



# **Conservation Easement Program**

## **Policies and Procedures**



**November 17, 2020**

## **1. Background, Mission and Goals**

**1.1** In 1997, El Paso County (County) initiated a Conservation Easement Program (Program) to enhance the County's ability to protect the natural and scenic features abundant in the County. Currently, the County holds 32 conservation easements, totaling 2,496.75 acres of land in El Paso County. The mission of the Program draws from the goals of the El Paso County Parks Master Plan (Master Plan) adopted in 1997 and most recently updated in 2013 (Appendix 1).

**1.2** The mission of the Program is to preserve scenic viewsheds, wildlife habitat, agricultural lands, and historic and cultural sites, and to provide recreational opportunities for the public benefit. This is accomplished through the protection of prairies, forests, existing ranching operations, and undeveloped natural lands, as well as working cooperatively to develop trail connections and view corridors throughout the County.

**1.3** The policies and procedures utilized in the Program ensure that the legal requirements of federal and state law are met, that the Program results are real and genuine, and that the responsibilities of the County can be carried out in perpetuity. To fully ensure that all scientific, public, and legal aspects of the conservation easement process are sufficiently addressed for each property, County staff work cohesively on all aspects of the process, including property evaluation, acquisition, stewardship, monitoring, and recordkeeping.

**1.4** All of the policies and procedures that guide the Program are compiled in this comprehensive document which updates and supersedes any previous guidelines, policies, procedures, or documents pertaining to the Program.

## **2. Easement Process**

**2.1** The landowner approaches the County with a proposed conservation easement property.

**2.2** The County conducts an initial evaluation of the proposed property. All criteria must be met or the County will not proceed with a formal analysis of the proposal.

**2.3** The County initiates a formal analysis of the proposed property, including a site visit. The proposed property must meet criteria for one or more of the conservation purposes in order to proceed.

**2.4** The County provides a letter recommending that the landowner obtain independent financial, tax, and legal advice.

**2.5** The County provides the landowner with a Disclosure of Perpetuity form available from the Colorado Division of Regulatory Agencies Division of Conservation.

**2.6** County staff provides a recommendation to accept or decline the property as a conservation easement.

**2.7** A property recommended by County staff for acceptance into the Program is presented at a Parks Advisory Board (PAB) meeting for endorsement.

**2.8** If endorsed by the PAB, the following items shall be provided to the County by the property owner:

- Due Diligence Agreement with proposed Deed of Conservation Easement
- Title commitment
- Subordination agreement, if needed
- Property boundary survey, if needed
- Mineral rights information or mineral remoteness report
- Title insurance
- Water rights information
- Environmental site assessment
- Disclosure of Perpetuity Form
- Baseline report (prior to closing)
- Property appraisal (prior to closing)
- \$4,000 endowment fee, unless waived (at or prior to closing)

**2.9** Legal review of all documentation by the County Attorney's Office.

**2.10** The proposed property is agendized for approval or rejection by the Board of County Commissioners (BoCC).

**2.11** Real estate closing of the Deed of Conservation Easement.

**2.12** The landowner is provided with a Welcome Packet (Appendix 6).

### **3. Evaluation Process**

#### **3.1 Initial Evaluation**

**3.1.1** When a landowner approaches the County with a potential conservation easement property, County staff conducts an initial evaluation (Appendix 2) using the following criteria:

- The property must be located within the boundaries of El Paso County
- The property must contain conservation/natural resource values that help to further the Program's mission
- The property contains conservation values that should be protected, and a conservation easement is the best tool for protecting the property
- The landowner must demonstrate conservation interest and donative intent regarding the property if tax benefits are to be claimed

- The property must be able to maintain its conservation values for the foreseeable future
- The property must be able to be protected and monitored in perpetuity
- The property must be “protected from something and/or for something”

**3.1.2** After determining that the property meets or exceeds the initial evaluation criteria defined above, the County will proceed with a formal analysis (Appendix 3), including a site visit to the proposed property.

### **3.2 Project Selection Criteria (Formal Analysis)**

Internal Revenue Service (IRS) Code, Section 170(h)(4)(A), has identified four conservation purposes as qualifying for a conservation easement tax deduction. The project selection criteria/formal analysis process is based on these IRS regulations. Following a successful initial evaluation, the proposed property is assessed by completing an evaluation of the four conservation purposes:

**3.2.1 Conservation Purpose 1:** The preservation of land areas for the general public’s outdoor recreation or education. Factors to be considered include:

- Does the property provide public access for recreation and/or education?
- Does the property contain features of scientific significance?
- Is the property contiguous to existing recreation sites?
- Is the property contiguous to existing open space or natural areas?
- Is the property valuable to the community as open space due to its proximity to developing areas?
- Do facilities such as parking lots and/or a visitor’s center exist on the property or is there potential for building them?
- Is most of the land in the surrounding area privately owned, thus affording little or no other public recreation?
- Does the plan for public access and recreation on the property fit within the goals and parameters of the Master Plan?

**3.2.2 Conservation Purpose 2:** The protection of a relatively natural habitat for fish, wildlife, or plants or a similar ecosystem. Factors to be considered include:

- Is the property large enough to adequately protect the resources?
- Does the property contain habitat for rare, threatened or endangered species of fish, wildlife, or plants?
- Has the habitat been altered by human activity?
- Does the property have high biological diversity?
- Is the property contiguous to existing open space or natural areas?
- Does the property buffer relatively natural habitats?

- Does the property provide a connection to other protected or open-space lands for movement of wildlife?
- Does the property provide a movement corridor for wildlife through developed areas?
- Does the property contain areas that contribute to the ecological viability of a local or state park or conservation area?
- Does the property provide any unique habitat?
- Does the property contain wetlands, ponds, or riparian areas?

**3.2.3 Conservation Purpose 3:** The preservation of open space (including farmland and forest land), where such preservation is for the scenic enjoyment of the general public or, pursuant to a clearly delineated federal, state, or local governmental conservation policy, that will yield a significant public benefit. El Paso County will consider the following criteria when evaluating a significant public benefit:

- Is the property of sufficient size that its scenic or agricultural attributes are likely to remain intact even if adjacent properties are developed?
- Is the property contiguous to other agricultural or open space areas?
- Is the property visible from a public roadway or recreation area?
- Would development of the property impair the scenic character or viewshed of the area?
- Does the property set a precedent for open space protection in a developing area?
- Does the property provide relief from intense land development in the area?
- Does the property provide a buffer between residential and non-residential development?
- Does the land contain unique or outstanding physiographic characteristics?
- Is the property in active agricultural use or an example of a historical agricultural use?
- Would the agricultural land otherwise succumb to development pressures?
- Does the property fall under the Sensitive Wildlife Habitat and Colorado Natural Heritage Program sites?
- Does the property fall under Landscape Character and Significant Landforms/Landmarks sites or within a Candidate Open Space Area?
- Does the property fall under Historic and Cultural Resource sites?

**3.2.4 Conservation Purpose 4:** The preservation of a historically important land area or a certified historic structure. A certified historic structure is any building, structure, or land area that is listed in the national register or is located in a registered historic district, and is certified by the Secretary of the Interior as being of historic significance to the district. The County limits acceptance of properties under this conservation purpose to land areas or sites of historic importance, as staff lacks the necessary expertise related to evaluating and monitoring structures. Factors to be considered include:

- Is the site in good condition and capable of being maintained in perpetuity?
- Has the site been altered or damaged?
- Does the property contain land areas of historical, geological, archeological, or local landmark significance?
- Is the property listed in the state or national register?
- Is the site identified in the Master Plan as having local historic significance?
- Is the site identified by a recognized organization as having local historical significance?

### **3.3 Considerations for Rejection of a Property**

**3.3.1** Based on the formal analysis, if the property does not meet the specific purposes of the Program, the County may decline the conservation easement. The factors that may be considered in the decision to reject a conservation easement include, but are not limited to, the following:

- The property is too small or isolated to allow for the adequate protection of conservation values
- The property has few conservation/natural resource values remaining intact
- The property contains a significant infestation of noxious weeds
- The property contains hazardous materials, contaminants, or refuse requiring containment, control, or disposal
- The property is located where trespassing may be a significant issue
- The property is likely to significantly diminish in conservation value because the development of adjacent properties is not consistent with maintaining such values
- The landowner insists on provisions in the conservation easement that are contrary to the Program and could diminish the conservation values
- The property is such that the easement requirements would be unusually difficult to enforce
- The property is part of a development proposal which, overall, is likely to have significant adverse impacts on the conservation resources
- The property does not meet IRS guidelines for the conservation easement

**3.3.2** It is possible to occasionally protect properties that fall short of the IRS criteria and therefore do not receive federal tax benefits. The County will carefully scrutinize easements of this nature to ensure that the property offers sufficient public benefit to warrant protection.

## **4. Tax Benefits**

**4.1** The County makes no guarantee regarding the qualification of a proposed conservation easement for tax credit purposes. The County strongly recommends that a landowner who is considering placing a conservation easement on a property should obtain independent legal, tax, and financial advice prior to completing the donation. An information letter (Appendix 4) discussing these recommendations is provided to the landowner when the formal analysis begins.

## **5. Due Diligence**

**5.1** Upon completion of the formal analysis and the determination that the proposed property is acceptable for a conservation easement, the County will proceed with the standard real estate and environmental due diligence (Appendix 5) steps for the transaction. The landowner will provide a Due Diligence Agreement and proposed Deed of Conservation Easement that shall be drafted by a qualified legal professional hired at the landowner's expense. The documents will be provided to County staff, including the County Attorney's Office, for legal and environmental due diligence. The County Attorney's Office conducts a formal legal review of every aspect of the Due Diligence Agreement and Deed of Conservation Easement and may require revisions to ensure that the conservation values are properly identified and protected. Any and all issues related to due diligence must be resolved to the County's satisfaction prior to final acceptance of the property.

### **5.1.1 Title Commitment Requirements**

The landowner will provide the County with copies of any documentation regarding title (ownership) to the property. The County will work with a title company or landowner's counsel to obtain a current title commitment for the property. Matters relevant to the conveyance of a conservation easement are:

#### **5.1.1.1 Subordination Agreement**

Any and all mortgages or liens on the property must be subordinate to the conservation easement. A subordination agreement must be signed by the lender or lienholder, notarized, and recorded with the conservation easement. Refusal of subordination, as defined above, will result in the easement not being accepted, as it is not a qualified conservation contribution under the IRS Code.

#### **5.1.1.2 Property Boundary Survey**

The County will review the legal description of the property in the title commitment and determine whether a survey is necessary. If a survey is required, a professional surveyor must be hired at the landowner's expense.

#### **5.1.1.3 Mineral Rights**

The County will review the status of mineral rights ownership on the property. When the conservation easement includes a donation, and if the title commitment indicates that mineral rights have been severed from surface ownership so that the landowner does not own all of the mineral rights on or under the property, in

order to comply with Internal Revenue Code §170(h), the County will require that a “mineral remoteness” letter be prepared indicating that the probability of extraction or removal of minerals from the property through surface mining by a third party is “so remote as to be negligible.” This letter must be prepared by a professional geologist, hired at the landowner’s expense.

#### **5.1.2 Title Insurance**

A title insurance policy naming the County as the insured party must be obtained at the landowner’s expense. Although the title commitment identifies any recorded exceptions to title, it does not guarantee there are not unrecorded defects to title, or that there are not mistakes or oversights in the title commitment. The County Attorney’s Office provides a thorough legal review of the title commitment to ensure that the County obtains good and marketable title to the conservation easement property. The title insurance protects the County from loss due to errors and defects in title. The amount of the policy should be equal to the amount of the tax credit for the conservation easement.

#### **5.1.3 Water Rights**

The County will work with the landowner to identify all water rights associated with the property. It is the County’s preference that water rights necessary to support the conservation easement values are delineated in the Deed of Conservation Easement and are reserved to the conservation easement property for use in perpetuity.

#### **5.1.4 Environmental Site Assessment**

An environmental assessment shall be conducted on the property to determine the existence or presence of any hazardous or toxic contaminants or other pollutants prior to the transaction. The nature and scope of the assessment will depend on the nature of the property involved and the potential for the existence of an environmental problem. The County will direct the landowner as to the type of environmental assessment required. The assessment must be completed by a qualified environmental professional, hired at the landowner’s expense.

#### **5.1.5 Submittal to Board Agendas**

Following legal and environmental review, the Due Diligence Agreement and proposed Deed of Conservation Easement will be submitted to the PAB for review and public comment. If the PAB recommends approval, the documents will be submitted as an agenda item at a BoCC meeting for public comment and hearing. The public will receive advance notice of the agenda item through the BoCC’s standard agenda publication process. The landowner, or landowner’s counsel, as well as County staff and the County Attorney’s Office, will be present to answer questions from the Commissioners and the public regarding the proposal.

## **6. Other Documentation**

### **6.1 Appraisal**

If the landowner intends to take federal and/or state tax benefits, the County requires the landowner to submit an appraisal of the conservation easement property that meets the requirements of state and federal law. The appraisal must be obtained from a qualified appraiser, hired at the landowner's expense. The appraisal must be submitted to the County prior to the real estate closing on the easement.

### **6.2 Disclosure of Perpetuity From**

In order to ensure that landowners are aware of the perpetual nature of conservation easements, a Disclosure of Perpetuity Form must be executed prior to the completion of the conservation easement. This form must be submitted to the Colorado Division of Regulatory Agencies Division of Conservation as a part of the tax credit application.

### **6.3 Baseline Report**

To ensure that existing conditions are noted and documented, a comprehensive baseline study assessing the condition of the property will be conducted and must be provided to the County no later than the closing date of the conservation easement. The baseline report must be completed by a qualified professional, hired at the landowner's expense. At a minimum, the baseline report must include:

- Landowner's name and contact information
- Property location and general description
- Property access instructions and directions to the property
- Property information provided by the County Assessor's parcel data
- Property details, geographical setting, hydrology, and geology
- Local open space planning designations
- Property conservation purposes and values
- Property conservation easement rights and restrictions
- Property water rights information
- Property mineral rights ownership status
- Property past, current, or future mining activity
- Property hazardous materials or refuse notations
- Property encumbrances
- Property existing structures and improvements
- Property vegetation and wildlife resources
- Property historic ownership and uses
- Property current uses and management
- Property adjacent land uses
- Property management plans
- Landowner goals and intended future uses
- Property weed management plans and issues
- Property management recommendations
- Property photos

- Property maps (vicinity, aerial photo, surveys, soils, irrigation, wetlands, rare plants, other important vegetation, location of buildings and other developed features, and photo points)
- Report preparation methods and authors
- Acknowledgment signatures

#### **6.4 Other Information**

Information related to any proposed building envelopes reserved on the property must be provided. At a minimum, data must include:

- Property map with building envelope(s) boundaries
- Shapefile of building envelope(s)
- GPS coordinates of building envelope(s) corners

### **7. Phasing**

**7.1** The County may occasionally enter into a phased conservation easement transaction. The County will not participate in any phasing transactions that abuse the Colorado conservation easement tax credit program or federal tax deduction regulations and/or the intent of the County's Program.

**7.2** Criteria for the County to consider in accepting phased conservation easements are as follows:

- Each phase must have specific, well-defined conservation purposes
- Each phase must stand alone in meeting IRS requirements
- Each phase must contribute to the property's overall conservation values and is not done solely to benefit the landowner
- Each phase may contain no more than one building envelope
- Each phase must be under the same ownership
- Each phase will require payment of the County's endowment fee
- Each phase is subject to all policies and procedures pertaining to a standalone conservation easement
- Larger portions of a phased transaction will be accepted first
- Upon completion, the properties should be reassembled into a single parcel and easement, if feasible

### **8. Endowment Fee**

**8.1** The County will assess a one-time endowment fee of \$4,000 for each conservation easement accepted by the County. This fee will be used to directly offset County costs for processing the easement and for conducting ongoing monitoring and must be paid at or before the real estate closing. Each phase of a multi-phased conservation easement will be subject to the endowment fee. The fee will be waived if public access is granted to the conservation easement.

## **9. Program Funding**

**9.1** Funding for the Program is provided by the County's conservation easement endowment fee and by designated funding from the El Paso County General Fund as may be annually approved and appropriated by the Board of County Commissioners. El Paso County strongly supports the goals and mission of the Program and is committed to its continued funding to meet the obligations pursuant to state and federal law.

## **10. Boards**

**10.1** Each proposed conservation easement property will be presented at a PAB meeting for review and endorsement. The PAB is appointed by the BoCC. The public is notified regarding PAB meeting dates/agendas and is encouraged to attend and provide comment.

**10.2** After presentation to the PAB, the proposed easement acceptance will be placed on a BoCC agenda for approval. The public is notified of the BoCC meetings, pursuant to the requirements of the Colorado Open Meetings Law, and the public is encouraged to attend and provide comment.

### **10.3 Conflicts of Interest**

El Paso County is committed to maintaining a high standard of professional integrity and will take all necessary precautions to avoid actual and perceived conflicts of interest and provide transparency in all conservation easement transactions. Any appearance of conflict of interest should be avoided. It is recognized that members of an advisory group and/or staff of El Paso County may have personal, financial, business, and professional interests, some of which may have the potential to create real or perceived conflicts with the best interest of the Program. El Paso County does not necessarily view the existence of these interests as an impediment to participation in Program activities, but it does require that, in some circumstances, they be disclosed. It is the policy of El Paso County that the conduct of any individual representing El Paso County should, at all times, act in the best interest of El Paso County and its citizens. Accordingly, the following rules are adopted to guide disclosure of potential conflicts of interest and the County's response thereto that shall apply to those who serve the Program in any capacity.

#### **10.3.1 Definitions**

**10.3.1a**      ***Conflict of Interest:*** A situation in which professional judgment or behavior concerning a primary interest (in this case the acceptance of a property into the Program) may be improperly influenced by a different interest (such as financial or personal gain).

**10.3.1b**      ***Persons covered:*** Any elected or appointed County officials; members of any County board, advisory group or committee; County staff; or any individual in any way acting as El Paso County's designated representative.

#### **10.4 Scope of disclosure**

**10.4.1** Any person covered by this policy shall disclose a personal or material financial interest in Program activities or proposed conservation easement property.

**10.4.2** Each individual governed by this policy shall file a disclosure statement with the El Paso County Community Services Department Executive Director immediately upon becoming aware of a possible conflict of interest. Each individual shall immediately recuse himself or herself until the matter has been resolved.

### **11. Closing of Conservation Easement**

**11.1** All documents necessary for closing on a conservation easement will be prepared and reviewed by the County Attorney's Office, title company and landowner's counsel. The County requires that the landowner's property tax payments be up to date. Signatures on closing documents are obtained from the Chair of the Board of County Commissioners prior to the closing. An Assistant County Attorney will attend the closing and will address any issues that arise on behalf of the County. If any part of the closing process does not meet with the County's approval, the closing will not proceed until all issues are resolved. Recording of documents and other post-closing matters are handled pursuant to standard real estate practices and procedures.

### **12. Stewardship**

#### **12.1 Monitoring**

##### **12.1.1 Scheduling**

Annual monitoring inspections are typically conducted July through September. County staff will contact all landowners to schedule the monitoring visits. Landowners are welcomed and encouraged to accompany staff during the inspection.

##### **12.1.2 Monitoring Inspection**

During the monitoring inspection, staff will walk or drive the property depending upon its nature, topography, and size. Photo points are established and repeated and the monitoring form (Appendix 7) is completed. Staff will note any issues of concern and determine the best course of action for addressing the issue(s). Staff may schedule a return visit with additional County staff or representatives from other agencies, such as the Natural Resource Conservation Service or Colorado Parks and Wildlife, to address issues and determine best management practices. Staff will endeavor to maintain an excellent relationship with the landowner while providing education and rectifying any issue(s) in the most positive way possible.

##### **12.1.3 Monitoring Report**

Staff will prepare a final annual monitoring report, including copies of all photo points and any additional information such as weed control methods or agency contact information. The report will rate the property as either compliant, compliant but actions

needed, or non-compliant. “Compliant” means that the monitoring inspection turned up no issues of concern and the property is meeting the terms of the conservation easement. “Compliant but actions needed” means that the property is in acceptable condition and is meeting the terms of the conservation easement but staff noted issues that could ultimately impact the property’s conservation values. This may be the case when noxious weeds are becoming a problem. When such issues are noted on the property, the landowner is directed to address the issues to ensure that the conservation values are protected. “Non-compliant” means that the property is no longer meeting the terms of the conservation easement and the issue must be addressed immediately. Depending on the reason for non-compliance and the willingness of the landowner to address the issue, the County may proceed with enforcement actions.

#### **12.1.4 Inspection Letters/Acknowledgement Forms**

The monitoring report (Appendix 7) is sent via certified mail, receipt return requested. The report includes a letter indicating the date the monitoring inspection was conducted. The letter also requests landowner agreement on the assessment of the property and a request to provide staff with updated contact information. The landowner is asked to acknowledge that the monitoring report accurately represents the condition of the property at the time of the inspection and to comply with recommendations. The landowner signs the owner acknowledgement statement (Appendix 8) and returns the statement to the County.

## **12.2 Enforcement**

**12.2.1** The County is committed to protecting the conservation purposes and values of all County-held conservation easements and has the resources necessary to enforce the restrictions identified for each property. In order to minimize the potential for violations, the landowner is made aware of the requirements for complete and strict compliance with the conditions established in the Conservation Easement Deed. This requirement is reinforced with an informational brochure. Additionally, a positive relationship with each landowner is established and cultivated through annual monitoring inspections.

**12.2.2** In the event that a possible violation is suspected, the following procedures will be completed by El Paso County Environmental Division Staff:

- Potential violation is investigated
- Information is documented, including photographs as needed
- Deed is reviewed regarding the potential violation and enforcement
- Staff conducting the monitoring notifies supervisor of potential violation
- If a violation is determined, the landowner is given written notice of the violation by certified mail, return receipt requested
- The Notice of Violation will:
  - Identify the violation
  - Advise the required management objectives

- Provide viable compliance options
- Specify a reasonable timeline for completion
- Stipulate compliance notification to the Program representative

**12.2.3** In the event that compliance is not achieved as required under 12.2.2, then the Executive Director of the Community Services Department, in coordination with the County Attorney's Office, will notify the landowner of the violation and outline the steps necessary in order to achieve compliance, to include a timeline in which to accomplish compliance. If the violation is of such a nature that there is a need to pursue immediate action in order to protect the conservation values, then the Executive Director reserves the right not to provide any further timeline beyond the Notice of Violation.

If the violation remains unresolved after the timeline established above, then the enforcement provisions of the Deed of Conservation Easement shall be followed. The Board hereby grants authority to the El Paso County Attorney's Office to pursue any legal remedies as provided for in the Deed of Conservation Easement, if so requested by the Executive Director of the Community Services Department, upon expiration of the timeline provided and confirmation that a violation remains.

### **13. Amendments**

**13.1** It is the policy of the County to hold and enforce conservation easements, as written, in perpetuity. Any request for an amendment to an easement must have a clearly justified reason and will only be approved under very special, limited circumstances.

**13.2** This amendment policy sets forth the procedures for effecting an amendment on a conservation easement and the basic principles that will guide the County in exercising its discretion in amending an existing easement.

**13.3** An amendment to a conservation easement may be considered for circumstances including, but not limited to, the following:

- The amendment represents a minor or incidental change that is not inconsistent with the conservation values or purposes identified in the easement
- The amendment enhances the conservation values or conservation purposes of the property, adds adjacent land, or achieves greater conservation of the property
- The amendment corrects an error or oversight in the original conservation easement
- The amendment will not set an unfavorable precedent for future amendment requests
- The amendment does not adversely affect the standing as a holder of conservation easements
- The amendment will not qualify as an impermissible benefit
- A public benefit is provided by the amendment

**13.4** Any amendment request must increase the conservation values or at least be neutral in its effect on the conservation values.

**13.5** To initiate the amendment process, a landowner must submit to the County a written request detailing the proposed amendment. The request must explain how the amendment meets one or more of the circumstances listed above, as well as discuss how it would have either a positive or negligible impact on the property's conservation values. This submission must also include a map with current and proposed features and any other supporting documentation.

**13.6** The County will review the documentation to determine that the proposed amendment meets one or more of the circumstances under which an amendment may be allowed, and ultimately find that the amendment either improves or has no effect on the property's conservation values.

**13.7** A staff recommendation is prepared, and following legal review, the proposed amendment must be approved by the Community Services Department Executive Director before being placed on the BoCC meeting agenda for approval.

## **14. Recordkeeping**

**14.1** In compliance with the State of Colorado Department of Personnel and Administration, Colorado State Archives Records Retention and Disposition Request, hard files related to conservation easements are maintained by the County with no destruction schedule. Additionally, conservation easement files are maintained electronically, and are backed up each night by the County.

### **14.2 Acquisition Files**

**14.2.1** The County maintains files related to the transaction process for each property. The files include the following documentation:

- Due diligence documentation (title commitment, subordination agreement, surveys, mineral remoteness letter, title insurance, water rights information, environmental site assessment)
- Appraisal (if required)
- Baseline report
- Closing documents
- Financial documents
- BoCC agendas and resolutions
- Correspondences
- Deed of Conservation Easement with exhibits
- Tax-related documentation (e.g. Form 8283, Disclosure of Perpetuity form, etc.)
- Other background information

**14.2.2** These files are kept in the County Attorney's Office in the secure main file room. All documents are scanned and the electronic copies are stored on the County's main server. Additionally, recorded documents related to BoCC actions are stored at the County Clerk and Recorder's Office.

### **14.3 Stewardship Files**

**14.3.1** The County maintains files related to stewardship for each property. Documentation included follows:

- Owner contact information
- Easement information (acreage, acquisition date, parcel number(s)), a list of file contents, a list of any background or additional information such as correspondence with landowners)
- General location map
- Aerial maps, including archival and new aerial photos
- Deed of Conservation Easement
- Management plans
- Monitoring reports
- Inspection letters
- Acknowledgment forms
- Baseline report
- Background information
- Correspondence
- Site photos

**14.3.2** These files are kept at the Environmental Division's office. All documents are scanned and the electronic copies are stored on the County's main server.

**Appendix 1:**  
**Mission Statement**  
**Excerpted from**  
**El Paso County Parks**  
**Master Plan**

“The Mission of El Paso County Parks is to:

Enhance quality of life in El Paso County by:

- Acquiring, developing, maintaining, and preserving regional parks, trails and open space
- Providing responsible resource management for open space lands characterized by unique natural environments
- Providing natural and cultural history interpretation, education, and information services
- Supporting major community events and festivals that celebrate our County’s heritage and culture
- Providing and managing visitor destinations and experiences

## **Appendix 2:**

# **Initial Evaluation**



## Conservation Easement Property Assessment Initial Evaluation

|                               |  |
|-------------------------------|--|
| <b>Project Name</b>           |  |
| <b>Contact Name</b>           |  |
| <b>Address</b>                |  |
| <b>Phone</b>                  |  |
| <b>Email</b>                  |  |
| <b>Property Address</b>       |  |
| <b>Property Parcel Number</b> |  |
| <b>Property Acreage</b>       |  |

- ☐ Y ☐ N Is the property located within the boundaries of El Paso County?  
☐ Y ☐ N Does the property help further the Program mission?  
 Explain:
- ☐ Y ☐ N Is a conservation easement the best tool for protecting the property?  
☐ Y ☐ N Is the property owner conservation-minded with respect to the property?  
 Explain the property owner goals:
- ☐ Y ☐ N Can the conservation values be maintained?  
☐ Y ☐ N Does the County have the resources to responsibly protect the property in perpetuity?

What is the Property being protected from?

What is the Property being protected for?

|                             |  |
|-----------------------------|--|
| <b>Current Land Use</b>     |  |
| <b>Past Land Use</b>        |  |
| <b>Surrounding Land Use</b> |  |

## **Appendix 3:**

### **Formal Analysis**



## Conservation Easement Property Assessment Formal Analysis

|                                          |  |
|------------------------------------------|--|
| <b>Project Name</b>                      |  |
| <b>Contact Name</b>                      |  |
| <b>Address</b>                           |  |
| <b>Phone</b>                             |  |
| <b>Email</b>                             |  |
| <b>Property Address</b>                  |  |
| <b>Property Parcel Number</b>            |  |
| <b>Property Acreage</b>                  |  |
| <b>Date of Site Visit</b>                |  |
| <b>Property Maps</b>                     |  |
| <b>Individuals Present at Site Visit</b> |  |
| <b>Proposed Conservation Values</b>      |  |

**Outdoor Recreation and Education Criteria:** The preservation of land areas for the general public's outdoor recreation or education.

☐Y ☐N Does the property provide public access for recreation and/or education?  
Describe:

☐Y ☐N Does the property contain features of scientific significance?  
Describe:

☐Y ☐N Is the property contiguous to existing recreation sites?  
Describe:

☐Y ☐N Is the property contiguous to existing open space or natural areas?  
Describe:

☐Y ☐N Is the property valuable to the community as open space due to its proximity to developing areas?

☐Y ☐N Do facilities such as parking lots and/or a visitor's center exist on the property or is there potential for building them?

☐Y ☐N Is most of the land in the surrounding area privately owned, thus affording little or no other public recreation?

☐Y ☐N Does the plan for public access and recreation on the property fit within the goals and parameters of the Master Plan?

**Natural Resource Criteria:** The protection of a relatively natural habitat for fish, wildlife, plants, or similar ecosystem.

|                              |  |
|------------------------------|--|
| <b>Habitat Type</b>          |  |
| <b>Hydrological Features</b> |  |

☐Y ☐N Is the property large enough to adequately protect the resources?\*

☐Y ☐N Does the property contain habitat for rare, threatened or endangered species of fish, wildlife or plants?  
Describe:

- ☐Y ☐N Has the habitat been altered by human activity?  
Describe:
- ☐Y ☐N Does the property have high biological diversity?
- ☐Y ☐N Is the property contiguous to existing open space or natural areas?  
Describe:
- ☐Y ☐N Does the property buffer relatively natural habitats?
- ☐Y ☐N Does the property provide a connection to other protected or open-space lands for movement of wildlife?
- ☐Y ☐N Does the property provide a movement corridor for wildlife through developed areas?
- ☐Y ☐N Does the property contain areas that contribute to the ecological viability of a local or state park or conservation area?
- ☐Y ☐N Does the property provide any unique habitat?  
Describe:
- ☐Y ☐N Does the property contain wetlands, ponds, or riparian areas?  
Describe:

**Open Space Criteria:** The preservation of open space (including farmland and forest land), where such preservation is for the scenic enjoyment of the general public or, pursuant to a clearly delineated federal, state, or local governmental conservation policy, that will yield a significant public benefit.

- ☐Y ☐N Is the property of sufficient size that its scenic or agricultural attributes are likely to remain intact even if adjacent properties are developed?
- ☐Y ☐N Is the property contiguous to other agricultural or open space areas?
- ☐Y ☐N Is the property visible from a public roadway or recreation area?
- ☐Y ☐N Would development of the property impair the scenic character or viewshed of the area?
- ☐Y ☐N Does the property set a precedent for open space protection in a developing area?
- ☐Y ☐N Does the property provide relief from intense land development in the area?

- ☐Y ☐N Does the property provide a buffer between residential and non-residential development?
- ☐Y ☐N Does the land contain unique or outstanding physiographic characteristics?
- ☐Y ☐N Is the property in active agricultural use or an example of a historical agricultural use?
- ☐Y ☐N Would the agricultural land otherwise succumb to development pressures?
- ☐Y ☐N Does the property fall under Sensitive Wildlife Habitat and Colorado Natural Heritage Program sites?  
Describe:
- ☐Y ☐N Does the property fall under Landscape Character and Significant Landforms/Landmarks sites or within a Candidate Open Space Area? (Parks Master Plan, pp. 97-101)  
Describe:
- ☐Y ☐N Does the property fall under Historic and Cultural Resources sites? (Parks Master Plan, pp. 114-118)  
Describe:

**Historic Value Criteria:** The preservation of a historically important land area.

- ☐Y ☐N Is the site in good condition and capable of being maintained in perpetuity?
- ☐Y ☐N Has the site been altered or damaged?
- ☐Y ☐N Does the property contain land areas of historical, geological, archeological, or local landmark significance?
- ☐Y ☐N Is the property listed in the state or national register?
- ☐Y ☐N Is the site identified in the Master Plan as having local historic significance?
- ☐Y ☐N Is the site identified by a recognized organization as having local historical significance?

**Recommended Acceptance of Property based on site visit and criteria:**

☐ Yes

☐ No

Comments:

## **Appendix 4:**

# **Information Letter**

# **EL PASO** **COUNTY**

## **COLORADO**

**COMMUNITY SERVICES DEPARTMENT**  
PARKS ~ PLANNING ~ RECREATION & CULTURAL SERVICES  
ENVIRONMENTAL ~ VETERANS SERVICES ~ CSU EXTENSION

Date

Landowner Name  
Landowner Address  
City, CO Zip

Dear Landowner,

Thank you for contacting El Paso County (County) regarding the preservation of your property through conservation easement. Based on the initial evaluation, your property meets the basic criteria necessary for consideration as a property held under conservation easement by the County.

The next step in the process is for County staff to conduct a site visit. The purpose of this visit is to walk the property, take photographs, and get a general feel for the conservation values of the property. Following the site assessment, a formal analysis will be completed and a determination will be made as to whether or not the property meets the County's selection criteria.

Please note that substantial costs may be involved with the conveyance of a conservation easement, and all costs are the sole responsibility of the property owner. The County currently charges a \$4,000 stewardship fee for each transaction. Additionally, items required may include, but are not limited to, property boundary surveys, a "mineral remoteness" letter, title insurance, and an environmental site assessment, all at the property owner's expense. Should the County allow a transaction to be phased under a limited set of criteria, each phase will be subject to the \$4,000 stewardship fee.

In addition to preserving your land, donations of conservation easements may qualify as charitable contributions under state and federal laws, with federal and state income and estate benefits associated with a conservation easement. It is imperative that you seek advice from your tax professional regarding a qualified conservation contribution and tax deduction in compliance with §170(h) of the Internal Revenue Code and §38-30.5-102 et seq. of the Colorado Revised Statutes.

If you have any questions or concerns and to set a time for your site visit, please contact me at your earliest convenience. My information is below.

Regards,

Nancy Prieve, Natural Resource Specialist  
El Paso County Community Services Department  
Environmental Division  
719-520-7845  
[nancyprieve@elpasoco.com](mailto:nancyprieve@elpasoco.com)

**Appendix 5:**  
**Due Diligence Checklist**



## Conservation Easement Request Due Diligence Checklist

### Title Documentation

|                |  |
|----------------|--|
| Date Requested |  |
| Date Provided  |  |
| Comments       |  |

### Title Commitment

|                |  |
|----------------|--|
| Date Requested |  |
| Date Provided  |  |
| Comments       |  |

### Subordination Agreement

|             |                                                       |
|-------------|-------------------------------------------------------|
| Required    | <input type="checkbox"/> Y <input type="checkbox"/> N |
| Date Signed |                                                       |
| Comments    |                                                       |

### Property Boundary Survey

|               |                                                       |
|---------------|-------------------------------------------------------|
| Required      | <input type="checkbox"/> Y <input type="checkbox"/> N |
| Date Provided |                                                       |
| Comments      |                                                       |

### Mineral Rights

|               |                                                       |
|---------------|-------------------------------------------------------|
| Required      | <input type="checkbox"/> Y <input type="checkbox"/> N |
| Date Provided |                                                       |
| Comments      |                                                       |

**Title Insurance**

|                    |                                                       |
|--------------------|-------------------------------------------------------|
| <b>Required</b>    | <input type="checkbox"/> Y <input type="checkbox"/> N |
| <b>Date Signed</b> |                                                       |
| <b>Comments</b>    |                                                       |

**Water Rights**

|                    |                                                       |
|--------------------|-------------------------------------------------------|
| <b>Required</b>    | <input type="checkbox"/> Y <input type="checkbox"/> N |
| <b>Date Signed</b> |                                                       |
| <b>Comments</b>    |                                                       |

**Environmental Assessment**

|                      |                                                       |
|----------------------|-------------------------------------------------------|
| <b>Required</b>      | <input type="checkbox"/> Y <input type="checkbox"/> N |
| <b>Type Required</b> | <input type="checkbox"/> Y <input type="checkbox"/> N |
| <b>Date Provided</b> |                                                       |
| <b>Comments</b>      |                                                       |

## **Appendix 6:**

## **Welcome Letter**



**COMMUNITY SERVICES DEPARTMENT**  
PARKS ~ PLANNING ~ RECREATION & CULTURAL SERVICES  
ENVIRONMENTAL ~ VETERANS SERVICES ~ CSU EXTENSION

Date

Name

Address

City, State, Zip Code

**RE: Conservation Easement**

Dear ,

Welcome to the El Paso County Conservation Easement Program.

Attached, please find a welcome packet outlining the responsibilities of the property owner and El Paso County under the Conservation Easement program. This information summarizes and clarifies some situations and opportunities regarding the Program.

Please let me know if you have any questions or concerns, or if I can be of any additional help. My contact information is below.

Sincerely,

Nancy Prieve, Natural Resource Specialist  
El Paso County Community Services Department  
Environmental Division  
719-520-7845  
[nancyprieve@elpasoco.com](mailto:nancyprieve@elpasoco.com)

## CONSERVATION EASEMENT PROGRAM



El Paso County is pleased to welcome you into the Conservation Easement Program. This information is provided to initiate a positive and productive partnership.

### *Responsibilities*

#### Deed of Conservation Easement

Both parties should have a clear understanding of what their rights and responsibilities are as outlined in the Deed of Conservation Easement. The terms and conditions expressed in the Deed of Conservation Easement govern all activities on and uses of the property.

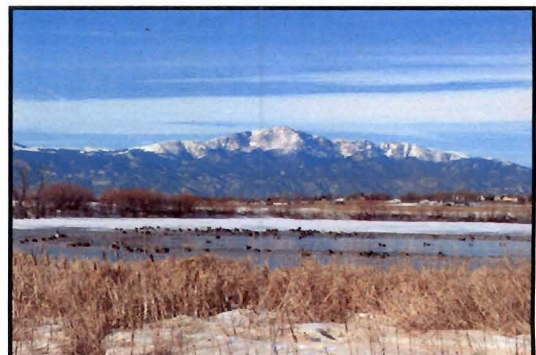
#### Conservation Values

The Conservation Values are stated in the Deed of Conservation Easement and can include such areas as Outdoor Recreation/Education, Natural Habitat, and Open Space for Scenic Enjoyment. It is the landowner's responsibility to make certain that these values are protected. The County will conduct an annual monitoring process to ensure adherence to the requirements.

### *Reserved Rights*

#### Notification Not Required

Many reserved rights are standardized and may include, but are not limited to, forestry activities, daily maintenance of fences and existing structures, erosion control, and weed control. It is assumed that these activities will not harm the conservation values and can be conducted at the landowner's discretion.



### Notification Required

Reserved rights that may have a more significant impact on the property require notification to El Paso County prior to exercising those reserved rights.

As the holder of the easement, it is El Paso County's responsibility to ensure that all activities are carried out in a manner consistent with the purpose of the easement and that they do not harm the conservation values.



The landowner is required to provide written notification, including a description of the nature, scope, design, location, timetable, and any other information relevant to any activity that significantly impacts the property. The information should be sent to the **El Paso County Conservation Easement Program, 3255 Akers Drive, Colorado Springs, Colorado 80922-1503.** Within thirty days you will receive written approval or denial of your request.

*Please read the terms and conditions of the Deed of Conservation Easement prior to exercising any reserved rights to determine if prior notification is required.*



If you are unsure about any activity, please call **El Paso County** at (719) 520-7845.

## ***Building Envelopes***

Before utilizing a building envelope, it is important to be familiar with the specific boundaries and activities called out regarding each building envelope. All details are indicated in the Deed of Conservation Easement. Please reference the Deed of Conservation Easement to determine if pre-notification is required.



## ***Prohibited Uses***

The Deed of Conservation Easement lists the prohibited uses. These may include, but are not limited to, high impact activities such as timber harvesting, mining, roads, feedlots, etc.

## ***Responsibilities of El Paso County***

It is El Paso County's responsibility to ensure compliance with the Deed of Conservation Easement. El Paso County conducts an annual monitoring of all properties held under Conservation Easement. The purpose of this visit is to make certain the condition of the property remains consistent with the values called out in the Deed of Conservation Easement.



El Paso County will contact you prior to conducting the monitoring. Landowners are welcomed and encouraged to be an active participant in the site visit. The visit will include photo points that are repeated yearly from the same position. The report also includes data and documentation as to the condition of the property. An annual report summarizing the conditions and notations observed during the monitoring process will be mailed to you.

### ***Contact Information and Ownership Change***

Please provide El Paso County with your current contact information. If property ownership changes, you are required to notify El Paso County and provide the new owner's contact information.

Thank you for being a part of the El Paso County Conservation Easement Program. It is in everyone's best interest to ensure that your property remains in the best condition possible. We have an array of resources and knowledge to assist you with any questions, concerns, or suggestions you might have. Please do not hesitate to contact us.



El Paso County  
Conservation Easement Program  
3255 Akers Drive  
Colorado Springs, CO 80922-1503  
Phone (719) 520-7845  
Fax (719) 520-7827



## **Appendix 7:**

# **Monitoring Report**



Date

Name

Address

City, State, Zip Code

**RE: Conservation Easement Yearly Monitoring Report**

Dear Mr. Name,

The El Paso County Community Services Department, Environmental Division, conducted the annual monitoring of the Name conservation easement on Date. Please review the annual monitoring report. If you agree with the accompanying report, including any indicated corrective actions, please sign the attached Owner Acknowledgement Statement and return to the El Paso County Environmental Division in the enclosed envelope. If you do not agree with the monitoring report or have any questions about problem areas or corrective actions, please contact me at (719) 520-7845 or [nancyprieve@elpasoco.com](mailto:nancyprieve@elpasoco.com).

Sincerely,

Nancy Prieve  
Natural Resources Specialist



**YEAR CONSERVATION EASEMENT  
MONITORING REPORT  
PROPERTY NAME**

|                  |  |
|------------------|--|
| Inspection Date  |  |
| Inspection Time  |  |
| Inspector        |  |
| Report Preparer  |  |
| Preparer Address |  |
| Preparer Phone   |  |

|                       |  |
|-----------------------|--|
| <u>Property Owner</u> |  |
| Name                  |  |
| Address               |  |
| Phone                 |  |
| Parcel #              |  |

|                                               |                                                   |                                                               |
|-----------------------------------------------|---------------------------------------------------|---------------------------------------------------------------|
| Representative contacted prior to visit?      | <input type="checkbox"/> Yes (Name):              | <input type="checkbox"/> No                                   |
| Did a representative accompany the inspector? | <input type="checkbox"/> Yes (Name):              | <input type="checkbox"/> No                                   |
|                                               | <input type="checkbox"/> Met at beginning (Name): |                                                               |
| Method of inspection                          | <input type="checkbox"/> Drive                    | <input type="checkbox"/> Walk <input type="checkbox"/> Other: |

### EASEMENT COMPLIANCE

|                                                       |                   |
|-------------------------------------------------------|-------------------|
| <input type="checkbox"/> Compliant                    | Recommendations:  |
| <input type="checkbox"/> Compliant but Actions Needed | Actions Needed:   |
| <input type="checkbox"/> Non-compliant                | Actions Required: |

### CONDITION OF CONSERVATION VALUES

|                     |                                                                                                                         |           |
|---------------------|-------------------------------------------------------------------------------------------------------------------------|-----------|
| Conservation Value: | Condition:<br><input type="checkbox"/> Good<br><input type="checkbox"/> Threatened<br><input type="checkbox"/> Impacted | Comments: |
| Conservation Value: | Condition:<br><input type="checkbox"/> Good<br><input type="checkbox"/> Threatened<br><input type="checkbox"/> Impacted | Comments: |
| Conservation Value: | Condition:<br><input type="checkbox"/> Good<br><input type="checkbox"/> Threatened<br><input type="checkbox"/> Impacted | Comments: |
| Conservation Value: | Condition:<br><input type="checkbox"/> Good<br><input type="checkbox"/> Threatened<br><input type="checkbox"/> Impacted | Comments: |

### PHOTO POINTS

| Photo Point #            | UTM (E) | UTM (N) | Notes |
|--------------------------|---------|---------|-------|
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |
| <input type="checkbox"/> |         |         |       |

#### **Additional Photos**

|                          |                          |
|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

### RESERVED RIGHTS

|                                                 |                              |                             |                                       |                                         |                             |
|-------------------------------------------------|------------------------------|-----------------------------|---------------------------------------|-----------------------------------------|-----------------------------|
| Has there been any exercise of reserved rights? |                              |                             |                                       | <input type="checkbox"/> Yes            | <input type="checkbox"/> No |
| If yes, was notice provided?                    | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Required | <input type="checkbox"/> Not Applicable |                             |
| Describe:                                       |                              |                             |                                       |                                         |                             |
| Building Envelope(s):                           |                              |                             |                                       |                                         |                             |

### PROHIBITED USES

|                                                  |                              |                             |
|--------------------------------------------------|------------------------------|-----------------------------|
| Has there been any violation of prohibited uses? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Describe:                                        |                              |                             |

### COMMON PROBLEM AREAS

#### Noxious Weeds

| Species | Location (see attached aerial photo) | Control Information Provided |
|---------|--------------------------------------|------------------------------|
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |
|         |                                      | <input type="checkbox"/>     |

#### Other

| Human Made                              | Yes                      | No                       | Describe |
|-----------------------------------------|--------------------------|--------------------------|----------|
| Littering, dumping, vandalism           | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Boundary or fence line issues           | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Trespass, unauthorized uses             | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Utilities maintenance and right-of-ways | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Other                                   | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Natural Occurrence                      | Yes                      | No                       |          |
| Soil erosion                            | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Bank erosion                            | <input type="checkbox"/> | <input type="checkbox"/> |          |
| Other                                   | <input type="checkbox"/> | <input type="checkbox"/> |          |

**NOTES / COMMENTS / QUESTIONS**

|                                  |                              |                             |
|----------------------------------|------------------------------|-----------------------------|
| Landowner concerns or questions? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 1.                               |                              |                             |
| 2.                               |                              |                             |
| 3.                               |                              |                             |

\_\_\_\_\_  
Signature of Report Preparer

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Date

**Appendix 8:**  
**Owner Acknowledgement Statement**



**CONSERVATION EASEMENT  
OWNER ACKNOWLEDGEMENT STATEMENT**

|                        |  |
|------------------------|--|
| <b>Property Name</b>   |  |
| <b>Contact Name</b>    |  |
| <b>Address</b>         |  |
| <b>Phone</b>           |  |
| <b>Inspection Date</b> |  |
| <b>Inspector Name</b>  |  |
| <b>Inspector Phone</b> |  |

**EASEMENT COMPLIANCE**

|                                                       |                   |
|-------------------------------------------------------|-------------------|
| <input type="checkbox"/> Compliant                    | Recommendations:  |
| <input type="checkbox"/> Compliant but Actions Needed | Actions Needed:   |
| <input type="checkbox"/> Non-compliant                | Actions Required: |

I, Name, owner of the above property, agree that the description prepared by Name, representative of El Paso County, is an accurate representation of the physical condition of the property as of Date.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date