

**OPEN SPACE BOARD OF TRUSTEES**

**Wednesday, November 12, 2014 at 6:00 p.m.**

**Open Space and Mountain Parks 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
  - A. Research Program Update
  - B. Voice and Sight Tag Program Update
  - C. Council retreat questions for Boards and Commissions
- 6:45 IV. Matters from the Board
- 6:55 V. Consideration of a motion to approve a conservation easement amendment on the property owned by the Graham Casden 2009 Trust at 5097 Flagstaff Rd.\*
- 7:20 VI. Consideration of a motion to approve a conservation easement amendment on the property owned by Epaka Holdings, LLC at 8104 N. 63<sup>rd</sup> St.\*
- 7:45 VII. Consideration of a motion pertaining to development of a trail on the Joder Open Space and Mountain Parks property.\*
- 8:30 VIII. Adjournment

\*Public Participation

## OPEN SPACE BOARD OF TRUSTEES

Minutes

Meeting Date October 23, 2014

### BOARD MEMBERS PRESENT

Tom Isaacson      Shelley Dunbar      Frances Hartogh      Molly Davis      Kevin Bracy Knight

### STAFF MEMBERS PRESENT

Mike Patton      Jim Reeder      Dave Kuntz      Todd Doherty      Mark Gershman  
Kacey French      Alyssa Frideres      Leah Case      Phil Yates

### GUESTS

Clay Douglas, Deputy City Attorney

### CALL TO ORDER

The meeting was called to order at 6:00 p.m.

### AGENDA ITEM 1 – Approval of the Minutes

Tom Isaacson said on page three, in the first paragraph under Return to the Board, “priory” should be “priority.”

Molly Davis moved to approve the minutes from Sept. 10, 2014 as amended. Kevin Bracy Knight seconded. This motion passed unanimously.

### AGENDA ITEM 2 – Public Participation for Items not on the Agenda

None.

### AGENDA ITEM 3 – Director’s Updates

#### North Trail Study Area (TSA)

Kacey French, Environmental Planner, gave the Board an update on the North TSA. Frances Hartogh expressed concern that the data collected this year will not reflect normal circumstances due to the amount of moisture. Kacey said staff feels they have adequate data to proceed. Shelley Dunbar asked if the public process will happen the same time as the data collection. Kacey responded that the writing of the inventory reports and design of the public process would occur concurrently. Mike added that the Board will need to meet several times to have a work plan in place by the end of the year. He added that City Council will need to be kept informed on how Open Space proceeds with this process.

#### Grants

Don D’Amico, Ecological Systems Supervisor, presented the 2014 Restoration Grant information. Open Space and Mountain Parks (OSMP) was granted \$535,474 towards restoration projects.

Tom Isaacson congratulated and thanked Don on the impressive amount of money awarded, considering the large amount of flood candidates that must have vied for it.

### Additional Updates

Mike noted that all of the Board budget recommendations were approved by the City Council.

#### **AGENDA ITEM 4 – Matters from the Board**

Tom asked about the survey being conducted on Sunshine Canyon. Mike responded that several property owners questioned Open Space ownership where the new trail work is being done. He said staff decided to go ahead and have the survey done.

Tom asked Don for an update on the South Boulder Creek berm project. Don said so far they have only done the preliminary work.

Tom asked staff to give an update at the next meeting on the Skunk Canyon Preble's meadow jumping mouse restrictions. Kevin said he spent time with Brad Skowronski regarding trail options on Skunk Canyon. He asked Brad to present his recommendations at a future meeting.

Shelley Dunbar asked for an update on trailhead and dog poop signs. Mike responded that there is \$50,000 in the 2015 budget, and residual funds if needed for that project. He said staff has put signs out in the system, and plans to put out more.

Kevin asked for an update on the Voice and Sight education class attendance. Mark Gershman responded that 16,000 slots have been offered and only 2,300 have attended; classes will be offered into 2015.

Kevin inquired about the trail status near the Highway (Hwy) 93 and Hwy 36 construction. Jim Reeder stated that after the approaches, seeding and artwork are finished on the tunnel, the contractor should open the Community Ditch Trail mid-November. Mark reported that the Hwy 36 project will begin on Nov. 17, closing the South Boulder Creek access.

Molly relayed a concern from the lessee at Boulder Valley Ranch that poop bags being left on the trails and in the irrigation ditches are killing the calves that have eaten them. The lessee also had concerns regarding the need for crusher fines in the barns to eliminate the horses standing in mud. Jim Reeder will talk to him about possible solutions. Frances added that she had received complaints from the equestrians regarding the cattle grates and gate issues. Kevin suggested that the gates be locked open when there are no cattle grazing, and use signage when the gates need to be closed. Mike commented that perhaps staff could establish that request as future protocol.

Mike encouraged the Board members who have not yet attended a Voice and Sight class to consider going. Mike also mentioned that there are a few overarching issues, such as off-trail and night time use that will go before council in 2015.

Tom said he would like to have a conversation about the Joder property at the next meeting.

#### **AGENDA ITEM 5 – 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 OSMP system.\***

Todd Doherty, Water Resources Administrator, gave a presentation to the Board requesting a letter of support for GOCO's Stewardship and Long-Term Sustainability (category of the Conservation Excellence program) grant.

#### **Public Comment**

None

### **Return to the Board**

Molly asked if there was a provision in the grant that would give a monetary value to the water portfolio. Todd responded that it does not.

### **Motion**

**Shelley Dunbar moved 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. Frances Hartogh seconded. This motion passed unanimously.**

### **AGENDA ITEM 7 – 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. \***

Mike Patton, Director, Open Space and Mountain Parks, gave a presentation on a possible transfer of city land. Because there is 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.

Frances asked if the Transportation Department would manage the proposed pieces of land for transportation purposes. Mike said yes, this is why the disposal would occur. Molly said the disposal is good because it allows time for the public to provide input; not going through this process, which is allowed for by Section 177 of the Charter, would be unfair.

### **Public Comment**

Raymond Bridge, PLAN-Boulder County, strongly supports the disposal of these properties. He urged the Board to emphasize that a disposal can only happen when following the provisions of the Open Space Charter.

Allyn Feinberg, Boulder, said this has come up previously and has the potential to come up again in the future. The Charter was amended to include these key provisions to protect Open Space. The disposal process is necessary for the protection of Open Space. She asked the Board to send a clear message to council that a disposal has to conform to the Charter and there is no such thing as a transfer among departments.

Gwen Dooley, Boulder, said she was the OSBT chairperson when the amendments to this Charter were made. This has been strictly followed, and for the City Attorney's Office to go against this is a big disservice to the community. She said the word transfer should be eliminated and this situation should only be referred to as "disposal."

Edie Stevens, Friends of Boulder Open Space (FOBOS), said they support the staff proposal. She said they disagree with the city attorney's assertion that the transfer to another city department would not be a disposal. Following this opinion would set a dangerous precedent weakening the integrity of Open Space. Land was purchased with sales and use taxes dedicated for Open Space. She urges the Board to follow provisions of 177 regarding this transfer.

### **Return to the Board**

Tom pointed out that when the Board last spoke about the South Boulder Creek berm disposal, it was made clear that even though it was a disposal to another city department, it should follow the Charter provisions of 177. He said he is unsure why this process should be any different. Frances agreed that this

should be treated as a disposal. Mike said Open Space land is defined by the Charter and the disposal gets rid of any ambiguity; they should not have Open Space land managed by another department.

Kevin said these are a series of disconnected paved paths and it makes sense to get rid of them. Molly said it adds up to a lot of Open Space that is proposed, and they are not necessarily small parcels. She said she appreciates that Open Space wants to alleviate maintenance responsibilities of them, but is not convinced that this many parcels being disposed of at the same time is a good idea. Frances added that her initial intention was to vote in agreement, but she sided with Molly after hearing her argument against the proposal.

**Motion**

**Frances Hartogh moved the Open Space Board of Trustees to make the following statement to City Council: the Board maintains that conveying or otherwise transferring management responsibilities for any parcel of Open Space land, including those containing paved multi-use paths, to any other department of the city constitutes a disposal of Open Space land, which is subject to all applicable city Charter provisions including without limitations Section 177. Molly Davis seconded. This motion passed unanimously.**

**Shelley Dunbar moved the Open Space Board of Trustees approve the disposal of Open Space land consisting of the parcels identified in Attachment A, consisting of 11 small non-contiguous, paved parcels, which primarily serve a non-Open Space purpose, to the City of Boulder Public Works Department. This disposal is at no cost. The compensation to the Open Space and Mountain Parks Department will consist of the cost savings of having no management or maintenance of those parcels. Kevin Bracy Knight seconded. This motion passed three to two; Molly Davis and Frances Hartogh dissented.**

ADJOURNMENT – The meeting adjourned at 9:00 p.m.

These draft minutes were prepared by Alyssa Frideres.

## MEMORANDUM

TO: Open Space Board of Trustees

FROM: Michael D. Patton, Director, Open Space and Mountain Parks

DATE: November 7, 2014

SUBJECT: City Council retreat questions for Boards and Commissions for 2015

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The city clerk has requested input from city Boards and Commissions to help inform council goals for 2015. The current (2014) work plan is attached for reference. The questions to be addressed are:

- What are your top priorities within the framework of the council work plan adopted at the last City Council retreat?
- What would you like to see done that would further advance the council goals?
- How can your Board specifically help reach the council goals?
- Are there city policies that need to be addressed that would enable your Board to function at a higher level?
- Are there other items that council should address in the coming year?

An addendum will be available on Dec. 16 that will include updates to the 2015 work plan. Your input will be summarized and sent to the city clerk by the Dec. 30 deadline.

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2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Comprehensive Housing Strategy	Council	Briefing - with other related efforts, workplan	SS - objectives, recommended early action items	Briefing	Direction on policy options	Adopt strategy and action plan			
	Staff Activities	Housing choice analysis; needs assessment; best practices; trends data; workplan	Opportunity site inventory; potential tools with "bang for buck" analysis	Develop policy options and recommendations; stakeholder engagement					
North Boulder	Council	IP - update and preliminary policy choices	Briefing - options and feedback	Update and direction					
	Staff Activities	Public meeting with options	Preferred options and refined action plan	Action plan					
East Arapahoe/Sustainable Streets and Centers	Council		Briefing - issues, scope, and feedback	SS - preferred scenarios, draft plan, and action plan	Plan "Lite" - council action	Next Corridor - 30th St or Colorado			
	Staff Activities	Joint East Arapahoe workshop to "test" planning workshop	East Arapahoe scope of work, public workshop, scenario modeling, character definition	Scenario refinement and recommendations	Develop East Arapahoe action plan				
Resilience	Council		Briefing - scope agenda		SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
	Staff Activities	Agenda setting workshop 4/28	Hire Asst. City Manager, begin strategy development	Scope strategy components	Scoping	Resilience work	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
Boulder Valley Comprehensive Plan	Council				SS - scoping session	SS	Direction or IP	Direction or IP	Direction or IP
	Staff Activities				Scoping analysis and partner outreach	Issues identification	Strategy analysis and development	Strategy analysis and development	Strategy analysis and development
Other	Council	Annexation Strategy - Direction (options and feedback)	Usable open space - Code Change	Economic Sustainability Strategy implementation - Code Change					
		Density/ROW Dedication Calculations - Code Change	Parking generation and reduction - Code Change						
		County Assessor valuations for landscape and lighting upgrades - Code Change	Renewable energy sources - Code Change						
	Staff Activities	Annexation Strategy - analyze costs and options	Planning Board for above code changes	Planning Board for above code changes					
Planning Board for above code changes									

HOUSING/LAND USE/PLANNING

		2014				2015				
Project	Council or Staff?	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	
<b>TRANSPORTATION</b>	Transportation Master Plan	Council	IP (includes scope for AMPs)	SS (includes AMPS)	Acceptance - establish work program and coordination	Continue implementing pilots	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP	Coordination with BVCP
		Staff Activities	Scenario and sensitivity analysis	Joint board workshop, TAB	Develop final update for board recommendation and council acceptance	Implement and coordination with BVCP and Resilience				
	Community EcoPass	Council	Feasibility Study - joint release with County	Rolls into TMP update						
		Staff Activities								
	Regional Transportation	Council	Briefing	Briefing		Briefing		Briefing		Briefing
		Staff Activities								
	Electric Vehicle Parking Ordinance/Energy Services	Council	Council agenda	SS			IP	IP	IP	IP
		Staff Activities								
	Access Management and Parking Strategies	Council	Scope	SS - Guiding principles, work program and process (includes TMP update)	Round 1 Code Changes - Auto and parking planning, zoning regs, EV charging stations	Update - Work plan and policy issues	Long Term Round 2 - Parking code changes and other policy issues	Council endorsement of ongoing work plan		
		Staff Activities	Finalize work program	Short term parking code regulation changes	Long term parking code changes	Long term parking code changes	Additional workplan items and public process tbd	Finalize document		
TDM tool kit development for TMP integration			Long term parking code regulation changes	Additional workplan items tbd	Additional workplan items and public process tbd					
Short term parking code ordinance changes			Public outreach and joint board meeting							
Research/best practices			Additional workplan items tbd							
Develop communications strategy										

<b>ADD'L HOUS/PLAN/TRANS</b>	Comp. Financial Strategy/Capital Bond	Council	Direction	SS	SS - finalize ballot?	Ballot?			
		Staff							
	Cap. Bond 1 Implement.	Staff		Construction			85% complete		100% Complete
	Flood Recovery	Staff		Repairs and FEMA Reimbursement	FHWA/FEMA work	FHWA/FEMA work	Building Better Boulder		Building Better Boulder
	Boulder Junction Phase 1 Implementation	Staff			South side of Pearl opens	Ongoing redevelopment coordination		Goose Creek Bridge opens	Depot Square opens
	Boulder Junction Phase 2 - City owned site	Staff		Coordination	Coordination		Coordination		
	Yards mobilized to move for Pollard option	Staff		Grading, prairie dogs, moving	Final prep			Yards moves continue	
	Safe Routes to School	Staff			Public process to prioritize projects		Application		
Implement Transpo.Tax	Staff		Expand maintenance, hire						

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Homelessness/Human Services	Council Items	Shelter/ Funding: Update on position and relationship with Boulder Shelter; Shelter funding and issues update and other funders.	SS - Human Services Strategy Update and Homeless Action Plan (including funding priorities and partnerships )	IP - Homelessness Issues	SS - Human Services Strategy Update and Homeless Action Plan (including funding and service priorities )				
				Regional Planning update/services and housing					
				2014 Point in Time Report					
				SS - Services and Regional coordination update	IP - Services and Regional coordination	IP - Services and Regional	SS - Services and Regional coordination	SS - Services and Regional	IP - Services and Regional
	Staff Activities	Facilitate monthly Boulder Homeless Planning Group re:	HS Strategy Update and Homeless Action Plan Update	HS Strategy Update and Homeless Action Plan -					
		Convene regional meeting with Denver/Boulder/MDHI							
County Ten Year Plan meeting with focus on meeting housing		County Ten Year Plan meeting with focus on meeting housing							
Neighborhood/Park Events and Other Events	Council Items	GOCO grant application		GOCO grant acceptance					
					SS - Special Events with Street Closures and Block Party Permitting				
	Staff Activities	Review current PR permits and developm pilot program	Conduct pilot neighborhood event (link with Hill and GOCO school yard grant)	Conduct pilot neighborhood event	Review neighborhood park planning and event pilot success and plan schedule for 2015	Finalize nneighborhood event schedule for 2015	Conduct neighborhood events	Conduct neighborhood events	Review pilot program and propose permit changes required to make improvements
		Link with park planning outreach	Summer recreation programs - arts, music, health, wellness	Continue summer art series and volunteer events					
		GOCO school yard grant	Submit GOCO grant	GOCO grant award - start civic area community park					
			Review and analysis of existing special event permitting	Develop recommendations					
Arts	Council Items		SS - Library & Arts, including Community Cultural Plan				Adoption of Community Cultural Plan		
	Staff Activities		Work with new director						

LIVABILITY

2014

2015

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
Code Enforcement	Council Items	SS	SS (includes Social Issues Strategy information)						
	Staff Activities								
University Hill	Council Items	IP - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership	Update - 14th St Public/Private Partnership					
		Bears/Trash							
	Staff Activities		SS - Hill Reinvestment Strategy	Update - Hill Reinvestment Strategy					
		14th St - Hill Alt. Mode survey	14th St - Finalize analysis and develop recommendation to proceed with the Global Agreement						
		14th St - Finalize LOI							
		14th St - Financial Analysis							
		14th St - Additional access analysis							
		14th St - Board outreach							
		Pilot Parklet Competition	Parklet Implementation						
		Outreach to CU and stakeholders for support of Reinvestment Strategy	Fox Theatre mural by CU students	start pilot RSD program (to run through 2016)					
Recommendation for staffing Strategy implementation and prelim. analysis of future org structure options	Hire a fixed term Hill Coordinator								
Civic Area	Council Items					SS - Park Program and Improvements			
	Staff Activities	Civic Activity Team established	Coordinate music in park series		Review summer series success and revise for 2015	Prepare first phase of park improvements for 2015	Conduct adult fitness and health classes	Conduct visitor event at civic area around art installations	
		Hire Civic Area staff for P&R	Add seasonal park staff for outdoor education and orientation		Expand Ready to Work crew	Revise summer programs and plan for 2015	Install temporary adult fitness playground	Coordinate horticulture gardens with Farmers' Market event	
		Prepare GOCO grant for nature play and park planning	Conduct volunteer event around upgrades to Peace Garden and edible plant exhibit		Complete park planning outreach	Conduct art competition for summer installation	Install south side nature play area		
		Work with Park Foundation to develop plan for art and entertainment	Coordinate with CU for partnership with GUB and Civic Area park plan		Develop 1% for Arts demonstration project in partnership with foundations and non-profits		Expand seasonal staffing and horticulture/edible garden displays		

LIVABILITY

Project	Council or Staff?	2014				2015			
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
LOCAL FOOD	Civic Area	Council Items	IP - update on implementation		SS - catalyst projects				
		Staff Activities							
	Ag Plan	Council Items	IP				Acceptance		
		Staff Activities							
	Other or not categorized	Council Items							
		Staff Activities	CU/BVSD partnership for neighborhood garden	Form cross-dept team	Develop work plan to achieve council vision				
Burk Park/Horizon School playground			Housing links with YSI programs and local gardening pilot						
	Staff Activities	Design guidelines for edible landscape in local parks							

CLIMATE AND ENERGY	Zero Waste Master Plan	Council Items	IP	SS - options and feedback		Acceptance and action plan		Implementation - commercial focus		
		Staff Activities	Stakeholder input on options and rulemaking on curbside compost		Public feedback on strategies	Draft plan and action plan for public review		Implementation - program enhancements and ordinance development		
	Municipalization	Council Items		SS - workplan	Briefing - energy services	Briefing - energy services	Update - energy services	Update - energy services	Update - energy services	Update - energy services
				SS - energy services						
	Staff Activities		Xcel/city task force; refine recommendations							
		Climate Commitment	Council Items		Briefing - framework, preliminary goals/targets, strategy development	SS - goals/targets, feedback on strategy scenarios, draft document	Approval			
	Staff Activities		Working groups meet	Scenario development; GHG inventory complete	Strategy formulation; city organization initiative launched		Launch action plan			
	Valmont Butte	Council Items			SS					
		Staff Activities								

		2014				2015			
Project	Council or Staff?	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
<b>OPEN SPACE</b>	Charter Issues	Council Items			Address disposition process and use of Realization Point for pro bike race				
		Staff Activities							
	Highway 93 Underpass	Council Items							
		Staff Activities			In process				
	Eldo to Walker Ranch	Council Items							
		Staff Activities	City/County review of contractor proposals for potential mountain bike connection	Routes - weather dependent					
	IBM Connector	Council Items							
		Staff Activities		City/County requirement complete and await railroad to replace bridge					
	Trailhead as part of transportation system	Council Items							
		Staff Activities			status update				
	Other or not categorized	Council Items							
		Staff Activities			additional signage				

Project	Council or Staff?	2014				2015					
		1st Quarter	2nd Quarter	3rd Quarter	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter		
OTHER	Emerald Ash Borer (EAB)	Council	IP Develop preliminary management plan	Implement pilot plan	Monitoring	Evaluate long term forest management plan and EAB strategy	Management plan and response	Response	EAB	EAB	
	Civic Use Pad	Council	SS - Public/private partnership	Approval of MOU with St. Julien Partners	Update on negotiations with St. Julien Partners						
	Human Services Strategy	Council		SS		SS		Public hearing			
	Various	Council	IGA with CDOT/County for US 36 bikeway maintenance	Pilot dog waste composting project - Valmont and OSMP possible site	Transportation code changes for AMPS	Smoking ban - public hearing					
			IGA for bikeway maintenance/ US 36 enhancements	CEAP call up for Baseline Underpass east of Broadway	Comprehensive Annual Financial Report						
			Old Pearl Street ROW vacation	DRCOG TIP Priorities for city applications	Appointment of independent auditor						
Transportation code changes - bike parking, TDM, etc.			Mobile food vehicles - ordinance change to expand podding in downtown	Update on investment policies - action							
NPP - zone expansions and removal				Modification of construction use tax filing - IP then action							
				Pearl Street Mall regulations - code changes							

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# 2-YEAR DESIRED Outcomes & Tasks



## Climate Change

- Develop clear expectations & timelines for energy efficiency in commercial/industrial buildings within 2 years.
- Zero Waste Management Update
  - Ways to significantly increase comm'l
  - Explore anaerobic digester, C&D, higher landfill tipping fees.
- Clarify what a uni utility can do (goals, regs)
  - Investigate efficient streetlights
  - Ordinance: allow only electric vehicles to park at charging stations.
- Climate Action Plan
  - Improve climate metrics so they're relative to results with other alternatives & region
  - Set timeline for achieving milestones for 80% reduction in emissions by 2050
- Greater leadership role in effecting statewide & national change (staff & council)

## Open Space

- Resolve charter interpretations - e.g., passive/active recreation vis-a-vis Flagstaff, E bikes on multi-use paths.
- Building regional trails
- Overarching policy issues: Carrying capacity; night time use; on/off road trail use; temporal restrictions
- Enforcement: homeless camping, user-group conflicts



## Local Food

- Develop local Food Policy
- Establish cross-department team
- Appoint staff person to address:
  - Locations + Scale
  - Charter implications + Partnerships
  - City procurement + Infrastructure required
  - Farmers' markets, incl. + food justice/access satellites
  - Housing farmers on + Edible landscapes land
  - Keep doing the good things we're doing

## Economy & Budget

- Economic Vitality
  - Explore ways to partner w/ Chamber
  - Innovation Blueprint
  - Consider rejoining Chamber if non-political & appropriate
- Budget
  - Consider capital bond for flood & civic center projects
  - Consider how to close funding gap, to include new tax revenue sources
  - Council role in budget process
    - Better understand funding of ext. groups
    - Availability of discretionary funding

## Livability

- Code enforcement
  - Increase enforcement immediately, to address - Trash on Hill (bear issue)
  - Transient issue on municipal campus
  - Study session w/ Staff about other areas of code enforcement & how to better support - e.g. over-occupancy on Hill
- Other
  - Smoking ban
  - Chautauqua lease - Council input on competing demands
  - Make it easier to hold block parties/events in parks

## Housing / Land Use Planning

- As part of Comp Plan Update, map potential job & residential development, get data on trends for commercial/industrial SF, take broader look at past updates
- Broad-minded opportunity-site inventory aimed at housing - evaluate suitability of current zoning
- Better direct residential & commercial development to relate to transportation & climate goals
  - Pattern books, "Area Plan Lite"
  - Anticipate redevelopment in key areas
- Integrate housing into everything we do
  - Permanent affordability at all levels
  - Goal: Boulder workers can afford to live in Boulder
  - Lots of public engagement ala Civic Center Plan
  - Look at smaller units to increase density w/o bulk
  - Engage University early on in process
- Revise ordinances for OADU/ADUs/increased occupancy limitations/co-ops & consider pilot programs in specific neighborhoods, as needed. Include VRSPs.
- Annexations in targeted areas of city
- Residential tree replacement
- Engage DPAB in revising land use guidelines

## University Hill

- Consider short-term professional leader w/ experience in economic development, to coordinate approach
- Explore:
  - Tools City has to promote innovative businesses on Hill
  - Appropriate mix of parking and alternative modes
  - Encouraging arts & beautification, including programming 15th st.
  - Ensuring we have appropriate transition & gateway zones to the Hill
  - Including economic vitality assessment, if needed
- Emphasize code enforcement:
  - Beginning year of enforcement
  - Bears & trash; litter
  - Expanding licensing to capture parents
  - Rentals & licensing



## Homelessness/Human Services

- Human Services
  - Review/refine how we fund programs - review redundancy, effectiveness, types of services, what incentives our services create
  - Review how Shelter is operated, get more transitional housing
  - Consider additional support for Ready to Work
- Get on agenda for Consortium of Cities
- Transients
  - Focus on enforcement to address bad behaviors in municipal campus
  - Get on agenda for Consortium of Cities



## Arts

- Develop options to invest 1% in art
- Support for & designation of viable districts (NoBo, Uni Hill, 15th st)
- Support & encourage new leadership department: completion of Cultural Plan
- Library: Meet w/ new Director, sup him/her in library remodel & trouble shooting, as well as how system is e

## Transportation

- Proceed with Transportation Master Plan, with deadlines
  - Finish feasibility study for community-wide EcoPass (or similar)
- Continue Parking Management Study
  - Include parking as tool to achieve multi-modal and other transportation goals while maintaining economic vitality
- Continue to be regional leaders in identifying State & regional transportation funding, especially regarding equitable funding for Hwy 36 corridor & NW Region
- Continue to be creative in pilot projects to increase bike safety (e.g., more dedicated bike lanes)



## General

- Make sure public process on flood occurs as part of Resiliency effort
- Make better use of Boards & CoI





**CITY OF BOULDER  
OPEN SPACE BOARD OF TRUSTEES AGENDA ITEM**

**MEETING DATE: November 12, 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 Rd.

**PRESENTER/S**

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

**EXECUTIVE SUMMARY**

The Casden property at 5097 Flagstaff Rd. 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 Rd., as written in Attachment F. 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 Nov. 9, 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. A small part

of the proposed greenhouse will be visible from a short section of 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.**

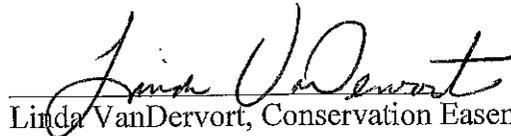
OSMP staff believes the conservation values on the Casden property will be enhanced with the amendment for the reasons discussed above. The timing seemed to be appropriate to work with Mr. Casden because he needed OSMP permission before he could get approval from the county to build a greenhouse. Mr. 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:

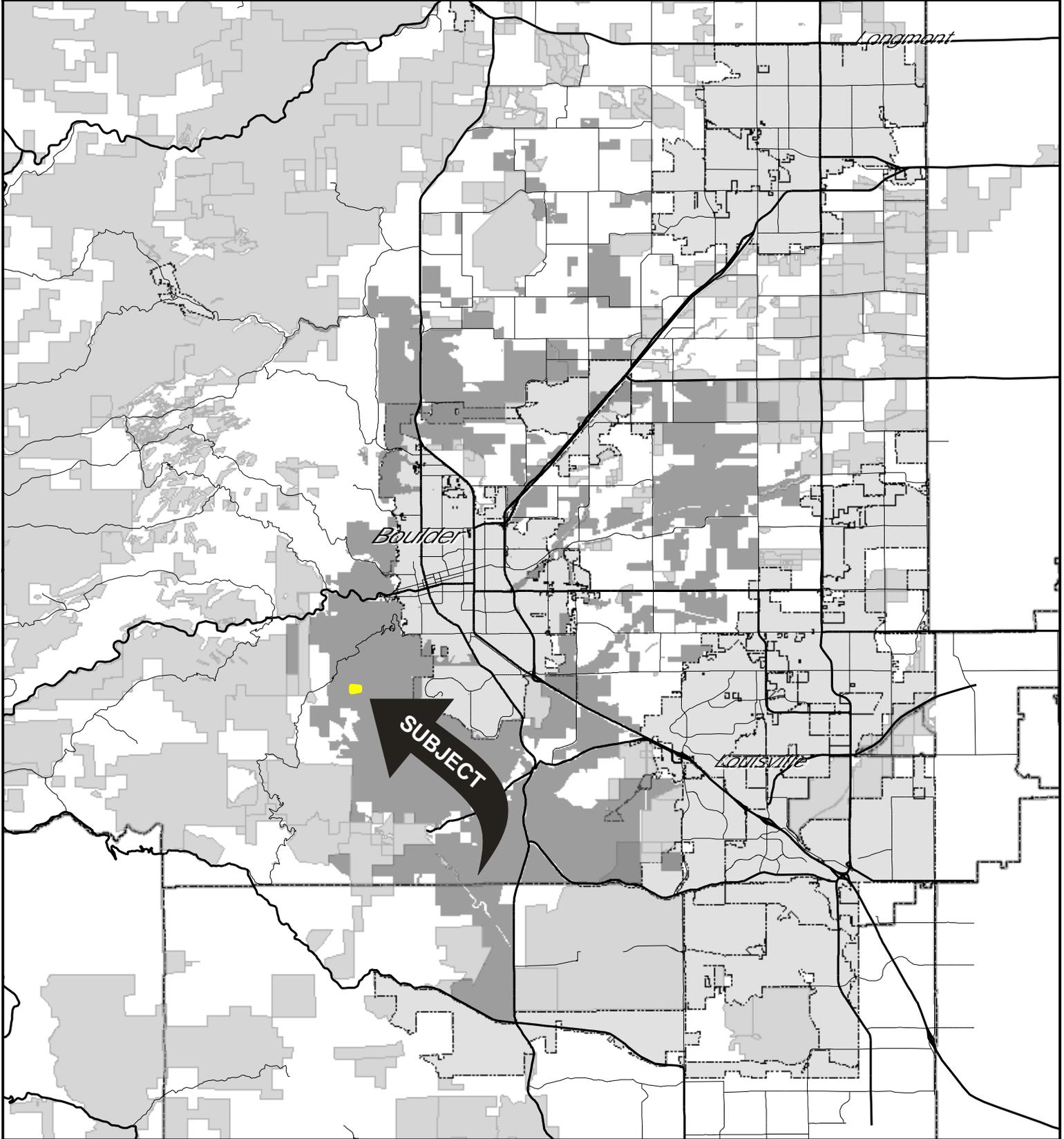
  
Michael D. Patton, Director

  
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**

# City of Boulder Open Space & Mountain Parks VICINITY MAP - Casden CE



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-  Subject Property
-  City of Boulder OSMP
-  Other Public Lands



AGENDA ITEM 5 PGE 5

Path: \\osmpm\api\data\MapFiles\Property\Casden\VICINITY-Casden.mxd

# CASDEN CONSERVATION EASEMENT



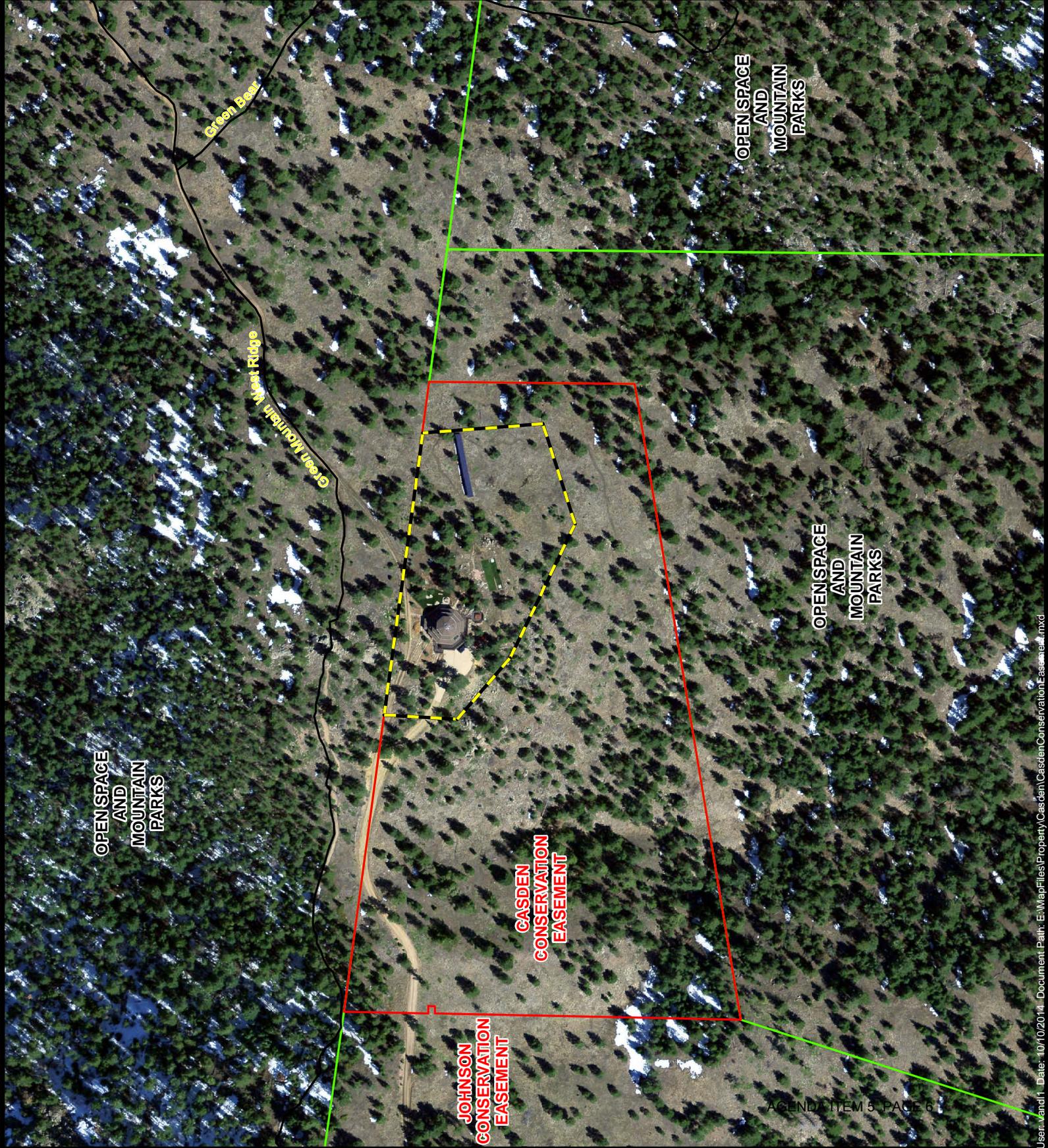
## PROPOSED BUILDING ENVELOPE

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



Based on 2012 Boulder  
County Digital Aerial Photos

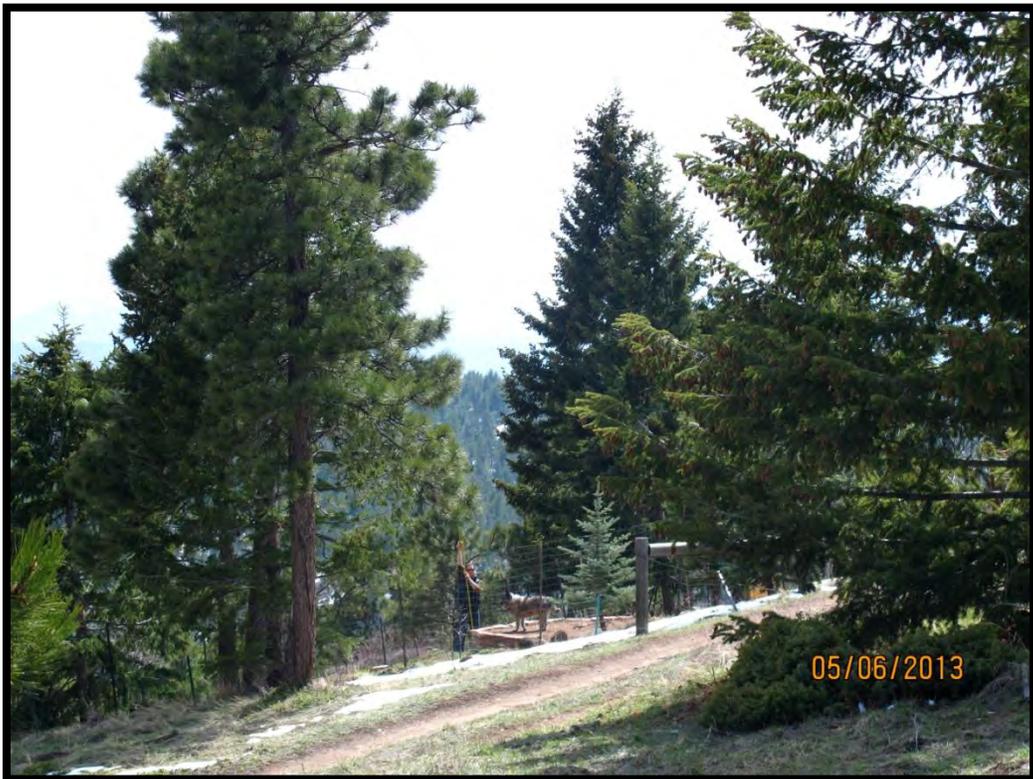
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**Casden property near the Green Mountain West Ridge Trail.**





CONSERVATION EASEMENT

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

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

6-1

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.

- 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. *b-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. Notwithstanding 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

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.
- 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. 63
- 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.



- 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. 6. 4/
- 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



EXHIBIT "A"

LEGAL DESCRIPTION

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.

6-6

## 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.

The terms of this Amended Conservation 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.
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. 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. Notwithstanding 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. 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 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.

- 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

and one ground-mounted solar panel array of approximately 850 square feet. Exhibit B shows the location of these structures. Grantor may not construct, locate, place or install on the Property additional structures of any kind, temporary or permanent, without the prior written consent of the City; except that, Grantor, as owner of the Property, reserves the following rights:

- 18.1. Existing Structures. Grantor may maintain and repair the existing structures listed above only in accordance with this Amended Conservation Easement. Grantor may replace and remodel the existing structures subject to Paragraphs 18.1 through 0.
- 18.2. Single-family Residence and Carport. Subject to Paragraph 18.5, in the respective existing footprint locations shown on Exhibit B, Grantor may replace and remodel the existing carport and may replace and remodel the existing single-family residence.
- 18.3. Greenhouse. Grantor may construct and use one greenhouse in the location shown on Exhibit B; provided, Grantor may not use the greenhouse for growing marijuana. The greenhouse shall not exceed 1500 total square feet and shall not exceed a structure height of 20 feet. Subject to Paragraph 18.5, Grantor may maintain, repair, replace and remodel the greenhouse only in accordance with this Amended Conservation Easement.
- 18.4. Landscaping Improvements. Grantor may construct, maintain, repair, replace and remodel residential landscaping improvements within the building envelope including, but not limited to, sidewalks, paths, patios and fire pits. None of these improvements may exceed 12 inches above grade. This paragraph does not permit recreational structures, such as a swimming pool or tennis court. Grantor may construct and maintain a dirt foot path, not to exceed 18 inches wide, outside of the building envelope.
- 18.5. Force Majeure. Subject to Boulder County limitations and requirements, if a Force Majeure requires replacement or Major Remodeling, the structures may be replaced or remodeled within the building envelope as follows:
  - 18.5.1. a single-family residence, not exceeding 6254 square feet of floor area;
  - 18.5.2. a carport, not exceeding 470 square feet;
  - 18.5.3. a ground-mounted solar panel array not exceeding 850 square feet; and
  - 18.5.4. a greenhouse, subject to the square-foot and height restrictions stated in this Amended Conservation Easement.

“Force Majeure” means an event, contingency or cause beyond the control and without the fault of Grantor or Grantee, including, fire, flood, earthquake, lightning, unusually severe weather or acts of God. “Major Remodeling” means demolition, removal or reconstruction of 50% or more

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

limited to, restraining orders, temporary and permanent injunctions, and damages for destruction or injury of the Property and the injured party's interest herein.

27. 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:

If intended for Grantor:

Graham Casden  
5097 Flagstaff Road  
Boulder, CO 80302

If intended for City:

City Manager  
c/o Director of Open Space and Mountain Parks Department  
P.O. Box 791  
Boulder, CO 80306

28. The terms of this Amended 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.
29. Grantor and Grantee covenant that they will defend and maintain the validity of the Amended Conservation Easement granted hereby.
30. This instrument and the attached exhibits contain the entire agreement between the parties relating to the Amended Conservation Easement on the Property, and may be modified only by an instrument in writing executed by all parties.
31. 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.

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: \_\_\_\_\_  
Jane Brautigam  
City Manager

ATTEST:

Approved as to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
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

GRANTOR:  
Graham Casden 2009 Trust

By: \_\_\_\_\_  
Graham Casden, Trustee

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014  
by Graham Casden, Trustee of the Graham Casden 2009 Trust.

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;

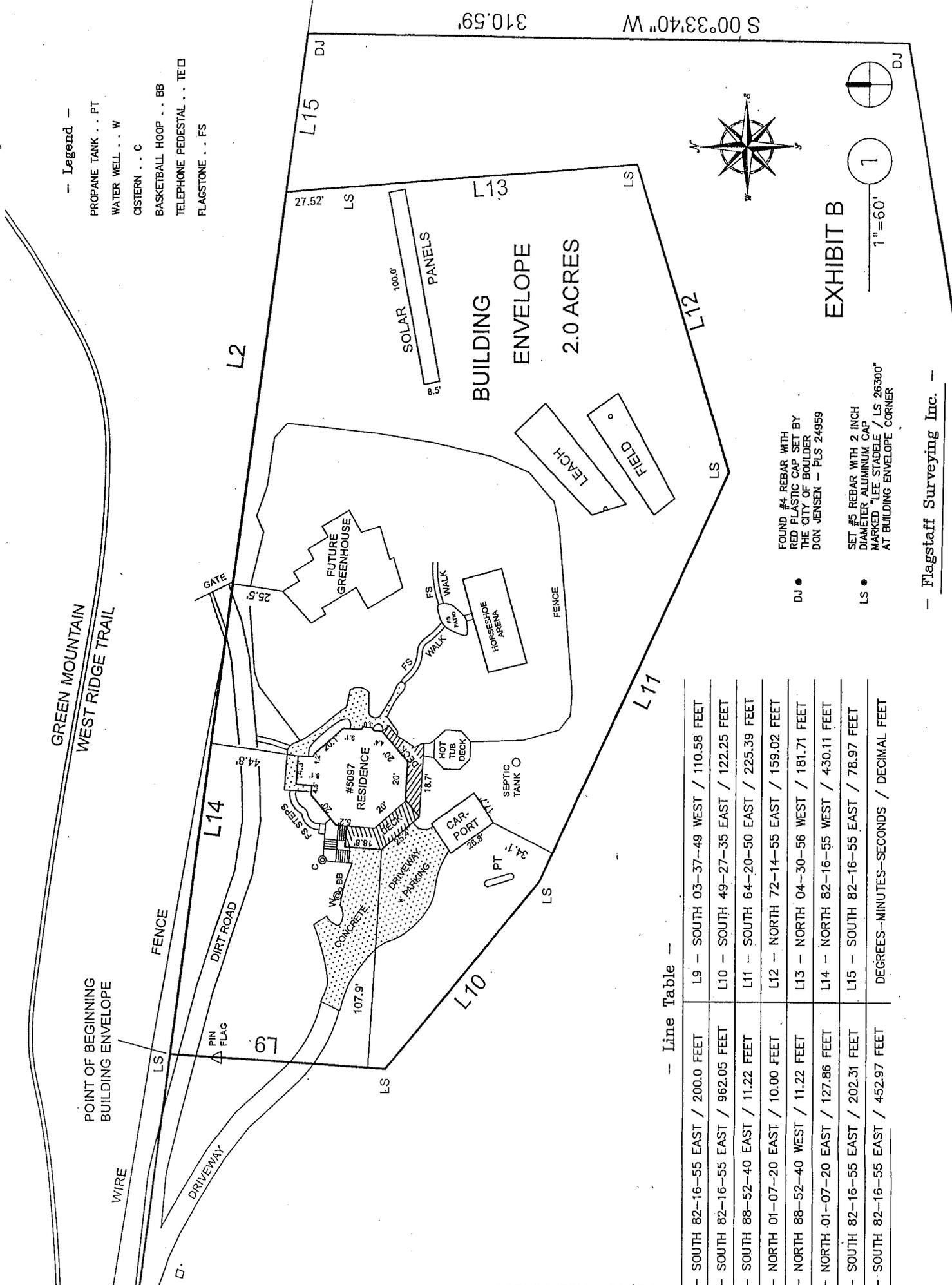
Thence North 01°07'20" East along said East line, 462.47 feet;

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.



- Legend —
- PROPAANE TANK . . . PT
  - WATER WELL . . . W
  - CISTERN . . . C
  - BASKETBALL HOOP . . . BB
  - TELEPHONE PEDESTAL . . . TEO
  - FLAGSTONE . . . FS

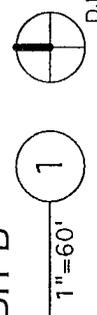
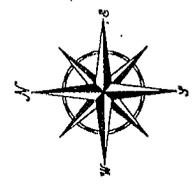


EXHIBIT B

FOUND #4 REBAR WITH RED PLASTIC CAP SET BY THE CITY OF BOULDER DON JENSEN - PLS 24959

SET #5 REBAR WITH 2 INCH DIAMETER ALUMINUM CAP MARKED "LEE STADELE / LS 26300" AT BUILDING ENVELOPE CORNER

DJ ●

LS ●

— Flagstaff Surveying Inc. —

— Line Table —

L1	— SOUTH 82-16-55 EAST / 200.0 FEET	L9	— SOUTH 03-37-49 WEST / 110.58 FEET
L2	— SOUTH 82-16-55 EAST / 962.05 FEET	L10	— SOUTH 49-27-35 EAST / 122.25 FEET
L3	— SOUTH 88-52-40 EAST / 11.22 FEET	L11	— SOUTH 64-20-50 EAST / 225.39 FEET
L4	— NORTH 01-07-20 EAST / 10.00 FEET	L12	— NORTH 72-14-55 EAST / 159.02 FEET
L5	— NORTH 88-52-40 WEST / 11.22 FEET	L13	— NORTH 04-30-56 WEST / 181.71 FEET
L6	— NORTH 01-07-20 EAST / 127.86 FEET	L14	— NORTH 82-16-55 WEST / 430.11 FEET
L7	— SOUTH 82-16-55 EAST / 202.31 FEET	L15	— SOUTH 82-16-55 EAST / 78.97 FEET
L8	— SOUTH 82-16-55 EAST / 452.97 FEET		DEGREES-MINUTES-SECONDS / DECIMAL FEET

## 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<sup>5</sup>

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: November 12, 2014**

**AGENDA TITLE:** Consideration of a motion to approve a conservation easement amendment on the property owned by Epaka Holdings, LLC at 8104 N. 63<sup>rd</sup> St.

**PRESENTER/S**

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

**EXECUTIVE SUMMARY**

The Epaka property at 8104 N. 63<sup>rd</sup> St. (Property) is a 17.85-acre agricultural and residential parcel next to the Imel Open Space and Mountain Parks (OSMP) fee property. Maps of the Property are shown in Attachments A, B and C. The maps refer to the Imel-63<sup>rd</sup> Street Conservation Easement because that is its name in the OSMP system. Photographs of the Property are in Attachment D. On June 1, 2001 the prior owner, Ray C. Imel, Inc., donated a conservation easement on the Property to OSMP as part of a larger transaction in which two other conservation easements were donated to OSMP and in which OSMP and Boulder County jointly purchased approximately 600 acres for \$9,717,000.00. Attachment E is a copy of the original conservation easement. Epaka Holdings, LLC (aka Alice and Karel Starek) purchased the Property from Ray C. Imel, Inc. on April 5, 2012. Soon after their purchase, the Stareks began talking with staff about amending the existing conservation easement. While at the time the easement allowed only “hobby” farming, the Starek’s were interested in operating a commercial organic farm. As a part of their proposal for change, the Stareks were willing to reduce the permitted single family residence maximum size from 8,000 square feet to 4,000 square feet. OSMP staff worked with the CAO and the Stareks to craft an amendment to the 2001 conservation easement that is agreeable to all parties (Shown in Attachment F). In addition to allowing and carefully defining a commercial organic farm on the Property, the details of the farming operation are contained in an Agricultural Management Plan, included in the new agreement. Further, the maximum single-family residence size has been reduced from 8,000 square feet to 4,000 square feet. OSMP staff supports this amendment because it improves the original conservation easement and is a benefit to the

OSMP program. In particular, it supports local organic food production and preserves agricultural operations in Boulder County as well as further restricts development on the Property. 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 a conservation easement amendment on the property owned by Epaka Holdings, LLC at 8104 N. 63<sup>rd</sup> St. and waive the amendment fee.

### **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 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.
- 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 City Council's objective to promote local food production. In addition, this amendment meets the objectives of OSMP Charter Section 176 by preserving agricultural uses and land suitable for agricultural production.

### **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 Nov. 9, 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 OSBT memo dated March 14, 2001 discussed the importance of preserving agricultural uses and lands suitable for agricultural production.

2) **The amendment is consistent with the purpose contained in the conservation easement.**

The conservation easement states that one of its purposes is to preserve the agricultural character of the Property. In addition, the conservation easement states that the Property

has significant agricultural values of importance to the people of the city and county of Boulder.

**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.**

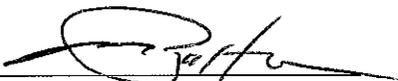
The amended conservation easement reduces the potential development on the Property by lowering the maximum size of the residence from 8,000 square feet to 4,000 square feet. In addition, it carefully limits the agricultural use to organic methods and allows a small-scale organic farm. It also increases OSMP oversight of the farm by including an Agricultural Management Plan.

**4) OSMP staff and OSBT will determine whether or not the conservation values are enhanced.**

OSMP staff believes the conservation values on the Epaka property will be enhanced with the amendment for the reasons discussed above. By lowering the maximum residential square footage it is less likely that this Property will be converted from a local farm to an estate property in the future. The agricultural values for the community are enhanced by allowing a commercial, small-scale, clearly defined organic farm on this Property.

OSMP staff and the CAO have worked together to make sure the above requirements have been satisfied. Now staff is requesting OSBT's approval of the amendment. In addition, staff requests a waiver of the conservation easement amendment fee because the Stareks have had to spend substantial energy and money to clean up the Property after it was purchased. Prior to OSMP securing an interest in the property, it had served the original owners as a long-neglected feedlot and farm junk repository. The clean-up has been a great benefit to OSMP and has enhanced the OSMP value. Also, OSMP staff encouraged the amendment from the beginning.

Submitted by:



Michael D. Patton, Director

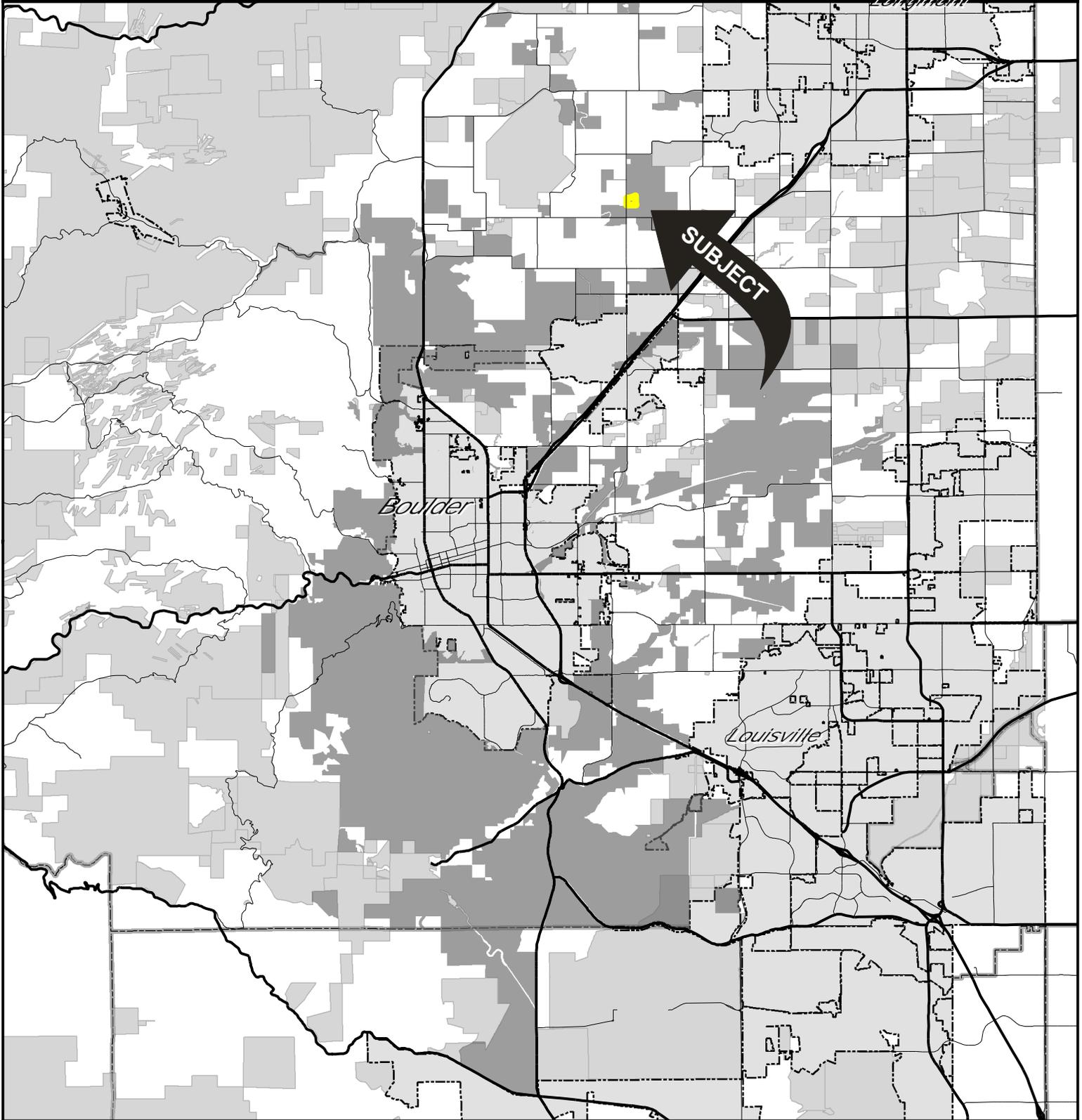


Linda VanDervort, Conservation Easement Specialist

**ATTACHMENTS:**

- A. Vicinity Map**
- B. Inel-63<sup>rd</sup> Street CE (Epaka) Aerial Property Map**
- C. Survey Map of existing buildings**
- D. Photographs of the Epaka property**
- E. Original Conservation Easement**
- F. Amended Conservation Easement**
- G. OSBT Conservation Easement Amendment Policy**

# City of Boulder Open Space & Mountain Parks VICINITY MAP IMEL 63rd Street Conservation Easement

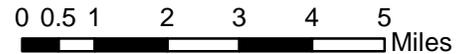


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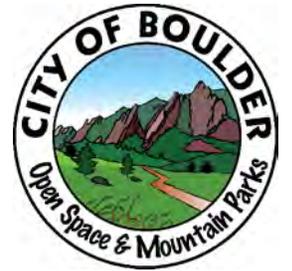
The information depicted is provided as a graphical representation only. While source documents were developed in compliance with National Map Accuracy Standards, the City of Boulder provides no guarantee, express or implied, as to the accuracy and/or completeness of the information contained herein.

-  Subject Property
-  City of Boulder OSMP
-  Other Public Lands



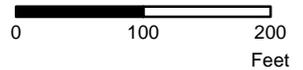
Approximate property boundaries from Boulder

*IMEL 63rd St.  
CONSERVATION  
EASEMENT*



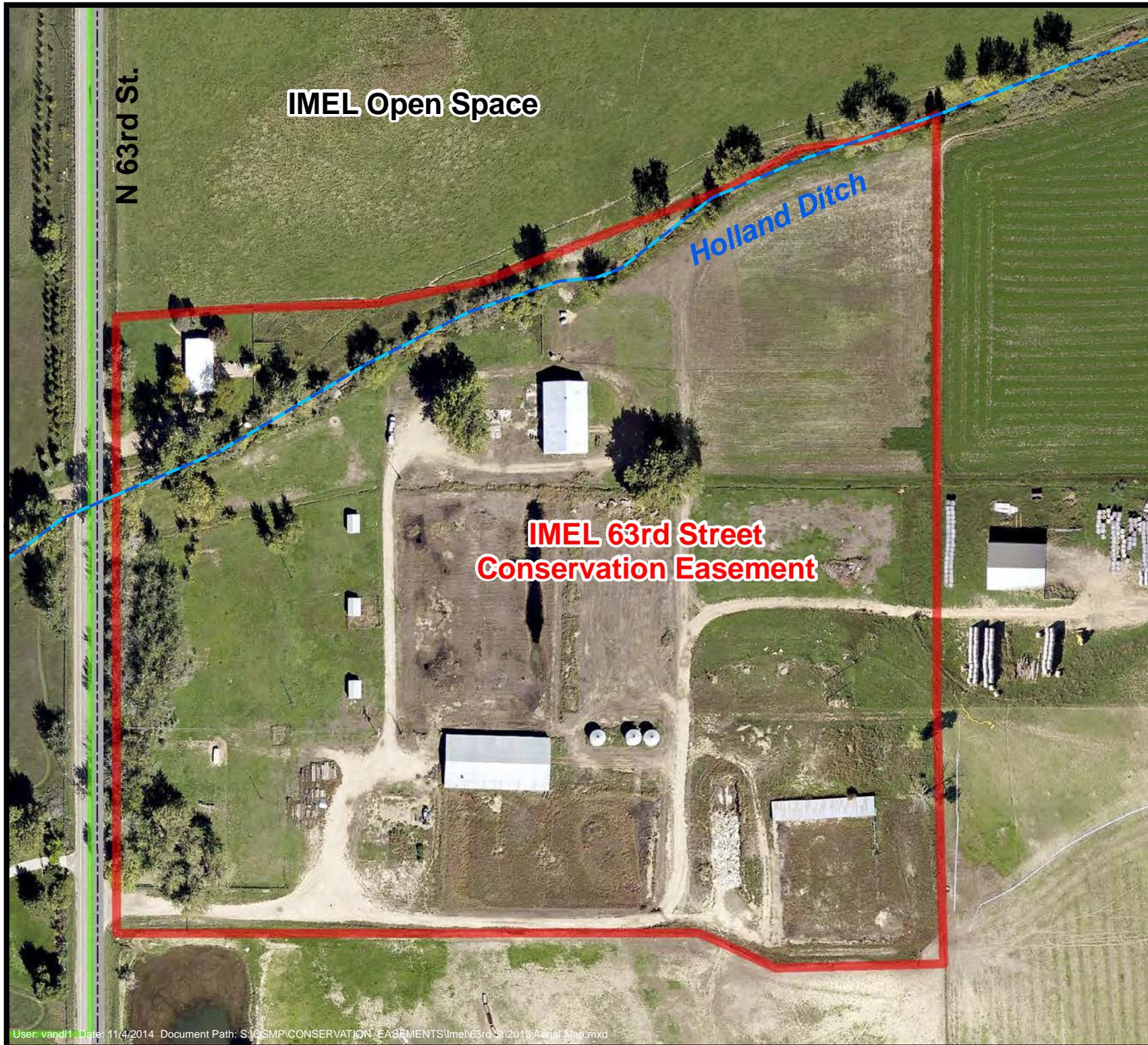
**OSMP Land**

-  Conservation Easement
-  Fee Property



Based on 2013 Boulder County Digital Aerial Photos

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**EPAKA PROPERTY (Imel 63<sup>rd</sup> Street Conservation Easement) - Photographs**





## CONSERVATION EASEMENT WITH RESTRICTIONS

**NOTICE:** GRANTOR AGREES TO GIVE WRITTEN NOTICE TO THE CITY OF BOULDER OF THE TRANSFER OF THE FEE INTEREST OR ANY LEASE EXCEEDING TEN YEARS WITH RESPECT TO THE PROPERTY COVERED BY THIS CONSERVATION EASEMENT PRIOR TO THE DATE OF SUCH TRANSFER OR EXECUTION OF SUCH LEASE. GRANTOR SHALL REQUIRE ANY NEW PURCHASER OR LESSEE UNDER SUCH LEASE TO SIGN THE ACKNOWLEDGMENT ATTACHED HERETO AS EXHIBIT C.

This Conservation Easement with Restrictions ("Conservation Easement") is granted by Ray C. Imel, Inc. ("Grantor"), a Colorado corporation, to the City of Boulder ("City" or "Grantee"), a Colorado home rule city.

WHEREAS, Grantor is the owner of the Property described in Exhibit A attached and incorporated herein by reference (the "Property"), which consists of approximately 17.85 acres of land, together with buildings and other improvements;

WHEREAS, the Grantor also owns those certain Water Rights described in Exhibit B attached and incorporated herein by reference ("Water Rights");

WHEREAS, Grantor and City acknowledge and agree that the Property has significant scenic, open space, agricultural, and ecological values ("Conservation Values") of importance to the people of the City and County of Boulder;

WHEREAS, the Property is located in a priority area for acquisition by the City of Boulder for its Open Space program;

WHEREAS, the State of Colorado has recognized the importance of efforts to preserve land in a natural, scenic, or open condition, and for wildlife habitat and agricultural uses consistent with the protection of open land having undisturbed or restored environmental quality, by the enactment of C.R.S. §§ 38-30.5-101 et. seq;

WHEREAS, Grantor and City desire to preserve and protect the Conservation Values of the Property in perpetuity and to prohibit development on the Property, except as expressly permitted in this Conservation Easement; and

WHEREAS, City is a "qualified conservation organization" as defined by the Internal Revenue Code.

NOW THEREFORE, in consideration of the promises, mutual covenants, terms and conditions herein contained, Grantor hereby voluntarily grants and conveys to the City, and the City hereby voluntarily accepts, a perpetual Conservation Easement in gross, pursuant to C.R.S. §§ 38-30.5-101 et. seq., over and on the Property.

1. **Purpose.** It is the purpose of this Conservation Easement to preserve and protect in perpetuity the wildlife and plant habitat, open space and scenic qualities, and agricultural character of the Property. Grantor and the City intend that this Conservation Easement shall limit the use of the Property to activities consistent with such purpose, as hereinafter provided.

ROB

2. **Baseline Documentation Report.** Within one hundred and twenty (120) days after the date of this Conservation Easement, the City shall prepare a Baseline Documentation Report (“Report”) regarding the Property. This Report will consist of a narrative description of the current features and status of the Property, its specific characteristics, photographs and a description of current uses of the Property. The City will consult with Grantor in its preparation of the Report and shall provide a draft of the Report to Grantor for review and comment before finalizing the Report. The City will be the custodian of the finalized Report, which shall be incorporated herein by reference. The parties agree that the finalized Report will provide an accurate representation of the Property as of the date of the Report and that it is intended to serve as an objective information baseline for purposes of monitoring and enforcing compliance with the terms of this instrument. It is not intended, however, to preclude the use of other evidence of the present condition of the Property.

3. **Rights of the City.**

- A. **Land Preservation.** By the means set forth below, the City shall have the right to preserve and protect the land and the view of and over the Property, and to protect its agricultural, open space and ecological condition.
- B. **Right of Entry.** Upon not less than ten (10) days’ notice and at a time mutually agreed to by the City and the Grantor, the City shall have the right to enter upon the Property in a reasonable manner and at reasonable times to inspect the Property, to enforce any and all rights granted herein, to study and make scientific observations of its ecosystems, and to determine that Grantor’s activities are in compliance with the terms of the Conservation Easement. The City shall also have the right of immediate entry to the Property if such entry is immediately necessary to prevent damage to or the destruction of the Conservation Values protected by the Conservation Easement. In connection with any entry upon the Property, the City shall make reasonable efforts not to damage the Property nor any of the improvements nor personal property located thereon, and reasonable efforts not to interfere with the quiet use and enjoyment of the Property by Grantor or its tenants, invitees, or licensees. The City shall, at its sole expense, promptly repair any damage the City causes to the Property or any improvements or personal property located thereon.
- C. **Enforcement.** The City shall have the right to enjoin any activity on or any use of the Property that is inconsistent with the Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use as set forth in Paragraph 8.
- D. **Right of Approval.** The City shall have the right to review and approve or deny requests from the Grantor for uses neither expressly granted nor specifically prohibited by the Conservation Easement described herein but which may be conducted in a manner consistent with the Conservation Values of the Property. The City shall deny such a request only if the requested use is inconsistent with the Conservation Values of the Property.

- E. Ownership of Development Rights. The City shall own any and all development rights, except as specifically described in Paragraph 4(B) below, now or hereafter associated with the Property. These rights include, without limitation, all rights, however designated, that may be used pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property.
- F. Assignment. This Conservation Easement is transferable, but the City may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold Conservation Easements under C.R.S. §§ 38-30.5-104 or the laws of the United States. As a condition of such transfer, the City shall require that the conservation purpose of this grant continue to be carried out. The City agrees to give written notice to Grantor of an assignment prior to the date of such assignment. The failure of the City to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way; provided, however, that the assignee under such assignment shall not exercise any rights or remedies provided to the City herein until such notice is provided to Grantor.

4. Permitted Uses and Practices. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with the Conservation Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the prior approval of the City. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Conservation Easement:

- A. Current Use. Grantor currently uses the Property for farming and ranching and as a single-family residence. There is one single-family dwelling, numerous farm/ranch outbuildings, including a barn, a mobile home (non-conforming use) and a feedlot on the Property. These buildings may remain and the current uses may continue until the following occur: 1) the Property is sold; and 2) the feedlot and other agricultural uses and buildings are no longer used in conjunction with the adjoining property described in Exhibit D. Should both these conditions occur, then the current uses shall be modified to conform to Paragraphs 4(B) and (C) below. Until then, maintenance, repair, replacement and use of roads and structures on the Property, substantially in their present condition or as reasonably necessary for the current uses, are permitted.
- B. Residence. Subject to Paragraph 4(A) above, Grantor shall have the right to one single-family residence and accessory buildings such as a garage, storage shed and/or barn on the Property. The single-family residence shall be restricted to a maximum structure height of thirty-five (35) feet, and square footage shall be restricted to a maximum of 8,000 square feet. The accessory buildings shall be limited to a combined total of 4,000 square feet. No other buildings are permitted. All construction shall be subject to review and approval by the Boulder County Land Use Department or other entity having jurisdiction at the time. If a new single-family

dwelling is constructed, the current one shall be removed by Grantor. Prior written notice shall be given to the City before any construction is undertaken under this paragraph, except if it is repair and maintenance of the current buildings.

- C. Agricultural Uses. Grantor shall have the right to hay, graze or otherwise raise domestic animals, including but not limited to horses, cattle, goats, sheep, llamas, alpaca and ostrich, for personal or hobby purposes; provided, however, that these activities shall not result in a downward trend in pasture conditions and that the Property shall be maintained in a condition at least equal to its condition as of the date of this Conservation Easement, subject to the effects of weather, drought and other seasonal and climatic changes. Planting, raising and harvesting of agricultural crops are also permitted. The agricultural activities shall not result in the pollution or degradation of any surface or subsurface waters. Use of pesticides to control agricultural pests may only be done after approval by the City.
- D. Utilities. Installation, maintenance, repair, removal and relocation, and replacement of utility mains, lines and underground facilities for the exclusive purpose of providing utility services to the Property are permitted.
- E. Irrigation. Grantor shall have the right to develop and maintain such water resources on the Property as are necessary or convenient for irrigation and the agricultural uses conducted thereon pursuant to the terms hereof; provided, however, that the development and use of such water resources shall be compatible with the purposes of this Conservation Easement to protect and preserve the agricultural and open space values of the Property. Permitted activities shall include installation, maintenance, repair, removal and relocation, and replacement of agricultural irrigation facilities, including ditches, pipes, sprinkler systems and water diversion structures. Currently, the following exist on the Property: HOLLAND DITCH AND EXISTING LATERAL DITCHES.
- 
- F. Recreational Use. Grantor can use the Property for recreational activities, scientific and/or educational activities which are occasional in nature, are limited to Grantor and Grantor's tenants and invitees and in no way interfere with or are detrimental to the Conservation Values of the Property. Hunting is not permitted.
- G. Water and Minerals. Except as such interest is otherwise conveyed to the City by deed, certificates of ownership, or this Conservation Easement, Grantor specifically retains (1) all right, title, and interest in and to the Water Rights, and related interests in, on, under, or appurtenant to the land; and (2) all right, title, and interest to subsurface oil, gas, and other minerals. The following language shall be typed on each Left Hand Ditch share retained by Grantor and used in connection with the Property: "Transfer or lease of this certificate is subject to conditions described in a Conservation Easement with the City of Boulder dated June 8, 2001." The City acknowledges that Grantor owns other water rights that are not subject to the restrictions of this Conservation Easement.

- H. Conveyance of Property. Grantor may convey the entire fee interest in the Property, subject to this Conservation Easement. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instruments by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. In addition, Grantor may convey easements and other interests that affect the Property pursuant to Paragraph 5(D), all of which shall be subject to this Conservation Easement.
- I. Written Notice to City Upon Transfer of Fee or Lease in Excess of 10 Years. GRANTOR AGREES TO GIVE WRITTEN NOTICE TO CITY OF THE TRANSFER OF THE FEE INTEREST OR ANY LEASE EXCEEDING TEN YEARS WITH RESPECT TO THE PROPERTY AND THE WATER RIGHTS PRIOR TO THE DATE OF SUCH TRANSFER. The failure of a Grantor to comply with this notice requirement shall neither invalidate the conveyance nor impair the validity of this Conservation Easement nor limit its enforceability in any way. If Grantor fails to comply with this notice requirement, then any new Purchaser shall nevertheless be bound by the provisions hereof relating to the rights and obligations of the Grantor herein. Grantor shall require any new Purchaser to provide written acknowledgment of this Conservation Easement by signing the acknowledgment attached hereto as Exhibit C and delivering the same to the City.
- J. Restrict Public Access. Grantor may restrict public access to the Property, except for the City's limited right of entry described in Paragraph 3(B). The City shall have no right to grant public access to, on, or over the Property for any purpose, and the City's right of entry described in Paragraph 3(b) shall be limited to the authorized employees and agents of the City entering only for the express purposes set forth herein.
- K. Subsequent Liens on the Property. No provisions of this Conservation Easement should be construed as impairing the ability of the Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subject to this Conservation Easement.
- L. Fencing. Grantor shall have the right to repair or replace existing fences and to construct new fences for purposes of reasonable and customary management of livestock and wildlife and for separation of ownership and uses, and to discourage trespassing.
- M. Other Uses. Grantor retains the right to apply to the City for permission to conduct other uses and activities on the Property which are neither expressly granted nor specifically prohibited by the Conservation Easement but which may be conducted in a manner consistent with the Conservation Values of the Property. The City shall deny such an application only if the requested use is inconsistent with the Conservation Values of the Property.
5. Prohibited Uses and Practices. Grantor shall not use the Property nor allow the Property to be used in a manner inconsistent with the spirit and purposes stated in this

Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

A. No Commercial Uses. Except as provided in Paragraph 4(A), there shall be no commercial or industrial use or structure on the Property, including, but not limited to the following:

- 1) Feed lot;
- 2) Commercial chicken or hog farm;
- 3) Greenhouse;
- 4) Veterinary hospital;
- 5) Junk yard;
- 6) Vehicle or vehicle replacement parts storage area;
- 7) Parking lot;
- 8) Horse, dog, motorcycle, bicycle or automobile race track;
- 9) Golf course; or
- 10) Helicopter or airplane landing area.

Use of the Property for non-agricultural business purposes of any kind, other than the agricultural uses described in Paragraph 4(A) and home occupations as defined by the Boulder County Land Use Code, is prohibited. This Paragraph 5(A) in no way limits Grantor's right to use the Property for personal, non-commercial or non-industrial purposes, such as parking a reasonable number of personal-use vehicles, raising animals or otherwise using the Property in any way consistent herewith.

B. No Subdivision or Transfer of Development Rights. The legal or *de facto* division, subdivision or partitioning of the Property for any purpose is prohibited. In addition, the use, exercise or transfer of development rights on or to the Property, or any portion thereof is prohibited.

C. No Dumping or Changing Topography. There shall be no dumping or storage of ash, trash, junk, rubbish, sawdust, garbage, chemicals, or other unsightly or offensive material. It is acknowledged that there are numerous old farm implements and farm debris currently on the Property. These may stay, but may not increase. Except as necessary for the permitted uses or practices, including but not limited to residential or accessory building construction, changing of the topography through excavation, dredging or filling, or the placing of soil or other substances, material or landfill on the Property is prohibited without prior approval from the City.

D. No Additional Easements. Except for reasonable and customary easements required in connection with construction of permitted structures on the Property and/or to serve the residential uses located on the Property, Grantor shall not allow, dedicate, or convey any easement or rights of way, including without limitation, any private, municipal, county or state roads, pipelines, bikeways or pedestrian access, without prior approval of the City. There shall be no construction of any additional road to serve the residence described in Paragraph 4(B) without prior approval of the City. Grantor shall be responsible for the maintenance and repair of that portion of the existing access road located on the Property.

- E. No Additional Structures. The construction, reconstruction or replacement of any structure, building or other improvements of any kind is prohibited except as provided in Paragraph 4(A) and (B) hereof.
- F. Water Rights. Grantor shall retain the Water Rights described in Exhibit B and shall not, without the prior approval of the City, transfer, encumber, sell, lease, or otherwise separate such rights from the Property or allow them to lapse due to nonuse or for any other reasons. The City acknowledges that Grantor owns other water rights that are not subject to the restrictions set forth in this Conservation Easement.
- G. No Mining. Except as necessary for the permitted uses or practices, including but not limited to residential or accessory building construction, filling, excavating, dredging, grading, quarrying, drilling, mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited without the prior approval of the City.
- H. No Annexation. Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the consent of the City.
- I. No Tree Cutting. No trees may be cut except under the following circumstances:
- 1) To control insects and disease;
  - 2) To clear for fire control;
  - 3) To prevent serious risk of personal injury and property damage;
  - 4) To control invasive non-native species; or
  - 5) After City's prior written approval, to clear for permitted residential or accessory building construction or for other permitted uses or practices.
- J. Existing Water Features. Grantor shall not alter, impair, modify or adversely affect any existing ponds, wetlands, stream channels or other water features currently located on the Property without prior written permission from the City.
- K. Other Prohibited Uses. The following are considered detrimental to the preservation and protection of the Conservation Values and are prohibited:
- 1) Additional residences, including mobile or manufactured homes other than provided for in Paragraph 4(C);
  - 2) Commercial kennel;
  - 3) Public or private school (but excluding home schooling);
  - 4) Parks, playgrounds and playfields (but excluding personal play equipment and areas);
  - 5) Church (but excluding small-group home worship, study, or fellowship);
  - 6) Group care home, receiving home or child care center (but excluding babysitting);
  - 7) Community swimming pool or neighborhood recreation center;
  - 8) Non-profit community theater;
  - 9) Public or private campground;
  - 10) Cemetery, including accessory mortuary;

- 11) Archery range, rifle range, or golf driving range;
- 12) Water reservoir, water tank, or water treatment facility, except as necessary for permitted agricultural uses or practices;
- 13) Utility substation or regulator station;
- 14) Sewage treatment facility, exclusive of an individual sewage disposal system;
- 15) Solid waste transfer facility or disposal site;
- 16) The erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in The Federal Telecommunication Act of 1996;
- 17) Fire station;
- 18) Public or quasi-public uses and facilities, except rights-of-way as described in Paragraph 5(D);
- 19) Temporary asphalt, concrete or other batch plant;
- 20) Wind-powered electric generators to produce electricity for off-site use; or
- 21) A 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.

6. **Grantor's Responsibilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the City, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

- A. **Construction.** Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations and requirements; provided, however, that the City shall reasonably cooperate with Grantor in obtaining permits and approvals so long as Grantor complies with the terms of this Conservation Easement. Grantor shall keep the Property free (by bonding or otherwise) of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- B. **Water Rights.** Grantor agrees to pay all water carriage fees and ditch assessments levied by ditch companies or other competent authorities relating to the Water Rights.
- C. **Fences.** Grantor shall be responsible for the construction and maintenance of all fences and gates on the Property.
- D. **Weeds.** Grantor shall control noxious weeds as required by Boulder County and Colorado State law.
- E. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon or incurred as a result of this Conservation Easement and shall furnish the City with satisfactory

evidence of payment upon request; provided, however, that nothing shall prevent Grantor from contesting taxes in accordance with applicable laws and procedures.

- F. Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the City to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").
- G. Environmental Remediation. If, at any time, there occurs, or has occurred, a release in, on or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil or in way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup required, unless the release is caused by the City, rather than the Grantor, in which case the City shall be responsible therefor.

7. **Grantor's Representations and Warranties**. Grantor represents and warrants to the best of its knowledge:

- A. No substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned or transported in, on, from or across the Property.
- B. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with federal, state or local law, regulation and requirements.
- C. Grantor and the Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Property and its use.
- D. There is no pending or threatened litigation in any way affecting, involving or relating to the Property.
- E. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances the Grantor might reasonably expect to form the bases for any such proceedings, investigations, notices, claims, demands or order.
- F. Grantor has good and sufficient title to the Property and warrants its ability to grant and convey this Conservation Easement, subject to easements and other matters of record.

As used in this Conservation Easement, the phrase "to the best of its knowledge" means the knowledge of Grantor's shareholders, Ray C. Imel, Jr., Donald E. Imel, and Terrance C. Imel, based solely upon their ownership of the Property and personal knowledge and

recollection. Grantor has not undertaken any independent studies, inspections or investigations of environmental matters or any other matter affecting the Property.

8. City's Remedies.

- A. Notice of Violation and Corrective Action. If the City determines a violation of the terms of this Conservation Easement has occurred or is threatened, the City shall give written notice to Grantor of such alleged violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, Grantor shall substantially restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the City.
- B. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice from the City, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- C. Specific Performance and Damages. The City shall be entitled to specific performance by Grantor of all rights granted pursuant to this Conservation Easement. The City shall also be entitled to recover damages for the reasonable and actual costs of undertaking corrective action on the Property to remedy damages caused by Grantor's violations of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement. In no event shall the city be entitled to recover incidental, consequential, or special damages.
- D. Emergency Enforcement. If the City, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the City may pursue its remedies under this Paragraph 8 without waiting for the period provided for cure to expire.
- E. Scope of Relief. The City's rights under Paragraph 9 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees the City's remedies at law for any violation of the terms of this Conservation Easement are inadequate and the City shall be entitled to injunctive relief described in Paragraph 8(B) above, both prohibitive and mandatory, in addition to such other relief to which the City may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The City's remedies described in this paragraph shall be cumulative. The City may pursue other applicable remedies at law or in equity not set forth in this paragraph.
- F. Mediation. If a dispute arises between Grantor and the City concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. The City's participation shall be subject to City Council appropriation. Within fourteen (14) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree

on the selection of a single mediator, then the parties shall within twenty (20) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:

- 1) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Conservation Easement.
  - 2) Participation. The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree they shall participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority shall attend mediation sessions as requested by the mediator.
  - 3) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.
  - 4) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
  - 5) Costs. The costs of the mediator shall be borne equally by Grantor and the City. The parties shall bear their own expenses, including attorneys' fees, individually.
- G. Costs of Enforcement. In the event of any action or proceeding regarding this Conservation Easement, its modification, or the performance or breach of either party hereto, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable costs incurred by the prevailing party, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of repair or restoration necessitated by either party's violation of the terms of this Conservation Easement, subject to City Council appropriation.
- H. Forbearance. Forbearance by the City to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by the City of such term or any subsequent breach of the same or any other term of this Conservation Easement or of any of the City's rights under this Conservation Easement. No delay or omission by the City in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
- I. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle the City to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control,

including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency condition to prevent, abate, or mitigate significant injury to the Property, or structures thereon, resulting from such causes.

9. **Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend the City and its officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, cause of action, claims, demands, orders or judgments or administrative actions, including without limitation, reasonable attorneys' fees, arising from or in any way connected with:

- A. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of the Indemnified Parties;
- B. The violation or alleged violation of or other failure to comply with, any federal, state or local law, regulation, or requirement including without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving or relating to the Property;
- C. The presence or release in, on, from or about the Property, at any time of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties; and
- D. The obligations, covenants, representations and warranties of Paragraphs 7 and 8.

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

11. **Condemnation.** In the event of condemnation of all or a portion of the Property, the City shall be entitled to a share of the proceeds of the condemnation award, based on the value, at the time of the taking, of the Conservation Easement that is the subject of the taking.

12. **Amendment.** If circumstances arise under which an amendment would be appropriate, Grantor and the City may jointly amend the Conservation Easement. Any such amendment shall be consistent with the purposes of the Conservation Easement, shall not affect its perpetual duration, shall not permit additional developments or improvements currently prohibited by the Conservation Easement, and shall not materially impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Boulder County, Colorado. (No amendment shall be allowed that will affect the qualification of this Conservation Easement under any applicable laws, including C.R.S. §§ 38-30.5-101 et. seq. or Section 170(h) of the Internal Revenue Code.)

13. **Notices.** All notices, demands, requests, consents, approval or communications under this Conservation Easement shall be in writing and delivered to the party entitled thereto or mailed to the party entitled thereto, by registered or certified mail, return receipt requested. If delivered, said notice shall be effective and complete upon delivery. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

If intended for Grantor:

Ray C. Imel, Inc.  
404 W. Baseline Road  
Lafayette, CO 80026

with a copy to:

Bruce D. Dierking, Esq.  
2305 Canyon Blvd., Suite 206  
Boulder, CO 80302

If intended for City:

Director of Open Space and Mountain Parks  
City of Boulder  
P.O. Box 791  
Boulder, CO 80306

14. **General Provisions**

- A. **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Colorado.
- B. **Reasonableness.** Except with respect to the granting of future easements by Grantor (which shall be in the sole discretion of the City), whenever any term or provision of this Conservation Easement requires the consent or approval of either party, such party shall not unreasonably or capriciously withhold, delay or condition the granting of such consent or approval.
- C. **Severability.** Should any of the provisions of this Conservation Easement be found to be invalid or unenforceable, then the balance of the Conservation Easement shall be held to be in full force and effect as though the invalid portion was not included.
- D. **Terms.** The terms "Grantor" and "City", whenever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor's heirs, personal representatives, executors, successors and assigns and the above-named City and its successors and assigns, respectively.
- E. **Liberal Construction.** This Conservation Easement shall be liberally construed in favor of the Conservation Easement to effect the purpose of the Conservation Easement and the policies and purpose of C.R.S. §§ 38-30.5-101 et. seq.

- F. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an Amendment that complies with Paragraph 12.
- G. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no affect upon construction or interpretation.
- H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling. Facsimile signatures shall be acceptable to and binding upon all parties.
- I. Successors. The terms of this Conservation Easement shall be binding upon the parties and their respective agents, personal representatives, heirs, lessees, assigns, and all other successors to their respective interests, and shall continue as a servitude running in perpetuity with the Property.
- J. Joint Obligation. The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.
- K. Covenant to Maintain Validity of Conservation Easement. Grantor and the City covenant that they will defend and maintain the validity of the Conservation Easement granted hereby.
- L. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Easement or Property, except that representations and warranties of such party made herein and liability for acts or omissions of such party occurring prior to transfer shall survive transfer; provided, however, that notice of any breach or liability must be given to the transferring party within one year after the date of transfer. However, any transfer of the party's interest shall not terminate any environmental liabilities that may exist pursuant to federal or state environmental laws and notice shall not be required for such environmental liabilities.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed on this 1<sup>st</sup> day of June, 2001.

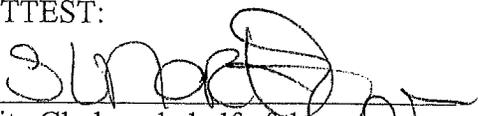
**GRANTEE:**  
City of Boulder

**GRANTOR:**  
Ray C. Imel, Inc.

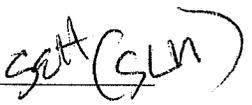
By: *Ronald A. Secrist* for  
Ronald A. Secrist  
City Manager

By: *Donald E. Imel*  
Donald E. Imel  
President

ATTEST:

  
\_\_\_\_\_  
City Clerk on behalf of the  
Director of Finance and Record

Approved as to form:

  
\_\_\_\_\_  
City Attorney

EXHIBITS

- Exhibit A Legal Description of the Property
- Exhibit B Water Rights
- Exhibit C Acknowledgment
- Exhibit D Adjoining property description

Exhibit A  
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 23, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 23 BEARS S 00°03'07" E, 1321.82 FEET; THENCE S 00°03'07" E ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 592.67 FEET; THENCE N 89°56'53" E, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE N 86°10'59" E, 159.90 FEET;  
THENCE N 87°49'28" E, 143.02 FEET;  
THENCE N 78°11'05" E, 126.49 FEET;  
THENCE N 69°11'04" E, 307.13 FEET TO A POINT ON THE CENTERLINE OF HOLLAND DITCH, AS SURVEYED;  
THENCE ALONG THE CENTERLINE OF HOLLAND DITCH, AS SURVEYED, THE FOLLOWING COURSES:

THENCE N 62°03'15" E, 97.54 FEET;  
THENCE N 81°40'06" E, 72.64 FEET;  
THENCE N 73°31'10" E, 63.21 FEET;  
THENCE N 64°53'26" E, 25.77 FEET;  
THENCE DEPARTING SAID CENTERLINE S 00°03'07" E, 692.63 FEET;  
THENCE S 01°31'28" E, 296.33 FEET;  
THENCE S 88°34'03" W, 194.89 FEET;  
THENCE N 65°44'55" W, 99.14 FEET;  
THENCE S 89°54'56" W, 495.37 FEET;  
THENCE N 89°54'24" W, 182.60 FEET;  
THENCE N 00°03'07" W PARALLEL TO, AND MEASURED 30.00 FEET PERPENDICULARLY FROM, THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 717.23 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 777472 SQUARE FEET (17.8483 ACRES), MORE OR LESS.

05/15/2001 "14100LDC"



**Exhibit B**

Water Rights:

18 shares of Left Hand Ditch Company, Certificate Numbers 1862

Exhibit C

ACKNOWLEDGEMENT  
OF  
CONSERVATION EASEMENT WITH RESTRICTIONS

\_\_\_\_\_ (“Purchaser”) has purchased from \_\_\_\_\_ (“Seller”) certain property described as the \_\_\_\_\_, comprising approximately \_\_\_\_\_ acres. Such property is subject to land use restrictions contained in the Conservation Easement With Restrictions (“Conservation Easement”), dated as of \_\_\_\_\_, between the Seller and the City of Boulder (the “City”).

It is understood that the City holds the Conservation Easement exclusively for conservation purposes and is responsible for administering, monitoring and enforcing the terms and conditions therein.

The Purchaser hereby acknowledges the following:

1. Purchaser has received a copy of the Conservation Easement, and is familiar with the provisions therein;
2. Purchaser understands that, as purchaser of the property, Purchaser is subject to all of the terms and conditions of the Conservation Easement;
3. Purchaser and the City acknowledge that the City is responsible to inspect the property from time to time. It is the intent of the City to give the Purchaser reasonable notice of such inspection periods, as set forth in the Conservation Easement, and to invite the Purchaser to participate in such inspection.

ACKNOWLEDGED:

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Boulder

\_\_\_\_\_  
Date

"EXHIBIT D"

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, EXCEPTING THEREFROM THAT PORTION AS CONVEYED BY RAY C. IMEL, INC., A COLORADO CORPORATION, TO ERIC ALAN JOHNSON AND DEBRA JAN JOHNSON BY QUITCLAIM DEED RECORDED OCTOBER 29, 1999 AS RECEPTION NO. 1994966, AND DESCRIBED AS FOLLOWS:

A STRIP OF LAND BEING A PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., THENCE SOUTH 89 DEG. 47'25" WEST ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 766.00 FEET; THENCE SOUTH 00 DEG. 00'46" EAST PARALLEL TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 22, 105.00 FEET; THENCE NORTH 89 DEG. 47'25" EAST PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 766.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 00 DEG. 00'46" WEST ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 105.00 FEET TO THE POINT OF THE BEGINNING;

AND FURTHER EXCEPTING THEREFROM THOSE TRACTS AS CONVEYED BY LLOYD K. RUDD TO THE UNITED STATES OF AMERICA BY WARRANTY DEED RECORDED OCTOBER 2, 1953 IN BOOK 937 AT PAGE 458, AND BEING MORE FULLY DESCRIBED THEREIN.

THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO.

THE SOUTHEAST 1/4; THE SOUTH 1/2 OF THE NORTHWEST 1/4; THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4; THE SOUTH 440 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4; AND THE SOUTH 440 FEET OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4, ALL IN SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO.

THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO;

EXCEPTING HOWEVER FROM THE AFORESAID NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26 AND AFORESAID SOUTHWEST 1/4 OF SECTION 23, THE FOLLOWING DESCRIBED PARCELS OF LAND, AND FOR IDENTIFICATION PURPOSES, TO BE KNOWN AS LOTS A, B, AND C:

LOT A

A PARCEL OF LAND BEING A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26 BEARS SOUTH 89 DEG. 50'17" WEST, 2641.06 FEET; THENCE NORTH 00 DEG. 11'08" WEST, ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1269.84 FEET;  
THENCE NORTH 02 DEG. 20'20" EAST, 187.58 FEET;  
THENCE NORTH 80 DEG. 57'41" EAST, 126.47 FEET;  
THENCE NORTH 64 DEG. 14'49" EAST, 75.19 FEET;  
THENCE NORTH 43 DEG. 05'33" EAST, 232.89 FEET;  
THENCE NORTH 73 DEG. 14'32" EAST, 274.74 FEET;  
THENCE NORTH 19 DEG. 03'01" EAST, 180.56 FEET;  
THENCE NORTH 07 DEG. 06'36" EAST, 275.60 FEET;  
THENCE NORTH 41 DEG. 11'16" WEST, 84.28 FEET;  
THENCE 84.55 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 240.21 FEET, A CENTRAL ANGLE OF 20 DEG. 09'59", AND A CHORD THAT BEARS NORTH 53 DEG. 03'42" EAST, 84.11 FEET;  
THENCE NORTH 42 DEG. 58'42" EAST, 155.36 FEET;  
THENCE NORTH 43 DEG. 43'08" EAST, 53.02 FEET;  
THENCE SOUTH 75 DEG. 50'30" EAST, 45.79 FEET;  
THENCE NORTH 76 DEG. 24'58" EAST, 54.02 FEET;  
THENCE NORTH 60 DEG. 43'22" EAST, 49.94 FEET;  
THENCE NORTH 70 DEG. 16'40" EAST, 116.50 FEET;  
THENCE SOUTH 83 DEG. 28'44" EAST, 58.03 FEET;  
THENCE SOUTH 75 DEG. 35'33" EAST, 51.77 FEET;  
THENCE SOUTH 58 DEG. 00'30" EAST, 19.25 FEET;  
THENCE SOUTH 43 DEG. 21'48" EAST, 18.77 FEET;  
THENCE SOUTH 80 DEG. 12'06" EAST, 9.11 FEET TO A POINT ON THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26;  
THENCE SOUTH 00 DEG. 11'08" EAST ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1216.11 FEET TO THE POINT OF BEGINNING.

LOT B

A PARCEL OF LAND BEING A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOUDLER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26 BEARS SOUTH 89 DEG. 50'17" WEST, 2641.06 FEET; THENCE NORTH 00 DEG. 11'08" WEST, ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 30.00 FEET; THENCE SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1269.84 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 656.38 FEET;  
THENCE NORTH 23 DEG. 41'21" EAST, 124.08 FEET;  
THENCE NORTH 37 DEG. 44'32" EAST, 92.57 FEET;  
THENCE NORTH 32 DEG. 58'15" EAST, 126.63 FEET;  
THENCE NORTH 54 DEG. 14'09" EAST, 130.88 FEET;  
THENCE SOUTH 68 DEG. 31'46" EAST, 32.87 FEET;  
THENCE SOUTH 69 DEG. 59'16" EAST, 112.59 FEET;  
THENCE NORTH 71 DEG. 49'42" EAST, 169.80 FEET;  
THENCE NORTH 48 DEG. 28'24" EAST, 76.25 FEET;  
THENCE NORTH 47 DEG. 09'17" EAST, 270.83 FEET;  
THENCE NORTH 35 DEG. 00'09" EAST, 105.31 FEET;  
THENCE NORTH 38 DEG. 45'42" EAST, 212.39 FEET;  
THENCE NORTH 59 DEG. 49'33" EAST, 36.95 FEET;  
THENCE NORTH 66 DEG. 41'20" EAST, 116.89 FEET;  
THENCE NORTH 63 DEG. 08'42" EAST, 166.70 FEET;  
THENCE SOUTH 41 DEG. 11'16" EAST, 84.28 FEET;  
THENCE SOUTH 07 DEG. 06'36" WEST, 275.60 FEET;  
THENCE SOUTH 19 DEG. 03'01" WEST, 180.56 FEET;  
THENCE SOUTH 73 DEG. 14'32" WEST, 274.74 FEET;  
THENCE SOUTH 43 DEG. 05'33" WEST, 232.89 FEET;  
THENCE SOUTH 64 DEG. 14'49" WEST, 75.19 FEET;  
THENCE SOUTH 80 DEG. 57'41" WEST, 126.47 FEET;  
THENCE SOUTH 02 DEG. 20'20" WEST, 187.58 FEET TO THE POINT OF BEGINNING.

LOT C

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 23, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 23 BEARS SOUTH 00 DEG. 03'07" EAST, 1321.82 FEET; THENCE SOUTH 00 DEG. 03'07" EAST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 592.67 FEET; THENCE NORTH 89 DEG. 56'53" EAST, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 86 DEG. 10'59" EAST, 159.90 FEET;  
THENCE NORTH 87 DEG. 49'28" EAST, 143.02 FEET;  
THENCE NORTH 78 DEG. 11'05" EAST, 126.49 FEET;  
THENCE NORTH 69 DEG. 11'04" EAST, 307.13 FEET;  
THENCE NORTH 62 DEG. 03'15" EAST, 97.54 FEET;  
THENCE NORTH 81 DEG. 40'06" EAST, 72.64 FEET;  
THENCE NORTH 73 DEG. 31'10" EAST, 63.21 FEET;  
THENCE NORTH 64 DEG. 53'26" EAST, 25.77 FEET;  
THENCE SOUTH 00 DEG. 03'07" EAST, 692.63 FEET;  
THENCE SOUTH 01 DEG. 31'28" EAST, 296.33 FEET;  
THENCE SOUTH 88 DEG. 34'03" WEST, 194.89 FEET;  
THENCE NORTH 65 DEG. 44'55" WEST, 99.14 FEET;  
THENCE SOUTH 89 DEG. 54'56" WEST, 495.37 FEET;  
THENCE NORTH 89 DEG. 54'24" WEST 182.60 FEET;  
THENCE NORTH 00 DEG. 03'07" WEST, PARALLEL TO, AND MEASURED 30.00 FEET PERPENDICULARLY FROM, THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 717.23 FEET TO THE POINT OF BEGINNING.

## AMENDED CONSERVATION EASEMENT WITH RESTRICTIONS

**NOTICE: GRANTOR AGREES TO GIVE WRITTEN NOTICE TO THE CITY OF BOULDER OF THE TRANSFER OF THE FEE INTEREST OR ANY LEASE EXCEEDING TEN YEARS WITH RESPECT TO THE PROPERTY COVERED BY THIS CONSERVATION EASEMENT PRIOR TO THE DATE OF SUCH TRANSFER OR EXECUTION OF SUCH LEASE. GRANTOR SHALL REQUIRE ANY NEW PURCHASER OR LESSEE UNDER SUCH LEASE TO SIGN THE ACKNOWLEDGMENT ATTACHED HERETO AS EXHIBIT C.**

### RECITALS

The parties agree to this amended conservation easement considering the following:

This Document ("Amended Conservation Easement") is an amendment of the June 1, 2001 Conservation Easement with Restrictions ("Original Conservation Easement") granted by Ray C. Imel, Inc. ("Original Grantor"), a Colorado corporation, to the City of Boulder ("City" or "Grantee"), a Colorado home rule city recorded June 5, 2001 in the records of the Boulder, Colorado County Clerk under reception number 2157640. 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.

Grantor is the current owner of the Property described in Exhibit A attached and incorporated herein by reference (the "Property"), which consists of approximately 17.85 acres of land, together with buildings and other improvements. Grantor purchased the property from Ray C. Imel, Inc. on April 5, 2012.

Grantor also owns those certain Water Rights described in Exhibit B attached and incorporated herein by reference ("Water Rights").

Grantor and City acknowledge and agree that the Property has significant scenic, open space, agricultural, and ecological values ("Conservation Values") of importance to the people of the City and County of Boulder.

The Property is located in a priority area for acquisition by the City of Boulder for its Open Space program.

The State of Colorado has recognized the importance of efforts to preserve land in a natural, scenic, or open condition, and for wildlife habitat and agricultural uses consistent with the protection of open land having undisturbed or restored environmental quality, by the enactment of C.R.S. §§ 38-30.5-101 et. Seq.

Grantor and City desire to preserve and protect the Conservation Values of the Property in perpetuity and to prohibit development on the Property, except as expressly permitted in this Conservation Easement.

City is a “qualified conservation organization” as defined by the Internal Revenue Code.

Paragraph 12 of the Original Conservation Easement allows for amendments if such amendments are consistent with the purpose of the Original Conservation Easement. The purpose of the Conservation Easement is “to preserve and protect in perpetuity the wildlife and plant habitat, open space and scenic qualities, and agricultural character of the Property”. The following amendments are consistent with this purpose.

A commercial organic farm on the Property is beneficial to Grantor and Grantee as well as to the people of the City of Boulder and Boulder County and should be permitted under the Amended Conservation Easement. In addition, the details of the farming operation are best contained in a new Agricultural Management Plan attached hereto as Exhibit F.

The majority of the following amendments are to permit this new agricultural use and to reduce the existing residential development provisions. The rest of the amendments are minor, primarily to correct references back to original paragraphs that have changed because of the amendments.

NOW, THEREFORE Grantor and Grantee agree to amend the Original Conservation Easement to read as follows:

In consideration of the promises, mutual covenants, terms and conditions herein contained, Grantor hereby voluntarily grants and conveys to the City, and the City hereby voluntarily accepts, a perpetual conservation easement in gross, pursuant to C.R.S. §§ 38-30.5-101 et. seq., over and on the Property.

1. **Purpose.** It is the purpose of this Conservation Easement to preserve and protect in perpetuity the wildlife and plant habitat, open space and scenic qualities, and agricultural character of the Property. Grantor and the City intend that this Conservation Easement shall limit the use of the Property to activities consistent with such purpose, as hereinafter provided.

2. **Baseline Documentation Report.** Within one hundred and twenty (120) days after the date of the Original Conservation Easement, the City shall prepare a Baseline Documentation Report (“Report”) regarding the Property. This Report will consist of a narrative description of the current features and status of the Property, its specific characteristics, photographs and a description of current uses of the Property. The City will consult with Grantor in its preparation of the Report and shall provide a draft of the Report to Grantor for review and comment before finalizing the Report. The City will be the custodian of the finalized Report, which shall be incorporated herein by reference. The parties agree that the finalized Report will provide an accurate representation of the Property as of the date of the Report and that it is intended to serve as an objective information baseline for purposes of monitoring and enforcing compliance with the terms of this instrument. It is not intended, however, to preclude the use of other evidence of the present condition of the Property.

3. **Rights of the City.**

A. **Land Preservation.** By the means set forth below, the City shall have the right to preserve and protect the land and the view of and over the Property, and to protect its agricultural, open space and ecological condition.

- B. Right of Entry. Upon not less than ten (10) days' notice and at a time mutually agreed to by the City and the Grantor, the City shall have the right to enter upon the Property in a reasonable manner and at reasonable times to inspect the Property, to enforce any and all rights granted herein, to study and make scientific observations of its ecosystems, and to determine that Grantor's activities are in compliance with the terms of the Conservation Easement. The City shall also have the right of immediate entry to the Property if such entry is immediately necessary to prevent damage to or the destruction of the Conservation Values protected by the Conservation Easement. In connection with any entry upon the Property, the City shall make reasonable efforts not to damage the Property nor any of the improvements nor personal property located thereon, and reasonable efforts not to interfere with the quiet use and enjoyment of the Property by Grantor or its tenants, invitees, or licensees. The City shall, at its sole expense, promptly repair any damage the City causes to the Property or any improvements or personal property located thereon.
- C. Enforcement. The City shall have the right to enjoin any activity on or any use of the Property that is inconsistent with the Conservation Easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use as set forth in Paragraph 8.
- D. Right of Approval. The City shall have the right to review and approve or deny requests from the Grantor for uses neither expressly granted nor specifically prohibited by the Conservation Easement described herein but which may be conducted in a manner consistent with the Conservation Values of the Property. The City shall deny such a request only if the requested use is inconsistent with the Conservation Values of the Property.
- E. Ownership of Development Rights. The City shall own any and all development rights, except as specifically described in Paragraph 4(A) below, now or hereafter associated with the Property. These rights include, without limitation, all rights, however designated, that may be used pursuant to applicable zoning laws, or other governmental laws or regulations, to compute permitted size, height, bulk, or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property.
- F. Assignment. This Conservation Easement is transferable, but the City may assign its rights and obligations under this Conservation Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold Conservation Easements under C.R.S. §§ 38-30.5-104 or the laws of the United States. As a condition of such transfer, the City shall require that the conservation purpose of this grant continue to be carried out. The City agrees to give written notice to Grantor of an assignment prior to the date of such assignment. The failure of the City to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Conservation Easement or limit its enforceability in any way; provided, however, that the assignee under such assignment shall not exercise any rights or remedies provided to the City herein until such notice is provided to Grantor.

**4. Permitted Uses and Practices.** The following uses and practices, though not an exhaustive recital of consistent uses and practices, are consistent with the Conservation Easement. Certain of these consistent uses and practices are identified as being subject to specified conditions or to the prior approval of the City. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Conservation Easement:

A. Structures. The following structures currently exist on the Property: one single-family residence consisting of approximately 1641 square feet (Building A), one metal storage building/barn consisting of approximately 4,141 square feet (Building B), one pole barn consisting of approximately 7200 square feet (Building C), a cattle shed consisting of approximately 2400 square feet (Building D) one silo consisting of approximately 255 square feet (Building E), and 2 sheds consisting of approximately 273 square feet each (Buildings F and G). The location of these structures is shown on Exhibit E. There are some structures on Exhibit E that are not labeled with a letter designation because they have been removed and are not the subject of the Amended Conservation Easement. Also, the western portion of Building B has been removed so will look different than it is drawn on Exhibit E. No additional structures of any kind, temporary or permanent, may be constructed, located, placed, or installed on the Property without the prior written consent of the City except, however, Grantor reserves the following rights:

1) Existing Structures. Maintenance and repair of the existing structures listed above are permitted and they may remain as long as they are used in accordance with this Section 4. Replacement and remodeling of the existing structures are restricted by Paragraphs 4(A) (2) and (4) below.

2) Single-family Residence. Grantor shall have the right to one single-family residence and associated residential accessory structures. The single-family residence and associated residential accessory structures shall be restricted to a combined total of Four Thousand (4,000) total square feet with a maximum structure height of Thirty (30) feet. All construction shall be subject to review and approval by the Boulder County Land Use Department or other entity having jurisdiction at the time. If a new single-family dwelling is constructed, the existing one shall be removed by Grantor unless it is converted to an accessory structure within the applicable square footage limitations. Prior written notice shall be given to the City before any construction is undertaken under this paragraph, except if it is repair and maintenance of the current structures.

3) Temporary Agricultural Housing. Temporary, seasonal agricultural housing for use by farm workers who engage in agricultural production on the Property may be permitted if approved by the City and approved by the Boulder County Land Use Department.

4) Agricultural Structures. Grantor shall have the right to accessory agricultural buildings, not for human habitation, including, but not limited to, storage sheds, agricultural workspace, barn and other animal shelters and a greenhouse on the Property subject to all limitations in Section 4. These accessory agricultural buildings shall be limited to a combined total of 12,200 total square feet with a maximum

structure height of 20 feet. Small, moveable hoop houses and similar structures of less than 120 square feet each with a maximum height of 72 inches and small moveable animal enclosures of less than 120 square feet each are permitted and will not be included when determining if the maximum square footage in this paragraph has been reached; provided, however, that the number of these small moveable structures shall not exceed four unless prior written approval is obtained from the City. A hoop house is defined as a temporary structure used as a season extender and characterized by a half-round "hoop" shape, generally constructed of lengths of PVC pipe and covered with plastic. A hoop house shall not have a foundation, is passively heated and will not be connected to any utilities. All construction under this paragraph shall be subject to review and approval by the Boulder County Land Use Department or other entity having jurisdiction at the time. Prior written notice shall be given to the City before any construction is undertaken under this paragraph, except if it is repair and maintenance of the current structures.

B. Agricultural Uses. Grantor shall have the right to open agricultural uses as more specifically described in this paragraph.

1) Agricultural Management Plan. The Property shall be operated and managed in accordance with an Agricultural Management Plan (Plan) attached hereto as Exhibit F. The Plan will be reviewed at least every five (5) years and revised, if necessary, with the mutual written agreement of both the Grantor and the Grantee. Any such revised plan shall be subject to the specific restrictions contained in this Conservation Easement and shall not impair any of the conservation values of the Property.

2) Organic Farming. Grantor has the right to plant, raise and harvest organic agricultural crops in compliance with the Plan. Grantor shall also have the right to raise domestic animals, including but not limited to chickens, pasture-raised pigs and grass-fed cattle in compliance with the Plan. Horses shall not be permitted. Growing marijuana is not permitted. After a four year transitional period, Grantors agree that they will be annually certified under the Certified Naturally Grown (CNG) program and will follow the organization's standards and practices for all of their produce. Should CNG cease to exist or is no longer the appropriate organization to work with, Grantor and Grantee shall mutually agree on a replacement organization for certification of organic practices.

3) Transitional Period. Grantor and Grantee acknowledge that the soil is currently in poor condition. Therefore, Grantor needs time to increase the soil fertility and to bring it up to the quality necessary to be certified by CNG. Grantor and Grantee agree to handle this transition period by complying with the Plan in the attached Exhibit F.

4) Greenhouse. All or a portion of the existing pole barn (Building C) may be converted to a greenhouse, using substantially the existing structure and subject to review and approval by the City and Boulder County. No other existing structure shall be converted to a greenhouse nor shall another greenhouse be constructed anywhere on the Property.

5) Other Agricultural Uses. Accessory agricultural sales are permitted from the Property as long as at least eighty percent (80%) of the produce and products are grown on the Property and the use conforms with Boulder County's requirements. Any structure used for the accessory agricultural sales must fit within the limits of the agricultural accessory square footage permitted in Paragraph 4(A)(4) above. A sign advertising the accessory agricultural sales is permitted as long as it is in compliance with the sign code regulations of Boulder County. "Bed and Breakfast" type arrangements as well as a Farm Store shall not be permitted. Farm gatherings with more than 80 individuals are not permitted. However, Grantor may host up to six farm events per year with less than 80 people as long as no compensation is received. Weddings, wedding receptions and reception hall type events where Grantor receives compensation are prohibited. Horse boarding and horse riding facilities are prohibited.

6) Leasing Adjoining Open Space Agricultural Land. In the event that Grantor is able to lease at least 50 acres of the adjoining City and/or Boulder County open space agricultural land (Exhibit D) for farm animal grazing within 6 years of the date of the Amended Conservation Easement, the cattle shed (Building D) may remain and be repaired and maintained as needed. Grantor agrees to remove the cattle shed (Building D) if Grantor is not able to meet these conditions. The cattle shed square footage has not been included in the total allowable agricultural building square footage stated in Paragraph 4(A)(4) above. As a result, if the cattle shed is removed, Grantor cannot replace it with another structure.

- C. Maximum Square Footage Not Guaranteed. The maximum square footage permitted in this section 4 is not guaranteed because Boulder County has the authority to review the structures contemplated by the Conservation Easement and may decide that the permitted amount of square footage is not compatible with the County regulations. In that case, the maximum allowed by Boulder County Land Use Regulations, in effect at the time that any proposed construction, remodel and/or replacement takes place, will be the maximum allowed under the Conservation Easement. Therefore, the maximum square footage is either the square footage permitted in the Conservation Easement or the square footage ultimately permitted by Boulder County, whichever is less. Further, the Conservation Easement does not presume to automatically grant Boulder County's approval for any development within the limits established in the Conservation Easement, if any, or for any anticipated activity regulated by the Boulder County Land Use Regulations.
- D. Utilities. Installation, maintenance, repair, removal and relocation, and replacement of utility mains, lines and underground facilities for the exclusive purpose of providing utility services to the Property are permitted. Grantor may construct solar panels for the exclusive purpose of providing utility services to the Property. However, the solar panels shall be included in the permissible square footage outlined in Paragraph 4(A) above unless they are constructed on the roofs of existing buildings.
- E. Irrigation. Grantor shall have the right to develop and maintain such water resources on the Property as are necessary or convenient for irrigation and the agricultural uses

conducted thereon pursuant to the terms hereof; provided, however, that the development and use of such water resources shall be compatible with the purposes of this Conservation Easement to protect and preserve the agricultural and open space values of the Property. Permitted activities shall include installation, maintenance, repair, removal and relocation, and replacement of agricultural irrigation facilities, including ditches, pipes, sprinkler systems and water diversion structures. Currently, the following exist on the Property: HOLLAND DITCH AND EXISTING LATERAL DITCHES. Grantor may create a pond to hold irrigation water provided that Grantor receives permission from the water company and constructs the pond in compliance with Colorado water law. In addition, the City must also provide written approval of any pond.

- F. Recreational Use. Subject to Paragraph 4(B) Grantor can use the Property for recreational activities, scientific and/or educational activities which are occasional in nature, are limited to Grantor and Grantor's tenants and invitees and in no way interfere with or are detrimental to the Conservation Values of the Property. Hunting is not permitted.
- G. Water and Minerals. Except as such interest is otherwise conveyed to the City by deed, certificates of ownership, or this Conservation Easement, Grantor specifically retains (1) all right, title, and interest in and to the Water Rights, and related interests in, on, under, or appurtenant to the land; and (2) all right, title, and interest to subsurface oil, gas, and other minerals. The following language shall be typed on each Left Hand Ditch share retained by Grantor and used in connection with the Property: "Transfer or lease of this certificate is subject to conditions described in a Conservation Easement with the City of Boulder dated June 1, 2001." The City acknowledges that Original Grantor owned other water rights that are not subject to the restrictions of this Conservation Easement.
- H. Conveyance of Property. Grantor may convey the entire fee interest in the Property, subject to this Conservation Easement. Grantor agrees to incorporate the terms of this Conservation Easement in any deed or other legal instruments by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. In addition, Grantor may convey easements and other interests that affect the Property pursuant to Paragraph 5(D), all of which shall be subject to this Conservation Easement.
- I. Written Notice to City Upon Transfer of Fee or Lease in Excess of 10 Years. GRANTOR AGREES TO GIVE WRITTEN NOTICE TO CITY OF THE TRANSFER OF THE FEE INTEREST OR ANY LEASE EXCEEDING TEN YEARS WITH RESPECT TO THE PROPERTY AND THE WATER RIGHTS PRIOR TO THE DATE OF SUCH TRANSFER. The failure of a Grantor to comply with this notice requirement shall neither invalidate the conveyance nor impair the validity of this Conservation Easement nor limit its enforceability in any way. If Grantor fails to comply with this notice requirement, then any new Purchaser shall nevertheless be bound by the provisions hereof relating to the rights and obligations of the Grantor herein. Grantor shall require any new Purchaser to provide written

acknowledgment of this Conservation Easement by signing the acknowledgment attached hereto as Exhibit C and delivering the same to the City.

- J. Restrict Public Access. Grantor may restrict public access to the Property, except for the City's limited right of entry described in Paragraph 3(B). The City shall have no right to grant public access to, on, or over the Property for any purpose, and the City's right of entry described in Paragraph 3(B) shall be limited to the authorized employees and agents of the City entering only for the express purposes set forth herein.
  - K. Subsequent Liens on the Property. No provisions of this Conservation Easement should be construed as impairing the ability of the Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subject to this Conservation Easement.
  - L. Fencing. Grantor shall have the right to repair or replace existing fences and to construct new fences for purposes of reasonable and customary management of livestock and wildlife and for separation of ownership and uses, and to discourage trespassing.
  - M. Other Uses. Grantor retains the right to apply to the City for permission to conduct other uses and activities on the Property which are neither expressly granted nor specifically prohibited by the Conservation Easement but which may be conducted in a manner consistent with the Conservation Values of the Property. The City shall deny such an application only if the requested use is inconsistent with the Conservation Values of the Property.
5. Prohibited Uses and Practices. Grantor shall not use the Property nor allow the Property to be used in a manner inconsistent with the spirit and purposes stated in this Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- A. No Commercial Uses. Except as provided in Paragraph 4(B), there shall be no commercial or industrial use or structure on the Property, including, but not limited to the following:
    - 1) Feed lot;
    - 2) Commercial chicken or hog farm;
    - 3) Greenhouse;
    - 4) Veterinary hospital;
    - 5) Junk yard;
    - 6) Vehicle or vehicle replacement parts storage area;
    - 7) Parking lot;
    - 8) Horse, dog, motorcycle, bicycle or automobile race track;
    - 9) Golf course; or
    - 10) Helicopter or airplane landing area.

Use of the Property for business purposes of any kind, other than the agricultural uses described in Paragraph 4(B) is prohibited.

- B. No Subdivision or Transfer of Development Rights. The legal or *de facto* division, subdivision or partitioning of the Property for any purpose is prohibited. In addition, the use, exercise or transfer of development rights on or to the Property, or any portion thereof is prohibited.
- C. No Dumping or Changing Topography. There shall be no dumping or storage of ash, trash, junk, rubbish, sawdust, garbage, chemicals, or other unsightly or offensive material. It is acknowledged that there are numerous old farm implements and farm debris currently on the Property. These may stay, but may not increase. Except as necessary for the permitted uses or practices, including but not limited to residential or accessory building construction, changing of the topography through excavation, dredging or filling, or the placing of soil or other substances, material or landfill on the Property is prohibited without prior approval from the City.
- D. No Additional Easements. Except for reasonable and customary easements required in connection with construction of permitted structures on the Property and/or to serve the residential uses located on the Property, Grantor shall not allow, dedicate, or convey any easement or rights of way, including without limitation, any private, municipal, county or state roads, pipelines, bikeways or pedestrian access, without prior approval of the City. There shall be no construction of any additional road to serve the residence described in Paragraph 4(A) without prior approval of the City. Grantor shall be responsible for the maintenance and repair of that portion of the existing access road located on the Property.
- E. No Additional Structures. The construction, reconstruction or replacement of any structure, building or other improvements of any kind is prohibited except as provided in Paragraph 4(A) and (B) hereof.
- F. Water Rights. Grantor shall retain the Water Rights described in Exhibit B and shall not, without the prior approval of the City, transfer, encumber, sell, lease, or otherwise separate such rights from the Property or allow them to lapse due to nonuse or for any other reasons. The City acknowledges that Original Grantor owned other water rights that are not subject to the restrictions set forth in this Conservation Easement.
- G. No Mining. Except as necessary for the permitted uses or practices, including but not limited to residential or accessory building construction, filling, excavating, dredging, grading, quarrying, drilling, mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance is prohibited without the prior approval of the City.
- H. No Annexation. Grantor shall not apply/petition for, or consent to, the annexation of the Property to any municipality without the consent of the City.
- I. No Tree Cutting. No trees may be cut except under the following circumstances:
- 1) To control insects and disease;
  - 2) To clear for fire control;
  - 3) To prevent serious risk of personal injury and property damage;

- 4) To control invasive non-native species; or
- 5) After City's prior written approval, to clear for permitted residential or accessory building construction or for other permitted uses or practices.

J. Existing Water Features. Grantor shall not alter, impair, modify or adversely affect any existing ponds, wetlands, stream channels or other water features currently located on the Property without prior written permission from the City.

K. Other Prohibited Uses. The following are considered detrimental to the preservation and protection of the Conservation Values and are prohibited:

- 1) Additional residences, including mobile or manufactured homes other than provided for in Paragraph 4(C);
- 2) Commercial kennel;
- 3) Public or private school (but excluding home schooling);
- 4) Parks, playgrounds and playfields (but excluding personal play equipment and areas);
- 5) Church (but excluding small-group home worship, study, or fellowship);
- 6) Group care home, receiving home or child care center (but excluding babysitting);
- 7) Community swimming pool or neighborhood recreation center;
- 8) Non-profit community theater;
- 9) Public or private campground;
- 10) Cemetery, including accessory mortuary;
- 11) Archery range, rifle range, or golf driving range;
- 12) Water reservoir, water tank, or water treatment facility, except as necessary for permitted agricultural uses or practices;
- 13) Utility substation or regulator station;
- 14) Sewage treatment facility, exclusive of an individual sewage disposal system;
- 15) Solid waste transfer facility or disposal site;
- 16) The erection, construction, installation, relocation or use of a communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in The Federal Telecommunication Act of 1996;
- 17) Fire station;
- 18) Public or quasi-public uses and facilities, except rights-of-way as described in Paragraph 5(D);
- 19) Temporary asphalt, concrete or other batch plant;
- 20) Wind-powered electric generators to produce electricity for off-site use; or
- 21) Subject to Paragraph 4(B)(5), a 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.

6. Grantor's Responsibilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Other than as

specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the City, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

- A. Construction. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations and requirements; provided, however, that the City shall reasonably cooperate with Grantor in obtaining permits and approvals so long as Grantor complies with the terms of this Conservation Easement. Grantor shall keep the Property free (by bonding or otherwise) of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.
- B. Water Rights. Grantor agrees to pay all water carriage fees and ditch assessments levied by ditch companies or other competent authorities relating to the Water Rights.
- C. Fences. Grantor shall be responsible for the construction and maintenance of all fences and gates on the Property.
- D. Weeds. Grantor shall control noxious weeds as required by Boulder County and Colorado State law.
- E. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon or incurred as a result of this Conservation Easement and shall furnish the City with satisfactory evidence of payment upon request; provided, however, that nothing shall prevent Grantor from contesting taxes in accordance with applicable laws and procedures.
- F. Control. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the City to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").
- G. Environmental Remediation. If, at any time, there occurs, or has occurred, a release in, on or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil or in way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup required, unless the release is caused by the City, rather than the Grantor, in which case the City shall be responsible therefor.

7. **Grantor's Representations and Warranties**. Grantor represents and warrants to the best of its knowledge:

- A. No substance defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned or transported in, on, from or across the Property.
- B. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with federal, state or local law, regulation and requirements.
- C. Grantor and the Property are in compliance with all federal, state and local laws, regulations and requirements applicable to the Property and its use.
- D. There is no pending or threatened litigation in any way affecting, involving or relating to the Property.
- E. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances the Grantor might reasonably expect to form the bases for any such proceedings, investigations, notices, claims, demands or order.
- F. Grantor has good and sufficient title to the Property and warrants its ability to grant and convey this Conservation Easement, subject to easements and other matters of record.

As used in this Conservation Easement, the phrase “to the best of its knowledge” means the knowledge of Grantor’s manager or members based solely upon their ownership of the Property and personal knowledge and recollection. Grantor has not undertaken any independent studies, inspections or investigations of environmental matters or any other matter affecting the Property.

**8. City’s Remedies.**

- A. Notice of Violation and Corrective Action. If the City determines a violation of the terms of this Conservation Easement has occurred or is threatened, the City shall give written notice to Grantor of such alleged violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, Grantor shall substantially restore the portion of the Property so injured to its prior condition in accordance with a plan approved by the City.
- B. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice from the City, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such

violation until finally cured, the City may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

- C. Specific Performance and Damages. The City shall be entitled to specific performance by Grantor of all rights granted pursuant to this Conservation Easement. The City shall also be entitled to recover damages for the reasonable and actual costs of undertaking corrective action on the Property to remedy damages caused by Grantor's violations of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement. In no event shall the city be entitled to recover incidental, consequential, or special damages.
- D. Emergency Enforcement. If the City, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the City may pursue its remedies under this Paragraph 8 without waiting for the period provided for cure to expire.
- E. Scope of Relief. The City's rights under Paragraph 9 apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Grantor agrees the City's remedies at law for any violation of the terms of this Conservation Easement are inadequate and the City shall be entitled to injunctive relief described in Paragraph 8(B) above, both prohibitive and mandatory, in addition to such other relief to which the City may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The City's remedies described in this paragraph shall be cumulative. The City may pursue other applicable remedies at law or in equity not set forth in this paragraph.
- F. Mediation. If a dispute arises between Grantor and the City concerning the consistency of any proposed use or activity with the purpose of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. The City's participation shall be subject to City Council appropriation. Within fourteen (14) days of the receipt of such a request, the parties shall select a single trained and impartial mediator. If the parties are unable to agree on the selection of a single mediator, then the parties shall within twenty (20) days of receipt of the initial request, jointly apply to a proper court for the appointment of a trained and impartial mediator. Mediation shall then proceed in accordance with the following guidelines:
- 1) Purpose. The purpose of the mediation is to: (i) promote discussion between the parties; (ii) assist the parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any

express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Conservation Easement.

- 2) Participation. The mediator may meet with the parties and their counsel jointly or *ex parte*. The parties agree they shall participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the parties with settlement authority shall attend mediation sessions as requested by the mediator.
- 3) Confidentiality. All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the parties or their respective counsel. The mediator shall not be subject to subpoena by any party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceeding or construed as an admission of a party.
- 4) Time Period. Neither party shall be obligated to continue the mediation process beyond a period of ninety (90) days from the date of receipt of the initial request or if the mediator concludes there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- 5) Costs. The costs of the mediator shall be borne equally by Grantor and the City. The parties shall bear their own expenses, including attorneys' fees, individually.

G. Costs of Enforcement. In the event of any action or proceeding regarding this Conservation Easement, its modification, or the performance or breach of either party hereto, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable costs incurred by the prevailing party, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of repair or restoration necessitated by either party's violation of the terms of this Conservation Easement, subject to City Council appropriation.

H. Forbearance. Forbearance by the City to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by the City of such term or any subsequent breach of the same or any other term of this Conservation Easement or of any of the City's rights under this Conservation Easement. No delay or omission by the City in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

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

9. **Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend the City and its officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, cause of action, claims, demands, orders or judgments or administrative actions, including without limitation, reasonable attorneys' fees, arising from or in any way connected with:

- A. Injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of the Indemnified Parties;
- B. The violation or alleged violation of or other failure to comply with, any federal, state or local law, regulation, or requirement including without limitation, CERCLA, by any person other than any of the Indemnified Parties, in any way affecting, involving or relating to the Property;
- C. The presence or release in, on, from or about the Property, at any time of any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation, or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil or in any way harmful or threatening to human health or the environment, unless caused by any of the Indemnified Parties; and
- D. The obligations, covenants, representations and warranties of Paragraphs 7 and 8.

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

11. **Condemnation.** In the event of condemnation of all or a portion of the Property, the City shall be entitled to a share of the proceeds of the condemnation award, based on the value, at the time of the taking, of the Conservation Easement that is the subject of the taking.

12. **Amendment.** If circumstances arise under which an amendment would be appropriate, Grantor and the City may jointly amend the Conservation Easement. Any such amendment shall be consistent with the purposes of the Conservation Easement, shall not affect its perpetual duration, shall not permit additional developments or improvements currently prohibited by the Conservation Easement, and shall not materially impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Boulder County, Colorado. (No amendment shall be allowed that will affect the qualification of this

Conservation Easement under any applicable laws, including C.R.S. §§ 38-30.5-101 et. seq. or Section 170(h) of the Internal Revenue Code.)

**13. Notices.** All notices, demands, requests, consents, approval or communications under this Conservation Easement shall be in writing and delivered to the party entitled thereto or mailed to the party entitled thereto, by registered or certified mail, return receipt requested. If delivered, said notice shall be effective and complete upon delivery. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

If intended for Grantor:

Epaka Holdings  
3375 75<sup>th</sup> Street  
Boulder, CO 80301

If intended for City:

Director of Open Space and Mountain Parks  
City of Boulder  
P.O. Box 791  
Boulder, CO 80306

**14. General Provisions**

- A. Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Colorado.
- B. Reasonableness. Except with respect to the granting of future easements by Grantor (which shall be in the sole discretion of the City), whenever any term or provision of this Conservation Easement requires the consent or approval of either party, such party shall not unreasonably or capriciously withhold, delay or condition the granting of such consent or approval.
- C. Severability. Should any of the provisions of this Conservation Easement be found to be invalid or unenforceable, then the balance of the Conservation Easement shall be held to be in full force and effect as though the invalid portion was not included.
- D. Terms. The terms "Grantor" and "City", whenever used herein, and any pronouns used in place thereof, shall mean and include the above-named Grantor and Grantor's heirs, personal representatives, executors, successors and assigns and the above-named City and its successors and assigns, respectively.
- E. Liberal Construction. This Conservation Easement shall be liberally construed in favor of the Conservation Easement to effect the purpose of the Conservation Easement and the policies and purpose of C.R.S. §§ 38-30.5-101 et. seq.

- F. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an Amendment that complies with Paragraph 12.
- G. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no affect upon construction or interpretation.
- H. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling. Facsimile signatures shall be acceptable to and binding upon all parties.
- I. Successors. The terms of this Conservation Easement shall be binding upon the parties and their respective agents, personal representatives, heirs, lessees, assigns, and all other successors to their respective interests, and shall continue as a servitude running in perpetuity with the Property.
- J. Joint Obligation. The obligations imposed by this Conservation Easement upon Grantor shall be joint and several.
- K. Covenant to Maintain Validity of Conservation Easement. Grantor and the City covenant that they will defend and maintain the validity of the Conservation Easement granted hereby.
- L. Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Easement or Property, except that representations and warranties of such party made herein and liability for acts or omissions of such party occurring prior to transfer shall survive transfer; provided, however, that notice of any breach or liability must be given to the transferring party within one year after the date of transfer. However, any transfer of the party's interest shall not terminate any environmental liabilities that may exist pursuant to federal or state environmental laws and notice shall not be required for such environmental liabilities.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**GRANTOR:**

Epaka Holdings, LLC

By: \_\_\_\_\_

As: \_\_\_\_\_

STATE OF COLORADO )

: ss.

COUNTY OF BOULDER )

SUBSCRIBED AND SWORN to be for me, a notary public, this \_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_, as \_\_\_\_\_ for Epaka Holdings, LLC.

Witness my hand and official seal.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**GRANTEE:**

CITY OF BOULDER

By: \_\_\_\_\_

City Manager

**ATTEST:**

\_\_\_\_\_

City Clerk

Approved as to form:

\_\_\_\_\_

City Attorney

Date: \_\_\_\_\_

STATE OF COLORADO )

: ss.

COUNTY OF BOULDER )

SUBSCRIBED AND SWORN to be for me, a notary public, this \_\_\_\_\_ day of \_\_\_\_\_ by Jane S. Brautigam, as City Manager for the City of Boulder, Colorado.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

#### EXHIBITS

Exhibit A	Legal Description of the Property
Exhibit B	Water Rights
Exhibit C	Acknowledgment
Exhibit D	Adjoining property description
Exhibit E	Map showing structure locations
Exhibit F	Agricultural Management Plan

Exhibit A  
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 23, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 23 BEARS S 00°03'07" E, 1321.82 FEET; THENCE S 00°03'07" E ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 592.67 FEET; THENCE N 89°56'53" E, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE N 86°10'59" E, 159.90 FEET;  
THENCE N 87°49'28" E, 143.02 FEET;  
THENCE N 78°11'05" E, 126.49 FEET;  
THENCE N 69°11'04" E, 307.13 FEET TO A POINT ON THE CENTERLINE OF HOLLAND DITCH, AS SURVEYED;  
THENCE ALONG THE CENTERLINE OF HOLLAND DITCH, AS SURVEYED, THE FOLLOWING COURSES:

THENCE N 62°03'15" E, 97.54 FEET;  
THENCE N 81°40'06" E, 72.64 FEET;  
THENCE N 73°31'10" E, 63.21 FEET;  
THENCE N 64°53'26" E, 25.77 FEET;  
THENCE DEPARTING SAID CENTERLINE S 00°03'07" E, 692.63 FEET;  
THENCE S 01°31'28" E, 296.33 FEET;  
THENCE S 88°34'03" W, 194.89 FEET;  
THENCE N 65°44'55" W, 99.14 FEET;  
THENCE S 89°54'56" W, 495.37 FEET;  
THENCE N 89°54'24" W, 182.60 FEET;  
THENCE N 00°03'07" W PARALLEL TO, AND MEASURED 30.00 FEET PERPENDICULARLY FROM, THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 717.23 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 777472 SQUARE FEET (17.8483 ACRES), MORE OR LESS.

05/15/2001 "14100LDC"



**Exhibit B**

Water Rights:

18 shares of Left Hand Ditch Company, Certificate Number 1862.

**Exhibit C**

ACKNOWLEDGEMENT OF CONSERVATION EASEMENT WITH RESTRICTIONS

\_\_\_\_\_ (“Purchaser”) has purchased from \_\_\_\_\_ (“Seller”) certain property described as the \_\_\_\_\_, comprising approximately \_\_\_\_\_ acres. Such property is subject to land use restrictions contained in the Conservation Easement With Restrictions (“Conservation Easement”), dated as of \_\_\_\_\_, between the Seller and the City of Boulder (the “City”).

It is understood that the City holds the Conservation Easement exclusively for conservation purposes and is responsible for administering, monitoring and enforcing the terms and conditions therein.

The Purchaser hereby acknowledges the following:

1. Purchaser has received a copy of the Conservation Easement, and is familiar with the provisions therein;
2. Purchaser understands that, as purchaser of the property, Purchaser is subject to all of the terms and conditions of the Conservation Easement;
3. Purchaser and the City acknowledge that the City is responsible to inspect the property from time to time. It is the intent of the City to give the Purchaser reasonable notice of such inspection periods, as set forth in the Conservation Easement, and to invite the Purchaser to participate in such inspection.

ACKNOWLEDGED:

\_\_\_\_\_  
Purchaser

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Boulder

\_\_\_\_\_  
Date

"EXHIBIT D"

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, EXCEPTING THEREFROM THAT PORTION AS CONVEYED BY RAY C. IMEL, INC., A COLORADO CORPORATION, TO ERIC ALAN JOHNSON AND DEBRA JAN JOHNSON BY QUITCLAIM DEED RECORDED OCTOBER 29, 1999 AS RECEPTION NO. 1994966, AND DESCRIBED AS FOLLOWS:

A STRIP OF LAND BEING A PORTION OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., THENCE SOUTH 89 DEG. 47'25" WEST ALONG THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 766.00 FEET; THENCE SOUTH 00 DEG. 00'46" EAST PARALLEL TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SECTION 22, 105.00 FEET; THENCE NORTH 89 DEG. 47'25" EAST PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 766.00 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22; THENCE NORTH 00 DEG. 00'46" WEST ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 22, 105.00 FEET TO THE POINT OF THE BEGINNING;

AND FURTHER EXCEPTING THEREFROM THOSE TRACTS AS CONVEYED BY LLOYD K. RUDD TO THE UNITED STATES OF AMERICA BY WARRANTY DEED RECORDED OCTOBER 2, 1953 IN BOOK 937 AT PAGE 458, AND BEING MORE FULLY DESCRIBED THEREIN.

THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO.

THE SOUTHEAST 1/4; THE SOUTH 1/2 OF THE NORTHWEST 1/4; THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4; THE SOUTH 440 FEET OF THE NORTH 1/2 OF THE NORTHWEST 1/4; AND THE SOUTH 440 FEET OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4, ALL IN SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO.

THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO;

EXCEPTING HOWEVER FROM THE AFORESAID NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26 AND AFORESAID SOUTHWEST 1/4 OF SECTION 23, THE FOLLOWING DESCRIBED PARCELS OF LAND, AND FOR IDENTIFICATION PURPOSES, TO BE KNOWN AS LOTS A, B, AND C:

LOT A

A PARCEL OF LAND BEING A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26 BEARS SOUTH 89 DEG. 50'17" WEST, 2641.06 FEET; THENCE NORTH 00 DEG. 11'08" WEST, ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1269.84 FEET;  
THENCE NORTH 02 DEG. 20'20" EAST, 187.58 FEET;  
THENCE NORTH 80 DEG. 57'41" EAST, 126.47 FEET;  
THENCE NORTH 64 DEG. 14'49" EAST, 75.19 FEET;  
THENCE NORTH 43 DEG. 05'33" EAST, 232.89 FEET;  
THENCE NORTH 73 DEG. 14'32" EAST, 274.74 FEET;  
THENCE NORTH 19 DEG. 03'01" EAST, 180.56 FEET;  
THENCE NORTH 07 DEG. 06'36" EAST, 275.60 FEET;  
THENCE NORTH 41 DEG. 11'16" WEST, 84.28 FEET;  
THENCE 84.55 FEET ALONG THE ARC OF A CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 240.21 FEET, A CENTRAL ANGLE OF 20 DEG. 09'59", AND A CHORD THAT BEARS NORTH 53 DEG. 03'42" EAST, 84.11 FEET;  
THENCE NORTH 42 DEG. 58'42" EAST, 155.36 FEET;  
THENCE NORTH 43 DEG. 43'08" EAST, 53.02 FEET;  
THENCE SOUTH 75 DEG. 50'30" EAST, 45.79 FEET;  
THENCE NORTH 76 DEG. 24'58" EAST, 54.02 FEET;  
THENCE NORTH 60 DEG. 43'22" EAST, 49.94 FEET;  
THENCE NORTH 70 DEG. 16'40" EAST, 116.50 FEET;  
THENCE SOUTH 83 DEG. 28'44" EAST, 58.03 FEET;  
THENCE SOUTH 75 DEG. 35'33" EAST, 51.77 FEET;  
THENCE SOUTH 58 DEG. 00'30" EAST, 19.25 FEET;  
THENCE SOUTH 43 DEG. 21'48" EAST, 18.77 FEET;  
THENCE SOUTH 80 DEG. 12'06" EAST, 9.11 FEET TO A POINT ON THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26;  
THENCE SOUTH 00 DEG. 11'08" EAST ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1216.11 FEET TO THE POINT OF BEGINNING.

LOT B

A PARCEL OF LAND BEING A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 26, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOUDLER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26 BEARS SOUTH 89 DEG. 50'17" WEST, 2641.06 FEET; THENCE NORTH 00 DEG. 11'08" WEST, ALONG THE EAST LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 30.00 FEET; THENCE SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 1269.84 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 89 DEG. 50'17" WEST, PARALLEL TO THE SOUTH LINE OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 26, 656.38 FEET;  
THENCE NORTH 23 DEG. 41'21" EAST, 124.08 FEET;  
THENCE NORTH 37 DEG. 44'32" EAST, 92.57 FEET;  
THENCE NORTH 32 DEG. 58'15" EAST, 126.63 FEET;  
THENCE NORTH 54 DEG. 14'09" EAST, 130.88 FEET;  
THENCE SOUTH 68 DEG. 31'46" EAST, 32.87 FEET;  
THENCE SOUTH 69 DEG. 59'16" EAST, 112.59 FEET;  
THENCE NORTH 71 DEG. 49'42" EAST, 169.80 FEET;  
THENCE NORTH 48 DEG. 28'24" EAST, 76.25 FEET;  
THENCE NORTH 47 DEG. 09'17" EAST, 270.83 FEET;  
THENCE NORTH 35 DEG. 00'09" EAST, 105.31 FEET;  
THENCE NORTH 38 DEG. 45'42" EAST, 212.39 FEET;  
THENCE NORTH 59 DEG. 49'33" EAST, 36.95 FEET;  
THENCE NORTH 66 DEG. 41'20" EAST, 116.89 FEET;  
THENCE NORTH 63 DEG. 08'42" EAST, 166.70 FEET;  
THENCE SOUTH 41 DEG. 11'16" EAST, 84.28 FEET;  
THENCE SOUTH 07 DEG. 06'36" WEST, 275.60 FEET;  
THENCE SOUTH 19 DEG. 03'01" WEST, 180.56 FEET;  
THENCE SOUTH 73 DEG. 14'32" WEST, 274.74 FEET;  
THENCE SOUTH 43 DEG. 05'33" WEST, 232.89 FEET;  
THENCE SOUTH 64 DEG. 14'49" WEST, 75.19 FEET;  
THENCE SOUTH 80 DEG. 57'41" WEST, 126.47 FEET;  
THENCE SOUTH 02 DEG. 20'20" WEST, 187.58 FEET TO THE POINT OF BEGINNING.

LOT C

A PARCEL OF LAND BEING A PORTION OF THE SOUTHWEST 1/4 OF SECTION 23, TOWNSHIP 2 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 23, FROM WHENCE THE SOUTHWEST CORNER OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 23 BEARS SOUTH 00 DEG. 03'07" EAST, 1321.82 FEET; THENCE SOUTH 00 DEG. 03'07" EAST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 592.67 FEET; THENCE NORTH 89 DEG. 56'53" EAST, 30.00 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 86 DEG. 10'59" EAST, 159.90 FEET;  
THENCE NORTH 87 DEG. 49'28" EAST, 143.02 FEET;  
THENCE NORTH 78 DEG. 11'05" EAST, 126.49 FEET;  
THENCE NORTH 69 DEG. 11'04" EAST, 307.13 FEET;  
THENCE NORTH 62 DEG. 03'15" EAST, 97.54 FEET;  
THENCE NORTH 81 DEG. 40'06" EAST, 72.64 FEET;  
THENCE NORTH 73 DEG. 31'10" EAST, 63.21 FEET;  
THENCE NORTH 64 DEG. 53'26" EAST, 25.77 FEET;  
THENCE SOUTH 00 DEG. 03'07" EAST, 692.63 FEET;  
THENCE SOUTH 01 DEG. 31'28" EAST, 296.33 FEET;  
THENCE SOUTH 88 DEG. 34'03" WEST, 194.89 FEET;  
THENCE NORTH 65 DEG. 44'55" WEST, 99.14 FEET;  
THENCE SOUTH 89 DEG. 54'56" WEST, 495.37 FEET;  
THENCE NORTH 89 DEG. 54'24" WEST 182.60 FEET;  
THENCE NORTH 00 DEG. 03'07" WEST, PARALLEL TO, AND MEASURED 30.00 FEET PERPENDICULARLY FROM, THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 23, 717.23 FEET TO THE POINT OF BEGINNING.



## **EXHIBIT F**

### **8104 63<sup>rd</sup> St. 5 year Management Plan**

#### **Management Objective**

Transition existing feedlot farm from an abused and degraded state toward a sustainable operation using organically-approved practices and within the limitations imposed by Boulder County Open Agricultural land use regulations and our City of Boulder Conservation Easement.

#### **Strategy**

Restore and promote a self-regulating, diverse, agricultural ecosystem characterized by improvements in the primary ecological processes of water, carbon, and nutrient cycles, energy flow, and community dynamics.

The primary tools we expect to use for accomplishing this (based on annual progress toward the long-term objective) include:

1. Development of a sustainable business plan for this property that fosters improvements to the land and its supporting ecosystem processes.
2. Establishment of a multistory perennial agricultural food forest as the foundation for the farm ecosystem.
3. Establish a crop rotation that including annual crops, cover crops, and livestock forage.
4. Employ a targeted and appropriately-scaled grazing plan to mimic natural grazing regimes by including adequate recovery periods that will facilitate weed control, ecological succession, and improved community dynamics.
  - a. There will be a maximum of four breeding heritage sows on the property with a boar and the associated piglets, 20 breeding heritage ewes with a ram and the associated lambs (or the equivalent herbivore AU), and no more than 200 heritage fowl.
  - b. The first year brought in feed shall not exceed 90%. Our goal is to decrease this by 10% per year through the first 5 years. This ambitious

plan will have a greater chance of success if additional acreage nearby could be leased in the future.

- c. Livestock will always have access to fresh pasture and/or crop aftermath grazing. Animals will not be confined indoors except for temporary confinement due to severe weather, treatment for illness or injury or to administer preventative healthcare, and during breeding or parturition.
  - d. Subtherapeutic antibiotics will not be fed or administered.
  - e. Growth hormones will not be fed or administered.
  - f. Animal by-products (fish, bird, or mammal) will not be fed.
  - g. Locally-grown (Colorado Front Range) non-GMO grain screenings and vegetable discards from local restaurants and grocery stores can be used to supplement livestock and poultry feed in an effort to reduce food waste and the carbon footprint of the farm.
5. Using/introducing/facilitating greater biodiversity to develop a more resilient agroecosystem. For example: using native forbs on field edges to provide wildlife and beneficial insect/pollinator habitat and using compost tea and other biological soil inoculants to increase the diversity of soil microorganisms which can suppress soil borne pathogens.
  6. Prioritize improving soil quality on the farm through additions of amendments. Emphasis will be placed on increasing soil organic matter and mineral balancing. We will take annual soil tests and use these to guide our management decisions. We will test several different areas on our farm separately, to reflect the previous history of the farm (feed lot area vs. row crop area).
  7. Mechanical manipulation of the land including mowing of invasive weeds prior to seed set, earth manipulation such as creation of terraces, swales, drainage ditches, contour (subsoil) plowing, etc.
  8. We will make improvements to the irrigation delivery on the farm, including employing more efficient irrigation strategies (drip irrigation).
  9. A minimum of 30% of all annual crop lands will be rested from tillage and annual crops yearly (excluding potential annual no-till cover crops).

Feedback tools to measure progress include:

1. Annual check in with the City of Boulder's Open Space and Mountain Parks Agricultural Specialist
  - a. We will provide records of animal numbers and supplemental feed purchased and fed
  - b. We will work with the agricultural specialist to develop an agricultural plan as the condition of the property improves
  - c. We will walk through the property together to check on the overall condition and to address management issues
2. Annual soil testing
3. We will take photos of fixed plots four times per year (March 21, June 21, September 21, and December 21) to track how the farm is doing over time as we transition away from its degraded state.

#### **Phases:**

#### **Year One Initiatives**

- Site clean up including demolition of unnecessary feedlot infrastructure.
- Perimeter fencing.
- Develop lease arrangement with tenant that ensures alignment with management plan.
- Division of interior into zones to allow for rotation of grazing and farm crops: Approximately 4 acres of grazing land and 4.5 acres of annual vegetables are currently planned with the balance in perennial plants.
- Begin assessment, planning and improvements to water delivery infrastructure
- Baseline soil testing
- Fertilize the back pasture with on-site manure. Cover crop this area with a grass/legume mix to build organic matter and fix nitrogen (organic matter in this area is currently 1%). Disk or mow strips to plant pumpkins and winter squash into (New England and Winter Luxury pie pumpkins, and squashes including acorn, butternut, delicate, buttercup and kabocha). Mulch plants with straw on property. The pigs will be turned out onto this area after harvest to clean up and fertilize.
- Disk and reseed disturbed front pasture areas with dryland pasture seed to discourage weed growth and provide animal forage. Mow pastures regularly to avoid weed seed set.

- The feedlot area presents serious challenges. It may just be serious hard pan, however it may also have chunks of buried concrete. We will disk and mow and make an attempt at subsoiling and try to get cover crops growing.
- The southern slope is also a challenge. We will attempt to get the fire department to do a controlled burn so that we can clean it up and make it tractor accessible.

### **Year 2 and 3 Initiatives**

- Continue cover cropping to build damaged soils using animal rotations to clean up and add further organic matter. Start to build more annual vegetables into field rotations.
- Begin Infrastructure improvements including terracing of south facing slope.
- Begin plantings of perennial polyculture food forest including nuts, fruits, bee forage, nitrogen fixers, ground covers, hedgerows, wind breaks, timber crops.

### **Year 4 and 5 Initiatives**

- Enroll tenant farmer in Certified Naturally Grown Program or agreed equivalent for all produced crops (vegetable, fruit, nut, seed, etc.). Livestock and poultry will be owner-certified natural through an affidavit.
- Renovation of existing pole barn to incorporate greenhouse for growing indoor crops
- Use feedback data to make adjustments to crop and grazing rotations

### **Year 6 Initiatives**

- Assess future need for existing 2400 sq. ft. loafing shed at southeast corner of property and remove if not needed in foreseeable future.
- Write new management plan based on relative successes of this plan and to include any additional management objectives.

## 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: November 12, 2014**

**AGENDA TITLE:** Consideration of a motion pertaining to development of a trail on the Joder Open Space and Mountain Parks property.

**PRESENTER**

Michael D. Patton, Director, Open Space and Mountain Parks

**EXECUTIVE SUMMARY**

The bulk of the Joder property was acquired by the city in 2013. The property is located in the North Trail Study Area (North TSA), and was approved for inclusion in the North Foothills Habitat Conservation Area (HCA) by the Open Space Board of Trustees (OSBT) and City Council. At the time of acquisition, staff recommended that decisions about resource management, including public access, be made as part of the Trail Study Area (TSA) planning process.

Long-term flood recovery and the extended timeline for implementation of the West TSA have resulted in delays to the North TSA planning process. This has, in turn, raised concerns that the timeline for providing a trail connection on the Joder property between Olde Stage Road and North Foothills Highway could be unacceptably delayed. This memo analyzes the issues and opportunities related to providing a trail on the Joder property outside of the TSA process, and recommends that the OSBT provide direction to staff on this matter.

**STAFF RECOMMENDATION**

- a) Recommend that staff begin a public process for identifying a trail connection from North Foothills Highway to Olde Stage Road across the Joder property using existing roads/trails.
- or**
- b) Recommend that staff defer trail development on the Joder property to the North TSA Plan

## **COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS**

**Environmental:** The Joder property has significant environmental values associated with its landscape context in a large block of forested foothills/prairie grasslands, the diversity of habitat types on the property and a globally unique opportunity to conserve imperiled butterflies. The OSBT and City Council both unanimously accepted staff's recommendation that the property be included in the Northern Foothills HCA. Developing a trail on the property has the potential to adversely affect native species and ecological systems. The Analysis section of this memorandum contains more information about this factor.

**Economic:** Open Space and Mountain Parks (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:** The Joder property lies between developed trail systems on city-owned open space to the south and east and open space owned by Boulder County to the northwest (Heil Ranch). Establishing a trail on the Joder property could contribute to the connectivity of regional trails in the Boulder Valley. A trail on the Joder property would also increase the amount of trail miles available to open space visitors; and provide opportunities to enjoy the scenery, vistas and wildlife on the property. The Analysis section of this memo contains more information about this factor.

## **OTHER IMPACTS**

**Fiscal** – There are no significant non-personnel costs associated with developing a *recommendation* for a trail on the Joder property. Should the OSBT recommend that staff proceed with the trail connection, there will be costs associated with establishing a trail. A connection to Olde Stage Road will require the acquisition of land or an easement, the price of which has not been determined. Staff would return to the OSBT with information about benefits, feasibility issues and costs before beginning work. As there are a number of priority projects underway during the final quarter of 2014, staff recommends that this project be integrated into the 2015 work plan.

Leaving the trail connection across the Joder property as part of the North TSA planning process would result in similar costs. There are additional costs associated with TSA plan development.

**Staff time** – Staff proposes that if the OSBT determines work should proceed outside the TSA planning process, that this project is integrated into the 2015 work plan and staff time be allocated accordingly. No additional staffing is anticipated to complete this project, but other projects of lower priority may be delayed.

If the trail connection is left to the North TSA, there would be no additional staffing needed to accomplish the project.

## **PUBLIC COMMENT AND PROCESS**

This item is being heard at this public meeting, advertised in the *Daily Camera* on Nov. 9, 2014.

### **ANALYSIS**

Staff is presenting two options for consideration by the OSBT.

- a) Recommend that staff begin a public process for identifying a trail connection from North Foothills Highway to Olde Stage Road across the Joder property using existing roads/trails;  
or
- b) Defer trail development on the Joder property to the North TSA Plan.

Immediacy of a trail connection and the benefits of the TSA planning context are the two factors that staff believes most affect the decision about which alternative to pursue.

### **The TSA Planning Context**

The Visitor Master Plan identified the TSA planning process as a way to integrate a broad perspective into visitor access and resource protection decisions. In 2007, the OSBT approved changes to the TSAs reducing their number and increasing their geographic scope to encompass the entire OSMP system. Larger areas allowed for a better consideration of the issues affecting recreational, natural and cultural resources and a more clear understanding of the relationships and connections among those issues and the OSMP resources at play.

This approach proved useful and beneficial in the West TSA planning process. A larger area provided more options for staff, stakeholders and decision makers to create alternative scenarios that balanced various interests (e.g. visitor access with habitat protection) in different ways.

### **Immediacy of Access**

The city took possession of the Joder II and Cox properties (382 and 3.5 acres respectively) in July of 2013. A small portion (ca. 20 acres) of the Joder/Cox complex had been purchased by the city in 1993. Based upon input from some community members as well as the OSBT and City Council, there is a strong interest for the city to provide a trail connecting North Foothills Highway to Olde Stage Road across the Joder property sooner rather than later.

### ***Integration with the North TSA***

The OSBT received an update on the progress of the North TSA plan at the Oct. 23, 2014 meeting. Staff described plans to complete and process inventory information by the end of the first quarter of 2015 and projected completion of the North TSA inventory reports afterwards. Staff also described developing the North TSA public process during the first quarter 2015--including conversations with the OSBT. Staff wished to avoid defining the process timeline beyond the first quarter of 2015 until there was a shared understanding about the planning process among staff, the OSBT and if necessary City Council.

Staff believes that a conservative estimate of the time required to develop a draft North TSA plan with a “traditional” approach to public involvement at approximately 18 months from now—assuming the availability of staff. It is difficult to predict the timeline for board and council approval. Under the quickest scenario, such approval would take only a month or two to complete. Similarly implementation of facilities for a trail on the Joder property could be dependent upon prerequisites identified or established in the plan. Construction timeframes would be dependent upon weather and the nature, location and design of facilities. Under the scenario of integrating a trail on the Joder property into the North TSA, it could be two years or more from now before facilities on the Joder property would be available for public use

However, even a two year timeline may be optimistic. Since the October update, staff has been examining the implementation timeline for projects resulting from flood damages as well as projects identified in the West TSA Plan. Even with the increases in staffing, OSMP does not anticipate completing flood recovery work until 2017-implementation of the major projects in the West TSA that were likely to wrap up in 2018 are likely to be pushed further out. Consequently, staff is concerned that undertaking the North TSA plan at this time would create community expectations that the city will not be able to accomplish in the short or even mid-term.

#### *Stand-Alone Process for the Joder Property*

The timing of a stand-alone process depends to a large degree upon the scope of work to be considered. Narrowing the range of considerations will reduce the number of topics for discussion and expedite the process. Staff believes that it would be possible to develop a proposal for a connection between North Foothills Highway and Olde Stage Road, share that proposal with stakeholders, solicit feedback and present a recommendation to the OSBT at the December meeting.

As with the North TSA plan alternative, timing from this point forward is difficult to anticipate because the OSBT and City Council may wish to have staff revise the proposal, winter weather could delay implementation and the process may identify prerequisites and acquisitions or easements that need to be addressed. Nevertheless, the stand alone approach would likely result in a proposal for a trail connection across the Joder property far sooner than awaiting completion of the North TSA plan.

#### **CONCLUSION**

Should the OSBT recommend that the planning process for the trail connection move forward immediately and outside of the North TSA, staff believes it would be beneficial to establish the following conditions:

#### The trail alignment should be built on existing roads and trails

This approach would minimize construction costs and disturbance to the landscape while making no significant infrastructure investments. (See Attachment A).

The trail alignment will be open to reconsideration in the NTSA planning process  
This condition recognizes that the North TSA process will have the benefit of more information drawn from a larger area that may identify an alignment for the connection that is better integrated into the local and regional trail system, and may be more sustainable.

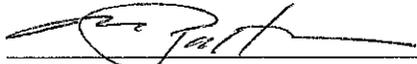
Visitor use on the affected properties will be limited to the connector trail  
On-trail/on-leash requirements for dogs

The OSBT and City Council identified the Joder property as an HCA because of the ecological values of the property. Staff believes that until the North TSA is completed, and important habitats clearly defined, visitor activities should be limited to the connector trail and that the remainder of the property continue to be closed. Because the connector will also include a portion of the Buckingham property-designated at the time of the Visitor Master Plan as an HCA, staff recommends that travel off the designated trail be prohibited on the affected portion of the Buckingham property as well. Staff recommends that dogs be required on leash to protect natural resources at least until the North TSA process.

Multi-use trail designation for the connector trail.

Allowing pedestrians, equestrians and cyclists will provide access to a large cross section of OSMP visitors. Staff anticipates asking for public input on the advisability of temporal separation of uses to reduce the potential for visitor conflict.

Submitted by:



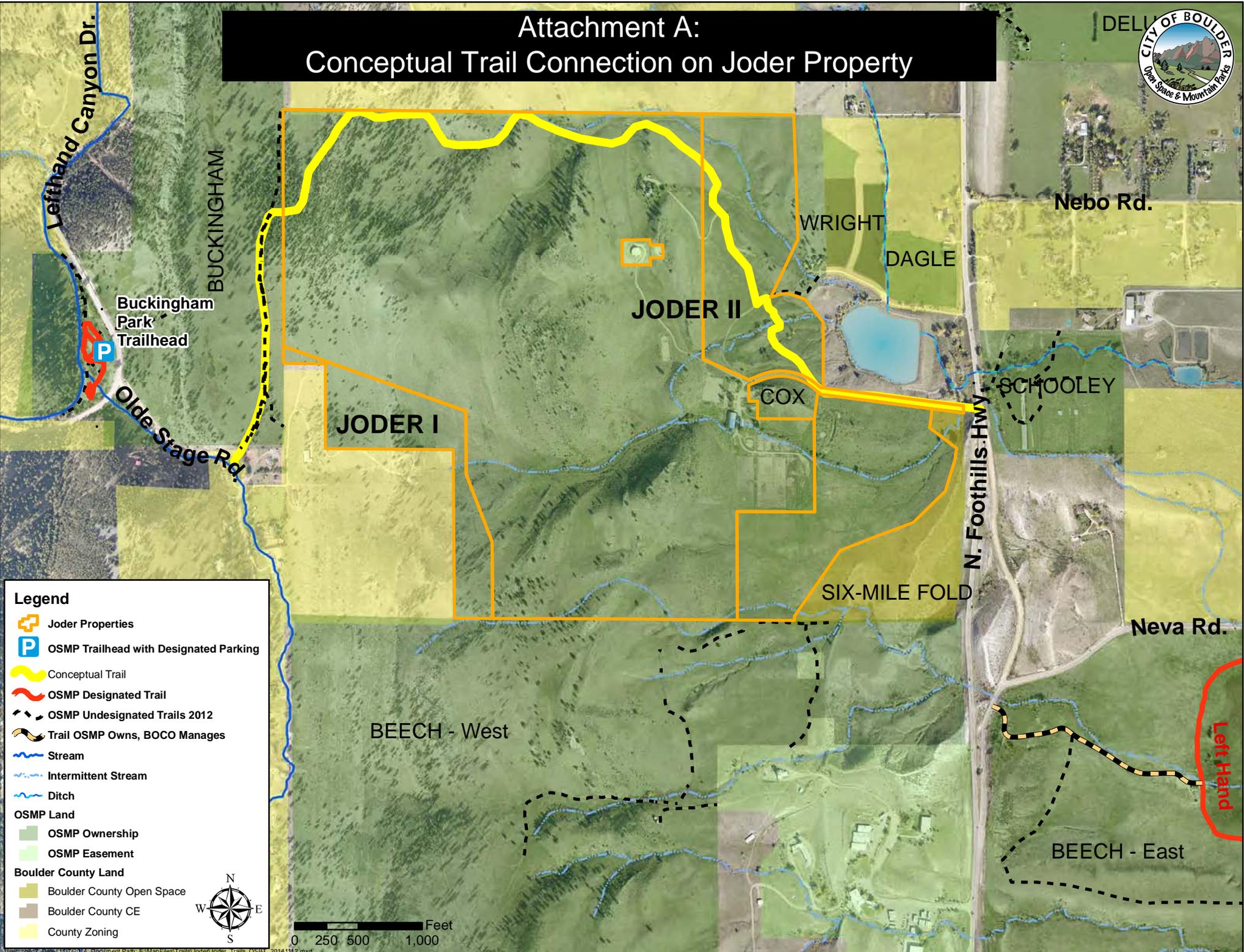
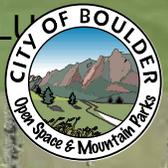
Michael D. Patton, Director

ATTACHMENTS:

- A. Joder Trail Conceptual Alignment

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# Attachment A: Conceptual Trail Connection on Joder Property



**Legend**

- Joder Properties
- OSMP Trailhead with Designated Parking
- Conceptual Trail
- OSMP Designated Trail
- OSMP Undesignated Trails 2012
- Trail OSMP Owns, BOCO Manages
- Stream
- Intermittent Stream
- Ditch
- OSMP Land**
  - OSMP Ownership
  - OSMP Easement
- Boulder County Land**
  - Boulder County Open Space
  - Boulder County CE
  - County Zoning