

**COSAC IV Meeting Minutes
City Council Chambers
August 13, 2013, 8:30 a.m.**

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

Public (alternates) Carolyn Frankenburg (electronically), Brooke Hontz, Paul Boyer, Bill Cunningham, Erin Bragg, Jeff Ward

Excused: Suzanne Sheridan

Staff: Heinrich Deters, Andy Beerman, Mark Harrington, ReNae Rezac

Guests: Nancy McLaughlin, Kate Sattelmeier

CALL TO ORDER

Chair Ryan called the meeting to order.

STAFF AND COMMITTEE DISCLOSURES/COMMENTS

Chair Ryan reminded committee members to get their disclosure affidavits turned in. Heinrich wished candidates involved in the primary election good luck and reminded committee members to vote.

PUBLIC COMMUNICATIONS

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

OLD BUSINESS

Ms. Ryan outlined the discussion items for the meeting. 1) Finalizing the recommendation to City Council on the Risner Ridge easement; and, 2) presentation by Nancy McLaughlin clarifying the qualifications and processes associated with extinguishment, condemnation and amendment provisions of an easement.

Conservation Easements

Ms. McLaughlin addressed the group. She asked COSAC members to consider options available within the chosen preservation option. She distributed the Utah statute relating to land preservation. Conservation easements can be used "for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, **or** for recreational, agricultural, cultural, wildlife habitat or other use of condition consistent with the protection of open land". The level of protection on a property must be consistent with an organization's mission statement.

Traditional purposes for protection include: habitats, water, scenic, cultural, recreation (passive and active), historic. Sometimes the protection purposes conflict. A conservation instrument should reflect the priorities for which the land is being preserved.

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Potential uses, both present and future, should always be carefully considered when contemplating perpetual property preservation.

City Attorney Harrington stated placing a permanent instrument on a property means being willing to designate permitted uses in perpetuity. Ms. McLaughlin reminded the committee that the public can have very different views of what "public use" means. It is important to build in sufficient language regarding the overall purpose of the instrument so when the easement is reviewed in the future, it is clear why the land was preserved. Thought should be given as to types of activities allowed or disallowed. Providing examples of allowed or disallowed activities is helpful to people reviewing the easement in the future.

Appropriately naming a preservation easement to indicate why the land is being preserved helps to avoid misunderstandings later.

A perpetual easement is supposed to be permanent, and/or should remain in effect for as long as it remains practical and possible to continue protecting the values associated with the land.

In order to extinguish a conservation easement you have to go to court and prove that continuing to protect the land for the purposes outlined in the easement is no longer possible or practical because of changing conditions. Extinguishment is an extremely high bar.

The second method of eliminating a conservation easement is through condemnation by the local government, private parties, or the state. Condemnation has to prove that the proposed public purpose is *higher* than the public purpose for which the land was initially preserved. Sometimes there is a settlement in lieu of condemnation. It is possible to do a partial condemnation.

It is possible to swap land under a current conservation easement for a parcel with higher conservation values. Caution is advisable to avoid the final result being holding properties with high conservation values, but that are not in a desirable location.

Ms. Ryan noted it is simpler to do a partial condemnation if each parcel is protected under its own separate preservation easement.

Ms. McLaughlin said a conservation easement can be amended, but because it is a perpetual instrument, the amendments have to be consistent with the overall *purpose* of the easement. The landowner and the entity holding the easement must agree to the amendment.

Vice chair Henney asked if the process for condemnation is something COSAC can add language to clarify the process at the local municipal level or is it already set. Attorney Harrington replied the process is already set at a state level and includes due public

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process since public funds were used to purchase the open space. Condemnation of land involves a public process.

Mr. Wilking asked if it was possible for a referendum to be created that allows for a conservation easement to be re-visited after a specific amount of time has passed rather than have a conservation easement exist in perpetuity. Ms. McLaughlin answered there are easements that have a timeframe attached to them. They are not *perpetual* easements.

Heinrich asked if a parcel of land where a more intensive usage might be in order could be omitted from an area being considered for a conservation easement. Ms. McLaughlin's answer was yes. She emphasized that any amendment must be consistent with the overall values and purpose of the easement. A preservation amendment can be customized to preclude *specific* changes. An amendment can be crafted to be subject to review, but not approval.

If the holder of the easement ceases to exist, the State Attorney General's office assigns another entity to hold the easement.

Risner Ridge

Chair Ryan outlined the Risner Ridge discussion was to focus on what to title the easement, not finalize the minute details of the easement. COSAC's job is to provide guidance to Summit Land Conservancy so they can draft a document in line with COSAC's direction.

Heinrich added a formal vote was needed to ratify COSAC's decision to move forward with a conservation easement.

Motion: Vice chair Henny made a motion to move forward with a perpetual easement to be named later on the five Risner Ridge properties. Mr. Doilney seconded the motion.

Ms. Kahn recommended including the words "aesthetic and recreational" to the name of the easement. Mr. Henney and Doilney accepted the amendment to the motion.

Mr. Wilking said he was concerned about the perpetual nature of conservation easements. He wants to see a very high bar established for change, but would like some mechanism for change included.

Vote: The motion carried, with Mr. Wilking voting against it.

The next step is finalizing the values and purpose of the easement. Ms. Fox said she was looking for to some direction and wondered if might not be helpful to forward a more detailed recommendation to City Council.

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Chair Ryan stated additional policy determination work is needed prior to presenting a more detailed easement document to City Council.

Mr. Wilking asked if Mountain Trails could make improvement/changes to the trails in the area without the approval of the conservation holder. Ms. Fox said yes, if the trails are part of the trails master plan. She added the trails master plan would be part of the conservation easement document. If the trails are part of the trails master plan, the conservation holder only has to be notified.

Chair Ryan asked the committee to focus their discussion on the principles that lead to the details. There was committee consensus that the proposed document meets the conservation values and purposes outlined in the matrix.

Ms. Fox identified uses that would not be permitted on the property; i.e., large trail cuts, zipline adventures, etc. In order to protect the wildlife in the area, best practices will be used to eliminate any impacts to the wildlife. Trail use would not be prohibited, but it could be posted, "please leash your dogs because the elk are calving". Ms. Ryan asked the document to reflect specificity when using the words "best practices". Ms. Fisher indicated having a baseline on the property helps provide a reference point about the level of protection needed.

Heinrich added COSAC will be given an opportunity to see the final document and weigh in on areas where there is disagreement between staff and Summit Land Conservancy.

Mr. Sturgis believes the parking language is a bit strong and that some flexibility could be included. Ms. Ryan suggested that if COSAC members have input that was not shared at the meeting because of time to meet with Heinrich individually.

Moving forward, staff will continue to work with Summit Land Conservancy to draft the easement. Chair Ryan asked committee members if there was any additional policy input. There was none.

Ms. Fox asked if COSAC was taking the full conservation easement to City Council. City Attorney Harrington clarified next steps as a policy recommendation to Council to provide an aesthetic/recreation/preservation perpetual easement on Risner Ridge subject to terms still being identified.

The next meeting is August 27.

The meeting adjourned at 10:19 a.m.