

**Citizens' Open Space
Advisory Committee
(COSAC IV)
Council Chambers, 445 Marsac Ave.
February 25, 2014**



AGENDA

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

ROLL CALL

ADOPTION OF MINUTES: January 14, 2014

STAFF AND BOARD COMMUNICATIONS/DISCLOSURES

PUBLIC INPUT

NEW BUSINESS

Summit Land Conservancy Stewardship Endowment Request (1 hour)

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.

**COSAC IV Meeting Minutes
City Council Chambers
January 14, 2014, 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, Jim Doilney, Judy Hanley, Bill Cunningham

Excused: Cara Goodman, Meg Ryan

Public (alternates): Bronson Calder, Carolyn Frankenburg, Jeff Ward

Staff: Heinrich Deters, ReNae Rezac, Mark Harrington

CALL TO ORDER

Heinrich called the meeting to order.

ADOPTION OF NOVEMBER 19, 2013 MINUTES

MOTION: Suzanne Sheridan moved approval of the minutes as written; Cheryl Fox seconded.

VOTE: The motion carried.

PUBLIC COMMUNICATIONS

Heinrich called for public comment on items not included on the agenda. There was none.

STAFF AND COMMITTEE DISCLOSURES/COMMENTS

Heinrich noted the Risner Ridge discussion would be part of the February 13 City Council agenda.

NEW BUSINESS

Heinrich called for nominations for Vice Chair.

Motion: Jim Doilney moved to appoint Judy Hanley as Vice Chair; Jan Wilking seconded.

Vote: The motion passed carried

Heinrich led a discussion about the future meeting schedule and asked committee members if meeting the 2nd Tuesday of the month would work. Wendy asked that the 4th Tuesday be considered. Kathy Kahn wondered about the 1st Tuesday. After discussion, the committee decided to meet the 4th Tuesday. The next meeting would be February 25, 2014. Cheryl Fox said she would like to discuss stewardship and did not support waiting until February 25. She asked if it would be possible to meet January 28th. The group agreed to meet on January 28th. After that, the next meeting would be February 25.

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Heinrich noted that Bill Cunningham would be filling Tim's spot as an at-large member of the committee.

Motion: Jan Wilking moved to close the meeting to discuss property; Judy seconded the motion.

VOTE: The motion carried.



COSAC Staff Report

Subject: Summit Land Conservancy’s (SLC) Stewardship Endowment Request
Author: Heinrich Deters
Department: Sustainability
Date: February 25, 2014
Type of Item: Advisory- Budget Recommendation

Topic/Discussion:

Staff recommends COSAC discuss and provide a recommendation to City Council on how best to address Summit Land Conservancy’s (SLC) stewardship endowment request in the amount of \$1,500,000.

Staff Recommendation:

COSAC should forward a negative recommendation and instead recommend the City Council direct staff to publically advertise a request for proposals (RFP) that includes a ten-year contract for the monitoring and stewardship of the requested easements (Exhibit A). Additionally, recommend SLC privately fundraise for their current endowment needs and address new endowment funding at the time COSAC partners with the City in future acquisitions.

Background

The City has granted numerous easements on city-owned open space to Summit Land Conservancy to ensure an independent third party provides oversight to monitor the conservation values as set forth on each parcel. As with any service, certain financial realities present themselves. In the case of third party easements, those realities manifest themselves as monitoring and stewardship expenses.

Current Council direction is to negotiate (preferably have the seller cover) all easement costs for a parcel at the time of the original transaction. Because the third party easements were not contemplated in the early phases of our open space program, this approach was not considered for the 10 requested parcels. The Council struggled with early easement requests (some by other parties) in large part to an inability to agree on permitted and prohibited uses. After years of discussion with the Council and led by former Council Member Jim Heir, the City compromised by agreeing grant third party easements with the same permitted use language as the open space bonds/deed restrictions, and to pay for monitoring through a Special Service Contract on a direct cost basis. In 2009 Council changed the payment method to a regular contract because of the nature of the service was more closely aligned with a regular contract rather than a Special Service Contract (which more parallels a grant allocation for community services and the total available funds are limited by budget policy and state law). Below is a historical breakdown of direct costs, specific to Summit Land Conservancy, for the services related to baseline document preparation and monitoring of open space parcels.

2005-2007	Round Valley & Empire Baseline/Easement, Round Valley, Empire, Richard's Ranch monitoring (Virginia Mining Claims, Rail Trail, UP&L easements/baseline)	\$12,500 (2-year contract total)
2007-2009	McPolin Baseline/Easement Round Valley, Empire, Virginia Mining Claims, Rail Trail, UP&L, Richard's Monitoring. Aerial photos	\$15,000 (2-year contract total)

2009-2012	Quarry, Iron Mountain, Round Valley, Empire, Virginia Mining Claims, Rail Trail, UP&L, Iron Mountain, McPolin Farm Monitoring *PRI Round Valley, Gambel Oak, Hope Baselines/Easements.	\$143,833 (3-year contract total)
2013	Quarry, Iron Mountain, Round Valley, Empire, Virginia Mining Claims, Rail Trail, UP&L, Quarry, Iron Mountain, McPolin Farm Monitoring	\$ 23,530 (1-year contract total)

*The City paid for the easement drafting and baseline work for both the Gambel Oak and PRI Round Valley Parcels as part of the 2009 RFP award.

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 discussed the item again on June 14, 2012 where no decision was made. However, Council directed staff to provide a placeholder in the FY 2014 budget, in the amount of \$1,500,000. Additionally, Council directed staff to ensure any proposed stewardship costs associated with a future open space parcel be included in the seller's transactional costs.

During a prior discussion regarding Risner Ridge, Council directed staff to have COSAC provide a recommendation on three topics: the use and form of conservation easements; the SLC stewardship request; and the proposed Risner Ridge and Gambel Oak easements.

Staff and Council identified the Resort City Sales Tax (RCST) five year allocation budget for open space acquisition, including the \$1,500,000 stewardship placeholder which could be used to fund contract costs or some other mechanism to address the stewardship costs. The City does not have this budgeted amount as cash in hand, but a portion of the projected revenues from the RCST have simply been tentatively budgeted for this purpose.

Analysis

The endowment request

Summit Land Conservancy is requesting the City provide a \$500 per acre endowment, totaling \$1,500,000. The funds need to be 'non-political' or independent of the political process. This endowment would be permanently restricted, meaning that the income from the fund would be used to cover the Conservancy's annual stewardship expenses on City-owned and co-held easements. SLC expects to generate a 6% annual return, with 3% of that return (\$45,000) to be withdrawn from the fund to fund annual stewardship and 3% to be reinvested (3% interest). The endowment could be funded over a number of years.

City/Summit Land Conservancy Protection Goals

The City and SLC's goal in granting/holding easements on city-owned property is to ensure an independent third party will oversee the conservation purposes and values as set forth in the easement documentation for the public's benefit.

Terminology: stewardship, monitoring, maintenance/management, legal defense

To better understand the difference between monitoring, stewardship, maintenance, and legal defense, staff has provided the following definitions:

- Stewardship is the land trust staff's obligation to provide oversight, education and communication efforts to maintain the conservation values associated with an easement.

Most often the deliverable of this function is staff review, confirmation and possible notification of a violation of the easement values, to the landowner through email, call or verbally. It is the landowner's responsibility to physically remedy any possible violation.

- Maintenance/Management is the direct or physical implementation of the landowner's ongoing annual oversight of property, which includes general maintenance for the landscape, recreational facilities, infrastructure and response to public requests or concerns.
- Monitoring is the compilation of physical site evaluations of an easement property by the professional land trust staff or volunteers, which documents changes or lack thereof as it pertains to the original property's easement baseline report. These observations are compiled into an annual report, which is provided to the landowner.
- Legal defense of an easement is the act of legally addressing an existing violation of properties conservation values.

Collectively, each aspect described above form the core duties associated with any land trust. Moreover, funding and appropriation of each duty is stipulated by different funding sources, closely administered by LTA standards and practices and ultimately an annual audit.

Why an 'endowment' is not a viable funding option for the City

Summit Land Conservancy's request that stewardship funds be removed from the political mainstream, thus ensuring the independent third party 'watchdog', not be beholden to 'unforeseen changes in future political decision making' is important to note. The City agrees that a financially independent land trust may best ensure the success of the City's easements; however, an endowment is not something a governmental entity can either hold or bequeath to a non-profit due to regulations associated with the Money Management Act, which regulates 'prudent' governmental use of public funds. Thus, the SLC endowment request has never been recommended by City staff or the City's auditor. This recommendation was addressed and determined by City Council's direction on June 14, 2012, to find a placeholder for the request funds but stipulated that the funds must be maintained in a City controlled account.

Why a Capital Account (CIP) is not a viable option for the City

In 2012, Government Accounting Standards Board (GATSB) specifically noted that operating costs, such as monitoring and stewardship cannot be funded through a capital account.

Land Trust Accreditation

It is important to note that Summit Land Conservancy's accreditation into the Land Trust Alliance (LTA) has led to the stewardship endowment request. While the accreditation is an important aspect in SLC's development and recognition as a respected national entity, staff strongly feels that this recognition should not dictate the dedication of tax payer funds in the amount requested. Furthermore, staff confirmed with SLC, that the endowment stipulation by LTA notes that if an endowment is not currently secured, a land trust should at minimum have a plan to acquire the funds into the future.

Stewardship funding in Ketchum, Aspen and Boulder

Staff spoke with public jurisdictions and local land trusts from the Ketchum, ID., Aspen, CO. and Boulder, CO., about their approach to ensuring open space values and public funding of private land trusts.

Boulder does not utilize third party land trusts on their 45,000 acres of publically funded open space, rather their property is overseen by the Open Space and Mountain Parks department, which is publically funded and governed by a board of trustees that report to the City Council. This is not to say that conservation easements are not utilized in and around Boulder, it is simply noting that the public entity overseeing the City's parcels does not utilize or publically fund third party land trusts.

Aspen/Pitkin County publically funded open space is overseen by the Open Space and Trails Board (OSTB), which is governed by a board of trustees that reports to the County Commissioners. Similarly, it has a funded trails and parks staff that provides much of the monitoring and stewardship for their parcels. The OSTB does utilize conservation easements and works closely with the Aspen Valley Land Trust; however, the land trust is entirely privately funded.

Wood River Land Trust has acquired and now stewards over 13,000 acres of open space in and around Ketchum, ID. The Trust is funded entirely through private donations. The trust does work in collaboration with the towns of Ketchum and Sun Valley but is largely the driving force for open space preservation in the valley. When speaking with the land trust, they noted that the LTA, made special reference to the public funding issue several years ago at their conference and cautioned land trusts on their over reliance of governmental funds.

Resort City Sales Tax (RCST) open space funds

In 2012, discussions associated with the resort city sales tax increase, focused on using the funds for open space acquisition and capital projects, such as those identified and approved in the Old Town Improvement Study (OTIS). Staff finds that the intent and primary purpose of these open space funds is for acquisition of new property, not retroactive stewardship costs.

Currently, the RCST open space fund allocated \$15,000,000, yet unrealized as bonds associated have not been issued, is approximately \$11,000,000 due to the costs associated with the purchase of the Nadine Gillmor 'Stoneridge' parcel. Additionally, by removing the SLC request of \$1,500,000 from the open space fund, you are further limiting the purchasing power of COSAC to \$9,500,000 over the next 15 years of debt service.

Acquisition v Stewardship fundraising efforts

SLC has noted that private fundraising for stewardship will impact their acquisition fundraising efforts. For the most part, Park City Municipal has been the primary acquisition entity spending over \$45,000,000, not including the current \$15 million RCST budget, to acquire approximately 2500 acres. It is important to note, that this does not include approximately 6000 acres of internal subdivision or MPD open space such as the Risner Ridge Parcels, which have been acquired thru the regulatory process. While certainly any non-profit must address the degree of fundraising attributed to its operational expenses and staff costs/salaries, the reality is SLC already functions successfully fundraising this way. In conclusion, if RCST funds are not utilized for the stewardship funding, as staff is recommending, these funds will remain in place for acquisition.

Overview of options pros/cons:

1. Recommend Council provide Summit Land Conservancy a stewardship endowment in the amount of \$1,500,000.

- Not a viable option due to governmental regulatory aspects associated with the use of public funds. (con)
 - May remove acquisition funds from open space budget (con)
 - Does not establish fiscal independence for SLC (con)
2. COSAC should recommend the City Council direct staff to publically advertise a request for proposal (RFP) that includes a ten-year contract for the monitoring and stewardship of the requested easements (Exhibit A). Additionally, recommend SLC privately fundraise for their endowment costs.
- Provides for ongoing monitoring/stewardship of property for the next 10 years (pro)
 - Adheres to the procurement process (pro)
 - Does not impact open space acquisition funding (pro)
 - Consistent with financial regulatory aspects (pro)
 - Consistent with other non-profit professional service contracts (pro)
 - If successful within the RFP process, provides SLC opportunity to match public funds through private fundraising and realize financial independence over a period of time (pro)

This is the staff recommendation.

Significant Impacts:

Recommendations outside of staff's findings are likely to be inconsistent with financial regulatory practices and may likely produce a violation of state law during the financial audit.

Alternatives:

1. **Approve Recommendation:** COSAC should recommend the City Council should direct staff to publically advertise a request for proposal (RFP) that includes a ten-year contract for the monitoring and stewardship of the requested easements (Exhibit A). Additionally, recommend SLC privately fundraise for their endowment costs.
2. **Modify Recommendation:** Explore the creation of a new advisory board to oversee the City's open space program with a budget to award monitoring and stewardship contracts in the same manner as #2 above, but the new board would award contracts not the City Council.
3. **Do Nothing:** Maintain Status Quo: Publically advertise 3 year contract for monitoring and stewardship of easements.
4. **Explore other options:** COSAC may recommend staff explore other options similar to multi-year contracts held by entities such as the Silly Market or Triple Crown.

Funding Source:

Recommended funding for the Professional Service Agreement contract for the existing open space easements would come from the open space maintenance fund.

Consequences of not taking the recommended action:

By not providing a revenue opportunity for the existing easements, third party monitoring of the easements may be jeopardized.

Recommendation:

COSAC should recommend the City Council should direct staff to publically advertise a request for proposal (RFP) that includes a ten-year contract for the monitoring and stewardship of the requested easements (Exhibit B). Additionally, recommend SLC privately fundraise for their endowment costs.



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



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.