



Conservation Easement Best Management Practices

**Natural Resources Department
April 2013**

The mission of the Larimer County Natural Resources Department is to establish, protect and manage significant regional parks and open lands providing quality outdoor recreational opportunities and stewardship of natural resource values. We are committed to fostering a sense of community and appreciation for the natural and agricultural heritage of Larimer County for present and future generations.

Summary

Conservation easements are a common land protection tool that enables Larimer County to fulfill the Open Lands Master Plan by protecting natural, scenic, historic, agricultural and other resources of public interest.

A conservation easement is a voluntary, permanent legal agreement that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. Each conservation easement is unique and tailored to the landowner's and Larimer County's interest. The foundation of an effective easement program is based on good working relationships with landowners.

Larimer County has a legal and ethical responsibility to protect the conservation values outlined in the conservation easements and is required to ensure that landowners perpetually comply with the terms of the conservation easement. Since conservation easements are for public benefit, it is paramount that the public has confidence in Larimer County's ability to fulfill stewardship responsibilities. Comprehensive real estate due diligence, baseline inventory documentation, annual monitoring, current management plans and regular communication with the landowner are effective ways to ensure good stewardship of the public trust.

The following Best Management Practices reflect rules established by the Colorado Division of Real Estate titled Qualifications for Certification to Hold Conservation Easements, Colorado Open Space Alliance's (COSA) Best Management Practices document titled Holding Conservation Easements: A Local Government Best Practices Handbook (2009) and guidance provided by the Colorado Coalition of Land Trusts Center of Excellence Program and the Land Trust Alliance.

What is a Conservation Easement?

A conservation easement is a legal document which contains permanent restrictions on the use or development of a specific property. Landowners enter into a conservation easement as a voluntary act to protect the resource values found on their property. Each easement is individually crafted to reflect the needs and objectives of the landowner and the agency holding the easement.

The easement must be granted to a qualified conservation-oriented governmental entity (such as Larimer County), or a private non-profit land trust (such as Legacy Land Trust).

The process for establishing, monitoring and reporting on conservation easements is contained in this Stewardship document.

Conservation Easement Evaluation

Conservation easements are acquired via donation (where landowners may pursue a State tax credit), purchase, or a combination of both. Easements acquired via donations where

landowners pursue a tax credit must be held by an entity certified by the State of Colorado. Larimer County is certified by the State of Colorado and renews this certification annually.

Larimer County has a 12-step process, known as the Written Project Selection Criteria, that guides staff, the Open Lands Advisory Board and the Board of County Commissioners in evaluating properties proposed by the landowner for protection through a conservation easement held by Larimer County.

Staff involved: Open Lands Program Manager (OLM), Resource Program Manager (RPM), Senior Land Agent (SLA), Department Director (DD), other staff as appropriate, Open Lands Advisory Board (OLAB)

Conservation Easement Document Development and Review

The SLA and OLM are the primary contacts for landowners interested in donating or selling a conservation easement. The SLA and OLM initiate discussions with the landowner regarding conservation values and landowner intent. Once the project has passed the Open Lands Advisory Board and Board of County Commissioner Initial Review steps the SLA and OLM begin negotiating an easement. As the project moves forward, the list of "prohibited uses" and "reserved rights" is developed, based upon the needs and desires of both parties. The conservation easement is drafted by the SLA and may be reviewed by additional staff, as appropriate.

Staff involved: OLM, RPM, SLA, others as appropriate.

Baseline Documentation Report

The purpose of the baseline documentation report (baseline) is to document the conservation values and existing conditions at the time of conservation easement conveyance. Therefore, all baselines will be completed and signed by the landowner before or at closing. If there are extenuating circumstances (such as snow that prevents access or photos of all conservation values) then an abbreviated baseline detailing available information and including site photos will be done. The abbreviated baseline and a letter of agreement for the landowner to sign the final baseline will be signed by the landowner, at closing. The full baseline will be completed and signed by both parties within 9 months of closing.

The Acknowledgement Statement, signed by the grantor and grantee must clearly indicate that the baseline accurately represents the conservation values and condition of the property at the time of the conservation easement conveyance.

Baselines are completed by qualified County staff or consultants, with oversight by the Resource Program Manager and follow Larimer County's Model Baseline Format. Larimer County and the landowner receive fully executed copies.

Staff involved: RPM, Resource Specialist (RS), others as appropriate

Management Plans for Conservation Easement Lands

Management plans outline the activities conducted by the grantor (landowner) or representatives of the grantor that will affect the conservation values. A management plan may have sections dedicated to weed control, wildlife habitat improvements, agricultural activities, fence maintenance or other structure maintenance. A management plan allows the grantor and grantee an opportunity to discuss and plan activities that will protect and improve the conservation values.

Larimer County can provide land management advice or direct the grantor to other agencies that can provide this advice. Larimer County has a [Model Conservation Easement Management Plan Outline](#) that the landowner can use to develop a management plan for the eased property.

Management plans will be completed by the landowner, with technical support and review by the RPM or RS as assigned, and will be approved and signed by the grantor and grantee by closing. Management plans will be updated by the grantor as needed, to reflect current management practices.

Staff involved: RPM, RS

Landowner Relationships

Larimer County maintains regular contact with owners of eased properties. When possible, Larimer County provides landowners with information about new land management practices regarding forestry, weed/pest control, wildlife and agriculture. Larimer County strives to build a positive working relationship with all landowners of properties eased by Larimer County.

Conservation Easement Monitoring

All conservation easements are monitored annually, starting the year after the completion of the Baseline Report. An annual monitoring report must be completed for each conservation easement every calendar year and reports must be completed within 10-14 months of the previous report.

Staff, interns and volunteers conduct conservation easement monitoring, under the supervision of the RS. The RS manages the Easement Monitoring Program, monitors easements or assigns qualified staff and volunteers to monitor them. Typically the individual that completes the monitoring event will create the monitoring report, which is then reviewed and approved by the RS.

Preparation of each monitoring event begins with a review of the conservation easement, baseline, management plan and previous monitoring reports. Plats and Findings and Resolutions or other planning and legal documents may also need to be reviewed if the conservation easement allows limited development.

After the conservation easement documents have been reviewed, the grantor or representative of the grantor is contacted to schedule the monitoring event. All monitoring events involve a site visit. Grantors or their representatives are encouraged to attend the monitoring event, to meet staff, discuss any changes or proposed changes to the property and how the property is managed. If the grantor or their representative attend the monitoring event, their signature, affirming they attended the event, will be requested.

If the grantor or their representative cannot attend the monitoring event, staff will ask the grantor or their representative a series of questions over the phone about changes to the property or management of the property. A summary of these comments will be captured in the monitoring report.

Annual monitoring reports should include photographs of any significant changes to the conservation values, changes in land use, improvements, potential easement violations or other noteworthy observations. The conditions of the property and any potential violations are documented by completing an official conservation easement monitoring report for each property. Each photo from the baseline report does not have to be reproduced for the annual monitoring report. Any new photos taken from a location not identified in the baseline require a new photopoint map to be included in the annual monitoring report.

In some cases, more than one agency holds a single conservation easement. In this case additional measures are needed to make sure each agency receives copies of the annual monitoring report. Additionally, Larimer County may own land and grant a conservation easement to another agency or organization. In this case, the County's role will change from completing the report to being interviewed and hosting a monitoring event for the agency or organization holding the conservation easement.

The following three arrangements exist with conservation easements held by Larimer County or land owned by Larimer County that are eased by another agency or organization.

Easements held solely by Larimer County: The landowner is invited to but not required to attend the annual monitoring event. Larimer County will attempt to contact the landowner via phone and if there is no response, Larimer County will leave a voicemail stating their plans to monitor on a certain day/time. Since monitoring is required in the conservation easement, confirmation from the landowner is not needed to begin the site visit. Landowners receive a cover letter highlighting the date of the event and a copy of the completed annual report. The original annual report and a digital copy are archived with Larimer County.

Easements co-held between Larimer County and another entity: The primary holder of the easement is designated and is responsible for all monitoring activities. The agency or organization that co-holds the conservation easement (partner) is invited to attend the site visit, but does not have to attend. Landowners and partners receive a cover letter highlighting the date of the event and a copy of the completed annual report. A copy of the cover letter and monitoring report is archived with Larimer County.

Larimer County owned land with an easement held by another entity: The holder of the conservation easement conducts the monitoring event and completes all paperwork. At the request of the conservation easement holder, Larimer County may take photos to be included in the annual monitoring report. The holder of the conservation easement retains the original copy of the monitoring report and Larimer County (the landowner) and partners receive a copy of the completed report. A digital copy is archived with Larimer County. If, over time, the location of photopoints varies significantly from the baseline, an amendment to the baseline may be needed.

If water rights are tied to the conservation easement or owned by Larimer County, additional monitoring is needed to ensure the appropriate amount of water is being diverted and the risk of abandonment is prevented. This may include checking the state's abandonment list, provided by the Colorado Division of Water Resources, obtaining diversion records from the appropriate Water Commissioner and documenting that the property has been irrigated or water has been diverted to the property through photographs or commentary from farmers or ditch riders.

Staff involved: RS, others as appropriate

Annual Monitoring Report Repository

Annual monitoring reports are stored in a binder for each conservation easement. These files are scanned and backed up by filing them on Larimer County's shared drive.

Staff involved: RS

Conservation Easement Violations

Any activities that potentially violate the conservation easement are documented in an annual monitoring report. If these activities are observed by a third party or anytime other than the annual monitoring event, a site visit and monitoring event will be planned immediately. Once a potential violation is observed and documented by the RS, the RPM, SLA and OLM are notified to determine if indeed a violation has occurred. If the extent or severity of the violation changes, additional reporting may be necessary. If a violation has occurred, Larimer County is obligated to take action and appropriate staff including possibly the Department Director and County Attorney or members of the Open Lands Advisory Board will be consulted and a resolution will be developed.

Public agencies such as the Environmental Protection Agency (EPA) and Colorado Parks and Wildlife (CPW) may be consulted if federal or state laws are violated. Consultants may be hired to collect or process samples or develop a restoration plan, if needed. If the violation has temporal impacts and ceasing the activity could prevent additional harm to the conservation values, immediate action is necessary.

If a violation occurs, properties will be restored to the condition before the violation took place or impacts to the conservation values will be mitigated on or off site. If these remedies are not feasible, Larimer County will seek compensation for the loss of conservation values. In some cases, minor violations may be allowed to remain without enforcement by Larimer County. The SLA will contact the landowner to notify them of the violation and propose a remedy. Once compliance has been achieved, the SLA will send a letter acknowledging the easement is no longer in violation.

Partners that financially contributed to the easement will be provided copies of the violation and resolution documents and may receive financial compensation for the loss of conservation value relative to their contribution. Funds needed to cover the defense of eased properties will be paid out of the Help Preserve Open Spaces sales and use tax. See Larimer County's [Conservation Easement Enforcement or Violation Procedure](#) for more details.

Staff involved: RS, RPM, SLA, OLM, DD, County Attorney (CA), OLAB, others as appropriate

Annual Review of Conservation Easement Reports

In order to fulfill Colorado Division of Real Estate Certification Rules, a summary of the previous monitoring year will be provided to the Open Lands Advisory Board each year. Any violations and remedies to these violations will be emphasized during the presentation.

Staff involved: RS, RPM, OLM

Annual State Recertification

In order to fulfill the Colorado Division of Real Estate Certification Rules, Larimer County will reapply annually for certification to hold conservation easements for which a state tax credit is claimed. The SLA will submit the application materials.

Staff involved: SLA

Conservation Easement Amendments

Easements will be amended per Larimer County's [Conservation Easement Amendment Procedure](#).

Staff involved: SLA, OLM