

## 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.*