and use tax resolutions are Boulder County Resolution Nos. 93-174, 99-111, 2000-13 and 2004-86, 2007-80 and 2010-93.

3. Staff Review and Public Hearing Process

Requests for easements of a temporary nature shall be reviewed by Parks and Open Space staff and may be approved or denied by Parks and Open Space staff, so long as the review and approval/denial complies with all policies, procedures, rules and regulations of Boulder County. If a temporary easement would have a significant impact to the open space property, the request will be processed as described below for permanent easements. The Board of County Commissioners, at its discretion, may review decisions of staff.

Requests for permanent easements shall be reviewed by Parks and Open Space staff. If recommended by staff for approval, the application and a staff recommendation will be referred to the Parks and Open Space Advisory Committee (POSAC) at a regularly scheduled meeting. The applicant will be invited to attend the meeting and may speak on behalf of the proposal.

After review in a public meeting and recommendation by POSAC, the proposal will be forwarded to the Board of County Commissioners for public hearing and final action. **All charges for processing the application must be paid prior to the public hearing before the Board of County Commissioners.**

All applications for permanent or temporary easements that have a significant impact to the open space property shall be subject to the following requirements: At least 10 business days prior to the public hearing before the Board of County Commissioners, notice of the hearing, a summary of the application with a map, and the staff recommendation shall be mailed to all landowners adjacent to the property and to any other landowners within 500 feet of the proposed easement. The adjacent property owner notice may be waived, at staff's discretion, if the location and purpose of the easement in question has been considered at a prior public hearing for which the adjacent property owners were noticed. **The cost of any notice shall be borne by the applicant and paid to the Parks and Open Space Department in advance of the mailing.**

In any case where the affected open space land has been purchased with open space sales tax funds, the review, public notice, hearing and conveyance of any interest in real property by Boulder County must comply with all the requirements of the Sales Tax Resolutions. The cost of the public notice required by the Sales Tax Resolutions, publication of the notice "in the official newspaper of the county and of each city and incorporated town within the county**...."shall be borne by the applicant and paid to the Parks and Open Space Department in advance of the publication. The cost for the publication of the notice shall be a flat fee of $150.**

> *Practice: Boulder County routinely notifies the public of upcoming POSAC meetings and BOCC meetings and hearings online. The county also publishes upcoming BOCC hearings in the county's official newspaper (which paper is the 'official' newspaper for Boulder County varies year-to-year). To meet the foregoing policy and also the language of the open space sales and use tax resolutions, which applies when open space sales and use tax funds were used to acquire the property, POS publishes notice of Board of County Commissioners hearing in the official newspaper of Boulder County and in the paper for each incorporated municipality at least 10 days prior to the hearing.*
>
> *POS notifies the adjacent landowners and neighbors described above at least 14 days in advance of the POSAC meeting, and also at least 14 days prior to the BOCC hearing. If possible, POS sends notice of both the POSAC meeting and the BOCC hearing in the same mailing.*

Approval of the application, if granted, is solely at the discretion of the Board of County Commissioners. The county, by acceptance of an application, incurs no liability and has no obligation other than to review the request and provide a response in writing to the applicant.

Practice: If the BOCC approves the request, POS waits 60 days before granting the easement, if open space sales and use taxes were used to fund the acquisition. This waiting period is required to allow the public to petition that the easement disposition be put to a public vote.

When Boulder County grants the request, the requestors with condemnation authority will receive the interest they require. Boulder County will grant requestors that do not have condemnation authority a license or permit, rather than an easement or fee title. If fee title is being conveyed, the conveyance is done by special warranty deed or quitclaim deed only, and not by general warranty deed.

4. Applicant Obligations

The applicant is solely responsible for cost of: the application fee, staff time, notice to adjacent/proximate landowners, publication of hearing notice in local newspapers if required, all costs associated with surveying, construction, reclamation and maintenance of the easement, compensation to any lessee of the property for any damages (i.e. crops, landscaping), and the escrowed funds described below, if approved.

Practice: POS will collect payment for all of these costs before taking the request to POSAC. POS will collect costs and staff time accruals after POSAC before taking the request to the Board of County Commissioners for consideration. POS will collect any additional costs and staff time accruals before presenting the approval document for county signature.

The applicant must pay the application fee, the publication of notice fee, and any surveying fees prior to the Board of County Commissioners' public hearing. If the easement is approved, the county will estimate the costs for monitoring applicant's use of the easement, compensation to lessee for any anticipated damages, and costs for reclamation. The county shall require applicant to place funds equal to those costs into an escrow account pursuant to an escrow agreement that specifies requirements for dispersal of the funds. After applicant has demonstrated to County that it has compensated lessee for any actual damages, successfully reclaimed the easement site, and repaired any other damages caused by the use of the easement, County shall return all escrowed funds minus costs for monitoring the easement construction and reclamation. It may be necessary to hold such funds for up to three years before a determination can be made that the reclamation project is successful.

5. Value of the Easement

The value of or consideration for an approved easement or other interest shall be determined on a case-by-case basis, depending on the type of easement and the extent that it restricts or affects the use of the open space land. Such factors as the original cost of the open space, fair market value, similar transactions, damage to property, etc. shall be considered in determining the consideration required for the easement or other interest. The county, at its own discretion and expense, may obtain an appraisal of any property interest to be conveyed. In some circumstances the county may accept consideration other than cash, such as an exchange or conveyance of land or water rights; a donation of a conservation easement on land or building site in exchange for the easement. Acceptance of non-cash consideration is at the sole discretion of the Board of County Commissioners.

APPLICATION FORM

Request for Easement on County Open Space Lands

1. Name of applicant/company (include contact person):

   Address:
   Phone Number:
   Fax Number:
   E-mail:

2. Purpose of easement (utility, temporary construction, etc.)

3. Name of affected open space area. Attach a map showing the proposed route of the easement.

4. Width and approximate length of easement in feet (if approved, applicant will be responsible for surveying the easement to establish a legal description)

5. Term of easement (perpetual or temporary)
   Perpetual_____ Temporary: From _____ To _____

6. Name of public road from which easement will start (if applicable)

7. Does the requested easement utilize existing easements or roads? If so, which ones?

8. Please describe the alternative routes or options and the costs related to each of those? (This section must be answered for application to be complete.)

9. Please include any additional information that will aid in the review.

NOTE: Applicant is responsible for surveying the approved easement, obtaining all necessary county or state permits which may be required, locating utilities and paying all costs associated with reclaiming the property after construction (if applicable). A county-approved reclamation plan and bond may be required.

Appendix 14 –
Dispositions of Land Practices
(Including BLM Sliver Parcels)

Boulder County

Parks & Open Space
5201 St. Vrain Road • Longmont, Colorado 80503
303.678.6200 • Fax: 303.678.6177 • **www.bouldercounty.org**

Practices for Dispositions of Open Space

The following practices describe how Boulder County handles dispositions of open space that the county believes are beneficial to its open space program. These dispositions are different from requests for access to and easements into, over or across County open space, which are governed by the county's policy for Requests for Easements Into, Over or Across County Open Space Lands.

Boulder County may decide to sell or exchange the fee interest in land that was acquired for the county's open space program if Boulder County determines that no public use is appropriate and that a private landowner could better manage the land. (As recognized in the County's Comprehensive Plan, conservation easements can accomplish the same open space purpose as fee ownership in keeping land free from future development when no public recreation is intended for a property.[1] When such a disposition is done, Boulder County holds a conservation easement restricting development and use of the land.)

Sales and exchanges may be proposed by the county or interested parties. Boulder County almost never sells parcels with significant natural, historical or cultural resources, regardless of parcel size; however, the county may decide to dispose of, for example:

- Parcels containing houses or buildings that are not needed for the county's open space agricultural operation, where Boulder County does not want the expense of owning and maintaining them. (Boulder County usually lists these parcels for sale through a realtor that has been awarded the listing contract pursuant to County policy.)

- Large parcels whose disposition would present significant advantages to open land preservation or land management. For example, some properties require a large investment of money or labor, where instead an agricultural tenant or conservation buyer may be available who has more resources to restore or improve the properties than Boulder County desires to invest. As another example, a property may be exchanged with a landowner to protect additional land, in which case, the county then holds a conservation easement over both the original and the additional property, thereby creating a larger conserved property.

- Properties where the county had to acquire fee title to a parcel, rather than just a conservation easement, because the seller wanted to sell the entire property, and the county now has the opportunity to recover some of the purchase cost by reselling some or all of the property subject to a conservation easement. For example, some properties that are important to buy when the opportunity arises to fulfill county open space objectives are very expensive, and the county could recoup some of that cost by selling the property subject to a county-held conservation easement.

[1] The Open Space element of the Boulder County Comprehensive Plan states: "where public ownership of the land itself is not essential to the public interest, the county may acquire an interest through a deed of conservation easement in gross….conservation easements are especially well-suited to preserving prime agricultural land."

- Properties that could be reunited with adjacent parcels to re-create an originally larger parcel, usually done by selling an open space parcel to the owner of an adjacent house lot containing a farmhouse or other house that was originally part of the same property.

- Agricultural land of marginal value to the county's open space program, other land that does not have significant conservation value, or land that could be better managed by an adjacent landowner, agricultural operator or someone else that in POS' sole discretion is well-suited to manage the property for open space purposes.

- Former BLM lands or other properties that are geographically isolated from other open space properties, making them more difficult for Boulder County to manage efficiently. In these instances, POS evaluates the area surrounding the property to determine if any adjacent properties could be well-suited for exchanging or combining with the property.

Evaluation Factors
When POS considers the possible disposition of a property, POS considers any and all factors it deems relevant when contemplating a potential disposition. For example, POS evaluates the property to determine whether disposition is appropriate based on the property's size, location, connection to other open space, significance of natural features, importance to implementing open space objectives, management objectives, suitability of the proposed buyer to implement county goals for the property, etc.

Boulder County follows restrictions in the open space sales and use tax resolutions[2], and makes decisions that benefit the county's open space program. Boulder County makes disposition decisions on a case-by-case basis, with no situation setting a precedent for another situation. The county's decisions on dispositions of open space are final, and there is no appeal process.

County Requirements
County Open Space: Boulder County has these general requirements for dispositions of open space land:

1. The county reserves all mineral interests owned by Boulder County, all County road rights-of-way, and an undivided interest in all water rights appurtenant to the subject property.

2. The county conveys the property by special warranty deed or quitclaim deed only, and not by general warranty deed.

3. The county requires that a conservation easement be granted back to Boulder County that:

    - Protects the land's conservation values, including tying the buyer's undivided interest in any water rights to the property; and

    - Merges the parcel with the buyer's adjacent property (if any), so the properties are conveyed together in the future;

[2] The open space sales and use tax resolutions are Boulder County Resolution Nos. 93-174, 99-111, 2000-13 and 2004-86, 2007-80 and 2010-93.

- Extinguishes all residential building rights on the property, unless Boulder County deems that allowing a building right would contribute to better land management; and

- Prohibits use of the parcel to increase the development potential of another parcel, e.g., by using the parcel to make other land legally buildable, create legal access, provide physical access, resolve zoning setback issues or provide room for septic systems or utilities. (Exception: Boulder County may agree to sell parcels to correct encroachment issues resulting from pre-existing development.)

Former Federal Land: Boulder County has acquired some former federal lands through an exchange with the US Bureau of Land Management (BLM). Boulder County has these special requirements for dispositions of land formerly owned by the BLM or other federal agency, in addition to the requirements above:

1. Boulder County typically only sells former BLM land to adjacent landowners and only rarely splits a parcel among adjacent landowners. Where multiple parties want to own or lease a parcel, the county will not sell or lease the parcel to either party, unless an agreement acceptable to the county is reached that does not substantially increase the county's responsibilities and burden.

2. Boulder County requires a $2,000 processing fee upon a buyer's execution of a letter of intent and before taking the transaction through the public approval process. POS may waive the fee if POS, in its sole discretion, determines that the request will benefit Boulder County.

3. In keeping with the BLM's Decision Record Environmental Assessment CO-200-2001-0052, these conservation easements prohibit all development, residential and otherwise.

4. The county requires the purchaser to sign a restrictive covenant tying his/her original parcel and the former BLM land together in perpetuity.

5. Buyers are responsible for acquiring title insurance, if desired.

Disaster Buyout Properties: Boulder County has acquired some private land that was damaged by the 2013 flood, and may acquire additional land following other disasters. Federal funds used for these 'buyouts' come with acquisition conditions and restrictions on future uses. Boulder County has these special requirements for dispositions of buyout properties, *in addition to all of the foregoing requirements for general dispositions and dispositions of former federal land*. These additional requirements are necessary to meet disaster buyout funding requirements:

1. Boulder County will not dispose of a property where funding source requirements dictate that the county must own the property. Properties acquired with HUD/CDBG-DR funding cannot be disposed of until more than five years after acquisition and must have perpetual deed restrictions allowing only uses compatible with open space, recreation or wetlands management. Properties acquired with FEMA/HMGP funding cannot ever be sold, except to a public entity or qualified conservation organization and with the prior approval of the appropriate FEMA Regional Administrator. FEMA/HMGP-funded properties may be leased, as long as the uses are compatible with open space purposes and the lease is clearly subject to the use restrictions.

2. The county will make any and all requirements necessary to comply with buyout funding requirements at the time of sale or lease and to ensure that future uses are compatible with open space purposes. Restrictions include but are not limited to no structures, no paving, no fencing and no uses that obstruct the floodplain.

3. The county may require additional use restrictions, beyond what the funding source requires. For example, the county prohibits disturbance of riparian areas, may require restoration of native vegetation, and may lease a property for a shorter term than the funding source allows. POS, in its sole discretion, determines which requirements will benefit Boulder County for a specific property.

Public Hearing Process

Boulder County deems public input important and considers all comments, particularly those submitted by any immediately adjacent neighbors, as part of its overall determination of whether or not to proceed with the disposition. Boulder County is committed to the public process even in situations involving agencies with condemnation authority (i.e., the county cannot prevent the taking), because the public process may influence the ultimate outcome.

If the BOCC approval to acquire a property includes approval to sell a portion of the property later, and if POS met the following notice practices when the original acquisition transaction was presented to the Parks and Open Space Advisory Committee (POSAC) and the Board of County Commissioners (BOCC), POS does not repeat the notice process at the time of disposition, because county approval for the disposition has already been granted in a public process and in a manner that meets notice requirements.

For situations where the disposition was not initially approved, if POS recommends approval of a disposition, POS refers the disposition to POSAC for its recommendation and then requests approval from the BOCC at a public hearing. POS notifies the public of these meetings in these ways, so that Boulder County citizens can comment prior to the BOCC's decision:

Direct Recipients: POS notifies neighboring landowners in the unincorporated portion of Boulder County as described below for their input on the potential disposition before POS presents the proposed transaction to the BOCC, and before POS presents the transaction to POSAC if possible:

- For all dispositions, POS notifies landowners of properties touching the subject property.

- If more than 1,000 square feet of new buildings will be allowed on the subject property (typically these buildings would only be for agricultural use), POS also notifies landowners within 500 feet of the subject property's boundaries. POS *may* broaden the range to notify landowners within 500 feet up to 1,500 feet, if POS deems it appropriate for the situation.

- If the disposition involves a 'division of land' to create a new vacant-but-buildable parcel (a house lot with a new, as-yet unused building right) smaller than 35 acres, unless the division was approved by the county commissioners as part of an acquisition approval, POS also sends notices to property owners within 1,500 feet[3] of the subject property's boundaries, and to Boulder County's Transportation, Public Health and Land Use Departments.

[3] This distance is specified in the Land Use Code for community facility lot splits, also known as divisions of land.

- If Boulder County acquired the subject property from the US Bureau of Land Management (BLM) (these are commonly called BLM Slivers) in the Ward area, Boulder County also notifies the Town of Ward and various Native American tribes.

Published Notices: Boulder County routinely notifies the public of upcoming POSAC meetings and BOCC meetings and hearings online. The county also publishes upcoming BOCC hearings in the county's official newspaper (which paper is the 'official' newspaper for Boulder County varies year-to-year). When disposition of an open space parcel that was acquired with open space sales and use tax funds is proposed, POS publishes notice of the BOCC hearing in the official newspaper of Boulder County and in the paper for each incorporated municipality in the county.

Timing of Notices: POS sends notices to direct recipients at least 14 days prior to the POSAC meeting and also at least 14 days prior to the BOCC hearing. If possible, POS sends notice of both the POSAC meeting and the BOCC hearing in the same mailing. Published notices are published at least 10 days prior to the BOCC hearing.

60-Day Waiting Period After Disposition Approval

If the disposition is approved, and if open space sales and use taxes were used to fund the acquisition, POS waits 60 days after BOCC approval before closing the sale or exchange. This waiting period is required in the open space sales and use tax resolution language to allow the public to petition that the disposition be put to a public vote.