

CHAPTER 11

Public Places

- Article 1 Holbrook Reservoir Facility
Resolution No. 97-10, August 25, 1997**
- Article 2 Otero County Land Trust
Resolution No. 2001-18, November 5, 2001**

ARTICLE 1

Holbrook Reservoir Facility

Resolution No. 97-10

August 25, 1997

WHEREAS, Otero County has been actively involved in the development of the Holbrook Reservoir area as a recreational facility; and

WHEREAS, the improvements to the area have resulted in increased utilization of the present facilities; and

WHEREAS, this increased utilization has resulted in the need to implement safety policies that will protect and enhance participants' use of the facility.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the County of Otero, Colorado:

1. Certain areas of the Holbrook Reservoir Facility will be closed to motorized vehicles. Such areas shall be posted with the appropriate signage.
2. The speed limit within the facility area will be set at twenty (20) miles per hour.
3. All-terrain vehicles (ATVs) and motorcycles shall be restricted to designated roadways.

ARTICLE 2

Otero County Land Trust

Resolution No. 2001-18

November 5, 2001

A RESOLUTION DEFINING AND AUTHORIZING THE INVOLVEMENT OF OTERO COUNTY IN A CONSERVATION EASEMENT PROGRAM KNOWN AS THE "OTERO COUNTY LAND TRUST"

WHEREAS, the Board of County Commissioners of the County of Otero, State of Colorado, is allowed and directed by Section 30-11-101, C.R.S., to purchase and hold real property for the use of the County, and to make such order respecting the real property as may be deemed conducive to the best interests of the County and its inhabitants; and

WHEREAS, the terms and provisions of Section 30-11-101, C.R.S., further provide that the County has the power to make contracts and do all other acts in relation to property owned or held by the County; and

WHEREAS, the provisions of Section 30-11-107, C.R.S., dealing with the powers of the Board of County Commissioners provide that the Commissioners have the power to make such orders concerning property belonging to the County as the Commissioners may deem expedient, and further, the Board has the power to establish policies and procedures regarding the entering into contracts binding on the County, and to delegate its power to enter into such contracts pursuant to such policies and procedures as established; and

WHEREAS, the Board of County Commissioners of Otero County believes that the welfare and best interests of the inhabitants of Otero County will be served by the development and utilization of a conservation easement program as set forth hereafter.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Otero County, Colorado, as follows:

Section 1. The "Otero County Land Trust" is hereby established for the purpose of accepting donated conservation easements which will help preserve the beauty, open space, diverse agricultural practices and rural way of life in Otero County, Colorado.

Section 2. In order to implement the Otero County Land Trust, and in order to provide the appropriate procedures to run the Otero County Land Trust, the Board hereby adopts and approves the following documents which are attached hereto and hereby incorporated by reference:

(a) A document entitled "Otero County Land Trust Conservation Easement Program," which sets forth the purpose of the program, the definition of a conservation easement, various tax benefits and other relevant information.

(b) A document entitled "Otero County Land Trust Policy Statement," which sets forth the operative provisions deemed important by the Otero County Commissioners as concerns the operation of the Otero County Land Trust.

(c) A document entitled "Otero County Land Trust Conservation Easement Stewardship, Monitoring and Enforcement Policies," which sets forth more of the specific monitoring and enforcement policies to be utilized by the Otero County Land Trust, including drafts of documents to be used for monitoring of the easement, land owner interview relative to the easement, land use/management practices and office report relative to the same.

Section 3. The documents referenced above, which are incorporated herein by reference, shall be subject to amendment by the Board of County Commissioners of Otero County as it may deem necessary and prudent in the future.

Section 4. It is acknowledged that the Otero County Land Trust is designed as an interim measure to accept donated conservation easements pending the development and maturity of a newly-created Section 501(c)(3) tax-exempt entity known as the "Arkansas Valley Preservation Land Trust." Current Internal Revenue Service regulations require that such an entity be in existence for at least two (2) years before taking donated conservation easements. The plan and intent at this time is for the Board of County Commissioners of the County of Otero to transfer any conservation easements being held by the Otero County Land Trust to the Arkansas Valley Preservation Land Trust when in fact it is fully formed and mature. The Board of County Commissioners reserves the right to do this at its sole discretion.

Section 5. This Resolution shall become effective on November 5, 2001.

Section 6. If any paragraph or subparagraph of this Resolution is held to be invalid or unconstitutional by a Court of competent jurisdiction, such decision shall not invalidate the remainder of this Resolution, and to this end the provisions of this Resolution are declared to be severable.

OTERO COUNTY LAND TRUST

Conservation Easement Program

Purpose.

The purpose of the Otero County Land Trust (OCLT) is to help farmers and ranchers keep their land in production and to benefit all the inhabitants of the County. By accepting donated conservation easements, OCLT is offering landowners a way to capitalize on the increased value of their land and water without having to sell or subdivide their land. This is strictly a voluntary program and is designed to be responsive to individual needs and goals.

The Concept of Development Rights and Conservation Easements.

Full (fee simple) ownership of real property consists of a "bundle" of rights, such as the right to farm, to construct buildings, to subdivide the land, to extract minerals or to restrict access. These rights are only limited by previous legal restrictions and governmental regulations applicable to the property. Some rights in the bundle can be transferred to others while retaining the remaining rights of ownership. For example, mineral rights can be separated from the bundle of property rights and sold.

The right to build on real property is known as the development right. When development rights are transferred to a conservation organization like OCLT, the specific restrictions regarding the amount and type of development that are given up are set forth in a legal document called a conservation easement, which is recorded in the chain of title to the property.

What is a Conservation Easement?

A Conservation Easement is a voluntary agreement that allows landowners to limit the type or amount of development on their property and protect its agriculture character and productivity. The landowner, who is the easement donor, and OCLT, who is the party receiving the easement, sign the easement. OCLT accepts the easement with the understanding that it must enforce the terms of the easement in perpetuity. After the easement is signed, it is recorded and future owners are bound by its terms. The landowner retains title to the property subject to the easement. The easement does not grant public access or limit in any way the owner's right to lease, sell, mortgage or otherwise transfer title to the land, except as provided in the easement.

Why Donate a Conservation Easement?

Some people donate a conservation easement because they want to protect their land from unwanted development. By donating a conservation easement, a landowner can assure that the property will be protected forever from development as provided in the conservation easement, regardless of who owns the land in the future. An additional benefit of granting a conservation easement is that the donation of an easement may provide significant financial advantages to the donor.

What Kind of Financial Advantages Result From Donating an Easement?

Landowners may receive a state income tax credit or a federal income tax deduction from the gift of a conservation easement. The Internal Revenue Service allows a deduction if the easement is perpetual and donated "exclusively for conservation purposes." The amount of the tax deduction is determined by the value of the conservation easement. In addition, the donor may have estate and property tax relief.

Colorado Income Tax Credit.

The State allows a tax credit for the amount of the value of the easement up to one hundred thousand dollars (\$100,000.00) until December 31, 2002. Conservation easements created on or after January 1, 2003, have a maximum credit of two hundred sixty thousand dollars (\$260,000.00) and different rules than those created before January 1, 2003. For conservation easements created prior to January 1, 2003, the maximum tax credit or refund, or a combination of the two (2), is twenty thousand dollars (\$20,000.00) per year. It works like this: the donor of a conservation easement,

valued at one hundred thousand dollars (\$100,000.00) or more, would receive a tax credit for one hundred thousand dollars (\$100,000.00). Let's assume the donor has a tax obligation of five thousand dollars (\$5,000.00), the donor may apply five thousand dollars (\$5,000.00) of the one hundred thousand dollars (\$100,000.00) to settle the tax obligation and apply to the State for a refund of fifteen thousand dollars (\$15,000.00). The law states that, in any year the State has a budget surplus, the holder of the tax credit may apply to convert the tax credit to a refund. The donor has twenty (20) years to use the tax credit. One should consult with Appropriate tax and legal counsel to ensure individual circumstances of the donor are properly considered.

Qualifying for a Federal Income Tax Deduction.

The donation of a conservation easement is a tax-deductible charitable gift, provided that the donation meets certain requirements of the Internal Revenue Code. Generally, these requirements are that: 1) the easement is perpetual; 2) it is donated to a qualified organization (like OCLT); and 3) it is donated "exclusively for conservation purposes" (OCLT easements qualify). These requirements are not difficult to meet, but it is important that a proposed transaction be reviewed by tax and legal counsel experienced with the applicable law and regulations to ensure that the gift will qualify for a charitable deduction.

The Amount of the Deduction.

For a donated conservation easement, the amount of the charitable contribution deduction is measured by the fair market value of the easement at the time of the donation. The value of a conservation easement is generally the difference between the value of the land without the easement ("before") and the value of the land with the easement ("after"), determined by a qualified appraisal which is prepared by a qualified appraiser. Again, care should be taken to ensure compliance with the requirements of the Code and regulations.

Annual Limitations of Federal Income Tax Charitable Deductions.

Federal tax law places limitations on the maximum charitable deduction a taxpayer may take in any year. Generally, for a gift of appreciated long-term capital-gain property – which includes most gifts of a conservation easement – the amount the taxpayer can deduct in the year of the donation is limited to thirty percent (30%) of the adjusted gross income (AGI). If the value of the gift exceeds this amount, the excess can be carried forward for up to five (5) additional years, subject to the thirty percent (30%) of an AGI limit each year. Any remaining portion of the deduction cannot be used. If the property has not appreciated in value (for instance, if the donor acquired the property only recently), the annual limit is fifty percent (50%).

Can I Sell a Conservation Easement or Income Tax Credit?

Yes. An Internal Revenue Service Ruling (Rev. Rule. 77-414) provides that the entire cost basis of a property may be allocated to the sale of a conservation easement in calculating gain. Therefore, there may be little or no tax for even many low-cost-basis landowners when they sell an easement. A conservation easement may also qualify as "like kind" property for purposes of tax-deferred exchanges under Internal Revenue Code (IRC) Section 1031. Thus, the sale of a conservation easement might be used to finance the purchase of other agricultural land, business or investment real property in a nontaxable Section 1031 transaction. State law allows the holder of an income tax credit to transfer that tax credit to a third party.

Partial Gift.

In some instances, a landowner may be willing to donate a portion of the value of a conservation easement. Referred to as a "bargain sale," the seller is eligible for a charitable income tax deduction for the difference between the appraised fair market value of the easement and its selling price. The gift portion is subject to the annual limitations applicable to charitable gifts, and the sale portion is subject to capital gains tax. For any bargain sale, the donor's intent to contribute the value of the easement which is in excess of the sales proceeds should be documented in a letter or in the purchase and sale agreement.

Conservation Easements Can Significantly Reduce Estate Tax.

Given today's property values, transferring land from one (1) generation to the next may prove impossible for some families. A landowner dies, leaving land to his or her children. The children find that the land has appreciated dramatically since it was acquired. The land's fair market value may be in the millions of dollars. The federal estate tax – levied at rates starting at thirty-seven percent (37%) and going up to fifty-five percent (55%) – is based on this fair market value, not on the land's cost or on its current use. Selling all or part of the land may be the only way to pay the estate tax.

A conservation easement can change this. If the landowner places an easement on the land, its fair market value will, in most cases, be reduced significantly. When the landowner dies, estate taxes – based on the value of land subject to the conservation easement – will be reduced. The reduction in estate tax because of the easement may help avoid the necessity to sell the land to pay the tax.

An easement's effect on estate taxes is generally more important to landowners with sizeable estates and substantial real estate holdings than to those with more modest estates, since federal tax law generally exempts the first six hundred seventy-five thousand dollars (\$675,000.00) of assets from estate taxes. This exemption will raise under current tax law to one million dollars (\$1,000,000.00) in 2002 and 2003; to one million five hundred thousand dollars (\$1,500,000.00) in 2004 and 2005; to two million dollars (\$2,000,000.00) in 2006, 2007 and 2008; and to three million five hundred thousand dollars (\$3,500,000.00) in 2009. Under current law, the estate tax is repealed in 2010, but it is reinstated in 2011 with only a one-million-dollar exemption. However, today's real estate market can easily push a property's value well above the exemption levels available.

(d) Like an easement donated during a person's life, an easement donated by Will should be agreed upon in advance. This ensures that the easement will achieve what the donor wants and that the easement will be accepted by OCLT.

Special Estate Tax Benefits.

A change in estate tax law in 1997 provides additional incentives to donors of conservation easements not available to easement sellers. IRC Section 2031(c) allows the exclusion from the taxable estate of up to forty percent (40%) of the value of land (not structures) subject to a qualifying conservation easement. The benefit is reduced if the easement reduces the value of the underlying land by less than thirty percent (30%). By 2002, the total value that can be excluded under this provision will be five hundred thousand dollars (\$500,000.00) per estate. The exclusion applies to any donated easement meeting the requirements of Section 2031(c) regardless of when it was donated, provided that the land is still held by the original donor or a member of the original donor's family.

Post-Mortem Easement Donation (Easement Donation After the Death of the Landowner).

Prior to this new law, if a landowner died without having either donated (or sold) an easement during his or her lifetime, or included an easement donation in his or her will, the estate tax was based on the full, unrestricted, fair market value of the land. This new law allows heirs and/or executors to donate a qualified conservation easement after the death of the landowner.

Working Relationship.

Once a conservation easement is signed, OCLT and the landowner begin a working relationship to assure that the intended conservation becomes a reality. Landowners continue to make all of their property management decisions, while the easement limits only the broad parameter of land use, such as subdivision, commercial development, construction and surface mining as set forth in the easement. A stewardship staff from the donee conducts annual monitoring visits. These visits foster good communication with the landowner and an opportunity to answer questions or respond to concerns. In many ways, the conservation easement is a working partnership for the land. Mutual respect and clear understanding of easement terms will help avoid potential conflict. If you would like to learn more about this program, please call or visit the office of the Board of County Commissioners. All inquiries are confidential and without obligation.

Otero County Land Trust
Policy Statement

The Board of County Commissioners has established the Otero County Land Trust (OCLT) to receive donated conservation easements on agricultural lands within the County. The Board of County Commissioners shall serve as the Board of Directors. The following criteria have been set forth for accepting donated conservation easements.

Agricultural Productivity.

The land should currently be in active agricultural production and have every prospect of remaining so. Indicators of agricultural productivity, such as yield per acre, carrying capacity, soil quality and water supply, will be considered. The land should be a viable production unit.

Public Benefit.

The donated conservation easement shall have clear public benefits. It shall be consistent with state and county policies. Consideration will be given to productive agricultural land that also is attractive to the public because of its wildlife values, historic features, scenic qualities and watershed or buffering values.

Geographic Area.

The land on which Otero County Land Trust holds an easement shall be located entirely within the County or, in the case of contiguous properties that extend beyond the borders of the County, the land may be in Otero County and such other counties as is necessary to accomplish the goals of the conservation easement.

Family Support.

The donation of a conservation easement should be understood and supported by members of the landowner's family. Having said this, it is understood that an individual may deal with his or her land as he or she deems prudent.

Critical Mass.

Ideally, a property protected by Otero County Land Trust should have the potential to become a part of a group of protected properties that, as a whole, lend themselves to long-range agricultural stability and the continued support of agricultural infrastructure (feed, supplies, services, lending, etc.).

Conservation Easement Stewardship.

Although the Otero County Land Trust conservation easement program does not prescribe specific practices on the land, Otero County Land Trust does prefer projects that highlight conservation practices and encourage environmental sensitivity, consistent with agricultural productivity. Otero County Land Trust will hold a conservation easement only if it can reasonably fulfill the stewardship responsibilities, monitoring and enforcement associated with the property.

Application Fees.

Landowners applying to Otero County Land Trust to donate a conservation easement will be asked to pay a fee to cover Otero County Land Trust costs in inspecting the property, developing a baseline inventory of the property, document preparation, legal fees, etc.

Clear Title.

The owner will be required to produce title evidence showing the owner has good and marketable title to the property and showing any and all mortgages, liens, third-party mineral rights and other impediments to title. Mortgage holders will be required to subordinate their interest to the conservation easement.

Appraisal.

All donors of conservation easements will be required to obtain an appraisal of the conservation easement conducted by a qualified appraiser. It is the donor's responsibility to pay for this appraisal.

Legal and Tax Advice.

Before a landowner proceeds with the donation of a conservation easement, he or she should retain qualified legal and tax counsel to provide advice on various matters, including but not limited to property usage, estate planning and tax implications of the donation of a conservation easement. It is understood that Otero County Land Trust may not and will not advise the landowner in this regard.

Property Inspection and Baseline Information.

The landowner will be required to provide Otero County Land Trust with a thorough inspection report of the property. Any environmental contamination of the property shall be noted. The landowner will be required to cooperate with Otero County Land Trust in preparing a baseline conditions report, which will document the property's condition at the time of the easement donation.

Endowments.

Every easement donation will require a donation by the landowner of a cash endowment to be placed in Otero County Land Trust's segregated Stewardship Fund. These funds generate interest necessary to cover annual stewardship costs and are to be available for enforcement activities, if necessary. The amount of the endowment required will be negotiated with each landowner. As a guideline, the endowment should equal thirty (30) times the estimated annual monitoring costs.

Conservation Easement Amendments.

As a general rule, conservation easements held by Otero County Land Trust will not be amended. The Board would consider amending an easement only for extenuating circumstances and compelling reasons, and then only after evidence had been presented that the amendment would not cause a net loss of the conservation values protected by the original easement.

Cooperation With Other Organizations.

Otero County Land Trust may want to take on projects in cooperation with other organizations, for example, with local land trusts, conservation districts, local cattlemen's or farm organization chapters, county government, and so on. Such cooperative projects will be at Otero County Land Trust's sole discretion, subject to easement terms.

The Board's Discretionary Role.

All of the preceding notwithstanding, the Board of Directors of the Otero County Land Trust retains sole discretion over approval of land projects, including acceptance of donated conservation easements, and will evaluate each project on its own merits after careful investigation of the property, its resources and its public benefits.

*Otero County Land Trust
Conservation Easement Stewardship, Monitoring and Enforcement Policies*

Stewardship Endowment.

Each conservation easement accepted by Otero County Land Trust (OCLT) shall be accompanied by a contribution to the OCLT dedicated stewardship endowment account. The pooled funds placed in the stewardship account shall produce enough funding to cover normal annual monitoring and stewardship costs for all OCLT conservation easements. Current

budgets show that five percent (5%) of the total stewardship amount at the beginning of a calendar year will be used for the annual stewardship responsibilities.

Annual Monitoring.

- Each OCLT conservation easement shall be monitored at least once annually.
- Monitoring shall occur at a time of the year that is appropriate for examining the conservation values protected by the easement.
- An easement monitoring form shall be completed and filed for each monitoring visit to the property.
- Monitoring shall be conducted by the Board of Directors or its designated representative. Individuals who are to conduct annual monitoring visits must be specifically approved by the Board of Directors in advance of any monitoring activity.

Conflict of Interest.

No individual who owns property covered by an OCLT conservation easement agreement, including Board members, staff or volunteers approved by the Board of Directors to monitor conservation easements, may monitor an easement on his or her own property.

Enforcement.

It is the stated policy of the OCLT to enforce all of the terms of the conservation easement agreements. That being stated, it is also the desire and hope of the OCLT to avoid litigation in the enforcement of any violation of any provision of a conservation easement agreement. Nothing in the above statement shall be construed to limit OCLT's ability to pursue legal remedies for the violation of any provision of a conservation easement agreement.

Procedures for Addressing Violations.

In the event that OCLT becomes aware of a possible violation of the conservation easement agreement, the-following actions will occur:

- The conservation easement agreement shall be reviewed by the Board of Directors and legal counsel to discuss the situation and determine if a violation has occurred on the property.
- If a violation has not occurred, this will be documented in a memo to be kept in the easement file, and no further action will be taken.
- If a violation has occurred, the landowner and any parties involved with the violation will be contacted by telephone or in person and the problem and preferred correction plan or method discussed. This conversation will be followed by a letter describing the problem and the preferred correction plan or method. If appropriate, OCLT may offer technical assistance in correcting the violation at this point. The conversation and letter shall set a reasonable deadline for correction of the violation. This letter will also let the parties know how and when OCLT will be following up with them.
- OCLT will inspect the site at the deadline date set out in the letter to the landowner and any parties involved with the violation.
- If the violation has been corrected, OCLT will send a letter to the parties thanking them for their timely compliance, and the matter will be closed.
- If the violation has not been corrected, a second letter detailing the problem and the preferred correction plan or method will be sent to the parties by certified mail.

- If noncompliance continues, the Stewardship Committee will consult with OCLT's counsel to discuss legal action necessary to correct the violation. If legal action is to be taken, a resolution of the Board of Directors will be required.

Conservation Easement Documentation.

- Each conservation easement shall have a complete, updated and usable baseline documentation report. Baseline reports will conform to the criteria developed by the Board of Directors.
- One (1) copy of this Otero County Land Trust baseline documentation report shall be kept in the OCLT office and used during field visits. A second copy will be kept in a separate location and shall not be used for field visits.
- Each baseline report shall be reviewed at least once every five (5) years to determine if updating needs to occur or to formally amend the baseline report to include updated information, including photographs from the preceding five (5) years.

Record Keeping.

Each conservation easement shall have its own clearly marked file in the OCLT office. This file shall include a copy of the executed conservation easement agreement, baseline documentation report, completed monitoring forms and relevant correspondence regarding the conservation easement and its stewardship.