

**Citizens' Open Space
Advisory Committee
(COSAC IV)
City Hall, Council Chambers
June 18, 2013**



AGENDA

MEETING CALLED TO ORDER - 8:30 a.m.

ROLL CALL

PUBLIC INPUT

ADOPTION OF MINUTES: June 4, 2013 (Attachment A)

STAFF AND BOARD COMMUNICATIONS/DISCLOSURES

REGULAR AGENDA

Topic: Criteria Discussion Review and Adoption (10 min)

Recommendation:

Adoption of an established criteria matrix (Attachment B) provided to evaluate recommended acquisition of parcels. List includes criteria, which denotes the purpose or intent of acquisition, as well as, the possible values, traits, desired uses and funding and preservation tool associated with each recommendation.

Background:

The Committee reviewed an updated criteria framework on May 21st and June 4th and provided comment. The tool will serve as a 'filter' to prioritize parcels. Their purpose and intent for recommended acquisitions to City Council.

Significant Impacts:

Any recommended purchase by COSAC should meet clear objectives that the public would understand. Furthermore, due to the flexibility in the funding source, the Committee may wish to explore parcels which may serve broader goals of the general public while identifying areas to be preserved in perpetuity with clearly stated intent.

Topic: Discussion on Risner Ridge Protection Mechanism (45 min)

Recommendation:

Review the City Council meeting minutes where Council provided direction to extend existing deed restrictions to the other parcels in City ownership that were acquired without the restrictions. Review the preservation tool matrix and information provided by Nancy McLaughlin on the use of Conservation Easements as a preservation mechanism. Attached are the June 4 and December 6, 2012 staff reports (Exhibits A & C) and Council minutes (Exhibit B & D). Either confirm the December 6, 2012 Risner Ridge direction by Council, or provide an alternative recommendation regarding a preservation tool/conservation easement.

In the June 14, 2012 minutes, there was consensus among Council that parcels should be addressed on a case by case basis.

In the December 6, 2012 minutes, there was consensus among Council to extend deed restrictions to the remaining Risner Ridge parcels and have COSAC provide an opinion on how to address future and retroactive conservation easements.

Based upon your work to date on protection tools, the COSAC Criteria and review of the existing deed restrictions and individual Committee site visits, the question before the Committee is as follows:

Is COSAC comfortable with proceeding as directed by Council to extend the deed restrictions or do you wish to provide an alternative recommendation?

Topic: Conservation Easement on Gambel Oak Parcels (10 min)

Recommendation:

Staff has tentatively scheduled a work session with City Council on July 19th to clarify possible conservation values, which may be included in the proposed conservation easement. Staff encourages Committee members to visit the Gambel Oak area in the near future to provide insight on what values should be addressed, in addition to baseline documentation and historic references/use, if the easement is approved.

ADJOURN

Pursuant to the Americans with Disabilities Act, individuals needing special accommodations during the meeting should notify the Park City Sustainability Department at 435-615-5201 24 hours prior to the meeting.

Attachments

Attachment A- June 4, 2013 COSAC Minutes

Attachment B- COSAC IV Criteria Matrix

Exhibits

Exhibit A- June 4, 2012 Staff Report Easement/Endowment

Exhibit B- June 4, 2012 City Council Meeting Minutes (excerpts)

Exhibit C- December 6, 2012 Staff Report SLC Risner Ridge Request

Exhibit D- December 6, 2012 City Council Meeting Minutes (excerpts)

Exhibit E- Park City Protected Open Space Map

**COSAC IV Meeting Minutes
City Council Chambers
June 4, 2013, 8:30 a.m.**

COSAC members in attendance: Charlie Sturgis, Cheryl Fox, Wendy Fisher, Jan Wilking, Suzanne Sheridan, Andy Beerman, Stew Gross, Rhonda Sideris, Kathy Kahn, Tim Henney, Cara Goodman, Meg Ryan, Jim Doilney, Judy Hanley

Public (alternates) Jeff Ward, Carolyn Frankenburg

Excused: Bill Cunningham

Staff: Heinrich Deters, Polly Samuels-McLean, ReNae Rezac

CALL TO ORDER

Chair Ryan called the meeting to order.

PUBLIC COMMUNICATIONS

Chair Ryan called for public input for any items not on the agenda. There was none.

ADOPTIONS OF MAY 7, 2013 MINUTES

Motion: Judy Hanley moved approval of the minutes as written; Kathy Kahn seconded the motion.

Vote: The motion carried.

STAFF AND COMMITTEE DISCLOSURES/COMMENTS

Chair Ryan stated that Vice chair Henney is running for City Council.

REGULAR AGENDA

Adoption of COSAC IV Electronic Meeting Policy

Motion: Jan Wilking moved approval of the COSAC IV Electronic Meeting Policy; Stew Gross seconded the motion.

Vote: The motion carried.

Adoption of COSAC IV Attendance Policy

Motion: Rhonda Sideris moved approval of the Attendance Policy as written; Vice chair Henney seconded the motion.

Vote: The motion carried.

Criteria Discussion Review and Adoption

Heinrich stated he incorporated everyone's comments from the last meeting into the criteria. Chair Ryan asked for thoughts from the group. After discussion, the consensus was there is no way to know how popular a recreation parcel will become, so each parcel should be considered on a case by case basis. Parking provided at trailheads is a necessary component of the deed restriction or conservation easement. Restrooms are also recommended at trailheads.

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Chair Ryan asked the committee to focus on the "Other Considerations" section of the matrix. The first item is location of potential parcels for purchase and whether COSAC has authority to buy land outside city limits.

Councilman Beerman said City Council would support land purchase that is contiguous to Park City's boundaries before they would support acquisition of land further away in Summit County.

Heinrich said it may be appropriate to consider purchase of land that has some environmental concerns relating to soils since they would be more financially attainable. If purchased, the City would be taking on additional liability.

The discussion moved to "Partition of more intensive use parcels". Heinrich explained the concept for these criteria is that there is no limiting bond language, so the committee has more flexibility in recommending open space parcels for purchase. Vice chair Henney expressed his support of the "Other Considerations" being a catchall/filter for criteria that doesn't fit elsewhere. Chair Ryan asked if trailhead infrastructure would fit under these criteria. Mr. Wilking supported adding trailhead infrastructure under passive recreational use.

The last criteria under Other Considerations is "Adaptability/Sustainability [unknown future uses]". Heinrich further defined these criteria as applying to land that may become more valuable as open space in the future. Ms. Fisher said this could also be a filter in looking toward the future and considering a suitable parcel for solar panel placement.

The committee agreed two more criteria for Other Considerations should include parcel size and infrastructure. Councilman Beerman recommended considering water rights when contemplating land acquisition. Heinrich wondered whether open space funds could be used to purchase water rights.

Chair Ryan summarized the three additional issues to be added under Other Considerations as: 1) Infrastructure; 2) Parcel size; and, 3) Water rights.

Ms. Goodman asked if fishing and hunting should be included under recreational value. Heinrich noted that regulation would come through the Division of Wildlife Resources. If it is decided that there are wildlife components that need to be protected further through a preservation tool, that is where hunting and fishing would be addressed. The acquisition and purpose is the responsibility of COSAC. If a parcel falls under critical conservation, a different tool would be used. Ms. Fisher clarified if land is publically owned; there is debate from the State's perspective, if you can restrict hunting. An owner of a land parcel considered for purchase can include in the purchase agreement that hunting is not allowed even if the land is going to be publically owned in the future.

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Ms. Kahn asked how mineral rights would be addressed. Ms. Fisher responded that issue comes under preservation tools since buying mineral rights is similar to buying water rights. Ms. Fox added this issue provides an opportunity to diversity funding sources. Heinrich will incorporate changes/additions to the matrix and bring to the next meeting for ratification.

Heinrich said he modeled the Preservation Tool section of the matrix after Nancy McLaughlin's presentation. Ms. Fox asked to whom the deed restriction would revert. Assistant City Attorney McLean said if the owner is requiring a specific legal method to conserve the land, there are different ways to structure the agreement. If land is donated as part of a development agreement in lieu of retaining it with a deed restriction, it can be very complicated. It is more a factor of the strength of the preservation agreement. Heinrich said it depends who you are working with.

Heinrich said the matrix tool is the mechanism to be used in evaluating properties for purchase and asked the committee if they feel the matrix meets the purpose for which it was created. Ms. Fox said she would be paying particular attention in purchase considerations as to whether a parcel meets the criteria included in the matrix. Ms. Fisher added when looking at a deed restriction there are some common law implications that don't fit within the realm of public trust like a conservation easement does. A more flexible, terminable conservation contract can be crafted under the conservation easement statute of Utah law. She stated it is important for the committee to clarify why they are recommending purchase of specific parcels and to contemplate what could happen on the parcel in the future. Ms. Fisher offered to do a bit more research into different qualifying language that would be beneficial to incorporate into deed restrictions.

Committee member Sturgis suggested not getting too caught up in the legal aspects of land purchase . . . that COSAC's job is to weigh acquisition of specific parcels against the criteria to see if the parcel measures up. Heinrich stated the committee has an obligation to protect the grantor's wish that the land not be developed. Ms. Fox added that if a deed restriction is violated and the land reverts back to the developer, there is no binding contract.

Chair Ryan summarized the discussion. Additional language is to be added in the preservation purpose/intent boxes to add further clarification. Another important consideration from Nancy McLaughlin's presentation is to make sure that the land is held in trust for the people of Park City and the state of Utah regardless of the manner of acquisition. Both Ms. Fisher and Ms. Fox affirmed that language is inherent in conservation easements. Under the Preservation Purpose/Intent, it was decided to replace the word 'compliment' with 'meet'.

The Committee decided to continue the Conservation Easement discussion to the June 18th meeting. Ms. Sheridan asked what parcels would be discussed at the next

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meeting. Heinrich offered to write up some specific questions based on Council's discussion at their June 27th meeting.

Chair Ryan outlined work to be done by COSAC prior to the next meeting.

- Read the Council staff report relating to Summit Land Conservancy's request for endowment funds;
- General discussion on conservation easements;
- Independent site visits to Risner Ridge;
- Think about what recommendation COSAC will make to City Council regarding Risner Ridge; and,
- Formulate summer meeting schedule.

The meeting adjourned at 10:03 a.m.

Council Goals

1. World Class Multi-Seasonal Resort Destination
2. Preserving & Enhancing Natural Environment
3. An Inclusive Community of Economic & Cultural Opportunities, Responsive
4. Cutting Edge and Effective Government

Categories (Purpose)	<i>Recreational</i>	<i>Aesthetics</i>	<i>Critical Conservation</i>	<i>Community Character</i>
<p>Tier I</p> <p><i>Will the open space purchase advance and/or protect stated goals in the Park City General Plan and specifically add/or enhance one or more of the following four primary purposes?</i></p>				
<p>Tier II</p> <p>Values and Priorities (Intent/Unweighted)</p> <p><i>The following sections are intended to narrow the prioritization of allowed uses and preserved values which may further enable COSAC to identify funding sources and the appropriate protection tool.</i></p>	<ul style="list-style-type: none"> • Improves trail connectivity and new trail development. • Acquisition needed for public access; • Passive recreation higher priority (Passive/Non-motorized activities on established trails; related trail infrastructure, parking); • Active recreation (includes improved fields, parks, facilities, group camping, restrooms); • multiple public uses permitted 	<ul style="list-style-type: none"> • Protect resort and open view sheds; • Greater Park City Area entry corridor; • preserves open space buffers against new development encroachment • Prevention of new residential or commercial construction- land may or may not have specific additional conservation values 	<ul style="list-style-type: none"> • Protection of the natural habitat of fish, wildlife or plants; • Enhances stream corridor or watershed; • Protects wetlands; • Existing natural characteristics and conservation values essentially preserved as is and primary over other uses 	<ul style="list-style-type: none"> • The preservation of open space in conjunction with agriculture, farmland and forestland, or the preservation of historically important land or a historic structure. Appropriate related infrastructure. • reservation is for the scenic enjoyment of the general public, which will yield a significant public benefit; may include mines, mine structures or repositories provided open character of land is maintained and environmental issues mitigated; secondary uses partitioned

Funding

<p><i>Do the acquisitions leverage public monies, provide significant benefits compared to costs incurred and/or involve donations from private lands to the public?</i></p>	<p>Open Space; Possibly Shared for Active recreation</p>	<p>Open Space</p>	<p>Open Space</p>	<p>Open Space; Possibly Shared</p>
<p><i>Other Considerations</i></p>	<ul style="list-style-type: none"> • Location: Outside City Boundaries or Internal • Contiguous to existing Open Space • Consideration of Parcel/Purchase Acreage • Soils Issues • Water Rights • Partition of more intensive use parcels • Adaptability/Sustainability [unknown future uses] 			



Preservation Tool

<p>Preservation Purpose/Intent</p> <p><i>Does the preservation tool meet the purpose and intent of the committee and Council at time of acquisition?</i></p> <p><i>More than one tool may be implemented within a parcel to better meet COSAC/Council Goals.</i></p>	<p>Perpetual “Recreational/OS” Easement Primary purpose is recreation; subsidiary purpose is protection of natural and habitat values</p> <p>OR</p> <p>Deed Restriction/Right of Reverter</p>	<p>Perpetual Multi-Purpose Easement</p> <p>Establish different use zones</p> <p>OR</p> <p>Deed Restriction/Right of Reverter</p>	<p>Perpetual “Conservation” Easement</p> <p>“Forever Wild” easement or</p> <p>Primary purpose is protection of natural and habitat values; subsidiary purpose is recreation</p>	<p>Non-perpetual (§ 57-18-1) Easement</p> <p>OR</p> <p>Conservation Contracts</p> <p>OR</p> <p>Deed Restriction/Right of Reverter</p>
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**City Council
Staff Report**



Subject: Summit Land Conservancy Request for Endowment Funds and General Discussion of the role of conservation easements
Author: Heinrich Deters & Diane Foster
Department: Sustainability & Executive
Date: June 14, 2012
Type of Item: Discussion and Direction

Summary Recommendations:

1. Staff recommends Council discuss Summit Land Conservancy's \$1,500,000 request for an endowment and the possible options for an endowment structure within the budget process and provide staff with direction.
2. Staff would also like Council to have a high level discussion on their desire to place additional conservation easements on existing and future City-owned property.

Because of the complex nature of this staff report, staff recommendations are provided in a list below:

1. Staff recommends Council not place endowments on parcels that currently have conservation easements or on recently acquired property where Council wishes to place a new conservation easement.
2. Staff recommends that Council suggest endowment funding for future conservation easements at the time of purchase as part of the transaction.
3. Staff recommends that should Council wish to place conservation easements on current or future open space parcels, that Council consider each parcel individually, rather than making a blanket statement to place conservation easements on any and all open space.

Topic/Description: Staff would like to discuss two topics with Council:

1. Review Summit Land Conservancy's request to receive funds from Park City Municipal to create an endowment to provide a secure source of future funding for the stewardship/monitoring of conservation easements on City-owned open space?
2. Does Council wish to place additional conservation easements on existing and/or future City-owned property?

Background

On March 29, 2012, staff presented Council with an initial work session report on the endowment request by Summit Land Conservancy and the placement of future conservation easements. Council had several questions and asked staff to return during the budget process with more information. Staff has provided a list of those questions and their answers.

1. What is stewardship? *Stewardship can have several deliverables, depending on the issue but basically involves third party monitoring of the easement property and subsequent reports to ensure the conservation values associated are being upheld. Much of the cost is associated with staff time and administrative costs, such as meetings, site visits and other aspects which are essential for third party monitoring of reserved rights and possible violations.*
2. What is stewardship vs. maintenance? *Stewardship is the oversight, education and communication of maintaining the conservation values associated with an easement. Most often the deliverable of this function is notification through email, call or verbally. Maintenance is the direct or physical implementation of caring or rectifying a possible violation associated with an easement.*
3. Can Conservation Easements be transferred? *Yes. There is a specific clause in the easement noting the ability to transfer the easement for various reasons. Easements may only be passed to qualified organizations per Section 170(h) of the Internal Revenue Code.*
4. Would an endowment funded by incremental appropriations be subject to the City annual budget process? *Yes.*
5. Is a multi-year public Request for Proposal required for stewardship/monitoring costs if the easement is held in perpetuity by an entity such as Summit Land Conservancy? *Yes. The City's procurement code dictates this process as noted below:*

The selection of professional service contracts in an amount exceeding \$25,000 shall be based on an a formal documented evaluation process such as Request for Proposals (RFP), Statement of Qualifications (SOQ), Qualification Based Selection (QBS), etc. (see Park City's Best Practices in Procurement for details). The evaluation process should include an objective assessment, preferably by multiple reviewers, of the services needed, the abilities of the contractors, the uniqueness of the service, the cost of the service, and the general performance of the contractor. Special consideration may also be given to local businesses during the evaluation in instances where knowledge of local issues, geography, statutes, etc., may enhance the quality of service rendered. The lowest quote need not necessarily be the successful contractor. Usually, emphasis will be placed on quality, with cost being the deciding factor when everything else is equal. The manager shall determine which contracts are professional service contracts. Major professional service contracts (\$25,000 and over) must be approved by the City Council.

6. Could future special interests be in conflict with the bond language- *It is definitely possible. A good example of this is currently taking place in Northern California.*
www.pressdemocrat.com/article/20120325/articles/203251091?p=1&tc=pg.

Summit Land Conservancy has also provided a fact sheet and budgetary breakdown to help clarify any questions Council may have. (Exhibit A)

Endowment Discussion

Recently Summit Land Conservancy has asked if Council would be willing to consider providing an endowment to provide for stewardship/monitoring services in perpetuity, as well as, their position on moving forward with easements without specific funding.

Summit Land Conservancy is unwilling to take on the liability of additional conservation easements unless those easements are accompanied by an ongoing, protected source of funding, such as an endowment. (Exhibit B Letter from Summit Land Conservancy)

Why provide an endowment?

Summit Land Conservancy would like Council to consider funding an endowment that would provide ongoing funding for third party stewardship/monitoring of conservation easements outside of economic and political uncertainty, as well as, the fact that it would potentially save taxpayers in the future.

ANALYSIS

Funding stewardship of existing and possible future conservation easements:
Stewardship/monitoring of existing conservation easements, of which the existing Summit Land Conservancy contract is part of, are paid out of the Flagstaff Fees budget. The annual cost for the stewardship of 2095 acres of property at \$15.24/acre (taken from current Park City Municipal contract with Summit Land Conservancy) is \$31,927 per year. (Contract Scope of Services Exhibit C) This does not include 'land conservation' costs which include the drafting of new easements and one time baseline documents for each parcel. Summit Land Conservancy has quoted approximately \$7000/new easement for this service. The annual totals of 2009-2011 for Stewardship and Land Conservation in the existing contract were \$43,057, *\$55,208 and **\$39,090

**The Osguthorpe Parcel was an unanticipated cost at time of contract*

***Gambel Oak and White Acre Easements have yet to be finalized*

The Open Space Maintenance Fund has a current balance of \$558,523. This fund is restricted to costs of "recreation improvements, and/or open space acquisition, maintenance, or preservation."

Existing/potential costs associated with Maintenance of existing open space:
Maintaining City-owned open space is vital to upholding the open space values set forth in bond language, deed restrictions and conservation easements. Below is a table of existing and potential open space expenditures:

Noxious Weed Maintenance	Existing
Open Space Staffing: Trails and Open Space Project Manager	Existing
Capital Projects: Fences, Signage, Trails	Existing
Monitoring of Easements	Existing
Educational Programs (often in conjunction with Summit Land	Existing

Conservancy or other local non-profits)	
Management Plans: Studies	Potential
Management Plans: Capital projects, such as wetland restoration, wildlife infrastructure, wildfire mitigation, forestry enhancements or other environmental restoration projects.	Existing on certain properties, but no current comprehensive plan
Additional Conservation Easements	Potential
Open Space purchases	Potential

In 2011, costs associated with the maintenance of Open Space, totaled **\$120,306**. This included maintenance costs detailed above and monitoring of easements. *Therefore, the City spent an additional \$72,500 towards stewardship in addition to the SLC contract. It should be noted, that the 2011 expenditures did not include the costs of any internal staff time or any capital projects, such as the 2012 Osguthorpe fence and trail project.*

Any future expenditure associated with additional easements or open space purchases of open space may likely from this funding source, unless an alternate is identified.

Requested Endowment:

Summit Land Conservancy is requesting a total endowment of \$1,500,000 or **\$500/acre**, over the next 15-20 years to provide sufficient funds to monitor the City's current easements. That endowment is expected to generate a 6% annual return, with 3% of that return (\$45,000) to be withdrawn from the fund to fund annual monitoring and 3% to be reinvestments (3% interest) to be used for monitoring. Below is a table of the stewardship or monitoring cost for City-owned parcels with easements held by Summit Land Conservancy and the endowment requested to monitor each parcel.

Easement Monitoring Costs & Endowment Request

Property	# of acres	annual cost= \$15/acre (or minimum*)	Endowment Needed (assuming 3% interest)	
City-Owned Easements				
Bilogio - Round Valley	143.7	\$ 2,156	\$ 71,850	
Cranbrook - Round Valley	40	\$ 600	\$ 20,000	
Ed Gillmor - Round Valley	186	\$ 2,790	\$ 93,000	
Grover - Round Valley	40	\$ 600	\$ 20,000	
McMillian - Round Valey	280	\$ 4,200	\$ 140,000	
McPolin Farmlands	115.57	\$ 1,734	\$ 57,785	
Rail Trail*	1.977	\$ 500	\$ 16,667	
Richards' Ranch	18.92	\$ 284	\$ 9,460	
UP& L*	0.51	\$ 500	\$ 16,667	
Virginia Mine Claims*	13.3	\$ 500	\$ 16,667	
New Round Valley	340	\$ 5,100	\$ 170,000	
Gambel Oak	200	\$ 3,000	\$ 100,000	
City-County Easements				
Quarry Mountain	183	\$ 1,373	\$ 45,750	this is 50% since County is co-owner
Easements Co-held with Park City				
Lady Morgan* -- Deer Valley	1.79	\$ 500	\$ 16,667	
Ski Area -- Deer Valley	883	\$ 13,245	\$ 441,500	
Osguthorpe Farm	121	\$ 1,815	\$ 60,500	
Prospect Ridge -- Talisker	64.75	\$ 971	\$ 32,375	
Warren Claims -- Talisker	105	\$ 1,575	\$ 52,500	
TOTALS	2738.517	\$ 41,442	\$ 1,381,387	

* stewardship based on \$15/acre per year or a minimum of \$500 per year

Recent Summit County funding of similar endowment requests:

Summit County has provided 'Stewardship Endowment' funding for two of their recently acquired Open Space parcels, as one time capital expenditure, outside of the property purchase. The County utilized the 'Open Space Management' budget, for this funding. It should be noted, that the County has a separate 'Weed Management budget'. Below is the endowment cost and acreage for both parcels:

Parcel/Acres	Endowment Provided	Cost per acre
Koleman- 10 acres	\$25,000	\$2,500
*PRI Kimball- 316 acres	\$23,500	\$65.10

*Private fundraising was used to offset this endowment cost.

Endowment Structure:

The Summit Land Conservancy is proposing that the endowment would be held by The Park City Foundation. Municipal funds could be deposited into a specially identified Park City Municipal Conservation Easement Monitoring Fund that would be used exclusively for the monitoring of Park City Municipal properties or can be placed

in the Summit Land Conservancy already existing permanently restricted stewardship endowment fund. **Staff has consulted with the City's auditor, Piercy, Bowler, Taylor & Kern, and they recommend that City funds not be held in this manner by a third party. The City holding the funds would be more appropriate in their opinion.**

Non-Endowment option

The creation or appointment of existing boards could be delegated the power to approve annual monitoring payments for services rendered, as opposed to a taxpayer funded "endowment," for the non-profit entity holding the easement. This would provide separation from the political bodies and monitoring, provided an established long term funded CIP stewardship account is identified. If further separation is desired, a stewardship fund could be placed in an escrow account with a designated trustee(s) to authorize payments rather than another non-profit.

Current Summit Land Conservancy Professional Service Provider Contract

The term of the contract is three years, ending in June of 2012. Staff is looking to provide a three month extension to the existing contract while Council provides direction associated with this report.

Additional Conservation Easement Discussion:

Protecting open space from future development has been a long standing goal for Park City residents and it's Council. Over the past twenty years, the City has preserved over 7,000 acres of open space, through development agreements, the purchase of property or acquisition of easements. Mechanisms to ensure that the use of these parcels remain 'undeveloped' into the future include but are not limited to; deed restrictions, zoning, and associated bond language.

Park City has traditionally employed all of the following measures on all parcels purchased with Open Space Bond funds:

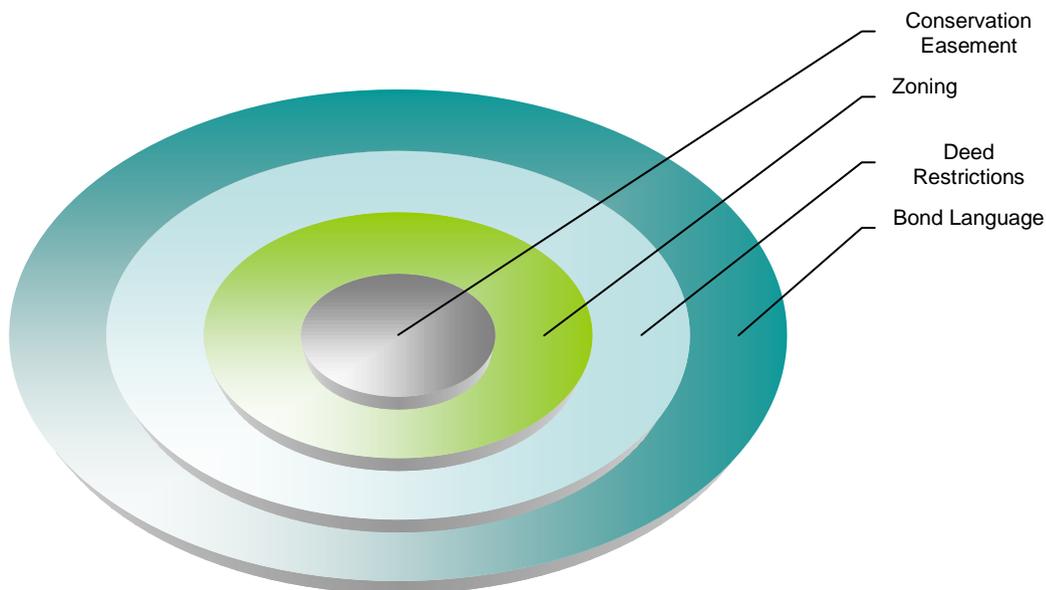
1. *Deed Restrictions:* Language which restricts use of the property as open space with a reversionary interest for the benefit of the prior owner should the terms be violated.
2. *Zoning:* Purchased properties within Park City limits are typically zoned as Recreational or Protected Open Space.
3. *Bond Language:* Every parcel purchased by the City with bond funds must be used in compliance with the terms of the issuance of the bonds restricting such use, in perpetuity, to open space.

A fourth option available for open space acquisition and subsequent stewardship is the use of conservation easements. These easements have two main goals:

1. Assigns enforcement rights of the open space deed and bond terms by which the City acquired the property to a third party conservation organization; and
2. Depending on the easement terms, the easement may further restrict the City's or the public's use of the property in perpetuity by narrowing the definition of permitted uses and conservation values of the property.

The City Council previously established that the additional protection in the form of granting such easements provide a desired degree of additional public assurance that the City government will not on their own compromise the open space values of the land in contradiction of the applicable bond language, deed restrictions and zoning. However, if drafted too narrowly, the conservation easements can limit public uses that would be otherwise permitted under the bond language and deed restrictions. Therefore, these permanent easements should be carefully drafted. Park City staff and legal counsel have consistently recommended against further limiting “permitted uses” for this reason, unless such restrictions are known and required by the seller at the time of acquisition (Armstrong for example).

The graphic below illustrates the three layers of protection that exist prior to placing a conservation easement on a piece of property, as well as, how permitted uses may come into conflict with one another if additional ‘layers’ are established at later intervals:



Staff maintains the position that the placement of conservation easements on parcels with existing restrictive covenants, such as deed restrictions, as well as, additional layers of ‘protection’, such as zoning and bond language is a ‘redundant’ application. However, staff recognizes that current council direction to place easements on existing parcels purchased with bond funds does provide a beneficial third party oversight of the parcels, as well as, reinforces the public’s will and commitment to fund said parcels as open space in perpetuity. However, the City Attorney points out that this could also be done by simply assignment of enforcement rights of the original deed restrictions (create third party beneficiaries of the original deeds and/or bond restrictions). Staff also recognizes the importance of a national accreditation of an organization. . However, the priorities and tax purposes underlying most of the accredited organizations may not be in alignment with the purpose(s) underlying why the City chose to acquire certain properties. For example, entering into the easements should in no way reduce the taxpayers’ ability to recover compensatory

damages in the event of a third party violation or condemnation by another government entity.

Summary of Questions for Council:

1. Does Council wish to fund stewardship endowments that already have conservation easements on them? In answering this questions, the Council should ask itself are the City's management goals and reasons the City wants easements aligned or the same as the "stewardship" concepts articulated in the attached material from Summit Lands.
2. If Council wished to place conservation easements on some or all, of the city's open space parcels that currently do not currently have easements, does Council wish to fund stewardship endowments for those properties?
3. Does Council wish to establish a policy for funding future stewardship endowments, in the case where a new open space bond fund was established?
4. Does Council wish to place conservation easements on some or all City-owned open space that does not currently have a conservation easement? If so, should this be policy direction for the future?
5. Does Council wish to place conservation easements on some or all City-owned open space on a case-by-case basis? If so, should this be policy direction for the future?
6. Should staff incorporate this Council direction (received in response to questions 1-5) in the new RFP?

Department Review: This report has been reviewed by the Sustainability, Legal and Executive Departments. Input for this report was also received from the Finance and Budget Department.

The City Manager agrees with the City Attorney's opinion listed below.

The City Attorney recommends that:

- 1) Continue to contract annually for direct expenses of third party monitoring of the open space and other services as agreed but limit the use of conservation easements for future purchases to only when part of the original acquisition so that endowments and other consideration may be negotiated with the seller;
- 2) Unless established by the seller or City at the time of purchase, the "permitted uses" in conservation easements should mirror the bond language and deed restrictions only and future permitted, public uses are determined by the appropriate governing body in accordance with such restrictions, local zoning and open/public meeting requirements;
- 3) Conservation easements should affirmatively state that all damages and third party compensation for violations go to a designated City open space [bond replacement] fund, including condemnation; and
- 4) By enabling ordinance, the Council should specifically empower their Recreation Advisory Board (assuming COSAC is to remain temporary in

nature) or a new board to make long term use recommendations and oversee specific management plans actively and proportionately funded by each jurisdiction. Delegate to RAB the power to approve annual monitoring payments for services rendered, as opposed to a taxpayer funded "endowment," for the non-profit entity holding the easement. This would provide separation from the political bodies and monitoring, provided the Council decided to establish long term funded CIP stewardship accounts. If further separation is desired, the stewardship fund could be placed in an escrow account with a City designated trustee(s) to authorize payments rather than yet another non-profit contract that will create difficulties with government accounting rules.

Significant Impacts

Funds are not available in the budget to fund the endowment. If Council wishes to place funds in a CIP project for monitoring, those funds should come from the Resort Tax ballot initiative if passed.

Summary Recommendations: Staff recommends Council discuss Summit Land Conservancy's request for an endowment and the possible options for an endowment structure and provide staff with direction. Staff would also like Council to have a high level discussion on the need for future conservation easements on existing and future City-owned property.

Because of the complex nature of this staff report, staff recommendations are being provided in a list below:

1. Staff recommends Council not place endowments on parcels that currently have conservation easements or on recently acquired property where Council wishes to place a new conservation easement.
2. Staff recommends that Council suggest endowment funding for future conservation easements at the time of purchase as part of the transaction. The City Attorney recommends an alternative escrow or long term CIP fund administered by RAB.
3. Staff recommends that should Council wish to place conservation easements on current or future open space parcels, that Council consider each parcel individually, rather than making a blanket statement to place conservation easements on any and all open space

Attachments

Exhibit A: Summit Land Conservancy Fact sheet and budget breakdown

Exhibit B: Letter from Summit Land Conservancy

Exhibit C: Summit Land Conservancy 2009-2011 Contract- Scope of Services

Exhibit A



WE SAVE LAND

Stewardship

Preserving land for ever and all eternity

As the holder of conservation easements on City-owned property, the Summit Land Conservancy has an "affirmative obligation" to steward these lands in perpetuity.

In order to fulfill this obligation to protect the citizens' investment in open space, the Conservancy must find non-political funding for the on-going stewardship of these properties.

Questions and Answers:

What does Stewardship entail?

1. Annual Monitoring -- Includes site visits to each property, monitoring property boundaries, comparing GPS photo locations with previous years' photo documentation, compiling written reports that include issues that have arisen during the last year which are distributed to the City and to our secure archives. Staff also follows up with City staff on any issue needing resolution and works collaboratively to see the issue to closure.
2. Archives -- Each monitoring report must be duplicated and stored with multiple layers of redundancy. The annual monitoring reports may form the basis for the Conservancy ability to defend the conservation easement in the future. Paper and digital copies are stored in the Conservancy's office and in the off-site archive location. These archives are reviewed every three years to insure the quality of the documents and continued readability of digital files.
3. Reserved Uses -- Every easement document allows some "reserved uses" that are permitted, for example trail construction or temporary structures for special events. Many of these uses require the City to notify the Conservancy that something is going to happen on the property. Some of these uses also require the Conservancy to grant approval. In each case, the Conservancy staff must investigate the request, visit the site to see what the impacts on the ground will be, and prepare a memo for the Conservancy's board. The Conservancy's board will consider each request and notification and direct the staff on how to proceed.
4. Easement Violations -- The Conservancy is required to document any easement violation by any landowner or any third party. Again, the Conservancy's board will direct staff on how to proceed. Naturally, any easement violation takes considerable staff time both in the field and in discussions with the parties involved.
5. Amendments -- Any time a land owner wishes to make a change to an easement, the Conservancy's staff must again prepare a thorough report for the Conservancy's board. This report will detail the requested amendment and analyze the impacts upon the

conservation values as well as whether or not the proposed amendment is consistent with the conservation easement and the Conservancy's Amendment Policy. The board will direct staff on how to proceed. If the amendment moves forward, the staff must document the discussions regarding the amendment, and the Conservancy will have to engage legal counsel.

6. Public Use -- Because the City properties permit public use and public events, the Conservancy staff is frequently contacted regarding issues. Each of these requires staff time to discuss, investigate, and resolve.
7. Landowner Relations -- One of the best ways to avoid easement violations is for the Conservancy and the City to maintain a good relationship, where each party understands the purpose and intents of the other. Conservancy staff and City staff meet monthly, and often have more frequent conversations regarding the variety of issues that come up on these properties. Additionally, unlike a private landowner who tends to stay the same over many years, the face of the City changes with each election, necessitating numerous meetings between the Conservancy's staff and elected officials.

Is the City Getting a Fair Deal?

The direct costs associated with the Conservancy's stewardship include staff time, GPS & camera equipment, computer programs, legal fees, other professional services as needed such as environmental reports or surveys, and document preparation. Since Stewardship is one of the public benefits the Conservancy supplies to the community, a portion of the organization's administrative costs are also allocated to Stewardship.

In 2009, at the request of City Council members Jim Heir and Candy Erickson, the Conservancy developed a stewardship cost per acre model.

How Costs are Estimated:

Total Budget for Stewardship in 2009 = \$22,900
 Divided by total acres under easement = \$22,900/2,095 (acres)
 Direct Costs per acre = \$11 per year.

Allocation for Overhead.

Stewardship in 2009 budget was 21% of total programs (excluding easement purchases)
 21% of Administration budget = \$9,034 administrative expenses allocated to stewardship
 Divided Administration allocation by total acres under easement = \$9,034/2,095 (acres)
 Administrative "burden" of Stewardship = \$4.31

Total Cost per Acre = \$4.31+\$11 = \$15.31

Comperables:

- \$7/acre. The Minnesota Land Trust estimates \$7/acre for agricultural easements averaging 100 acres with a single landowner and no public access. This land trust is in the process of reevaluating this price as it is not adequately covering the actual costs of stewardship.
- \$10/acre. Similarly the Vermont Land Trust averages \$10/acre again for primarily agricultural easements on private land. Here too, the organization is finding that this funding is inadequate. In both cases the private, agricultural easements being monitored require far fewer organizational resources than the public, intensely used City-owned easements.
- \$30/acre. Bainbridge Island Land Trust holds easements on publicly owned land with recreational use and access. In 2011, their cost per easement was over \$45/acre, but this included some exceptional remediation and restoration work. They estimate their annual cost in a more normal year to be closer to \$30/acre

Leveraging

The Summit Land Conservancy has found that the \$15/acre generally covers our actual costs.

We have found ways to leverage our cost/acre by bringing in AmeriCorps and other interns and volunteers to support the Conservancy's paid staff. This leveraging results in a savings to the Conservancy, and therefore to the City.

Additionally, we hope that some economies of scale will keep our costs in the \$15/acre range, despite inflation, even as the number of acres we monitor continues to increase. The Conservancy also hopes to supplement our stewardship funds with additional donations from other sources, such as bequests.

What if the Conservancy isn't doing its job?

1. Donor Restricted Funds: If the City establishes a "designated" or "field of interest" fund with the Park City Foundation, the contract can specify that the organization receiving the money for stewardship is the organization charged with stewarding the easement properties.
2. Maintaining national standards. The Contract can specify that the recipient of the funds is accreditation with the Land Trust Accreditation Commission, or adhere to other well-established "best practices" for the stewardship of conservation easements. If the Conservancy were to let its accredited status drop and could not prove to the satisfaction of the Park City Foundation's board of trustees that it was still performing to the Land Trust Alliance's standards, the funding for stewardship could be withheld or allocated to another organization that was able and qualified to do the work.

How might the City pay for this?

If the City wished to fund a stewardship endowment over 20 years, a contribution of \$75,000/year would be necessary.

Empire Pass Fees. Understanding that the Empire Pass fees are an important, but fluctuating source of revenue for the City, the Conservancy suggests that the City establish minimum amount from this revenue source that is used for other purposes. If the City receives more than the minimum or base in any given year, then it can make the contribution to the stewardship fund.

Exhibit B
Summit Land Conservancy Stewardship Letter



WE SAVE LAND

March 19, 2012

Dear Mayor Dana Williams and members of the Park City Council:

Park City should be honored for its many positive environmental initiatives. One of its greatest successes has been the City's open space acquisition programs. Recognizing the critical importance of open space to the character, economy, and quality of life of Park City, Park City has not only acquired important properties, but has employed the best tool to insure that the citizen's investment in these landscapes is protected forever: permanent third party conservation easements.

As the holder of conservation easements on much of the City's open spaces, the Summit Land Conservancy monitors each property each year, inventories the ecology, and works with City staff to mitigate any adverse uses. The Conservancy's mission to permanently protect the open spaces of Park City and Summit County means that it must take measures to insure its ability to continue these monitoring activities permanently.

Accordingly, the Conservancy has established a Stewardship Endowment. This money is permanently restricted, meaning that only the interest can be used and then only for the purposes of making sure that the conservation values (open space, recreation access, wildlife habitat, etc.) are in fact still protected.

The Summit Land Conservancy is unable to accept conservation easements without appropriate stewardship funding. The IRS requires land trusts, like the Conservancy, to have funding set aside in such stewardship endowments in order to insure that these organizations will be able to fulfill their obligation to protect the land forever. Likewise, the Land Trust Alliance, having reviewed the Summit Land Conservancy's easements and their additional protections, recommends substantially increasing our existing stewardship endowment.

The Conservancy will honor its current contract with the City to place conservation easements on the North Round Valley Parcel and the Gambol Oak/Hope White-Acre Parcels, hoping to find stewardship funds from the neighbors or other sources. If the City moves forward and continues to acquire open space, we advise it to include stewardship funding as part of the transaction costs, for without such funding the conservation process is not complete.

As you know, the Conservancy has already accepted 10 conservation easements from Park City Municipal without any stewardship funding, and it is a co-holder of 5 additional easements: 4 of these also lack adequate stewardship funding. Despite this lack of funding, the Conservancy remains obligated to monitor these properties each year and has done so, with support from a contract with the City. But the contract must be renewed every few years and done so in a public

process. It is entirely possible that the City could chose not to renew its contract with the Conservancy, but the Conservancy would still have to the obligation of monitoring the properties. If the Conservancy were to go away or lose the ability to monitor these easements, the open space would be imperiled.

While we understand that other protections have been placed on these lands, but these additional measures lack one very important factor: a third party. Without a third party (in this case the Summit Land Conservancy) there may be no one who realizes that a piece of property was supposed to be protected. There may be people who wish such protections to be forgotten. The Summit Land Conservancy exists for the very purpose of remembering and speaking up on behalf of those who protected the land in the first place.

In the 1920's a group of people in the town of Huntsville acquired land high up on Ogden Mountain. The property had been over-grazed resulting in a degradation of the town's water source. After purchasing the land, the people of Huntsville gave this property to the forest service, thinking that the US Government would protect the land from future development and insure that their investment would be maintained forever.

They were wrong. In the 1990's the federal government, influenced by Utah's Congressional Delegation, decided to give that land to a developer instead, and it is now owned by Snow Basin.¹

This is why Park City decided to use third party conservation easements on the lands that it truly wants to protect. But without stewardship funding today, a future government could cripple the Summit Land Conservancy's ability to protect the land and honor the investment made by Park City citizens.

Thank you for all that you do to keep Park City green and open.



Cheryl Fox
Executive Director
Summit Land Conservancy



¹ See Stephen Trimble's *Bargaining For Eden*, University of California Press, 2008

Exhibit C
ADDENDUM "A"

SCOPE OF SERVICES

Proposal for Contract to Monitor Conservation Easement Compliance
Submitted by the
Summit Land Conservancy

Experience:

The Summit Land Conservancy has been working to protect open space in and around Park City through permanent conservation easements since its inception as COOL (Conserving Our Open Lands) in 1998. We currently hold over 847 acres of City-owned property in conservation easements and we co-hold with Park City Municipal another 1052 acres that represent the open space portion of the Flagstaff/Empire Pass Development.

These acres are held in 14 separate easements, each of which was drafted with input from the Summit Land Conservancy. The Summit Land Conservancy has also prepared baseline studies for each of these properties and monitors them annually. Copies of all baseline studies and monitoring reports have been given to the City's staff in charge of overseeing easement lands. The Summit Land Conservancy's staff meets regularly with the City's legal and sustainability staffs to address issues that our annual monitoring reveals.

The Summit Land Conservancy is proud to be a member of the Land Trust Alliance, a national educational and representative organization of over 1500 land trusts across the country. We follow the Alliance's Standards and Practices, striving for state of the art stewardship and conservation programs. This diligence has allowed us to do a better job monitoring easement properties.

In 2006 and 2007, we converted all of our monitoring documents to digital formats with GPS telemetry, and delved into other ownership issues, such as title reports. This work revealed that the acreage listed on one of the Round Valley easements was off by 90 acres. We also found that a parking lot had encroached on part of the Rail Trail easement. Finally, we discovered that the county recorder does not show the City as the owner of the entire UP&L parcel on lower Main Street. Our staff has documented these issues in each monitoring report and followed up with a series of meetings with city staff. Some of these issues have been resolved, but we are still pursuing others.

In addition our work for Park City, the Summit Land Conservancy has been granted conservation easements by private landowners, including developers. On July 1, 2009, we expect to close on our first purchase of a conservation easement from an Eastern County landowning family. We are also working with Summit County to place conservation easements on land purchased by BOSAC.

Services & Deliverables:

Monitoring:

Existing Easements:

The Summit Land Conservancy will visit each property annually once it is free of snow and perform a thorough inspection of its conservation values. Written reports for each property will be submitted to the City by December 31 of each year that this contract is in place.

The Summit Land Conservancy will monitor each of the following easement properties in 2009, 2010 and 2011:

Empire (Flagstaff Annexation Agreement), 4 easements: Ski Area, Lady Morgan, Prospect Ridge, as well as the Warren Claims on Iron Mountain, and
Round Valley, 5 easements: Ed Gilmore, Bilogio, Cranbrook, Grover, McMillian, and
Virginia Mine Claims
Rail Trail Richards
Ranch McPolin
Farmlands UP&L
Parcel

New Easements:

At this point, we expect to monitor the Clissold/Quarry Mountain and Iron Mountain properties in 2010 and 2011.

If the other new easements are completed before the estimated dates below, they will be added to the annual monitoring schedule sooner than is currently planned.

The Summit Land Conservancy will provide the City with written monitoring reports for each easement or group of easements. Conservancy staff will meet with the appropriate city staff to resolve any issues that the monitoring reveals. If the issues are not resolved by the next monitoring session, the Conservancy staff will take the issue to the City Manager and/or City Council.

Additionally, we will include these easements in our Adopt an Easement program to insure that more eyes and ears are attending to the conditions of the properties. Each monitoring report will also be archived both in our office safe and in a secure, off-site location.

Conserving New Properties:

The Summit Land Conservancy will complete baseline studies and conservation easements for the following properties:

Clissold/Quarry Mountain: The Summit Land Conservancy has already completed the baseline study for this property and drafted the easement. This baseline study features an expanded wildlife study. Conservancy staff has forwarded easement drafts to both County and City legal departments. Both the County and the Summit Land Conservancy are ready to sign the easement. We are currently waiting for final approval from the City's legal department. We expect this easement to be signed and recorded before the end of 2009. Copies of the baseline document will be supplied to the City.

Iron Mountain: The Summit Land Conservancy has already done preliminary work for the baseline of the Iron Mountain parcel, since it surrounds the easement we already hold on

the Warren Claims. The Conservancy will prepare a baseline study, and the conservation easement by the end of 2009.

New Round Valley: The Summit Land Conservancy will complete a baseline study of the City's new purchase in Round Valley. Staff will also draft the easement and follow it through the appropriate processes at City Hall. Copies of the baseline and recorded easements will be provided to the City no later than December 2010. The Summit Land Conservancy will also keep archive copies of these documents in both our in-office safe, and at a secure off-site archival location.

White Acre/Hope Parcels: The City purchased the Hope Parcel with COSAC II funds, and has been working with Congress to have the White Acre parcels granted to the City. Once this has been finalized, the Summit Land Conservancy will prepare one baseline study and one conservation easement for the entire area. These will be finalized by December 2010, if the congress grants the land to the city by June 2010. Again, copies of all documents will be provided to the city and archives will be kept in two separate and secure locations.

Factors:

Four unique factors give the Summit Land Conservancy an important advantage in meeting the City's needs:

1. The Summit Land Conservancy is based in Park City. Our staff and board live here and are intimately familiar with the lands that we protect. People don't have to call Salt Lake or somewhere else to get hold of us. The Board of Directors and staff understand and are honored by the trust that Park City has placed in us by granting conservation easements on tax-payer purchases and on the community benefit-open space components of local developments. We take this charge very seriously and strive to insure that the interests of the government and the citizens are well protected.
2. The Summit Land Conservancy mobilizes volunteers from the community. Our Adopt an Easement program asks locals to pay special attention to what they see on easement properties-good and bad-and let us know. We have a simple form for people to fill out on our website, or they can always call us. This increases our ability to watch these properties for compliance.
3. The Summit Land Conservancy focuses its efforts only on lands within Summit County. While we recognize and applaud efforts to protect other areas of this beautiful state and nation, the scope of our organization is strictly local. Our board believes that the development pressures faced by Summit County combined with the economic need to protect open space justifies the existence of an organization like the Summit Land Conservancy that works every day to insure that the open spaces that have been preserved, remain so. Our staff is readily available by phone and email to members of the local governments and their staff, as well as the citizens of Summit County.
4. The Summit Land Conservancy is committed to maintaining the highest standards of excellence as measured by the national Land Trust Alliance. Our policies and procedures for conservation and stewardship are based on the best practices as defined by the national organization. We are also a member of the Utah Nonprofits Association.

Other Factors/Limitations:

This proposal represents our best efforts to calculate the actual costs of stewardship and new conservation over the next three years. Like any non-profit organization, we strive to keep overhead and administrative costs to a minimum. We realize, however, that in order to perform our obligations **in** a professional manner, we may need to hire additional staff and move to a slightly larger office space within the next three years. Nevertheless, the financial figures in this report are based on our budget for 2009.

Monitoring Policy:

Please see appendix A

References:

1. Mayor Dana Williams 435-901-8135
2. Chris Donaldson, Chair of BOSAC, chris.donaldson@cushwake.com
3. Jan Wilking, co-Chair COSAC I, COSAC III liaison to BOSAC janwilking@gmail.com
4. Richard Sheinberg, Board Chair, Summit Land Conservancy 435-901-9163

Compliance:

The Summit Land Conservancy will comply with Park City Municipal's standard contract so long as nothing in that agreement modifies, amends or limits our rights under any of the conservation easements.

Stewardship

based on cost per acre

	2009	2010	2011
City Owned esmts	\$ 12,917	\$ 23,435	\$ 31,666
4- Empire/Warren	\$ 16,074	\$ 16,074	\$ 16,074
Total	\$ 28,991	\$ 39,509	\$ 47,740

Land Conservation

based on cost per new easement

	2009	2010	2011
1/2 Clissold	\$ 3,449		
Iron Mt	\$ 6,898		
Round Valley		\$ 6,898	
White Acre/Hope		\$ 6,898	
Total	\$ 10,347	\$ 13,796	
tals	\$ 49,686	\$ 46,407	\$ 47,740

TOTAL 3-YEAR REQUEST***\$ 143,833**

*if the city acquires other new easements not included here,
we will submit additional invoices for those baseline and easements.

ADDENDUM "B"

PAYMENT SCHEDULE FOR "EXTRA" WORK

Summit Land Conservancy will establish a baseline and provide ongoing monitoring for any additional open space acquisition that the City requests to add to this contract for an incremental cost of \$6,898 per property and \$15.24 per acre for ongoing monitoring services.

and 4 into 2018 and 2020 as a plan. The Mayor pointed out the flexibility with OTIS and Ms. Simpson indicated she would like OTIS projects moved up.

3. Summit Lands Conservancy endowment request and future consideration easements on City open space. Heinrich Deters explained that the City has been working with SLC for a long time who holds outright or co-holds with the City 200 acres of open space. Staff is seeking direction on a request from SLC for a stewardship endowment and Council's interest in placing future conservation easements on properties. The endowment secures funding from political and economic uncertainties. Mr. Deters relayed that the request is specific to existing easements which are held by SLC who is reluctant to take additional easements from the City without the associated endowment. There are some budgetary impacts because of limited funding and most of open space maintenance and monitoring comes from the Flagstaff accounts. He also asked if the endowment is the right mechanism. Summit County provided some stewardship endowment funding for two parcels, Coleman and the PRI/Kimball Parcels. Cheryl Fox interjected that the amount SLC was paid was not what the staff report identified. She stated that SLC received \$15,525 for the 10 acre Coleman Parcel.

Mr. Deters stated that staff is recommending to deny the current request and basically limit endowment funding to a process when the property is purchased. This is a known cost that can be included in the purchase agreement. The next aspect is to continue what has been done through special service contracts to provide for that monitoring through a RFP process. SLC's contract is up now and the RFP will be conducted immediately. If the Council believes this is a good idea, the City's auditor recommends setting up a CIP fund as the best means for funding that source. Because the request itself is outside political or financial purview, another option is that Council appoint a board or a commission to oversee the actual fund but this is not supported by the City's auditors.

Cheryl Fox addressed funding the on-going stewardship of the ten conservation easements. The City has made a tremendous investment in these properties and in order to make sure that they are adequately protected, there has to be some sort of on-going funding mechanism for the stewardship that is separate from the political process. There needs to be a program so that the future government cannot withdraw support and the City needs to feel confident in the work being done by the conservancy.

Liza Simpson viewed the endowment as an on-going cost but is more comfortable with it being in the City's hands than managed by a foundation. Ms. Fox explained that SLC has looked at other land trusts across the country and pointed out that things change over the years. Dick Peek asked how many of those land trusts are funded publicly and how many privately. She responded that she doesn't know but spoke about funding endowments and legal defense at the time of acquisition. SLC is not asking for funding for a legal defense fund.

Alex Butwinski expressed concerns about an outside board managing the program as those members also change. He supports staff's recommendation by not funding a separate endowment fund; he is more inclined to support an account in the CIP.

The Mayor referred to the staff report where the first request is to receive funds for an endowment. Cindy Matsumoto liked the concept of having the process outside the political mainstream. Ms. Simpson clarified that her suggestion would be creating a CIP fund, with the commitment to build an endowment fund for the currently acquired pieces. Andy Beerman questioned what the City would be funding and Ms. Simpson suggested that it would be building an endowment in the neighborhood of \$1.5 million. It would function like an endowment but would be held and restricted in the CIP.

Tom Bakaly explained that the endowments for future properties would be covered at the time of purchase and managed by the conservancy. Mark Harrington pointed out that this has occurred in some instances. The potential for disagreement emanates from compatibility issues with stewardship, ownership and long term public uses. He encouraged being cautious in contracting those rights away or in a manner that perpetuates more conflict which would be unfortunate. Mr. Harrington emphasized that there was an original RFP and the consideration was the monitoring. The special service contract is direct reimbursement for costs and in the future, doing them simultaneously is truly the more legal an appropriate approach.

Mark Harrington stated that we all agree that it can be better and the question is the most efficient vehicle to ensure the public's trust long-term. The Mayor stated that there is agreement among members about future purchases and creating and managing an internal endowment fund.

Andy Beerman stated that he is not completely there yet and would like to know more about the auditor's recommendation. Nate Rockwood explained that he could obtain more details, but the initial reaction was that cities do not typically do this. Tom Bakaly pointed out the difficulty of giving an outside board money for a service that is not directly tied to a service the City is receiving. Dick Peek compared creating the board as a new entity that bypasses the voters. The majority of members felt staff should proceed with a RFP. The Mayor relayed that he read the job description and pointed out the significant charge to the City for monitoring and the minimal stipend paid to people monitoring for SLC. Cheryl Fox explained that stewardship involves a whole lot more than just monitoring and the organization supplements its operations by finding volunteers and interns. Stewardship costs \$15 per acre on average and SLC is committed to the price into the future even though prices will increase. The stewardship fund will have to grow with other resources.

The Mayor relayed that the process for monitoring for most land trusts is pretty standardized based on what is required by the IRS. It is possible that someone else could do it substantially cheaper and contract with the City based on SLC's criteria. Cheryl Fox stated that the site visit is one very small part of stewardship and that is why

it can be done by a volunteer or intern. There is a whole lot more involved like relationships, interpreting legal documents, and handling complex stewardship issues. These easements are busy and not like easements other land trusts hold. They take a significant amount of staff time. She ran the numbers and in 2010, SLC spent almost exactly \$15 an acre on annual stewardship.

Alex Butwinski commented that based on this information, it makes sense to conduct a RFP every five years in fairness to the taxpayer and SLC. Anyone responding to the RFP can make a case about value. He supports staff's recommendations for the most part and Ms. Simpson's suggestion of creating an endowment fund in the CIP. The Mayor also felt that five years is a good duration so there is consistency. Cindy Matsumoto pointed out that non-profit organizations use volunteers all of the time to offset costs. The Mayor believed the third party the City chooses to manage our open space should be monitored.

Andy Beerman pointed out that an endowment in the CIP could be revocable rather than dedicating the monitoring money every year out of the CIP. Ms. Simpson believed it is more tightly bound. She spoke about assigning an oversight board. The Mayor confirmed consensus to fund the endowment in a restricted fund on a five year basis. Cheryl Fox asked that the payments be tied to the easement holder.

The Mayor stated that his issue is that SLC determines the fee. The City Council has asked for comparisons and has a fiscal responsibility to the public. Mr. Beerman understood that if an internal endowment is created, it would not be tied to the easement holder. However, future acquisitions would include an endowment going to the easement holder. Andy Beerman felt that many good ideas have been discussed today but the approach needs to be further refined.

Discussion ensued on the method of protecting acquired open space parcels which may be decided on a case-by-case basis. The Mayor pointed out that Council never intended to place a conservation easement on the Triangle Parcel, for instance. He agreed that properties need to be reviewed individually. If property was purchased with open space bond money, a conservation easement is appropriate.

Mark Harrington pointed out that the most famous case in the country, *Waldon Pond*, was saved by the original deed restriction not a conservation easement. There are different levels of protection and the question moving forward is do you want a contract for that protection and do you want it to expand beyond monitoring the same restriction? Do you want to narrow that to different ones because there are special attributes? He stated that when a land trust manages and operates an open space program and endowment, long term funding may be appropriate, but you are essentially turning over the management to a third party. He felt that it is about making sure the expectations of the public trust of the original authority of the purchase and the long term management align.

All members agreed that the level of protection should be decided on a case by case basis. Andy Beerman emphasized that when properties are purchased with open space funds, they should be protected with a conservation easement. If land is being purchased for recreation or other purposes, it doesn't make any sense.

Prepared by Janet M. Scott, City Recorder



City Council Staff Report

Subject: Risner Ridge Open Space Parcels
Author: Heinrich Deters
Department: Sustainability
Date: December 6, 2012
Type of Item: Administrative

Summary Recommendations:

Staff recommends Council review and discuss Summit Land Conservancy's (SLC) request to grant conservation easements on approximately 53 acres of City-owned open space property located near Risner Ridge. (Exhibit A) Staff recommends that Council provide direction to extend existing deed restrictions onto the parcels without deed restrictions and maintain municipal ownership.

Topic/Description:

The granting of conservation easements on city-owned open space parcels.

Background:

Acquisition

Park City Municipal acquired several platted open space parcels above Park Meadows, in the Risner Ridge area, via the Quarry Mountain Master Planned Development agreement (1994), and specifically, the Eagle Pointe subdivision process, between 1994 and 2004. Differing characteristics of the parcels are attributed to the 'phases' of the development.

Additionally, the City acquired the 7.83 acre parcel (PCA-2-2100-4-A-X) in 1992 from Arnold Industries Inc., formally known as Arnold Resorts Inc., via a Quit Claim in what staff believes to be a development agreement associated with Park Meadows and the American Saddler waterline.

All of the property is zoned Recreational Open Space with several public trails and trailheads within the area.

In the fall of 2010, staff was contacted by a representative of the Risner Ridge home owner's association regarding the status of the open space lots within the subdivision. When it was determined that some of the lots were protected with a deed restriction prohibiting building and others were not, staff recommended petitioning the City Council to have the deed restriction extended to the lots that were not protected as such. After sending a letter in October 2010 (Exhibit B), staff did not hear back from the Risner Ridge HOA representative. The deed restriction was not extended onto the parcels without a deed restrictions.

In 2011, SLC was contacted by a several residents of the Risner Ridge neighborhood who wanted to ensure adjacent city-owned parcels would remain as open space. SLC

and the resident’s discussed options, which included placement of conservation easements on the parcels, as well as, the costs associated with the process, monitoring and stewardship of the proposal.

This past summer, SLC and a few Risner Ridge residents met with City staff, to discuss options available to ensure the open space remains undeveloped, in addition to, seeking clarity on what restrictions were already in place. In that meeting City staff explained the 2010 inquiry and that staff would provide a positive recommendation to Council if the neighborhood was interested in extending the deed restriction. As a product of the meeting, City staff requested that SLC and the applicable home owner’s association’s work together with the intent of demonstrating the neighborhood’s collective support for a Council proposal. The Risner Ridge HOA, with the assistance of SLC, sent out mailers and went door to door and collected 143 petition signatures within the neighborhood. Petition language for the proposal has been provided below On August 24th, Summit Land Conservancy director Cheryl Fox formally requested that the Council review the easement proposal.

I/We the undersigned support the permanent preservation of the Risner Ridge open space parcels through the use of conservation easements. I/We understand that other protections are currently in place on these parcels, but we encourage Park City to take all steps possible to insure that these properties remain open and undeveloped for the future.

Analysis:

It is important to outline the process in which the City acquired these parcels, as well as, any restrictive covenants associated with the individual parcels. Staff has provided a matrix below, dictating each parcel and subsequent restrictions.

Parcel/Acres	Acquisition	Zoning	Other Restrictions
EP-I-A-X 5.78 acres	1995	ROS	Platted 'non-buildable lot' & Deed Restricted
EP-II-B-X 7.28 acres	1997	ROS	Platted 'non-buildable lot' & Deed Restricted
EP-IV-A-X 10.89 acres	2004	ROS	Platted 'open space'
EP-IV-B-X 21.92 acres	2004	ROS	Platted 'open space'
PCA-2-2100-4-A-X 7.83 acres	1992	ROS	none

Eagle Pointe Subdivision Process

Several parcels identified above were dedicated to the City as part of the public benefit obligations of the Eagle Pointe subdivision process. Earlier dedications (EP-I-A-X & EP-II-B-X) included deed restrictions, while later dedications were simply transferred as platted open space to the City. Staff believes that the intent of the later dedications as

open space was established but the formal drafting of the deed restrictions were simply overlooked by the developer.

American Saddler Waterline Parcel (PCA-2-2100-A-X)

Arnold Industries Inc. transferred deed of this 7.83 acre parcel in what appears to be an obligation associated with the development of Park Meadows. Specifically, it seems that the parcel was integral to the implementation of the American Saddler waterline, which provides water to adjacent parcels.

Granting an easement on City-owned open space parcels

Staff maintains the position that the granting of conservation easements on parcels with existing restrictive covenants, such as deed restrictions is a 'redundant' application. Furthermore, Staff finds that conservation easements should be primarily considered at the time of the properties acquisition, where all relevant parties can identify and agree upon the process to preserve identified conservation values.

Primary goals of conservation easements

Conservation easements, as a tool, are most often utilized to preserve open lands with specific 'natural values', while providing a grantor tax benefits. Tax benefits, are contingent, per IRS code, on several factors including the perpetuity of the easement. Furthermore, easements can be utilized to stretch funding sources by placing an easement on a parcel without actually purchasing title. Staff does support the use of conservation easements where specific 'values' need to be addressed above and beyond deed restrictions and planning regulations. Staff cautions that by utilizing easements on inappropriate parcels, such as these, Council may be unknowingly giving up "permitted open space uses" which would otherwise be allowed.

The parcels that do not currently have deed restrictions are small parcels within a residential setting. While they are important to the neighbors as open space, they do not represent the significant public value of Round Valley or the land surrounding the McPolin Barn.

Protections and process in place

In short, the City would have to receive new title without the deed restrictions and an amendment to the existing MPD, a zone change and a plat amendment would be required. Additionally, any tax benefits and density issues would need to be addressed. Staff finds that this process sufficiently ensures that development of these parcels is sufficiently prohibited (provided the deed restrictions are extended to all parcels as recommended by staff).

Staff asserts the real issue is what are the allowed public uses of the property consistent with the deed restrictions and open space zoning. Staff firmly recommends that such uses are determined by a public process and by a body accountable to the public. There is a fundamental difference between a legal instrument intended to prohibit an undesired use (deed restriction prohibiting buildings- residential or commercial density) compared to a conservation easement which usually restricts the

land to existing baseline conditions/conservation values unless certain uses are expressly defined and reserved as permitted uses at the time the easement is granted).

Middle Ground Option

If Council wishes to provide the public with additional measures to prevent development of the parcels currently free of deed restrictions, it should simply place deed restrictions, with appropriate language, on the parcels.

Parcel/Acres	Acquisition	Zoning	Council Option
EP-I-A-X 5.78 acres	1995	ROS	Property is properly protected
EP-II-B-X 7.28 acres	1997	ROS	Property is properly protected
EP-IV-A-X 10.89 acres	2004	ROS	Place additional deed restriction language
EP-IV-B-X 21.92 acres	2004	ROS	Place additional deed restriction language
PCA-2-2100-4-A-X 7.83 acres	1992	ROS	Place additional deed restriction language

Finally, staff finds that funds earmarked by some of the Risner Ridge residents may be best served as a donation to Summit Lands Conservancy specifically for the acquisition of new open space in the area, or donated to the City for specific, permitted amenities or maintenance of the property. Paying for a conservation easement endowment on property already protected as open space is like tying up cash for a public improvement guarantee/bond when the public improvement is already constructed.

Department Review:

This report has been reviewed by the Legal, Planning, Sustainability and Executive Departments

Alternatives:

Option 1: Allow the neighbors to fund the conservation easement on city-owned open space. Granting of the easement should be expressly conditioned that the City under no circumstances is responsible for endowment funding (this is acknowledged in the request letter). Council must provide direction what specific reserved uses the City needs to retain.

Option 2: Allow the neighbors to fund the conservation easement on the property, but require the neighborhood/HOA to purchase the property (so they will have long-term maintenance responsibility)

Option 3: Extend the existing deed restrictions onto the parcels without deed restrictions and maintain municipal ownership **(This is the staff recommendation.)**

Option 4: Extend the deed restrictions and sell or give the property to the HOA for long-term maintenance

Significant Impacts:

While allowing the neighbors to use their own funds to place a conservation easement on land owned by the public may not seem significant, it does set a precedent. Additionally, staff believes that the same intent of protecting the land from development could be achieved by extending the deed restriction to the parcels without deed restrictions and the funds raised by the neighbors donated to Summit Land Conservancy for additional open space acquisition or open space monitoring. Staff is also concerned that allowing neighbors to fund a conservation easement could create a perception of “our open space” and could result in a higher level of service being demanded for weed maintenance or other open space maintenance responsibilities of the City.

	World Class Multi-Seasonal Resort Destination (Economic Impact)	Preserving & Enhancing the Natural Environment (Environmental Impact)	An Inclusive Community of Diverse Economic & Cultural Opportunities (Social Equity Impact)	Responsive, Cutting-Edge & Effective Government
Which Desired Outcomes might the Recommended Action Impact?	- Accessible and world-class recreational facilities, parks and programs	- Abundant preserved and publicly-accessible open space - Managed natural resources balancing ecosystem needs	- Entire population utilizes community amenities	+ Engaged and informed citizenry
Assessment of Overall Impact on Council Priority (Quality of Life Impact)	Neutral 	Neutral 	<input type="text" value="Neutral"/> 	Very Positive 
Comments:				

Funding Source:

No additional funding is being sought.

Consequences of not taking the recommended action:

Staff requires Council direction to provide the Summit Land Conservancy and the associated Risner Ridge HOA with an answer to their proposal.

Recommendation:

Staff recommends Council review and discuss Summit Land Conservancy’s (SLC) request to grant conservation easements on approximately 53 acres of City-owned open space property located near Risner Ridge. Staff recommends that Council provide direction to extend existing deed restrictions onto the parcels without deed restrictions and maintain municipal ownership.

Exhibit A- Proposal



WE SAVE LAND

August 24, 2012

Mayor Dana Williams and members of the Park City Council:

As most of you know, the Summit Land Conservancy was contacted in 2011 by several residents of the Risner Ridge neighborhood of Park Meadows who wanted to insure the permanent protection of the open space located on five city-owned parcels near their property. The Conservancy spoke with City staff and understood that the City did not wish to spend the money required to cover the transaction costs of placing an easement on the properties, nor did it wish to fund the stewardship endowment that the Conservancy would require.

When informed of this as well as of the estimated costs, the neighbors agreed to help the Conservancy raise the necessary funds, if the City would agree to grant an easement on the parcels.

Over the course of 2012, the Conservancy's staff has had several meetings with City staff, including Heinrich Deters and Diane Foster, to discuss this project. The City staff also participated in a meeting with the Conservancy and several neighbors. At that meeting, the City was clear that there were already zoning restrictions on the property as well as deed restrictions on two of the parcels. Additionally, the City staff explained that a deed restriction could be used to accomplish a similar purpose as conservation easement.

At the request of City staff, the Conservancy met with the members of the three HOA's whose neighborhoods border the five parcels. The Conservancy made it clear that there are other options for protecting these lands as open space beside permanent conservation easements. In each case, however, the HOA boards felt that an easement would be the best option.

Again, at the request of City staff, the three HOAs sent a mailing to all of the property owners with a letter explaining the proposal to place these five parcels in a conservation easement. These letters also included a petition form that homeowners could return. As of August 24th, the Conservancy has received 143 signatures of homeowners who support placing these properties in permanent conservation easements. Copies of these petitions have been submitted to City staff.

The Conservancy received no objections from anyone to the proposal to place these lands in easements. A copy of the letter that was sent to Risner Ridge HOA members is attached to this letter. The three HOAs coordinated their letters so that each said essentially the same thing and they were all mailed at the end of July 2012.

At this time, the Summit Land Conservancy would like to respectfully request that the City Council consider granting the Conservancy a permanent conservation easement on the five Risner Ridge properties. If the City agrees to place these lands in an easement, the Conservancy will initiate a fundraising campaign to cover our transaction costs as well as the stewardship and legal defense endowments necessary. The Conservancy will not expect the City to contribute funds to this campaign.

Summit Land Conservancy
PO Box 1775, Park City, UT 84050

Risner Ridge Proposal

www.summitlandconservancy.org

These five parcels are important to the residents of Park Meadows as they provide wildlife corridors through this suburban neighborhood. Furthermore, these five parcels provide important trail connections to the adjacent Round Valley open space. These slopes and hillsides are also important view corridors for the Park Meadows neighborhoods.

The Conservancy staff and its Risner Ridge subcommittee would like to meet with you to discuss this project further.

We look forward to working with you to continue your strong legacy of protecting local open space.

Yours truly,

A handwritten signature in cursive script, appearing to read "Cheryl Fox".

Cheryl Fox
Executive Director



RISNER RIDGE HOMEOWNER'S ASSOCIATION

July 23, 2012

From: Your Board of Trustees

To: Our Homeowner Members

Re: Summit Land Conservancy Project Adjacent to Risner Ridge

We want to update you on a project spearheaded by the Summit Land Conservancy (SLC) to protect five parcels of City-owned land adjacent to or nearby our Risner Ridge subdivisions. The total land involved is 53 acres and includes the trailheads on both Ashley Court and Meadows Drive. A map is enclosed showing the five locations colored in pink.

According to the City's Environmental Sustainability Manager, "some of these were deeded to the City by developers as part of the subdivision process and others appear to have been dedicated/transferred to the City likely during or following the original development process."

The current zoning is Recreation and Open Space on all five parcels, with Special Warranty Deeds on just two of them. However, there is no permanent protection to prevent the City from changing the zoning and deeds in the future or using or selling the properties for development.

Accordingly, SLC has committed to petitioning the City to put conservation easements on the parcels to ensure the 53 acres remains Open Space in perpetuity.

Your HOA Board supports this endeavor and encourages the City to grant the Conservancy's request. As part of this process, SLC will be conducting a charitable drive to fund the endowment trust to manage the lands. The Board agrees this project is in our members' best interest and encourages interested homeowners to contribute to the fund raising when it commences.

In order to judge the interest of homeowners in HOAs adjoining these parcels, the City has asked us to circulate a petition that people who support placing permanent conservation easements on these parcels can sign. This petition will be circulated in our neighborhoods in the month of August. You can also indicate support by returning the enclosed card supplied by the SLC.

We encourage all of our homeowners to support this project in whatever way you can to ensure these lands remain a vital part of dedicated Open Space for Park City at large and Risner Ridge in particular. If you have any questions about the Summit Land Conservancy project, please contact their Executive Director Cheryl Fox at 649-0220.

**ONE ASHLEY COURT
PARK CITY, UTAH 84060**

Exhibit B- October 2010 Letter with Existing Deed Restrictions



October 13, 2010

Mr. Paul Boyer
Secretary-Treasurer
Risner Ridge Homeowners Association
One Ashley Court
Park City, UT 84060

Dear Mr. Boyer –

This letter is in response to your inquiry regarding City-owned parcels that are in the area of your home on Ashley Court.

City-owned Parcels

As you will see from the attached map, the City owns five parcels in that general vicinity. Some of the parcels were deeded to the City by the developer as part of the subdivision process and other parcels appear to have been dedicated/transferred to the City likely during or following the original development process.

The parcels owned by the City are shown in the attached map.

Zoning

Currently, all five parcels is found in the Recreation and Open Space (ROS) District (zone). The purpose of the ROS District is to:

- A. establish and preserve districts for land uses requiring substantial Areas of open land covered with vegetation and substantially free from Structures, Streets and Parking Lots,
- B. permit recreational Uses and preserve recreational Open Space land,
- C. encourage parks, golf courses, trails and other Compatible public or private recreational Uses, and
- D. preserve and enhance environmentally sensitive lands, such as wetlands, Steep Slopes, ridge lines, meadows, stream corridors, and forests.
- E. encourage sustainability, conservation, and renewable energy.

For a complete list of allowed uses, administrative conditional uses, and conditional uses please see the following link

<http://www.parkcity.org/Modules/ShowDocument.aspx?documentid=136>

Warranty Deeds

Parcels EP-I-A-X and EP-II-B-X both have Special Warranty Deeds associated with them that specifically restrict building on the parcel as well as specify that the property will be maintained with the natural qualities of open space. The deeds are attached, following the map.

The other three parcels do not have any of this type of restriction associated with them, however it is likely that the plat dedication and/or development approvals similarly restrict development on the parcels.

Question about Petitioning the City to Change Designation

In your email you asked about the "procedures for interested citizens to petition the City to change the designation of this City-owned land and transfer it into the Open Space program?"

By open space program, I assume you mean the third party conservation easements. These are currently placed only on property acquired by open space bond funds. A citizen may request that the City Council place a conservation easement on any other City property by simply petitioning the Council by letter. Staff would provide both a planning and cost/benefit analysis in making a recommendation.

If you would like further assistance, please do not hesitate to contact me.

Sincerely,

Diane Foster

Diane Foster
Environmental Sustainability Manager

WHEN RECORDED, MAIL TO:
CITY RECORDER
PARK CITY MUNIC. CORP.
P.O. BOX 1480
PARK CITY, UT 84060

SPECIAL WARRANTY DEED

EAGLE MOUNTAIN PARTNERS, L.L.C., a Utah limited liability company, grantor, hereby CONVEYS AND WARRANTS against all claiming by or through grantor, to PARK CITY MUNICIPAL CORPORATION, grantee, for the sum of TEN AND NO/100THS DOLLARS (\$10.00) and other good and valuable consideration, the following described tract of land in Summit County, State of Utah:

LOT A, as set forth on the official Record of Survey Map for
EAGLE POINTE SUBDIVISION, PHASE I, Park City, Summit County, Utah.

SUBJECT TO THOSE DEED RESTRICTIONS CONTAINED IN EXHIBIT "A" HERETO, AND THOSE ENCUMBRANCES AND RIGHTS OF WAY OF RECORD.

DATED this 11 day of December, 1995.

EAGLE MOUNTAIN PARTNERS, L.L.C.,
a Utah limited liability company

BY: [Signature]
ITS: President

00444360 Bk00931 Pg00197-00198
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1995 DEC 14 09:23 AM FEE \$12.00 BY DMG
REQUEST: ASSOCIATED TITLE

ACKNOWLEDGEMENT

STATE OF Florida)
COUNTY OF Orange) ss.

On this 11th day of December, 1995, personally appeared before me Norman A. ROSSMAN who being by me duly sworn, did say that he is the President of EAGLE MOUNTAIN PARTNERS, L.L.C., a Utah limited liability company, and that the foregoing instrument was signed in behalf of said limited liability company by authorization of the operating agreement, and said NORMAN A. ROSSMAN acknowledged to me that said limited liability company executed the same.

My commission expires:

[Signature]
NOTARY PUBLIC SARA FLYNN-KRAMER
Residing at: 7029 GREENBRIAR PARKWAY
Orlando, Florida 32819

SARA FLYNN-KRAMER
Notary Public, State of Florida
My comm. expires August 12, 1997
Comm. No. CC308237
Bonded thru: P. L. Brown, Inc.

EXHIBIT "A"

**Deed Restrictions - Lot A, Eagle Pointe Subdivision
Park City, Summit County, Utah**

This conveyance by Grantor to Grantee is expressly subject to the restrictions set forth below.

1. Lot A of the Eagle Pointe Subdivision, Park City, Summit County, Utah (the "Lot") is hereby conveyed to Grantee to be held and maintained in perpetuity by Grantee as open space and in a natural state.

2. No dwelling, structure, or above-surface equipment or facilities of any kind shall be erected or placed on the Lot except for the following: 1) those improvements which maintain the natural qualities of the open space; 2) those necessary to protect the safety and physical integrity of the surrounding properties; and 3) trail amenities and public utilities along the platted public trail(s) and utility easement(s).

3. The Lot shall not be used for any purpose that is inconsistent with it being held as open space. Furthermore, the Lot may not be used as any kind of park or location for gathering of people, other than for the use of the public trail(s) located thereon.

4. Grantee shall be responsible for maintenance of the Lot as referenced in this Section 4. Except as provided in this Section 4, the maintenance shall be at the expense of Grantee.

(a) Grantee agrees to maintain the vegetation on the Lot in an attractive, well-kept manner. Although the Lot shall be maintained as open space, it is acknowledged by Grantor and Grantee that the Lot is located in a residential neighborhood with residences adjoining the Lot. Therefore, it is the specific purpose of this Section 4 to assure that Grantee, while maintaining the natural condition of the Lot, will not allow the Lot to generally appear un-kept or a general nuisance.

(b) Subject to the prior approval of the Park City Landscape Architect, Grantor, or a duly authorized agent, employee, subcontractor, or other representative of the Grantor, may come upon the Lot for purposes of removing certain unsightly piles of rock located on the Lot in order to restore the Lot to a clean, attractive and sightly condition. Grantor acknowledges that all costs associated with the removal of these unsightly piles of rock will be the responsibility of Grantor.

5. These restrictions shall run with the land and shall be specifically and mutually enforceable by Grantor and Grantee, their successors and assigns.

These Deed Restrictions have been reviewed and approved by Grantor and Grantee effective as of the date of the Special Warranty Deed to which this Exhibit "A" is attached.

R

Warranty Deed for
parcel EP-II-B-X

WHEN RECORDED, MAIL TO:

CITY RECORDER
PARK CITY MUNICIPAL CORP.
P.O. BOX 1480
PARK CITY, UT 84060

SPECIAL WARRANTY DEED

EAGLE MOUNTAIN PARTNERS, L.L.C., a Utah limited liability company, grantor, hereby CONVEYS AND WARRANTS against all claiming by or through grantor, to PARK CITY MUNICIPAL CORPORATION, grantee, for the sum of TEN AND NO/100THS DOLLARS (\$10.00) and other good and valuable consideration, the following described tract of land in Summit County, State of Utah:

PARCEL "B", as set forth on the official Record of Survey Map for EAGLE POINTE SUBDIVISION, PHASE II, Park City, Summit County, Utah.

SUBJECT TO THOSE DEED RESTRICTIONS CONTAINED IN EXHIBIT "A" HERETO, AND THOSE ENCUMBRANCES AND RIGHTS OF WAY OF RECORD.

DATED this 16 day of Sept, 1996.

EAGLE MOUNTAIN PARTNERS, L.L.C.,
a Utah limited liability company

BY: [Signature]
Norman A. Rossman

ITS: President

STATE OF Florida)
) S.S.
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 16 day of Sept, 1996 by Norman A. Rossman. He is personally known to me or produced _____ and did take an oath.

[Signature]
NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

00472465 Ex01024 Ps00666-00667
ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1997 JAN 31 16:37 PM FEE \$12.00 BY DMG G
REQUEST: ASSOCIATED TITLE

RECEIVED
SEP 17 1996
PARK CITY
PLANNING DEPT.

KAREN M. GILMORE
My Comm Exp. 3/01/98
Bonded By Service Inc
No. CC351470
 Personally Known Other U.S.

eglen/mah/wes/ndb/nc

EXHIBIT "A"

**Deed Restrictions - Lot A, Eagle Pointe Subdivision
Park City, Summit County, Utah**

This conveyance by Grantor to Grantee is expressly subject to the restrictions set forth below.

1. Parcel "B" of the Eagle Pointe Subdivision, Park City, Summit County, Utah (the "Lot") is hereby conveyed to Grantee to be held and maintained in perpetuity by Grantee as open space and in a natural state.

2. No dwelling, structure, or above-surface equipment or facilities of any kind shall be erected or placed on the Lot except for the following: 1) those improvements which maintain the natural qualities of the open space; 2) those necessary to protect the safety and physical integrity of the surrounding properties; and 3) trail amenities and public utilities along the platted public trail(s) and utility easement(s).

3. The Lot shall not be used for any purpose that is inconsistent with it being held as open space. Furthermore, the Lot may not be used as any kind of park or location for gathering of people, other than for the use of the public trail(s) located thereon.

4. Grantee shall be responsible for maintenance of the Lot as referenced in this Section 4. Except as provided in this Section 4, the maintenance shall be at the expense of the Grantee.

(a) Grantee agrees to maintain the vegetation on the Lot in an attractive, well-kept manner. Although the Lot shall be maintained as open space, it is acknowledged by Grantor and Grantee that the Lot is located in a residential neighborhood with residences adjoining the Lot. Therefore, it is the specific purpose of this Section 4 to assure that Grantee, while maintaining the natural condition of the Lot, will not allow the Lot to generally appear un-kept or a general nuisance.

(b) Subject to the prior approval of the Park City Landscape Architect, Grantor, or a duly authorized agent, employee, subcontractor, or other representative of the Grantor, may come upon the Lot for purposes of removing certain unsightly piles of rock located on the Lot in order to restore the Lot to a clean, attractive and sightly condition. Grantor acknowledges that all costs associated with the removal of these unsightly piles of rock will be the responsibility of Grantor.

5. These restrictions shall run with the land and shall be specifically and mutually enforceable by Grantor and Grantee, their successors and assigns.

These Deed Restrictions have been reviewed and approved by Grantor and Grantee effective as of the date of the Special Warranty deed to which this Exhibit "A" is attached.

00472465 Bk01024 Pg00667

egm/whf/aml/dlx

and options and public private partnerships. The effort should result in an educated, well-vetted, public process, and a report that will inform the municipality and the community as a whole, and facilitate Council direction on the topic in the future.

Ms. Card explained Staff envisioned a four to six week timeline with weekly meetings beginning after Sundance through early spring, and a report and recommendations to Council in April. Council Member Simpson asked if there was a reason to present the recommendations in April. Staff envisioned people investing a lot of time for a short period of time and Staff was willing to work with Council on a timeline. Council Member Butwinski noted that rationale had worked very well with the Walkability program.

Ms. Card explained it was a true "Blue Ribbon Commission" and Council would be asked to reach out into the community to select people who would be important to this process. She explained it would be a public process and Staff would work closely with the group to provide background and educational information. Council was supportive of appointing a Blue Ribbon Commission and supported a quick timeline.

4. Risner Ridge Open Space Parcels. Trails and Open Space Manager Heinrich Deters explained that Summit Land Conservancy was asking for the granting of conservation easements on approximately 53 acres of city-owned open space property near Risner Ridge. Cheryl Fox, Executive Director of SLC, joined Mr. Deters during the presentation and discussion.

Council Member Alex Butwinski disclosed that he owns property in Risner Ridge.

Mr. Deters explained the City acquired several platted open space parcels in the Risner Ridge area via the Quarry Mountain Master Planned Development agreement. Additionally, a 7.83 acre parcel was acquired from Arnold Industries via a development agreement associated with Park Meadows and the American Saddler waterline. Some of the lots were protected with deed restrictions prohibiting building while others were not. Staff has been working with Summit Land Conservancy and Risner Ridge Homeowners Association representatives to identify options to ensure the open space remained undeveloped. The Risner Ridge HOA, with assistance from Summit Land Conservancy, collected 143 petition signatures supporting the permanent preservation of the Risner Ridge open space parcels through the use of conservation easements.

Mr. Deters explained Staff's position that granting conservation easements on parcels with existing restrictive covenants such as deed restrictions was redundant. Further, Staff finds that conservation easements should be considered at the time of the property's acquisition, where all relevant parties can agree upon the process to preserve specific conservation values.

Mr. Deters used the comparison of chocolate versus vanilla ice cream to describe deed restrictions versus conservation easements noting that both instruments can be used to protect open space. Deed restrictions are widely used through the planning process when a development has obligations towards open space. Conservation easements are most often

utilized to preserve open lands with specific “natural values”, while providing the grantor tax benefits.

City Attorney Mark Harrington emphasized they are not instruments of the same purpose and are completely different. The grantor of a deed is a new owner of a property and the original owner is the beneficiary of the deed restriction in that they don't want the property any more, but want to ensure that future uses are consistent with open space purposes. With a conservation easement, the owner wants to retain ownership of the property and want to take the benefits of removing the ability to develop it for certain purposes and insure long-term protection of the property.

He explained the City cannot require conveyance of a property interest to a private entity during an exaction process and this distinction is relevant because part of the parcels were acquired in that development process. The City can only exact things for the public benefit and cannot require conveyance of a property interest to a private entity, even a non-profit, during an exaction process. He further explained that a conservation easement was not a management agreement, it was the conveyance of a property interest to another entity; further, one cannot hold an easement if it is the fee owner. That is a merger of title and extinguishes the easement.

Mr. Deters explained Staff's recommendation was a middle ground option which would place deed restrictions to the two Eagle Pointe parcels that are platted open space but do not currently have deed restrictions and would place a deed restriction to the American Saddler waterline parcel. Staff suggested the citizens who were willing to place money for the conservation easement might provide those funds to Summit Land Conservancy for stewardship or new acquisitions.

Summit Land Conservancy Executive Director Cheryl Fox explained the neighbors approached them to ask for a conservation easement and they felt if the neighbors were willing to fund the stewardship endowment it seemed to make sense. She stated conservation easements are meant to last forever and to protect certain conservation values. The open space, recreational access, view sheds across Park Meadows and the wildlife habitat are important conservation values they would be willing to protect and believe easements are the best tool. She stressed they sent out 255 mailings and received 143 positive responses. She requested direction from Council.

Cindy Matsumoto expressed particular concern about the 10 acre parcel because it linked areas of Quarry Mountain and Round Valley and provided parking, trailheads and enhanced wildlife migration. She did not feel it would set precedent for other parcels because it is contiguous with the City's large open space parcels.

Ms. Fox pointed out the McPolin farm lands were purchased with the City's General Funds and held for nearly ten years before being protected by a conservation easement

City Attorney Mark Harrington clarified that past Council policy direction had a range of options for protecting open space, but moving forward the intention was to use conservation easements only on properties acquired with bond money.

Interim City Manager Diane Foster interjected that deed restrictions are a valuable tool that provides permanent protection to the parcels. From Staff's perspective, it is redundant to spend additional funds to add a level of protection in a community that is very committed to open space. Staff has provided a recommendation that provides the same protection the neighbors' are seeking from a third party.

Council Member Andy Beerman asked how a deed restriction could be overturned for economic hardship. Ms. Fox explained that if an owner were allowed to sell the property, use the money, and do something else of benefit for the City, a court of law would approve removal of the deed restriction

City Attorney Harrington argued there may be ways to argue how to get relief from a deed restriction, but they are so extreme that is a huge oversimplification. The deed restriction is actually stronger than a conservation easement because the consequence isn't purely financial. Ms. Fox stated there was some sketchy provenance on some of these parcels and the reversionary interest that could benefit and hold one to a deed restriction was not there.

Mr. Harrington concurred that was a valid point and encouraged legislation at the State level to provide long-term enforceability of public forfeiture to a public entity. He was fully supportive of trying to create long-term ways to ensure third party enforceability and there are ways to do that short of a conservation easement. When a long term priority is wilderness, or preservation as is, conservations easements are a good tool. When the priority is to allow a balance of recreation use and mixed uses that are hard to forecast or define now, how specifically you define them is what governs that down the road. He stressed they were all on the same page and Heinrich's statements that we were talking about flavors of ice cream was perfect. Staff is not opposed to conservation easements but wants them to be done deliberately and consciously, knowing that they may create imitations that were not intended at the time the property was acquired.

Council Member Beerman noted Staff cautioned against placing conservation easements on inappropriate parcels such as these. He felt they represented a large piece of land, were in a wildlife corridor, and contiguous to existing open space parcels that seemed to fit the criteria. Mr. Deters commented that conservation easements were often used on large parcels of wilderness where uses and prohibited uses could clearly be defined. When you introduce many people and many uses into open space, it must be managed strongly and that management can be difficult when there is a conservation easement on it.

Council Member Cindy Matsumoto commented the new source of funding would not contain bond language and she encouraged Staff to consider that in the future. Attorney Harrington explained that was why, in this situation, Staff supported extending the deed restrictions to all the parcels and using the same language consistently.

Council Member Liza Simpson supported the deed restrictions. She expressed frustration by the discussion about conservation easements, funding, monitoring, endowments and ensuring that it is self-sustaining. She requested a study session with COSAC to discuss a strategic open space plan that further defines where wildlife corridors are and specific conservation easements that could be placed in different areas so we have rationale, deliberative methods for placing a conservation easement on a specific parcel. She wanted to have full understanding going forward of not only paying for the conservation easements, but understanding how we are going to pay for continued monitoring.

Council Member Dick Peek also supported deed restrictions and agreed that a long term strategic discussion would be beneficial. Council Member Alex Butwinski concurred.

Mayor Williams favored a third party check on land that the government owns. Although he felt there should be a conservation easement, he was willing to support extending the deed restrictions and having the dialogue with COSAC.

Attorney Harrington encouraged an open policy level discussion and felt they could separate acquisition from long-term protection. The use of the phrase open space is widely misunderstood by the community and this is about public trust. The City holds lands for public trust and is trying to ensure that the trust is not broken, and that we are managing the property consistent with appropriate public uses.

Interim City Manager Diane Foster summarized that Council has directed Staff to extend the deed restrictions on the parcels. There were still questions about extending the third party enforcement to Summit Lands Conservancy on those deed restrictions. Attorney Harrington suggested they wait to do it in conjunction with that discussion because Summit Land Conservancy will have to decide whether they want to do it based on their internal obligations and responsibilities. They may not want to do that if it doesn't give them the tools to do it effectively.

Ms. Fox stated that Conservations Easements are a tool that has been used effectively. There is a stronger team protecting your open space when there is a third party holding the conservation easement and Summit Land Conservancy knows how to use that tool. Many neighbors support this and are eager to hear Council's direction. The City could proceed with deed restrictions and learn something new, or utilize known practices. She agreed with the need to have discussions about ongoing stewardship for other parcels in the future; however, the neighbors have agreed they will fund this stewardship. If Council opts to place deed restrictions on the parcels, she would have to take that discussion back to the SLC Board.

Mayor Williams restated Council's direction for Staff to move forward with deed restrictions and stressed that discussions about easements will continue. Council members have requested that conversation to be a COSAC priority when it is reconstituted.

Protected Open Space- Park City, Utah

