OPEN SPACE BOARD OF TRUSTEES

Thursday, October 23, 2014 at 6:00 p.m.

Open Space Administrative Office, 66 S. Cherryvale Rd.

MEETING AGENDA
(Please note that times are approximate.)

6:00	I.	Approval of Minutes
6:05	II.	Public Participation for Items Not on the Agenda
6:15	III.	Director's Updates North Trail Study Area Grants
6:30	IV.	Matters from the Board
6:40	V.	Request a letter of support for a grant application to Great Outdoors Colorado (GOCO) which will partially fund a study to provide water resource management strategies for the benefit of the environment within the Open Space and Mountain Parks (OSMP) system.*
6:55	VI	Consideration of a motion to approve a conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Road.*
7:20	VII.	Consideration of a proposal to dispose of 11 small, noncontiguous, paved parcels of Open Space land to the City of Boulder Transportation Department for the Purpose of Electric Bicycle Use as a Means of Alternate Transportation Pursuant to Article XII, Section 177, of the Boulder City Charter. *
8:00	VIII.	Adjournment

*Public Participation

OPEN SPACE BOARD OF TRUSTEES
Minutes
Meeting Date September 10, 2014

BOARD MEMBERS PRESENT
Tom Isaacson Frances Hartogh Molly Davis Kevin Bracy Knight

STAFF MEMBERS PRESENT
Mike Patton Jim Reeder Dave Kuntz Don D'Amico Steve Armstead
John D'Amico Mike Orosel Mark Gershman Leah Case

GUESTS
Kurt Bauer, Engineering Project Manager – Utilities
Jeff Lipton, Director of Real Estate, University of Colorado (CU)
Jeff Arthur, Director of Public Works for Utilities

CALL TO ORDER
The meeting was called to order at 6:01 p.m**.**

AGENDA ITEM 1 – Approval of the Minutes
Tom Isaacson asked, on the Aug. 20 minutes, to change "whole things" to "whole thing" under agenda item 7. Under Return to the Board, he said "staff closes this area" should be "staff close this area," and "staff requests the contractor" should be "that staff request the contractor." He said in the vote for the Martinson motion, Kevin Bracy Knight should be added to the Board members who dissented.

Molly Davis moved to approve the minutes from Aug. 20, 2014 as amended. Tom Isaacson seconded. This motion passed unanimously.

Frances Hartogh moved to approve the minutes from Sept. 2, 2014. Tom Isaacson seconded. This motion passed unanimously; Kevin Bracy Knight abstained as he was absent during that meeting.

AGENDA ITEM 2 – Public Participation for Items not on the Agenda
None.

AGENDA ITEM 3 – Director's Updates
Update on Implementing the Voice and Sight Tag Program Changes
Steve Armstead, Environmental Planner, gave the Board an update on the Voice and Sight Tag Program.

Frances asked if the Daily Camera has been helpful in promoting the education class. Steve said they have. Frances suggested putting a countdown on the Open Space and Mountain Parks (OSMP) Website. She said she has received positive feedback on the upcoming changes.

Change in Dog Regulations on Lion's Lair Trail and Wittemyer Open Space
Dave Kuntz, Resource Systems Division Manager, gave an update to the Board on the new dog regulations at the Wittemyer Open Space.

Tom said he supports making it clear up front that this area will be a no-dog trail; this would be easier than having to change a behavior down the road.

AGENDA ITEM 4 – Matters from the Board
Tom said he needs to change the October Board meeting date; this date will be posted when chosen.

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AGENDA ITEM 5 – Public hearing and consideration of a recommendation to City Council regarding the South Boulder Creek Major Drainageway Mitigation Plan. *
Don D'Amico, Ecological Systems Supervisor, and Kurt Bauer, Engineering Project Manager – Utilities, gave a presentation to the Board.

Kevin asked why the option to have a pipeline, which has no negative environmental impact, was not a part of the staff recommendation. Kurt said this option was not supported by other departments, and Urban Drainage would not provide maintenance to it. Jeff Arthur added there were several elements that provided a safety concern. Frances asked if Frasier Meadows would be pulled out of the flood plain under the staff recommendation. Kurt said yes, with construction of the full alternative including the retention pond. Tom asked if the consultant was tasked with looking at the environmental impacts for this project. Don said yes, but noted that staff still provided some feedback, as the mitigation proposed was either not feasible, or created issues for implementation. Frances asked if the land shown to be impacted by the berm includes damage during construction. Kurt said they only took into account permanent loss. Molly said she is concerned that just one of these options will not meet all of the potential needs; she would encourage staff to make sure they have strong data to support their solution.

Public Comment
Chuck Wellman, Boulder, said flash flood danger is a proven fact, and he supports the staff recommendation. In addition to the berm, the remainder of the detention pond could remain open for available habitat. With this proposal it appears in the instance of a flood, Boulder would not lose precious Open Space, but instead gain security. He recommends that the entire package goes forward

Ruth Blackmore, Boulder, said rushing to build poorly designed structures is not an appropriate response. The proposed berm has not been well thought out, nor have alternatives been investigated. This would have a major destructive impact on Open Space. She would urge the Open Space Board of Trustees (OSBT) recommend looking at all other alternatives before considering Open Space for a retention pond. She said she supports the staff recommendation.

Rick Mahan, Boulder, said CU is more than a willing partner. Staff does not need to study this anymore, but rather prevent this issue from happening again, and move forward. Look at the option to partner with the Colorado Department of Transportation (CDOT) and CU.

Steve Karakitsios, Boulder, said the definition of insanity is to do something over and over, knowing the end result will be the same. When CU bought this property, the flood plain was mapped out showing where the water would go if there was a flood. They were accurate in showing that water cresting over Highway (Hwy) 36 will go into their neighborhood. He said there were no reported casualties that day from Frasier Meadows, but trauma can have long lasting and even fatal effects.

Kathie Joyner, Boulder, said the majority of flood water came from Hwy 36. This community is very lucky that the main loss was only property damage. The recommendation for the Hwy 36 detention phase would positively affect structures, and asked for this option not to be dismissed.

David McGuire, showed a power point presentation of various flood damage. He asked the Board to please take into consideration the health and welfare of Boulder residents.

Carl Norby, Boulder, said the staff recommendation is good. He noted there are some steps throughout the city, such as cleaning out the creeks, which should be done as soon as possible.

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Ryan Eisenbraun, Boulder, said he supports the diversion plans west of Hwy 36. This plan would eliminate the spillover effect, a result of ineffective engineering along Hwy 36. Loss of life should not be the wake up call. He asked the Board to please act now and correct this problem.

Raymond Bridge, Boulder, asked the Board to not rush into projects which have had dubious design. He said places such as the gravel pits at CU were not considered enough. There are a lot of important aspects in this area including habitat. He urged the Board to take charge in protecting Open Space seriously, and to thoroughly investigate alternative strategies.

Terri Walters, Boulder, said their home is directly in the flood plain, and the water came into their neighborhood very quickly. They had extensive damage, and if the water had been any higher they would have lost their home entirely. The environmental concerns surrounding the berm are very small compared to the loss of life.

Karen Hollweg, Boulder, Friends of Boulder Open Space (FOBOS), supports the staff recommendation. She said the berm is a concern as it would impact the view of the city as well as damage very valuable land. FOBOS strongly urges the city to look at in-depth mitigation alternatives.

Elmar Dornberger, Boulder, said they lost the majority of their belongings, including most childhood possessions. They cannot afford to go through this a second time. He asked the Board to come up with a solution now.

Keith Hoffman, Boulder, said the cost benefit analysis does not include the hard-to-document costs. Boulder is an amazing community and this event consumed lives; both with death and people's ability to pursue dreams. The cost benefit needs to consider those who lost work space, time to contribute to the community and other intangible effects.

Jonathan Dings, Boulder, asked the Board to think about the impact on the community when making a decision. Many people are still displaced, there is a shortage of housing, and the human suffering continues. The staff recommendation enables this to move forward.

Jill Daugherty, Boulder, said she is concerned that Federal Emergency Management Agency (FEMA) costs are understating the human cost. Many people chose not to deal with FEMA, and are incurring a lot of out-of-pocket expenses. Others were rejected from FEMA, and some were only given partial help. The benefit side is dramatically understated for not having to deal with this process again.

Return to the Board

Tom asked if the land on CU property has been studied. Kurt said they have tried to stay within the CU concept plan, but have asked the contractor to look at alternatives on the CU South property. Tom asked if the University has a position on using the gravel pits for retention ponds. Jeff Lipton said they are willing to look at these options; their priory has always been safety of downstream residents. Molly asked what the timeline would be for implementation if the staff recommendation gets accepted. Kurt said it could take five to seven years until completion.

Tom said this would be the biggest disposal of Open Space land the Board has had so far, as the ecological impacts far exceed any previous disposal. There is a human aspect of this that is very powerful and the balance of this decision is very difficult. Kevin agreed that this is a difficult decision, but noted the Open Space Charter counters what is being presented. He suggested looking at other alternatives that will be better for Open Space and also meet the needs of those in the flood plain. Molly agreed that this is a very difficult decision. She said they need to make sure they come up with the right answer. She said she understands the urgency for a solution, but would suggest taking the necessary time to make sure the

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solution will actually work. Frances said this is a part of living in a community that has natural risks surrounding it, and this Board needs to represent both the community and all of the creatures on the property. The area proposed for possible disposal would cause an enormous impact to Open Space land.

Motion

Frances Hartogh moved the Open Space Board of Trustees recommend proceeding with the "West Valley Improvements" and "Arapahoe Detention" phases of the "Regional Detention at U.S. 36 with Downstream Improvements" flood mitigation alternative at this time. Molly Davis seconded. This motion passed unanimously; Shelley Dunbar was absent for this vote.

Frances Hartogh moved the Open Space Board of Trustees recommend investigating alternatives to the "Regional Detention at U.S. 36" component which may have lesser potential for environmental impacts. Molly Davis seconded. This motion passed unanimously; Shelley Dunbar was absent for this vote.

Frances Hartogh moved the Open Space Board of Trustees make a statement to City Council: The Board believes that constructing a regional detention at US 36 would require a significant disposal of Open Space lands, which would be subject to all applicable Open Space charter provisions. Molly Davis seconded. This motion passed unanimously; Shelley Dunbar was absent for this vote.

AGENDA ITEM 6 – Consideration of a motion to approve the purchase of approximately 80 acres of land, the mineral estate, nine (9) shares of Left Hand Ditch Company water, 80 shares of Dry Creek-Davidson Ditch Company water, two houses and associated outbuildings located at 3285 and 3287 95th St. from the Martinson family for $3,000,000 for OSMP purposes. *

John D'Amico, Property Agent, gave a presentation to the Board on the Martinson Property. This acquisition was discussed at the last Board meeting, but brought back by staff. At its 2013 retreat, City Council developed a vision with tasks and a two-year outcome. One of the goals for OSMP was to have more local, sustainable organic agriculture and farm housing. The Martinson property hits all these targets uniquely.

Tom asked if row crops are more water intensive than what is currently being grown. Mike said if you put in row crops of smaller things, such as most vegetables, it would not require any extra water. He noted that lessees could also rotate crops and put in a grass crop for livestock. Tom asked if the acquisition plan as a whole could still be completed using the per-acre value. Mike said yes. Molly asked how agricultural properties are governed. Mike said the Agriculture Plan provides direction on agricultural uses just like other management plans provide direction for other OSMP-owned property. Kevin asked if it makes sense for the properties that have passive recreation to be included in the Trail Study Areas (TSA). Mike said not necessarily; the Agriculture Plan looks at how this all fits together. Molly said she is curious to know how land is managed when it is producing food. Mike said staff keeps close tabs on leases and pays careful attention to regulatory issues and land management.

Public Comment

Karen Hollweg, FOBOS, supports the acquisition of the Martinson property. This property has been identified for purchase in the acquisition plan and the city has identified this (agricultural acquisitions) as a priority. Voters passed a tax extension for completing the approved acquisition plan.

Ray Bridge, PLAN Boulder County, supports this acquisition. Voters were told OSMP had enough money to follow this plan and therefore should do it.

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Return to the Board
Tom said this presentation showed that the purchase price is consistent with the vision of completing this plan. Kevin thanked staff for this presentation; it has set the bar for future acquisitions.

Motion
Frances Hartogh moved the Open Space Board of Trustees approve a motion recommending that the Boulder City Council approve the purchase of approximately 80 acres of land, mineral estate, nine shares of Left Hand Ditch Company water, 80 shares of Dry Creek-Davidson Ditch Company water, two houses and associated outbuildings located at 3285 and 3287 95th St. from the Martinson family for $3,000,000 for Open Space and Mountain Parks purposes. Kevin Bracy Knight seconded. This motion passed unanimously; Shelley Dunbar was absent for this vote.

AGENDA ITEM 7 – Review the City Manager's 2015 proposed budget for the OSMP Department and recommend approval of the Operating and Capital Improvement Program Budgets and a portion of the Lottery Fund Capital Improvement Program Budget. *
Mike Orosel, Financial Services Manager, gave a presentation to the Board.

Frances asked if staff is still expecting a refund from FEMA. Mike said yes, but the numbers are not included as it is difficult to do a fund financial without knowing the exact numbers. Kevin asked if there is a possibility to increase the funding for trail maintenance. Mike said over last few years OSMP has increased seasonal trails staff as well as two fixed-term trail crew leaders. Kevin said there still seems to be a backlog of work, and if possible they should look at how to increase staff. Dave Kuntz said another capacity that would be important to expand is the Integrated Pest Management (IPM) and Forest Ecological Management Plan (FEMP) seasonal crews. He said looking at positions that have project managers would be beneficial. There are a lot of plans that still need to be looked at/accomplished. Kevin said he would recommend increasing the budget to allow for an additional trail crew and funds to make the current fixed-term positions standard.

Public Comment
None.

Return to the Board
No further comment.

Motion
Kevin Bracy Knight moved the Open Space Board of Trustees approve, and recommend that City Council approve the appropriation of $29,601,652 in 2015 from the Open Space Fund and the General Fund and $355,300 from the City's Lottery Fund CIP to cover the 2015 Open Space and Mountain Parks Department operating and CIP expenditures and transfers. Additionally, the OSBT would recommend adding one additional standard fixed term trail specialist, the trail crew, and associated expenses. Tom Isaacson seconded. This motion passed unanimously; Shelley Dunbar was absent for this vote.

ADJOURNMENT – The meeting adjourned at 10:39 p.m.

These draft minutes were prepared by Leah Case.

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CITY OF BOULDER
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM

MEETING DATE: October 23, 2014

AGENDA TITLE: Request a letter of support for a grant application to Great Outdoors Colorado (GOCO) which will partially fund a study to provide water resource management strategies for the benefit of the environment within the Open Space and Mountain Parks (OSMP) system.

PRESENTER/S
Michael D. Patton, Director, Open Space and Mountain Parks
Jim Reeder, Land and Visitor Services Division Manager
Todd Doherty, Water Resources Administrator

EXECUTIVE SUMMARY

Staff requests the Open Space Board of Trustees (OSBT) provide a letter of support for a GOCO grant application (Attachment A) which will partially fund a study to provide water resource management strategies for the benefit of the environment within the OSMP system. Considering OSMP's broad mission in protecting and preserving a wide variety of values including agricultural, environmental and recreational, this proposal seeks funding to identify various water management strategies that contribute to ensuring and optimizing these values.

This grant request falls under GOCO's Stewardship and Long-Term Sustainability category of the Conservation Excellence program. The goal of this project is to manage OSMP's water resources in a way that better preserves and protects the natural environment and land resources. Significant local investment has been made to acquire, develop and protect Boulder's Open Space and Mountain Parks (OSMP) and to provide associated environmental educational opportunities and facilities. This project will not only provide specific management recommendations that provide environmental benefits on the City of Boulder's OSMP lands, but it is expected that this project will produce transferable information and methods for other open space departments and programs to adopt in order to manage their water resources to the benefit of the water-dependent environment.

STAFF RECOMMENDATION

Staff requests that the Open Space Board of Trustees provide a letter of support for a grant application to Great Outdoors Colorado to help fund a study to provide water resource management strategies for the benefit of the environment within the OSMP system.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Environmental: OSMP is a significant community-supported program that is recognized as a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council. This proposal seeks to identify ways to utilize OSMP's water resources to improve and/or enhance the environment.
- Economic: OSMP contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees.
- Social: This proposal seeks to identify ways to utilize OSMP's water resources to improve and/or enhance recreational opportunities for diverse communities.

OTHER IMPACTS

- Staff time – This matter will be handled by staff during its normal work hours.
- Fiscal – Matching funds for this grant would be $9,000.

PUBLIC COMMENT AND PROCESS

This item is being heard at this public meeting, advertised in the Daily Camera on Oct. 19, 2014.

PROJECT DESCRIPTION

This proposal seeks to develop strategies for using OSMP's water rights portfolio to enhance the multiple values held by the Boulder community, including agricultural and environmental. OSMP owns significant water rights that are used for the irrigation of approximately 5,500 acres of pasture, row crops and vegetables. The Boulder community is very supportive of active agricultural operations and encourages the preservation and sustainable use of agricultural lands as a renewable source of food and for their contributions to cultural, environmental and economic diversity. Equally important to the Boulder community is the preservation, protection and restoration of the natural environment: wetlands, riparian protection and enhancement, species protection and instream flows. These values have been explicitly expressed in the City Charter, the Boulder Valley Comprehensive Plan (BVCP) and in the resource and area management plans endorsed by the Open Space Board of Trustees and approved by the Boulder City Council.

This proposal seeks to compile existing environmental information on watersheds, identify streams and riparian areas with existing protections, and streams lacking such protections. Evaluating OSMP's water rights and physical structures to identify potential opportunities to improve its watershed's health while meeting other citizen-held values. The overall objective is to identify opportunities where OSMPs water resources can be used to optimize the benefits to the values important to the community including agriculture, the environment and recreation.

ANALYSIS

This grant request is for a GOCO Conservation Excellence grant. The Conservation Excellence grant program helps fund planning efforts and studies that help advance GOCO's mission and objectives. The application is requesting $50,000 in grant monies with OSMP committing approximately $9,000 in cash and $13,950 in in-kind (staff time) contributions towards the total project cost of $72,950. The grant application was submitted to GOCO on August 19, 2014. GOCO staff is currently reviewing the applications and will provide recommendations to the GOCO Board for their consideration at their December, 2014 meeting. If awarded, this project will begin in early 2015.

This grant request was approved by the City of Boulder's grant approval committee. In addition, this project has received letters of support (Attachment B) from the Nature Conservancy (Colorado), the Colorado Water Trust and the Larimer County Department of Natural Resources. All of these entities

are hopeful that this study can provide a template for other agencies and departments to apply to their systems.

One of the requirements included in the application for this grant in a letter of support for the project from the applicant's governing board. A sample letter of support is attached (Attachment C).

Submitted by:

Michael D. Patton, Director

Jim Reeder, Land & Visitor Services Division Manager

Todd Doherty by J Reeder

Todd Doherty, Water Resources Administrator

ATTACHMENTS:

A. GOCO Grant Application
B. Letters of Support
C. OSMP Board of Trustees' Letter of Support

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June 27, 2014

Fall 2014 Conservation Excellence Grant Cycle

Dear Applicant:

The State Board of the Great Outdoors Colorado Trust Fund (GOCO) is pleased to announce a Conservation Excellence grant cycle that will award approximately $300,000 to provide opportunities for communities and organizations to address issues and challenges facing the conservation community through pilot projects and research that meet GOCO's mission to protect open space and natural areas of statewide significance in Colorado. **Applications are due at GOCO by 5:00 p.m. on August 19, 2014**. The Open Space Committee meeting to discuss staff's funding recommendations will be held at the end of November. The Board decision for this cycle is tentatively scheduled for the December 9, 2014 Board meeting.

In early 2013, the GOCO Board asked staff to reevaluate the purpose of the Conservation Excellence program. We conducted a stakeholder outreach process to evaluate the goals and purpose of the program as well as the challenges facing the land conservation community. With input from conservation organizations across the state, GOCO has created a program with the goal of moving some of the conversations about complicated issues (oil and gas development on conserved lands, orphan easements, water, amendments, etc) forward through pilot projects or staff specifically dedicated to the research or project so that the conservation community can start exploring potential solutions on the ground. GOCO recognizes that some of these projects may not fully solve a problem but will provide opportunities to develop and test potential solutions that the conservation community could implement as the issues and challenges become more urgent.

GOCO expects to receive requests for several times the amount of funding available in this grant cycle, so funding is not guaranteed. The size of each grant request is limited to $100,000 so that GOCO can spread funds among a variety of project types around Colorado.

Please review the application guidance carefully for information about changes to the program, applicant eligibility, eligible costs, and how to fill out the application. If you have any questions about the grant program or the application, please contact Josh Tenneson at (303) 226-4522 or at jtenneson@goco.org. Thank you for your interest in GOCO's Conservation Excellence program.

Sincerely,

Josh Tenneson
Program Manager

MISSION: To help the people of Colorado preserve, protect, enhance, appreciate and enjoy our parks, wildlife, trails, rivers and open space through strategic grants, partnerships and leadership.

Conservation Excellence Grant Application

Grant Agreement, Instructions, and Guidance Note:

Please familiarize yourself with GOCO's policies, conditions, and requirements for Conservation Excellence grants before applying for funding. If you are awarded a grant, GOCO will require you to sign a standard grant agreement that requires compliance with GOCO's policies, standard conditions, and requirements. Guidance for GOCO's Conservation Excellence Application Form includes information about grant administration and requirements before funds can be released for grants.

Cycle Announced/Applications Available: June 27, 2014

Applications Due by 5:00 p.m.: August 19, 2014

(GOCO's address is 303 E. 17th Ave., Suite 1060, Denver, CO 80203 or jtenneson@goco.org)

Board Decision: December 9, 2014

(The Board decision date is subject to change)

Summary Form

If you would like feedback on a draft of your application, please submit the draft at least two weeks prior to the application deadline.

Please submit the following documents for your project, in this order:

a. Summary Form (1-page form, provided by GOCO)
b. Project Summary (250 words or less)
c. Miscellaneous Information, if necessary (250 words or less)
d. Budget (1-page form, provided by GOCO)
e. Budget Narrative
f. Workplan/Timeline
g. Workplan/Timeline Narrative
h. Color Maps (If your project focuses on work in a specific geographic region, please provide maps designating where the project will occur.)
i. Selection Criteria answers (Please include the questions with your answers.)
j. Letter of support from governing board of applicant
k. Other letters of support if applicable
l. Funding commitment letters
m. One copy of your organization's last three year-end financial reports that go to the Board or governing body along with the minutes from those Board meetings and any audit reports from the last three years. (Please note that this information will not be shared with peer reviewers and is for GOCO analysis only)

On August 19, 2014, please submit one (1) unstapled, unbound copy of your application <u>or</u> a pdf of your application to jtenneson@goco.org. GOCO staff will conduct an *initial review* of your application within three weeks and might ask you to revise the application or provide additional supporting documentation.

After GOCO staff conducts its initial review, you will be required to provide 6 ***unstapled, unbound copies*** of your application. Do ***not*** bind your application in any way (other than by rubber bands or binder clips); or add any dividers or tabs that will prevent GOCO from easily photocopying the application package. Please print the application double-sided if possible. Maps should be no larger than 11" x 17".

Please return the completed application by the deadline shown on the cover to:

Great Outdoors Colorado
Conservation Excellence Grant Program
303 E. 17th Ave., Suite 1060
Denver, Colorado 80203

When submitting maps, GOCO strongly encourages applicants to submit a GIS shapefile indicating the project's geographic boundary. (Shapefiles should be projected as UTM Zone 13 in NAD 1983 datum.)

Summary Form

ABOUT THE APPLICANT		
Name: City of Boulder Open Space and Mountain Parks Department		
Address: 7315 Red Deer Drive		
Applicant Contact Name: Todd Doherty		Title: Water Resources Administrator
Telephone: 303-413-7641	Email: dohertyt@bouldercolorado.gov	Are you the primary contact for this grant: x YES

ABOUT THE PARTNER		
Name: **N/A**		
Address:		
Partner Contact Name:		Title:
Telephone:	Email:	Are you the primary contact for this grant: ☐ YES ☐ NO

ABOUT THE PROJECT	
Project Title: City of Boulder's Open Space Environmental Water Sharing Feasibility Analysis	
Grant Request: $50,000	Total Project Cost: $72,950
Percent of overall match (25%): 31.5%	Percent of cash match (12.5% of total project cost): $21,750 (29.8%)
County of Service: Boulder County	

Brief Project Description (250 words or less): Considering the significant ownership of land and water resources by open space agencies and land trusts across the state, this proposal seeks to outline project for OSMP and like-minded agencies to manage their extensive water rights portfolios to optimize and balance the benefits for a variety of values including agricultural preservation and ecological restoration. This concept paper proposes how an analysis of OSMP's water rights and ecological restoration needs could lead to a water sharing program which would optimize the benefits to both ecological systems and agricultural operations. The conceptual water sharing project would include the analysis of OSMP's water rights portfolio, a description of OSMP's values and needs and the identification of strategies on how to optimize these needs.

Our grant request falls under the Stewardship and Long-term Sustainability category of the Conservation Excellence program. The goal of this project is to manage OSMP's water resources in a way that better preserves and protects the natural environment and land resources. Significant local investment has been made to acquire, develop and protect Boulder's open space and to provide associated environmental educational opportunities and facilities. We believe this project will not only provide specific management recommendations that provide environmental benefits on the City of Boulder's OSMP lands, but expect
this project to produce transferable information and methods for other open space departments/programs to adopt to manage their water resources to the benefit of the water dependent environment.

Miscellaneous (Please explain in 250 words or less any projects your organization has completed that are similar to this proposal. If this is not applicable, write N/A.): Boulder OSMP has an extensive collection of GIS shape files documenting sensitive and important aquatic and terrestrial species. These files will be used in the compilation and analysis of environmental attributes to be protected and/or enhanced through water management strategies. Other documents such as the OSMP Grasslands Management Plan. An additional resource is the Boulder Valley Comprehensive Plan (BVCP) where the City of Boulder and Boulder County have jointly adopted a comprehensive

Summary Form

Attributes and Development of Water Management Strategies) and Task 7 (Project Management and Final Report). As described in the budget table/spreadsheet, the cash (GOCO contributions and Boulder's) will be used to pay for the consulting services. A distribution of costs by task is provided in the budget table.

I certify that I am authorized to sign on behalf of the applicant and that if awarded a Conservation Excellence grant for this project, the applicant will comply with GOCO's requirements for Conservation Excellence grant administration, including matching and general reporting requirements.

David W. Kenty, ACTING

Date: 8/19/2014

An authorized person must sign here, such as the applicant's executive director, county commission chairperson, or city council chairperson.

Summary Form

plan that guides land use decisions in the Boulder Valley. The Boulder Valley Comprehensive Plan seeks to protect the natural environment of the Boulder Valley while fostering a livable, vibrant and sustainable community.

Budget Narrative (Please explain each of the items included on the Budget form. This should include what the contracts will cover, what tasks contractors will perform, what additional staff time is included, and any other information that will help explain the Budget items.):

The total project cost is $72,950. The City of Boulder is committed to providing up to $21,750 in cash match. The cash match includes up to $9,000 in funds as well as time for the City of Boulder OSMP staff to manage, coordinate and contribute to the project. The labor component of the cash match is valued at $12,750 which $1,200 in in-kind match reflects the time spent by similar open space programs and environmental NGOs (e.g. Boulder County Open Space, Larimer County Open Space, Pitkin County Open Space and TNC) in attending a briefing meeting and reviewing and commenting on the draft report. As described in the budget table/spreadsheet, the cash (GOCO contributions and Boulder's) will be used to pay for the consulting services associated with this project. A distribution of costs by task is provided in the budget table.

The $59,000 in cash funds (GOCO and the City of Boulder's) will be used to pay for consultant services to provide technical assistance and project management assistance. It is estimated that OSMP staff time for this project is approximately 170 hours throughout the project schedule. Most of this time will be the Water Resources Administrator's time with an estimated 115 hours (5% of position's time over a year) being spent on this project. This position's responsibilities include long-range strategic planning for OSMPs water resources and which this project clearly falls into this category. This position is also responsible for fostering collaborative relationships with the other workgroups in OSMP, which this project will help further. Aside from the Water Resources Administrator's time, the project has estimated that 65 hours of other OSMP staff time. This is mainly to reflect the staff time for internal working meetings, data gathering and review of the draft report. Total OSMP staff time of 170 is estimated to be $12,750 which assumes $75/hour including wages and benefits.

Schedule: If the City of Boulder receives a grant award for this project in December 2014, we expect to start the project in February 2015. This allows sufficient time to advertise RFQs for contractors, select a contractor/team and execute a contract for work.

GOCO
GREAT OUTDOORS COLORADO

I certify that I am authorized to sign on behalf of the applicant and that if awarded a Conservation Excellence grant for this project, the applicant will comply with GOCO's requirements for Conservation Excellence grant administration, including matching and general reporting requirements.

_____ Date: _____

An authorized person must sign here, such as the applicant's executive director, county commission chairperson, or city council chairperson.

WORKPLAN/TIMELINE

Section 2 - Application - Budget Form

Open Space Environmental Water Sharing Feasibility Analysis

[LOG #XXXXX]

Budget

	GOCO	OSMP Funds	OSMP Labor*	Partner	Total
Cash					
	$50,000	**$9,000**	**$12,750**	**$0**	**$71,750**
Task 1: Collect baseline data	$3,000		$1,125		$4,125
Task 2: Analysis of River Hydrology and Administration	$8,000		$1,125		$9,125
Task 3: Analysis of OSMP Water Rights Portfolio	$7,500		$1,125		$8,625
Task 4: Inventory and Analysis of Irrigation Infrastructure within the OSMP System	$6,500		$1,125		$7,625
Task 5: Aquatic health and instream flows	$8,000	$1,000	$1,125		$10,125
Task 6: Evaluation of Environmental Attributes and Development of Water Management Strategies	$11,000	$4,000	$5,250		$20,250
Task 7: Project Management and Final Report	$6,000	$4,000	$1,875		$11,875
					$0
CASH SUBTOTAL	$50,000	$9,000	$12,750	$0	$71,750

WORKPLAN/TIMELINE

In-Kind	Description	Vendor/Service Provider	No. of Units/Hours	Cost Per Unit/Hour	
Public outreach and input	Meet with other open space and NGOs to brief them on the effort and have them review draft report.	Boulder County Open Space, Larimer County Open Space, Pitkin County Open Space, TNC	16	75	**1,200**
IN-KIND SUBTOTAL					**1,200**
TOTAL					**72,950**

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	25%/Total Costs	$18,238	$22,950	Yes
Minimum Cash Match	12.5%/Total Costs	$9,119	$21,750	Yes

CALCULATION OF GOCO %

GOCO % of Total Costs 68.54%

*** Labor assumes $75/hour (includes wages and benefits) and a total of 170 hours.**

WORKPLAN/TIMELINE

Project Schedule

Tasks	**Feb**	**Mar**	**Apr**	**May**	**Jun**	**2015 Jul**	**Aug**	**Sep**	**Oct**	**Nov**	**Dec**
Task 1: Collect baseline data											
Task 2: Analysis of River Hydrology and Administration											
Task 3: Analysis of OSMP Water Rights Portfolio											
Task 4: Inventory and Analysis of Irrigation Infrastructure within the OSMP System											
Task 5: Aquatic health and instream flows											
Task 6: Evaluation of Environmental Attributes and Development of Water Management Strategies											
Task 7: Project Management and Final Report											

Describe your proposal below, answering each of the questions as listed. Eligible projects will be rated on a 100-point system based on the following criteria, and projects will be ranked by total points. **Please include the questions with your answers.** Failure to respond to these questions may substantially reduce your score, due to the difficulty of evaluating the project without this information.

---

1. Describe your project. What is the specific challenge or issue you propose to help address? What is the scope? What are the proposed outcomes and deliverables? What does success look like and how will you measure it? What challenges do you anticipate through this project and how do you propose to address them? (15 points)

   Description of Project
   This project proposes how an analysis of OSMP's water rights and ecological restoration needs could lead to a water sharing program which would optimize the benefits to both ecological systems and agricultural operations with the City of Boulder's Open Space boundaries. The conceptual water sharing project would include the analysis of OSMP's water rights portfolio, a description of OSMP's values and needs and the identification of strategies on how to optimize these needs.

   This project is consistent with the purposes of GOCO. Boulder OSMP is charged with a mission to preserve and protect the natural environment and land resources that characterize Boulder's Open Space and foster appreciation and use that sustain the natural values of the land for current and future generations. The goal of this project is to manage OSMP's water resources in a way that better preserves and protects the natural environment and land resources. Significant local investment has been made to acquire, develop and protect Boulder's open space and to provide associated environmental educational opportunities and facilities. This project seeks to find innovative means for open space departments/programs to manage their water resources.

   Description of Scope of Work
   While a detailed scope of work is attached as a separate document, the major project tasks include:

   Task 1: Collect baseline data (i.e. wetlands, species of interest, etc.) that occurs within the OSMP system.
   Task 2: Analysis of River Hydrology and Administration to provide a "planning level" understanding and a description of river operations with our system.
   Task 3: Analysis of OSMP Water Rights Portfolio to provide a generalized description of the water rights.
   Task 4: Inventory and Analysis of Irrigation Infrastructure within the OSMP System to determine if there upgrades/improvements that can benefit the environment.
   Task 5: Aquatic health and instream flows will be analyzed and described.
   Task 6: Evaluation of Environmental Attributes and Development of Water Management Strategies.
   Task 7: Project Management and Final Report

Specific challenge or issues to be addressed

Owners of water rights have the legal right to use them as long as they are consistent with the uses, amount of water and place of use as specified in the water court decree. If the owner desires to permanently change (or add) the place, timing, type or location of a water right, then the water user must apply for a water right change through the water court system which can be expensive and time consumptive process. Possibly more significant is that a change of a water right is scrutinized to ensure the change does not result in an "expansion" of use from historic practices and can be a risky proposition resulting in potentially much less water than the owner envisioned.

Through the collection of the environmental baseline data, the stream hydrology/river operations and OSMPs water rights portfolio, the project team's key objective will be to provide specific recommendations on future water management strategies. For example, the project team may recommend that some water rights that have historically been used for irrigated agriculture may be appropriate to use to for a wetland recharge project or instream flows in a certain area.

Final Deliverables

Aside from a final report outlining the findings and recommendations, the GIS layers compiled and used for this report will be provided as a deliverable.

A successful project will be a final report outlining specific water management strategies to undertake in the future. The most significant challenge will be engaging the distinct workgroups in a meaningful way to elicit input critical for meaningful recommendations. Todd Doherty has many years of experience working with internal and external groups on technical/political issues (i.e. Colorado's Basin Roundtables and Interbasin Compact Committee) and will be the lead project manager. It is also critical that the consulting firm also have skills and expertise in process facilitation. Success will be measured by performing the individual tasks and providing the specified deliverables as outlined in the scope of work.

2. Describe the need and urgency for this project for the conservation community. What would the likely resulting impact to the community be if this issue is not addressed in a timely fashion? (15 points)

   As the State's water demands continue to increase due to the associated population increases, the water dependent natural environment will continue to become more and more stressed. Oftentimes, the environment would receive incidental benefits from traditional water uses such as return flows from flood irrigation of agricultural lands. In addition, agricultural irrigation practices are trending towards more efficient practices (i.e. sprinkler or drip irrigation) which may also reduce the amount of water that was available for the environment. Due to these and other trends, the State is entering into an era where all uses including the environment, will need to secure water rights to ensure the long-term use.

3. How do you propose to complete this project (e.g. use of outside consultants, staff)? If existing staff will be working on the project, how will their existing duties be fulfilled? If the use of an

intern/fellow, consultant, or other outside assistance is requested, why can't this work be performed with existing staff resources? (15 points)

This project will be completed utilizing outside consultants and OSMP staff. Todd Doherty, Water Resources Administrator, will serve as the project manager whom will ensure that the project is following the proposed schedule and meeting the key milestones outlined in the scope of work. Other OSMP staff will also contribute to this project. The primary sections include: agriculture, ecology, GIS and planning. It is envisioned that a water rights/engineering firm with the capacity and ability to analyze the water rights, hydrology and river operations and provide recommendations will be hired via a competitive bid process in accordance with the City of Boulder's procurement procedures.

4. Why is your organization in the best position to undertake this work now? Describe the qualifications of key staff and/or consultants that will ensure the success of the proposal. Are there specific staff training needs for this project? (15 points)

   Boulder OSMP's department is comprised of many distinct disciplines including water managers, ecologists, planners and GIS specialists whom can help work collaboratively to identify the environmental attributes valued by the community and help inform the recommendations to be included in the report. There is no need for specific training for this project. Listed below are the key Boulder OSMP personnel whom will be engaged in this project. Collectively, the group below has over 75 years of experience in resource management.

   - Todd Doherty, Water Resources Administrator
   - Mark Gershman, Environmental Planning Manager
   - Maureen Valenta, Resource Information Coordinator
   - Don D'Amico, Ecological Systems Manager
   - Andy Pelster, Agricultural (Land and Facilities) Manager

   If Boulder OSMP receives this grant request, the consultant(s) will be hired through a competitive bid process and selected based on various criteria including costs and qualifications. Qualifications will include expertise with water rights, hydrology, river operations, environmental water needs, GIS, public facilitation and project managements.

5. How will this project be replicable or usable by other organizations? What specific steps will you include to disseminate and share information broadly with the conservation community and other partners? Who are the other partners in the project and what are their roles? What have you already done to engage these partners? (15 points)

   GOCO's funding of the proposed water sharing program would facilitate our ability to manage our water in a manner that is respectful to the many values of our community as well as the region and state. We believe that with our significant land and water holdings, we are in a unique position to manage our water portfolio in a way that meets the various needs and values. Considering that the City of Boulder OSMP is one of some 50 open space programs in Colorado, this innovative approach to the management of our water rights can serve as a template for others

to use. Since this project contemplates the analysis of only OSMPs water rights within our boundaries, this project does not have any outside partners. OSMP is comprised of several organizational sections including agricultural management, ecosystem services and planning which will work cooperatively on this project. Upon completion, OSMP will present our findings/recommendations at the annual Colorado Open Space Alliance conference as well as published on our website.

6. Describe any other ongoing efforts that are similar or complementary. How will this project build on or enhance existing efforts? Are the other organizations working on the issue aware of your proposal? If not, why not? Explain how your proposal differs and what effort will be made to work cooperatively. (10 points)

   We are not aware of a similar, ongoing project. At a GOCO board retreat in autumn of 2013, a similar concept was presented where Colorado Parks and Wildlife's water rights inventory would be assessed for restoration and protection opportunities of riparian areas throughout the state without impacting current uses. Recognizing the CPW concept/project, the applicant has requested support from CPW but have yet confirmed.

7. Describe the status of confirmed and potential cash and in kind funding sources including any applications for funding and the dates those funds are awarded. Leveraging points are awarded based on the applicant's ability to bring cash and in kind match to the project. (15 points)

   Boulder OSMP will commit well over the minimum cash match ($21,750) and has identified $1,200 in in-kind match to the project.

GREAT OUTDOORS COLORADO

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COLORADO WATER TRUST

1420 Ogden Street, Suite A2
Denver, Colorado 80218

TEL: 720.570.2897
FAX: 720.907.0377
WEB: www.coloradowatertrust.org

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Great Outdoors Colorado
303 E 17th Ave Parkway #1060
Denver, Colorado 80203

Tuesday, September 23, 2014

Dear Great Outdoors Colorado Board and Staff,

The City of Boulder Open Space and Mountain Parks Department ("OSMP") has submitted an application asking GOCO to contribute funding to an Environmental Water Sharing Feasibility Analysis ("Analysis"). The purpose of the Analysis is to provide OSMP with an understanding of how the agency's water rights portfolio can be used to meet all the values contained within OSMP's mission, including agriculture and ecological restoration.

The Colorado Water Trust ("CWT") is a statewide nonprofit that uses voluntary, market-based tools to restore and protect streamflows in Colorado. Since our inception, CWT has worked with the land conservation community on water rights issues, including creating model water rights language for conservation easements and evaluating the water right portfolios of several land trusts (funded by a Conservation Excellence Grant).

More recently, CWT has pioneered agricultural-environmental sharing agreements, through temporary, partial-irrigation leasing arrangements with agricultural water users. Just this past week, CWT partnered with the Colorado Water Conservation Board to pilot a permanent split-season agreement, in which irrigation will occur during the first half of the irrigation season, and as streamflows drop the water will be left and protected in the local stream to provide habitat for aquatic life.

Having actually navigated the technical and administrative processes to make such sharing agreements work, CWT understands the need to evaluate whether such projects are feasible with particular water rights, stream needs, and water user needs – funding such an analysis is an important first step. This Analysis will also serve as a guide for other land conservation agencies and organizations and grantors who wish to improve conservation values like wildlife habitat in rivers while retaining agricultural conservation values.

Lastly, funding this proposal is an introductory way for GOCO to promote flexibility within the land conservation community and to begin to desegregate conversations about land conservation from streamflow restoration.

For these reasons, CWT supports GOCO's funding of this application.

Sincerely,

Amy Beatie
Executive Director

The Nature Conservancy
Protecting nature. Preserving life.

The Nature Conservancy in Colorado
2424 Spruce Street
Boulder, CO 80302

tel [303] 444-2950
fax [303] 444-2986

nature.org/colorado

Josh Tenneson, Open Space Program Manager
Great Outdoors Colorado
303 E. 17th Ave., Suite 1060
Denver, CO 80203

August 19, 2014

Mr. ~~Tenneson~~: Josh

I am writing to express The Nature Conservancy's support of the City of Boulder's application for a Conservation Excellence grant to help fund the *Open Space Environmental Water Sharing Feasibility Analysis Project*. This proposal seeks to examine Boulder Open Space and Mountain Parks' extensive water rights portfolio, which is currently only used for irrigation, and propose management options that provide greater benefits to the environment such as wetlands and instream flows.

In Colorado, open space programs, land trusts, and state agencies own a significant amount of both land and water. The City of Boulder's proposal seeks to outline ways for Boulder Open Space and Mountain Parks and like-minded agencies to manage their extensive water rights portfolios to optimize and balance the benefits for a variety of values, including agricultural preservation and ecological restoration. If this project is successful, it could serve as a template for others to use in their water resources management planning efforts.

Thank you for your consideration of this proposal.

Tim

Tim Sullivan
Colorado State Director

DEPARTMENT OF NATURAL RESOURCES
• Visitor Services • Open Lands • Weed Management & Forestry
1800 South County Road 31
Loveland, CO 80537
(970) 679-4570/ (970) 679-4574 FAX
www.larimer.org/naturalresources

Josh Tenneson, Open Space Program Manager
Great Outdoors Colorado
303 E. 17th Ave., Suite 1060
Denver, CO 80203

September 23, 2014

Mr. Tenneson:

I am writing to express Larimer County's support of the City of Boulder's application for a Conservation Excellence grant to help fund the *Open Space Environmental Water Sharing Feasibility Analysis Project*. This proposal seeks to examine Boulder Open Space and Mountain Parks' extensive water rights portfolio which are currently only used for irrigation and propose management options that provide greater benefits to the environment such as wetlands and instream flows.

Considering the significant ownership of land and water resources by open space agencies, land trusts and state agencies across the state, this proposal seeks to outline ways for OSMP and like-minded agencies to manage their extensive water rights portfolios to optimize and balance the benefits for a variety of values including agricultural preservation and ecological restoration. If this project is successful, it could serve as a template for others to use in their water resources management planning efforts. As Larimer County looks to venture in to water ownership, we are already using Boulder as a resource of information on best practices of water management.

Thank you for your consideration of this proposal.

Kerri Rollins, Open Lands Program Manager
Larimer County Natural resources

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City of Boulder Open Space and Mountain Parks
Open Space and Mountain Parks
66 S. Cherryvale Road, Boulder, CO 80303; 303-441-3440
http://www.osmp.org

Josh Tenneson, Open Space Program Manager
Great Outdoors Colorado
303 E. 17th Ave., Suite 1060
Denver, CO 80203

October 23, 2014

Mr. Tenneson:

The City of Boulder Open Space Board of Trustees (OSBT) would like to express support of the department's application for a Conservation Excellence grant to help fund the *Open Space Environmental Water Sharing Feasibility Analysis Project*. Open Space and Mountain Parks (OSMP) mission and charter include the protection and preservation of a wide range of values including agriculture, the environment and recreation. With most of OSMP's water rights primarily used for irrigation, this project seeks to explore options and strategies for using some of these water rights for the benefit of the environment and recreation, while maintaining the agricultural conservation values. Additional uses could include instream flows or sustaining/creating wetlands.

We believe that Boulder's Open Space and Mountain Parks' system is sufficiently diverse and rich in resources to demonstrate water sharing strategies between agricultural, recreational and environmental uses. We are hopeful that this project will be a success and will serve as a model for other open space departments and agencies to use for their own systems.

The Open Space Board of Trustees would like to thank the Great Outdoors Colorado's staff and board for their consideration of this grant request.

Best regards,

Tom Isaacson, Board Chair
Open Space Board of Trustees

SAMPLE

CITY OF BOULDER
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM

MEETING DATE: October 23, 2014

AGENDA TITLE: Consideration of a motion to approve a conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Road.

PRESENTER/S
Michael D. Patton, Director, Open Space and Mountain Parks
Linda VanDervort, Conservation Easement Specialist

EXECUTIVE SUMMARY

The Casden property at 5097 Flagstaff Road is a ten-acre forested parcel next to Open Space and Mountain Parks (OSMP) and the Green Mountain West Ridge Trail. Maps of the parcel are shown in Attachments A, B and C. Photographs of the Casden property are in Attachment D. On Feb. 12, 1998 the prior owner, Vern Bunch, granted a conservation easement to the City's Mountain Parks Department for the purchase price of $32,500.00. Attachment E is a copy of this original conservation easement. Graham Casden purchased the property from Mr. Bunch in 2001. In 2013 Mr. Casden expressed the desire to build a greenhouse on his property. Although not specifically prohibited in the conservation easement, OSMP staff was concerned about the impact it and any further development would have on the adjacent OSMP land and the Green Mountain West Ridge Trail. Staff and Clay Douglas, Senior Assistant City Attorney, suggested a compromise where Mr. Casden would be permitted to build a greenhouse in exchange for agreeing not to build any additional structures on his property. Over the last year Mr. Casden and his attorney, OSMP staff and Clay Douglas have worked to craft an amendment to the 1998 conservation easement that is agreeable to everyone (shown in Attachment F). In addition to allowing a greenhouse and limiting further development it also clarifies/limits agricultural use on the property, defines a building envelope and makes other minor corrections to the conservation easement. OSMP staff supports this amendment because it improves the original conservation easement and is a benefit to the OSMP program. The Open Space Board of Trustees (OSBT) Conservation Easement Policy (Attachment G) requires this conservation easement amendment be approved by OSBT.

STAFF RECOMMENDATION

Staff recommends that the Open Space Board of Trustees approve the conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Road, as written in Attachment E. Staff further recommends that the Board waive the amendment fee.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Environmental: OSMP is a significant community-supported program that is recognized as a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council. The department's land and conservation easement acquisition, land and resource management and visitor service programs help preserve and protect the Open Space values of the surrounding publicly-owned lands. The properties off of Flagstaff Road, including Casden's, are important wildlife habitat.
- Economic: OSMP contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees.
- Social: This amendment meets the objectives of OSMP Charter Section 176 by preserving land for its aesthetic value and its contribution to the quality of life of the community. The Green Mountain West Ridge Trail is adjacent to the Casden property and used frequently by the citizens of Boulder who enjoy the view over the Casden property of Bear Canyon and all the foothills in the area.

OTHER IMPACTS

- Fiscal – There is no cost to the city for this amendment.
- Staff time – This matter has been handled by staff during its normal work hours.

PUBLIC COMMENT AND PROCESS

This item is being heard at this public meeting, advertised in the Daily Camera on Oct. 19, 2014.

ANALYSIS

The OSBT Conservation Easement Amendment Policy authorizes an amendment when the following conditions are met:

1) **The amendment is consistent with the intent of the original parties.**
The Parks and Recreation Advisory Board Memo dated Dec. 1, 1997 states that the intent of the conservation easement is to "maintain and enhance the habitat quality of the Mountain Parks through protecting natural resource values on nearby private properties." By limiting the amount and location of development on the Casden property, the amendment protects its natural resource values and, thus, enhances the habitat quality on the adjacent OSMP property. In addition, limiting development will also help to

maintain the scenic view from the nearby Green Mountain West Ridge Trail. The proposed greenhouse will be visible from the Green Mountain West Ridge Trail.

2) **The amendment is consistent with the purpose contained in the conservation easement.**
The conservation easement stated that its purpose was to preserve wildlife habitat and a Mountain Parks buffer zone. By limiting the amount of development and by restricting it to a building envelope, wildlife habitat is preserved. All fences, except in the building envelope, must not unreasonably restrict the movement of wildlife. In addition, non-native plants, shrubs and trees are prohibited outside of the building envelope. This also enhances the Casden property as an OSMP buffer.

3) **The new level of protection of the conservation values provided by the amended conservation easement is greater than what was provided by the conservation easement before being amended.**
Unlike today's OSMP conservation easements, the original Mountain Parks conservation easements, and, in particular, the Casden conservation easement did not limit the amount or size of development. OSMP now has the opportunity to amend the Casden conservation easement to include more of these limitations. In addition, the amendment makes clear that any use of this forested property for agriculture, other than a greenhouse, is prohibited. Boulder County has greatly increased permitted agricultural uses from the time of the original conservation easement and this amendment makes clear any expanded uses will not be permitted. The amendment also will correct several mistakes in the original conservation easement including references to a building envelope that was not included in the final recorded version of the original conservation easement.

4) **OSMP staff and OSBT will determine whether or not the conservation values are enhanced.**
OSMP staff believes the conservation values on the Casden property will be enhanced with the amendment for the reasons discussed above. The timing seemed to be appropriate to work with Mr. Casden because he needed OSMP permission before he could get approval from the county to build a greenhouse. Mr. Casden was very open to working something out when staff expressed concerns that he might want to build other structures as well in the future that would degrade the conservation values of his property. The amendment insures this will not happen. In addition, the original conservation easement has always been confusing because it referred to a building envelope but the building envelope was never defined. Research indicates that early discussions between the original owner and the Mountain Parks' Staff included an actual building envelope but that the parties agreed not to have one in the final version of the conservation easement. However, the references were not removed. Now there will be a surveyed two-acre building envelope and appropriate restrictions such as limiting landscaping to the building envelope.

OSMP staff and the CAO have worked together to make sure the above requirements have been satisfied. In addition, staff requests a waiver of the conservation easement amendment fee because Mr. Casden has had to pay for an attorney and also a surveyor to

survey the building envelope. Also, OSMP staff encouraged the amendment from the beginning.

Submitted by:

Michael D. Patton, Director

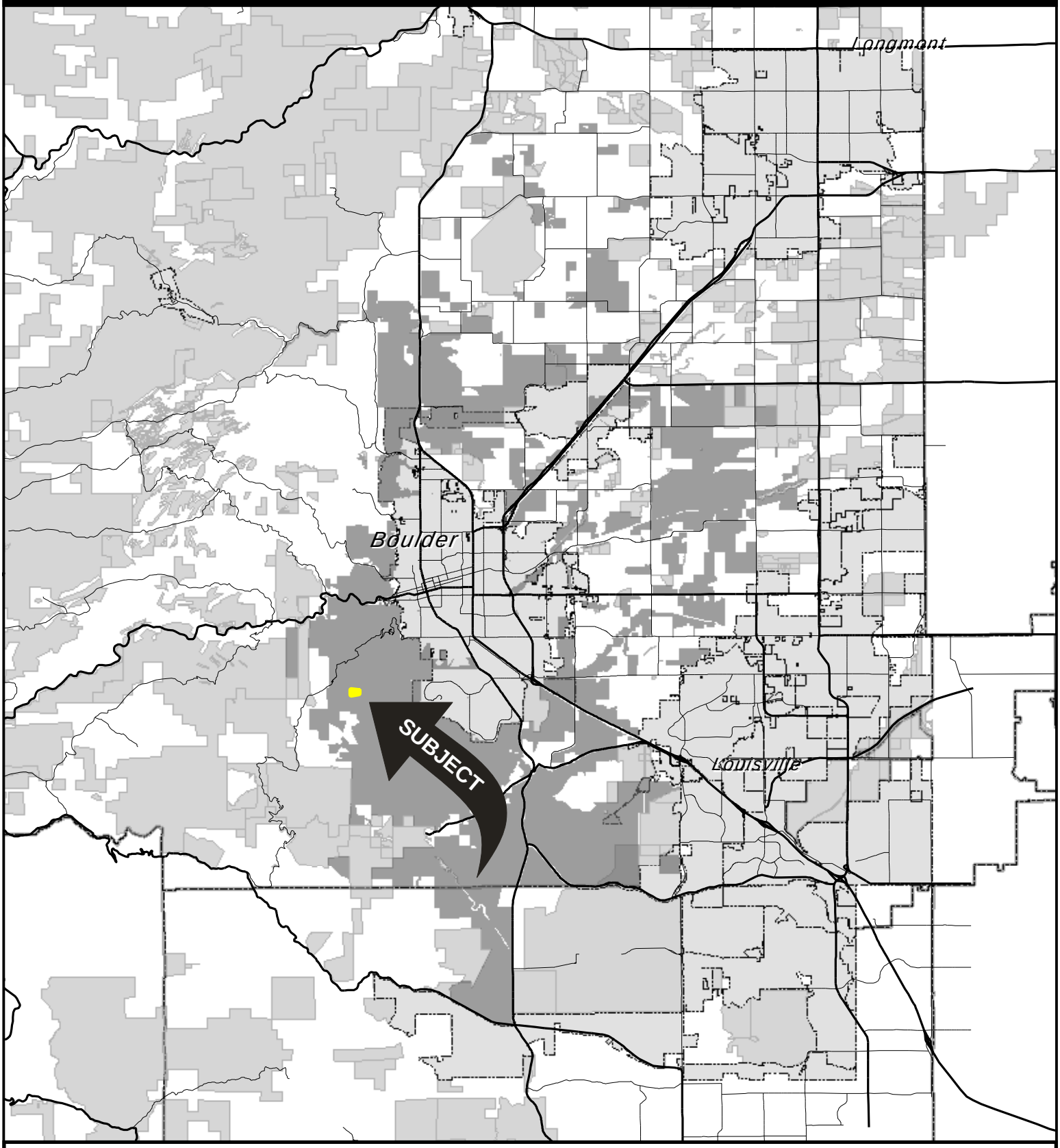
Linda VanDervort, Conservation Easement Specialist

ATTACHMENTS:

- **A. Vicinity Map**
- **B. Casden Aerial Property Map**
- **C. Survey Map of Building Envelope**
- **D. Photographs of the Casden property**
- **E. Original Conservation Easement**
- **F. Amended Conservation Easement**
- **G. OSBT Conservation Easement Amendment Policy**

ATTACHMENT A - City of Boulder Open Space & Mountain Parks

VICINITY MAP - Casden CE



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Path: \\osmpmap\data\MapFiles\Property\Casden\VICINITY-Casden.mxd

Subject Property

City of Boulder OSMP

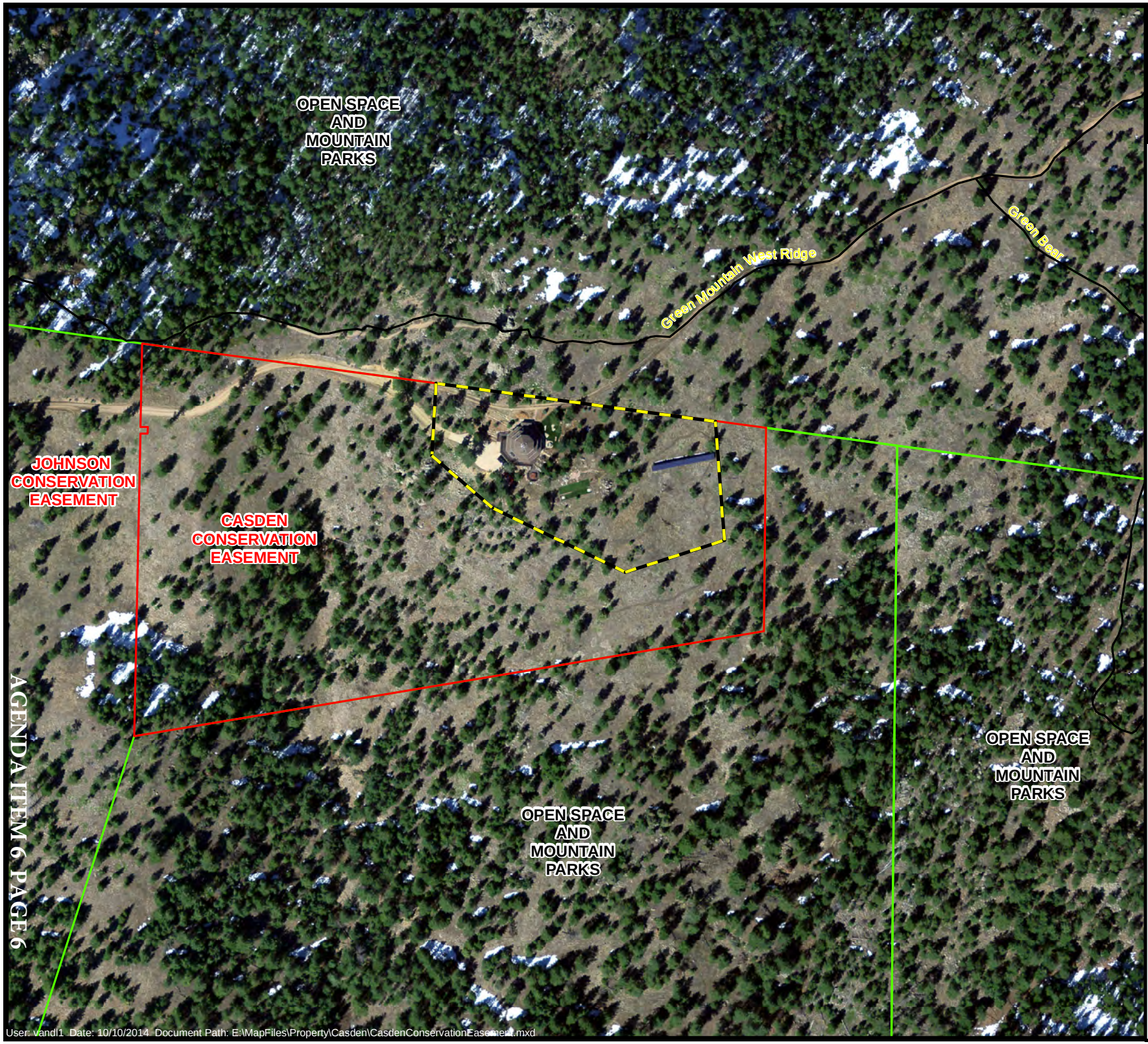
Other Public Lands

0 0.5 1 2 3 4 5 6 Miles

Approximate property boundaries from Boulder County Assessor data.

ATTACHMENT B

CASDEN CONSERVATION EASEMENT



PROPOSED BUILDING ENVELOPE

- Casden Building Envelope
- OSMP Conservation Easement
- OSMP Ownership
- Hiking Trail

N

0 50 100 200 Feet

Based on 2012 Boulder County Digital Aerial Photos

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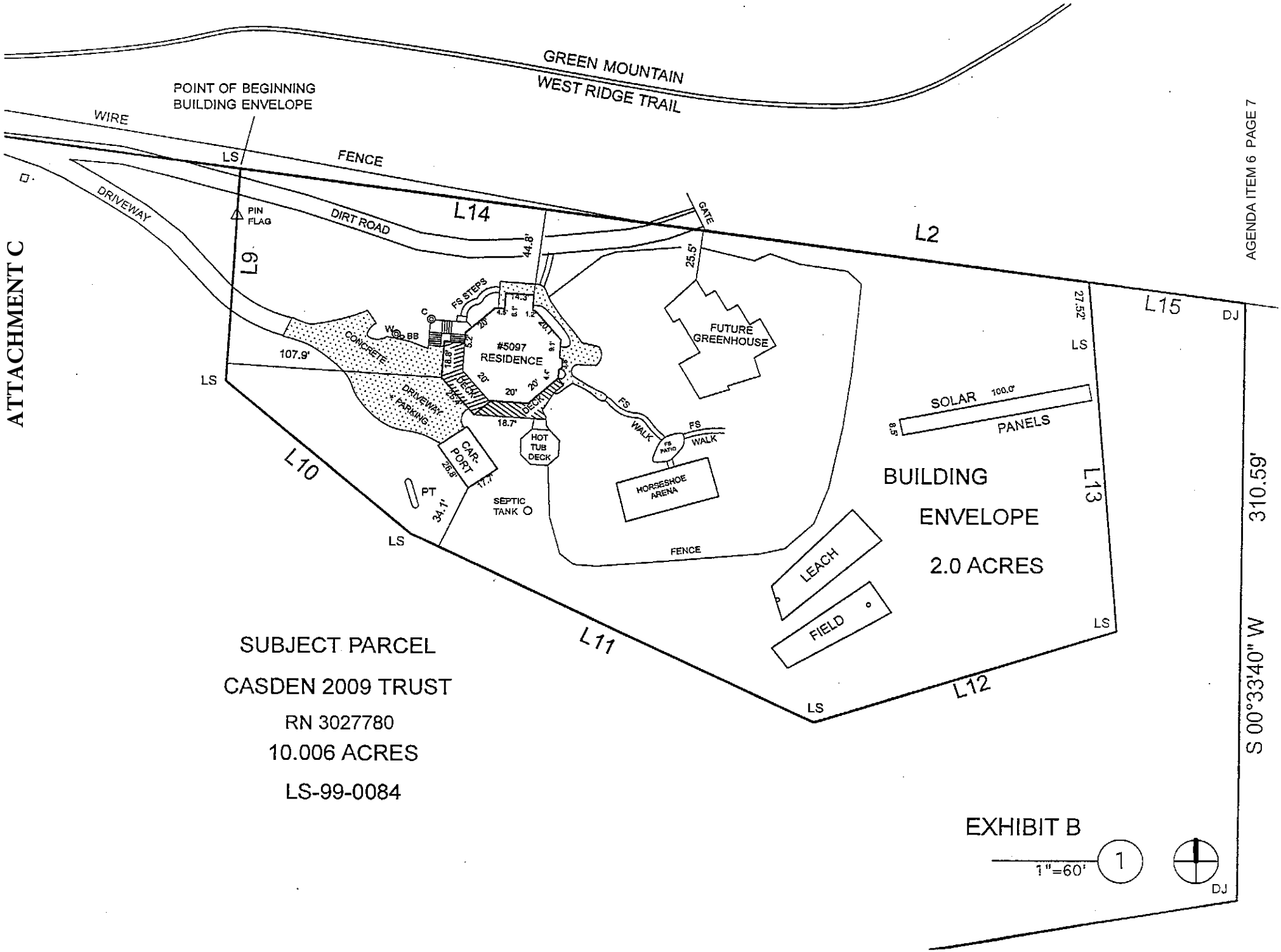
User: vandl1 Date: 10/10/2014 Document Path: E:\MapFiles\Property\Casden\CasdenConservationEasement.mxd

ATTACHMENT C



Casden property near the Green Mountain West Ridge Trail.

ATTACHMENT E

Boulder County Clerk, CO R 31.00 D 0.00
1771752
Page: 1 of 6
02/17/1998 09:13A

CONSERVATION EASEMENT

This Conservation Easement is granted by Vern Ray Bunch (Grantor") on the 12th day of February, 1998, to the City of Boulder ("Grantee" or "City"), a Colorado home rule city.

6-1

WHEREAS, the Grantor is the owner of the Property described in Exhibit A attached and incorporated herein by reference (the "Property"); and

WHEREAS, the Property is located adjacent to lands owned by the City of Boulder; and

WHEREAS, the Property is improved with a single family residence and outbuildings, sheds, and/or barns; and

WHEREAS, the Property currently remains in a substantially undisturbed natural state and has significant wildlife habitat and is used by wildlife for migration routes; and

,2741

WHEREAS, the parties intend to preserve the Property for wildlife habitat purposes and City of Boulder, Mountain Parks buffer zone purposes; and

WHEREAS, the parties intend to restrict the development of the Property to one single family residence.

NOW THEREFORE, for good and valuable consideration, the Grantor hereby grants and conveys to the City a conservation easement in gross, pursuant to CRS 38-30.5-101 et.seq., over and on the Property.

The terms of this easement are as follows:

1. Grantee shall have the right to preserve and protect the land and the view of and over the Property, and to protect and enhance its wildlife habitat and ecological condition.

2. Grantee shall have the right to enter upon the Property in a reasonable manner and at reasonable times for the purposes of inspection and enforcement of any and all rights granted herein.

3. Grantee shall have the right, in a reasonable manner and at reasonable times, to enforce by proceedings at law or in equity the rights granted hereby, including but not limited to the right to require the restoration of the Property if any damage is caused by acts or omissions of Grantor or Grantor's agents in violation of this agreement. Grantee shall not be deemed to waive or forfeit the rights to take any action to insure compliance herewith by any failure to act.

Mtnbunch.

4. Except as expressly granted herein, Grantor reserves all rights as owner of the Property, including the right to use the Property for all purposes not inconsistent herewith.

5. Grantor shall not use the Property or allow the Property to be used in a manner inconsistent with the spirit and purposes stated herein. Use of the Property for business purposes of any kind except those home occupations allowed by the Boulder County Land Use Code and uses specifically listed herein is prohibited. 6-7

6. Grantor may restrict public access to the Property. Nothing contained herein shall be construed to give the public any right to enter or use the Property.

7. Grantor shall not allow any hunting or trapping of wildlife or the discharge of firearms or fireworks. Not withstanding the above, should an instance arise when the capture, destruction, or harassing of wildlife becomes necessary in the opinion of the Colorado Division of Wildlife, then neither the Grantor nor the Grantee shall prohibit such necessary activity which the Colorado Division of Wildlife deems appropriate.

8. Grantor shall not allow any mineral extraction activities on the Property.

9. Grantor shall not adversely impact any natural wetlands, riparian areas, or natural features of a similar nature.

10. In order to protect wildlife habitat and other ecological values on the Property, where practicable, harvesting of trees shall be conducted so as to afford protection of soil and watershed values, riparian areas, and wildlife habitat. In addition, the harvesting of trees shall avoid trees in a floodplain or in a riparian zone; trees with evident bird or mammal nest holes or dens; and standing dead trees with a diameter exceeding six inches at an elevation four (4) feet above the surface level. Forest management practices shall also emphasize the conservation of old growth forest structural components, for example: large live trees, large snags (standing dead trees), and large fallen trees either on land or in water.

    The selective harvesting of trees shall be allowed only for the following purposes: control of forest disease; protection of persons or property from the hazards of falling trees or branches; providing firewood for limited domestic use on the Property (15 trees per year); wildfire hazard reduction; and enhancing wildlife habitat.

    Grantor shall not allow any commercial timber harvest operations on the Property unless first approved by the Grantee, which approval shall not be unreasonably withheld if sustainable harvesting methods are utilized.

11. Grantor shall not allow or permit their unsupervised pets or livestock to run at-large on

Mtnbunch.

the Property. Pets restricted to certain areas within the Property by means of electronic collars or similar devices shall not be deemed to be unsupervised or running at-large.

12. Grantor shall neither place nor maintain any fencing on the Property which unreasonably restricts the movement of wildlife, except within the building envelope area.

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13. Grantor shall not attract wildlife to the Property through artificial means such as feeding or baiting, except that this prohibition specifically shall not apply to bird feeders.

14. The Grantor shall not introduce non-native species of plants, shrubs, or trees to the Property, except within the building envelope.

15. There shall be no construction or placing or maintenance of any commercial or industrial structure or use on the Property, including, but not limited to, a mobile or manufactured home, a feed lot, a commercial chicken farm, a junk yard, a vehicle or vehicle replacement parts storage area, parking lot, or a horse, dog, motorcycle, bicycle or automobile race track, golf course, helicopter or airplane landing area, or a permanent sign, billboard, or other advertising material, except one sign of not more than 12 square feet in area, to advertise the sale, hire or lease of the Property. Any sign shall be in compliance with the sign code regulations of Boulder County.

16. There shall be no dumping or storage of ash, trash, junk, rubbish, sawdust, garbage, chemicals, or other unsightly or offensive material, or changing of the topography through dredging or filling, or the placing of soil or other substances, material or landfill on the Property, except within building envelopes.

17. Grantor shall not allow, dedicate, or convey any easement or right of way including without limitation, any private, municipal, county or state roads, pipelines, bikeways, trails, or pedestrian access, without prior approval of Grantee. There shall not be any construction of any additional road to serve the residential area described in Paragraph 18 below without prior approval of Grantee. Grantee shall not be responsible for the maintenance and repair of that portion of the existing access road located on the Property.

18. Grantor shall have the right to construct or reconstruct a maximum of one single family residence and associated outbuildings on the property.

19. Grantor shall not use or convey further, or assign any density or development right relating to the Property, except that Grantor may convey the entire fee, subject to this Conservation Easement.

20. Grantee shall not be responsible for the construction and maintenance of all fences and gates on the Property.

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21. Grantor agrees to pay any taxes and assessments levied on the Property.

22. The grazing of livestock on the Property shall be prohibited, unless grazing standards are mutually agreed to by Grantee and Grantor.

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23. Dumping or other disposal of refuse, animal carcasses, or any wildlife-attracting materials shall be prohibited on the property. Refuse shall be stored indoors or in bear-proof containers in such a way as to not present an attractive nuisance to bears and other wildlife.

24. Each of the parties shall be entitled to specific performance by the other party of all rights granted herein. In the event one of the parties fails to abide by the terms hereof, the other party shall be entitled to all applicable remedies at law or in equity, including, but not limited to, restraining orders, temporary and permanent injunctions, and damages for destruction or injury of the Property and the injured party's interest herein.

25. All notices under this agreement shall be given by registered or certified mail, postage prepaid, directed as follows, and shall be deemed given on the date of mailing:

a. If intended for Grantor:

Vern Ray Bunch
5097 Flagstaff Road
Boulder, CO 80302

b. If intended for City:

City Manager
c/o Director of Mountain Parks Division
P.O. Box 791
Boulder, CO 80306

26. The terms of this Conservation Easement shall be binding upon Grantor and Grantee and their agents, personal representatives, heirs, lessees, and assigns, and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Property.

27. Grantor and Grantee covenant that they will defend and maintain the validity of the Conservation Easement granted hereby.

28. This instrument and the attached exhibits contain the entire agreement between the parties relating to the Conservation Easement on the Property, and may be modified only by an instrument in writing executed by all parties.

29. The parties agree that, except for such of the terms, conditions, covenants and agreements

which are, by their very nature, fully and completely performed upon the closing of the transaction herein provided for, all of the terms, conditions, covenants and agreements herein set forth and contained shall survive the closing to run with the Property and to be binding upon and inure to the benefit of the parties hereto, their agents, personal representatives, heirs, lessees, successors, and assigns.

6-5

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed as of the day and year first above written.

GRANTEE:
City of Boulder

By: _____
David A. Rhodes
Acting City Manager

GRANTOR:

By: _____
Vern Ray Bunch

ATTEST:

_____
Director of Treasury and
Ex-Officio City Clerk

Approved as to form:

_____
City Attorney

STATE OF COLORADO)
) ss
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 12th day of ~~January~~ Feb, 1998 by Vern Ray Bunch.

My commission expires: 11-13-00

_____
Notary Public

SHARYL J. SIVUPE
NOTARY PUBLIC
STATE OF COLORADO

Mtnbunch

EXHIBIT "A"

LEGAL DESCRIPTION

6-6

a tract of land located in the Southwest 1/4 of the Northeast 1/4 of Section 11, Township 1 South, Range 71 West of the 6th P.M., County of Boulder, Colorado more particularly described as follows:

Commencing at the Northwest corner of the said Southwest 1/4 of the Northeast 1/4 of Section 11, thence South 82°16'55" East along the North line of said Southwest 1/4, said line also being the North line of a tract of land as described at Reception No. 1528586, of the Boulder County records, 200.00 feet to the POINT OF BEGINNING:
Thence South 82°16'55" East continuing along said North line, 962.04 feet;
Thence South 00°33'04" West parallel with the East line of said Southwest 1/4 of the Northeast 1/4 of Section 11, 310.59 feet;
Thence South 80°32'01" West, 975.35 feet, to a point on the West line of a tract of land described at Reception No. 1288400, of the Boulder County records;
Thence North 01°07'20" East along said East line, 462.47 feet;
Thence South 88°52'40" East, 11.22 feet;
Thence North 01°07'20" East, 10.00 feet;
Thence North 88°52'40" West, 11.22 feet;
Thence North 01°07'20" East, 127.86 feet to a point on the said North line of said Southwest 1/4 and the POINT OF BEGINNING.

AMENDED CONSERVATION EASEMENT

Recitals:

The parties agree to this Amended Conservation Easement considering the following:

A. This Document ("Amended Conservation Easement") is an amendment of the February 12, 1998 Conservation Easement ("Original Conservation Easement "), granted by Vern Ray Bunch ("Original Grantor") to the City of Boulder ("City" or "Grantee"), a Colorado home rule city recorded February 17, 1998 in the records of the Boulder, Colorado County Clerk under reception number 1771752; and

B. The purpose of this Amendment is to clarify that the easement allows a carport, greenhouse and landscaping improvements with certain restrictions, and to limit further development. In addition, agricultural use is clarified and the definition of the building envelope is clarified; and

C. From the date of this Amended Conservation Easement, this Amended Conservation Easement replaces conflicting terms of the Original Conservation Easement, but only to the extent of such conflict. Nothing in this Amended Conservation Easement shall affect the effectiveness or enforceability of any terms of the Original Conservation Easement as to any act or omission occurring before this Amended Conservation Easement; and

D. The Original Conservation Easement was granted by Original Grantor on the 12th day of February, 1998, to the City. At that time he was the owner of the property described in Exhibit A attached and incorporated herein by reference (the "Property"); and

E. Graham Casden purchased the Property from Vern Ray Bunch on March 12, 2001. He then conveyed the Property to the Graham Casden 2009 Trust (hereinafter "Grantor") on August 11, 2009. The Trust is the current owner of the Property; and

F. The Property is located adjacent to lands owned by the City; and

G. The Property is improved with a single-family residence and other improvements as described in Paragraph 18; and

H. The Property currently remains in a substantially undisturbed natural state and has significant wildlife habitat and is used by wildlife for migration routes; and

I. The parties intend to preserve the Property for wildlife habitat purposes and City of Boulder, Mountain Parks buffer zone purposes; and

J. The parties intend to restrict the development of the Property as provided herein.

NOW THEREFORE, for good and valuable consideration, the Grantor hereby grants and conveys to the City a conservation easement in gross, pursuant to CRS 38-30.5-101 *et.seq.*, over and on the Property.

10.1. The selective harvesting of trees shall be allowed only for the following purposes: control of forest disease; protection of persons or property from the hazards of falling trees or branches; providing firewood for limited domestic use on the Property (15 trees per year); wildfire hazard reduction; and enhancing wildlife habitat.

10.2. Grantor shall not allow any commercial timber harvest operations on the Property unless first approved by the Grantee, which approval shall not be unreasonably withheld if sustainable harvesting methods are utilized.

11. Grantor shall not allow or permit their unsupervised pets or livestock to run at-large on the Property. Pets restricted to certain areas within the Property by means of electronic collars or similar devices, shall not be deemed to be unsupervised or running at-large.

12. Grantor shall neither place nor maintain any fencing on the Property, which unreasonably restricts the movement of wildlife, except within the building envelope. All references in this Amended Conservation Easement to "building envelope" shall be to the building envelope shown on Exhibit B.

13. Grantor shall not attract wildlife to the Property through artificial means such as feeding or baiting, except that this prohibition specifically shall not apply to bird feeders.

14. The Grantor shall not introduce non-native species of plants, shrubs, or trees to the Property, except within the building envelope.

15. There shall be no construction or placing or maintenance of any commercial or industrial structure or use on the Property, including, but not limited to, a mobile or manufactured home, a feed lot, a commercial chicken farm, a junk yard, a vehicle or vehicle replacement parts, storage area, parking lot, or a horse, dog, motorcycle, bicycle or automobile race track, golf course, helicopter or airplane landing area, or a permanent sign, billboard, or other advertising except one sign of not more than 12 square feet in area, to advertise the sale, hire or lease of the Property. Any sign shall be in compliance with the sign code regulations of Boulder County.

16. There shall be no dumping or storage of ash, trash, junk, rubbish, sawdust, garbage, chemicals, or other unsightly or offensive material, or changing of the topography through dredging or filling, or the placing of soil or other substances, material or landfill on the Property, except within the building envelope.

17. Grantor shall not allow, dedicate, or convey any easement or right of way including without limitation, any private, municipal, county or state roads, pipelines, bikeways, trails, or pedestrian access, without prior approval of Grantee. There shall not be any construction of any additional road to serve the residential area described in Paragraph 18 below without prior approval of Grantee. Grantee shall not be responsible for the maintenance and repair of that portion of the existing access road located on the Property.

18. The following structures currently exist on the Property: one single-family residence consisting of approximately 6254 square feet of floor area, one 470 square foot carport

of the total existing above grade exterior wall area or of the combined total area(s) of the existing roof framing system and structural floor systems, not including eaves or decks.

19. Other Construction Provisions. Grantor shall minimize the visibility of any structures on the Property from City of Boulder "open space land", as defined in the City of Boulder home rule charter. In addition, all construction undertaken under this Amended Conservation Easement is subject to any required review or approval by the Boulder County Land Use Department or other entity having jurisdiction at the time. Grantor shall give City prior written notice before beginning any construction, except for repair or maintenance of the current structures, the greenhouse or the landscaping improvements.

20. Maximum Square Footage Not Guaranteed. This Amended Conservation Easement does not guarantee any maximum square footage permitted in this Paragraph 18 because Boulder County has authority to review the structures stated in this Amended Conservation Easement and may decide the square footage under this Amended Conservation Easement exceeds that permissible under County regulations. In that case, the maximum allowed by Boulder County Land Use Regulations, in effect at the time of any construction, remodeling or replacement, is the maximum allowed under this Amended Conservation Easement. Therefore, the maximum square footage is the lesser of that permitted in this Amended Conservation Easement or the square footage ultimately permitted by Boulder County. Further, this Amended Conservation Easement does not grant Boulder County's approval for any development within the limits established in this Amended Conservation Easement or for any activity regulated by the Boulder County Land Use Regulations.

21. Grantor shall not use or convey further, or assign any density or development right relating to the Property, except that Grantor may convey the entire fee, subject to this Amended Conservation Easement.

22. Grantee shall not be responsible for the construction and maintenance of all fences and gates on the Property.

23. Grantor agrees to pay any taxes and assessments levied on the Property.

24. Grantor shall have the right to operate a greenhouse, subject to the restrictions in Paragraph 18 above. Grantor may make no other agricultural uses of the Property, including, without limitation, outdoor production of crops (including marijuana), grazing or keeping of livestock, accessory agricultural sales, bed and breakfast type arrangements, farm store and weddings and other farm events.

25. Dumping or other disposal of refuse, animal carcasses, or any wildlife-attracting materials shall be prohibited on the property. Refuse shall be stored indoors or in bear-proof containers in such a way as to not present an attractive nuisance to bears and other wildlife.

26. Each of the parties shall be entitled to specific performance by the other party of all rights granted herein. In the event one of the parties fails to abide by the terms hereof, the other party shall be entitled to all applicable remedies at law or in equity, including, but not

GRANTEE:
City of Boulder

By: _____
Jane Brautigam
City Manager

ATTEST:

_____
City Clerk

Approved as to form:

_____
City Attorney

STATE OF COLORADO)
) ss
COUNTY OF BOULDER)

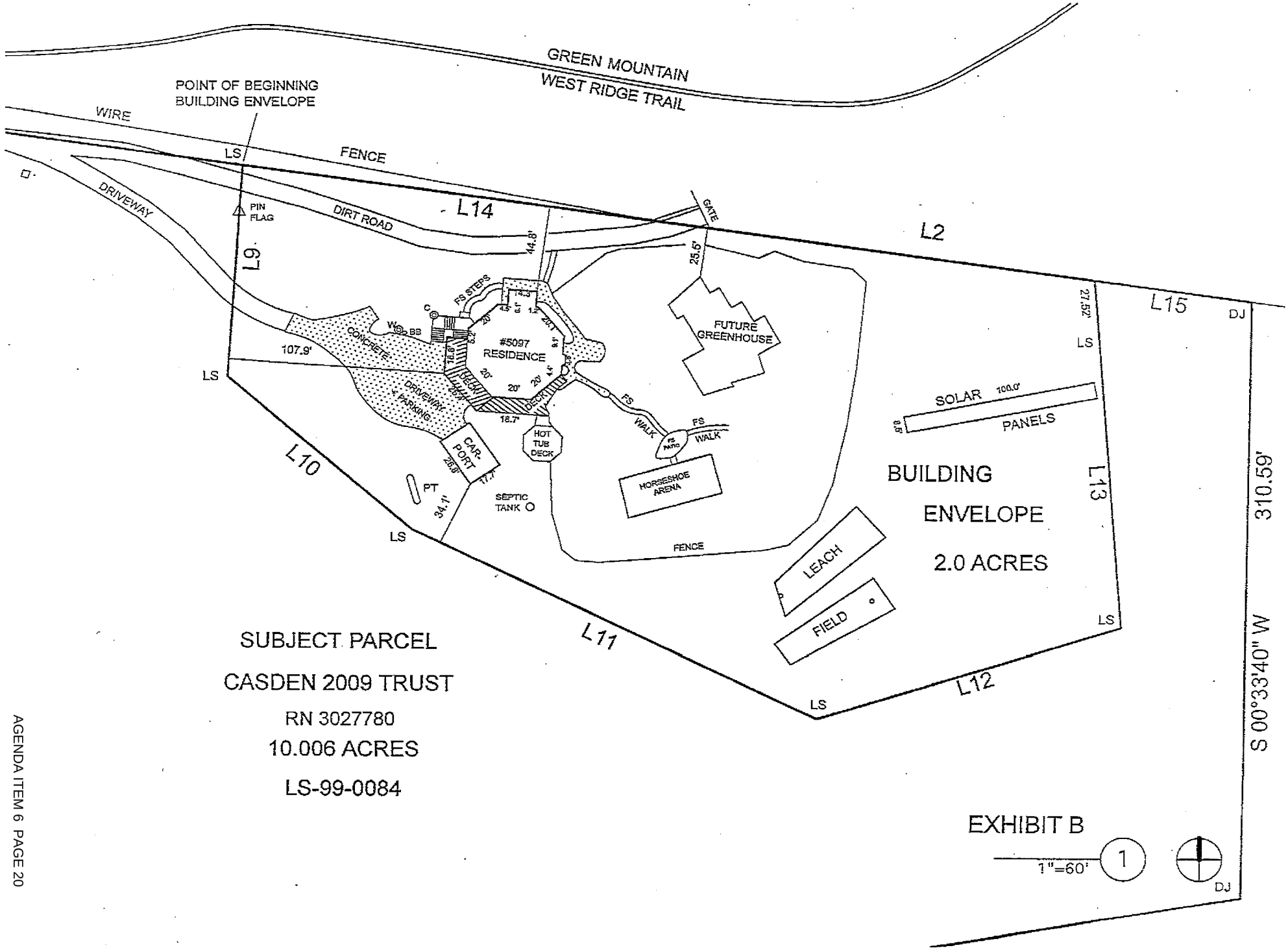
The foregoing instrument was acknowledged before me this _____day of _____, 2014 by Jane Brautigam, City Manager of the City of Boulder.
My commission expires:

_____
Notary Public

EXHIBIT A

A tract of land located in the Southwest 1/4 of the Northeast 1/4 of Section 11, Township 1 South, Range 71 West of the 6th P.M., County of Boulder, Colorado more particularly described as follows:

Commencing at the Northwest corner of the said Southwest 1/4 of the Northeast 1/4 of Section 11, thence South 82°16'55" East along the North line of said Southwest 1/4, said line also being the North line of a tract of land as described at Reception No. 1528586, of the Boulder County records, 200.00 feet to the POINT OF BEGINNING:
Thence South 82°16'55" East continuing along said North line, 962.04 feet;
Thence South 00°33'04" West parallel with the East line of said Southwest 1/4 of the Northeast 1/4 of Section 11, 310.59 feet;
Thence South 80°32'01" West, 975.35 feet, to a point on the West line of a tract of land described at Reception No. 1288400, of the Boulder County records;
Thence North 01°07'20" East along said East line, 462.47 feet;
Thence South 88°52'40" East, 11.22 feet;
Thence North 01°07'20" East, 10.00 feet;
Thence North 88°52'40" West, 11.22 feet;
Thence North 01°07'20" East, 127.86 feet to a point on the said North line of said Southwest 1/4 and the POINT OF BEGINNING.


GREEN MOUNTAIN
WEST RIDGE TRAIL
POINT OF BEGINNING
BUILDING ENVELOPE
WIRE
FENCE
LS
DRIVEWAY
PIN FLAG
DIRT ROAD
L14
L9
L2
GATE
44.8'
25.6'
FS STEPS
#5097
RESIDENCE
DECK
CONCRETE
DRIVEWAY
PARKING
107.9'
CAR-PORT
26.8'
17.7'
PT
34.1'
SEPTIC TANK
HOT TUB DECK
18.7'
FS WALK
HORSESHOE ARENA
FUTURE GREENHOUSE
L10
L11
L12
L13
L15
DJ
27.52'
SOLAR
100.0'
PANELS
BUILDING
ENVELOPE
2.0 ACRES
LEACH
FIELD
310.59'
S 00°33'40" W
SUBJECT PARCEL
CASDEN 2009 TRUST
RN 3027780
10.006 ACRES
LS-99-0084
EXHIBIT B
1"=60'
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CONSERVATION EASEMENT AMENDMENT POLICY

GENERAL POLICY STATEMENT

The City of Boulder ("City") Open Space and Mountain Parks Department ("OSMP") acquires and holds conservation easements to protect scenic, agricultural, ecological and open space values, in perpetuity, for the benefit of present and future generations. The success of the City conservation easement program depends upon the confidence the public and the landowners have in the City's ability and commitment to monitor and enforce these conservation easements and to treat landowners consistently throughout the system.

It is the policy of the City and OSMP to enforce and uphold conservation easements as originally written. Only under circumstances outlined below, or under other circumstances with an obvious benefit to the OSMP program, will an amendment be considered.

Amendments shall be consistent with the purposes and intent of the original conservation easement. They shall not affect its perpetual duration, nor permit additional development currently prohibited by the conservation easement, nor impair any of the significant conservation values of the property.

In most instances, an amendment should increase protection of the property's conservation values and, on balance, must not harm the scenic, agricultural, ecological and open space values of the property.

No amendment shall be allowed that will affect the qualification of a conservation easement under any applicable laws, including CRS 38-30.5-101 et. seq.

AMENDMENT REQUESTS

The City will consider amendments to its conservation easements only under the circumstances listed below. Any amendment shall be the minimum change necessary to achieve its purpose. An amendment may be proposed by either the landowner or OSMP staff. The procedures to be followed when applying for and considering an amendment request, including fees, are detailed in Exhibit A.

I. Minor Changes Not Requiring Board Approval

These are amendments where OSMP staff and the landowner agree that a minor change needs to be made. The OSMP Director may make these changes, following consultation with the City Attorney's office. Open Space Board of Trustees (OSBT) participation is not necessary. These minor changes generally correct an error or oversight made at the time the conservation easement was executed. These changes may include correction of a legal description, correction of a typographical error or inclusion of language that was unintentionally omitted. They may also include minor provisions that OSMP and the landowner agree were assumed by both parties to

be part of the overall agreement. Such amendments can be made at any time but would normally be made shortly after the execution of the original conservation easement. Amendments may also be allowed in this category in order to more clearly define terms, provisions or activities to include items not foreseen at the time of execution. They may also be made for minor boundary adjustments.

II. Changes Requiring Board Approval

A. Increase Level of Protection for Conservation Values. These amendments increase the level of protection, add acreage, or enhance the conservation values of the conservation easement. Existing conservation values are not negatively affected by these amendments. These amendments will be considered by OSBT.

1. Addition of Land, without Additional Reserved Rights. Additional land may be brought under the terms of a conservation easement, should the landowner and OSMP staff prefer having the land under one easement, rather than preparing a new easement. OSBT may allow this amendment if there are no other changes being proposed and an amendment to the legal description can be made.

2. Enhance Conservation Values. OSBT may authorize an amendment to a conservation easement that is consistent with the intent of the original parties and with the purpose contained in the conservation easement document, and if the new level of protection of the conservation values provided by the amended conservation easement is greater than what was provided by the conservation easement before being amended. OSMP staff and OSBT will determine whether or not the conservation values are enhanced. Examples include adding fencing in a riparian area to restrict the movement of livestock or changing the location of a building envelope when it can be documented that the new location will have a lower impact on the conservation values the easement was enacted to protect.

3. Increase Restrictions. OSBT may authorize an amendment to a conservation easement if the landowner wishes to impose new restrictions on the property or give up additional development rights.

4. Update an Older Conservation Easement Using the Current Standards. City conservation easements written prior to 2001 substantially differ from newer conservation easements. The newer conservation easements generally offer a greater level of protection for the land. OSBT may allow an amendment to a conservation easement if it updates the original conservation easement using current provisions which enhance protection.

B. Effect of the Amendment on the Conservation Values Will Be Neutral. OSBT may authorize amendments to conservation easements when the modification is consistent with the intent of the parties to the original conservation easement, and the resulting amended agreement is substantially equivalent to the original agreement. The effect of the amendment on the property's conservation values will be neutral as

determined by OSMP staff/OSBT. The conservation values will not be diminished nor will they be enhanced. OSBT shall be cautious in consenting to amendments under this section.

1. **Alleviate Unnecessary Hardship.** OSBT may authorize an amendment to a conservation easement when it is clear that it is impossible to meet the terms of the original conservation easement. For example, if it is impossible to build a permitted structure within a designated building envelope, an amendment will be considered. Similarly, a building parcel may need to be relocated or changed in size to make possible under local land use law a use that was contemplated in the conservation easement.

2. **Clarification of Provisions in Dispute.** Disputes can and may arise concerning the meaning of provisions in conservation easements. In order to avoid continuing conflict and uncertainty, OSMP staff and the landowner may negotiate an amendment to a conservation easement to resolve the provision in dispute. Such amendments shall be in the best interest of OSMP, have a neutral or positive impact on the conservation values protected by the conservation easement, and not give improper benefit to the landowner.

C. Condemnation/Judicial Proceedings. Conservation easements are subject to condemnation for public purposes, such as highways and schools. Where it appears that the condemnation power will be properly exercised, the City may enter into a settlement agreement with the condemning authority. In reaching such an agreement, OSMP shall attempt to preserve the intent of the original conservation easement to the greatest extent possible. Likewise, if judicial proceedings require amending the conservation easement, this may be done, attempting to preserve the original purpose of the conservation easement as much as possible.

This Conservation Easement Amendment Policy was adopted by the Open Space Board of Trustees on January 8, 2003.

Exhibit A

CONSERVATION EASEMENT AMENDMENT PROCEDURES

APPLICATION PROCESS

The applicant for an amendment to a conservation easement held by the City of Boulder must submit the following information to the City of Boulder Open Space and Mountain Parks Department (OSMP):

1. A written narrative detailing:
   a) What change is being sought
   b) Why the change is needed or warranted
   c) The impacts of the request to the conservation values protected by the conservation easement
   d) How the request enhances the existing conservation values
2. Maps to illustrate the request
3. Any other documentation the applicant deems necessary to support the request
4. A new survey if warranted

Requests which are not consistent with the terms of the Conservation Easement Amendment Policy adopted on January 8, 2003 will be rejected.

CONSIDERATION OF REQUESTS

OSMP staff will evaluate all amendment requests and conduct a site visit. Evaluation may include contacting the principal parties to the original transaction, including the original landowner and any entity (other than the City of Boulder) who contributed financially to the acquisition. The current landowner may be required to conduct a title search to prove the proper signatories to an easement amendment and to identify any outstanding mortgages or liens.

OSMP staff and the OSBT will consider the following factors in determining whether or not to grant an amendment request:

1. Whether the amendment is allowed by the Conservation Easement Amendment Policy adopted on January 8, 2003.
2. Whether a sufficient need exists for amending the existing conservation easement.
3. Whether the amendment will increase the level of protection for the conservation values of the property.
4. Whether the amended conservation easement is consistent with the goals of OSMP as set forth in section 2-3-9(c), B.R.C. 1981.
5. Other factors consistent with the OSMP charter and adopted plans, policies and regulations.

A decision to approve, reject, or approve the request with modifications will be made by either OSMP staff or a majority vote of the OSBT.

FEES

1. A fee will not be charged for processing the following amendment requests:
   A. Minor changes not requiring Board approval.
   B. Amendments that are a result of condemnation/judicial proceedings.

2. A fee of $2,500.00 will be charged for processing requests not covered by 1(A) or 1(B) above. The fee will be paid at time of application. OSBT may waive a portion or all of the fee when it considers the amendment request.

POST APPROVAL REQUIREMENT

Amendments shall be recorded with the Boulder County Clerk and Recorder's Office. The amendment must cite the date and Clerk and Recorder's Office reception numbers of the original easement and any previous amendments.

This "Conservation Easement Amendment Procedures" document was adopted by the Open Space Board of Trustees on January 8, 2003.

CITY OF BOULDER
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM

MEETING DATE: October 23, 2014

AGENDA TITLE Consideration of a proposal to transfer 11 small, noncontiguous, paved parcels of Open Space land to the City of Boulder Transportation Department for the Purpose of Electric Bicycle Use as a Means of Alternate Transportation Pursuant to Article XII, Section 177, of the Boulder City Charter.

PRESENTER/S
Michael D. Patton, Director, Open Space and Mountain Parks

EXECUTIVE SUMMARY

On November 11, 2013, City Council authorized a pilot electric bicycle (E-bikes) program for use on most non Open Space paved paths throughout the City. In support of the E-bike pilot program, the Open Space Board of Trustees (OSBT) and staff discussed the prospect for disposing of a number of short, paved paths on Open Space lands according to section 177 of the City Charter for use in the pilot program. The City Attorney advised that Section 177 only applied to conveyances of land to third parties and that a transfer to another department is not a disposal under the Charter. The prospect for disposing of or transferring Open Space land for the pilot program was considered by City Council at their November meeting but without a decision on the applicability of Section 177. The pilot proceeded without use of Open Space land.

Following a year of evaluation the pilot program has been determined a success. During its Nov. 21, 2014 meeting City Council will consider removing the pilot designation from the program and authorizing E-bikes for regular use on all Public Works Department paved paths.

Open Space and Mountain Parks (OSMP) staff believes that there are significant mutual advantages to the transfer of the parcels identified in Attachment A. The Public Works Department will be able to expand the E-bike program, improve connectivity and support

the use of E-bikes as an alternative means of transportation. For OSMP transfer of these properties will support an important shared community value, alternate transportation - and relieve the department of the responsibility for maintenance and management and from the frequent expectation for snow removal, an expectation that exceeds staffing and equipment capabilities. Advantages to both OSMP and Public Works departments support a proposal disposal at no cost to Public Works.

Because there is at least ambiguity under the Charter about whether section 177 applies to transfers between departments, staff recommends that OSBT treat this transfer as a disposal. This will insulate the city from any claim that the disposal procedures had not been followed to effectuate the change.

STAFF RECOMMENDATION

Staff recommends that the Open Space Board of Trustees authorize a motion approving the transfer of the parcels identified in Attachment A to the City of Boulder Public Works Department for no cost to accommodate the use of E-bikes as a means of alternative transportation.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- Environmental: OSMP is a significant community-supported program that is recognized worldwide as a leader in preservation of open space lands contributing to the environmental sustainability goal of the City Council. The transfer of these small, paved parcels has no environmental value and would have no impact on the environmental value, overall, of the OSMP system.
- Economic: OSMP contributes to the economic vitality goal of the city as it provides the context for the diverse and vibrant economic system that sustains services for residents. The land system and the quality of life it represents attract visitors and help businesses to recruit and retain quality employees. The transfer of these parcels would relieve OSMP of maintenance and management costs.
- Social: Because the Open Space land system is equally accessible to all members of the community, it helps support council's community sustainability goal because all residents "who live in Boulder can feel a part of and thrive in" this aspect of their community. The addition of these parcels to the City of Boulder transportation system would increase the potential for use of E-bikes as an alternative mode of transportation.

OTHER IMPACTS

- Fiscal – This transfer will have a modest economic benefit to the Open Space Department in that Open Space staff and equipment will no longer be required for maintenance of these parcels.
- Staff time – Sufficient funding for staff time is available to process this transfer.

PUBLIC COMMENT AND PROCESS

This item is being heard at this public meeting, as noticed in the *Daily Camera* on Oct. 19, 2014. A Notice of Disposal of Open Space Lands was published in the *Daily Camera* on Oct. 12 and 13, 2014 pursuant to Section 177 of the City Charter.

ANALYSIS

Staff and OSBT discussed the prospect for disposal of the parcels identified in Attachment A, according to Section 177 of the City Charter, last year when the E-bike program was first under discussion. The City Attorney advised that Section 177 only applied to conveyances of land to third parties and that a transfer to another department is not a disposal under the Charter during the November 11, 2013 City Council meeting this opinion was discussed but applicability of Section 177 was not finalized. . Council authorized the E-bike pilot program but excluded the use of any Open Space land.

After a year of experience, the pilot program has been determined a success and on Nov. 21, 2014 City Council will consider authorizing the use of E-bikes on all Transportation and Greenways paved paths.

No formal Council action has been taken to address the disposal of Open Space land as defined by the City Charter to another City Department. Staff is in support of transferring of the Open Space parcels as described in Attachment A according to Section 177 of the City Charter to enhance the E-bike program. Because there is at least ambiguity under the Charter about whether section 177 applies to transfers between departments, staff recommends that OSBT treat this transfer as a disposal. This will insulate the city from any claim that the disposal procedures had not been followed to effectuate the change.

All of the small parcels identified in Attachment A are paved segments and for the most part connected to other existing portions of paved transportation corridors. Emblematic of these parcels is the 1,700 foot long section of paved sidewalk in front of the NIST building along Broadway between Dartmouth Avenue and Lawrence Road. This sidewalk serves a means of connecting the Table Mesa shopping area with neighborhoods to the north and along Broadway. These parcels have limited environmental value and are difficult for OSMP to manage and maintain. Paved paths are inconsistent with virtually all other features of OSMP properties and not typically included in environmental or visitor use planning.

The development of alternative modes of transportation is an important and shared community value. The potential for increased use of nonpolluting modes of transportation could reduce carbon impacts on critical OSMP lands and habitats. The transfer of these parcels will provide better contiguity and a wider range of opportunity for the use of E-bikes as a viable alternative mode of transportation.

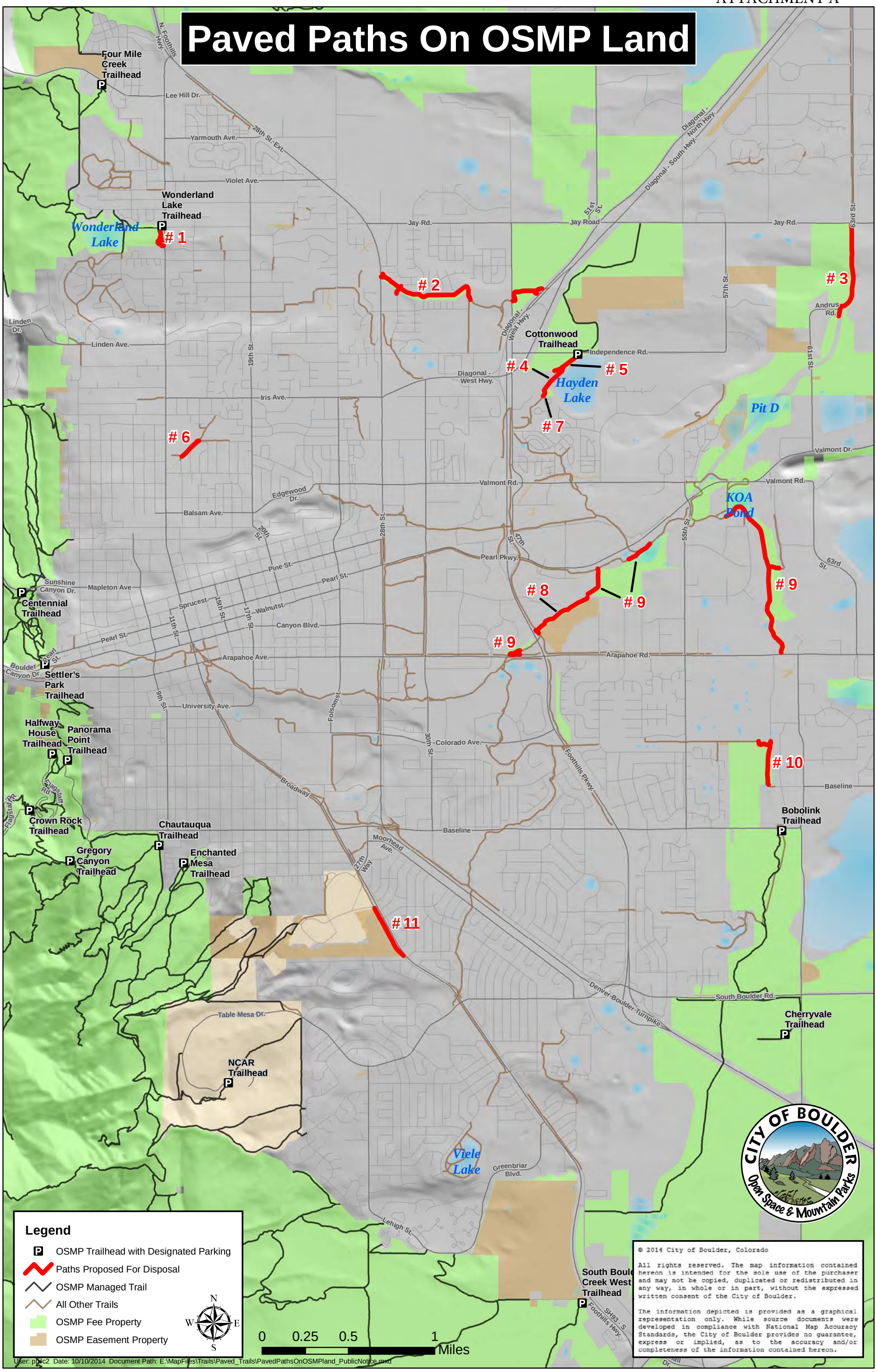
Disposal to the Public Works Department would be for no cost. Staff believes there is a value to OSMP in the development of nonpolluting alternative modes of transportation

and that OSMP will be relieved of the costs associated with the maintenance and management of these widely dispersed, short segments of paved path.

Submitted by:

Michael D. Patton, Director

ATTACHMENTS:

A. Paved Paths on OSMP Land (map)

Paved Paths On OSMP Land