

OPEN SPACE ADVISORY COMMITTEE STAFF REPORT

MEETING DATE: September 18, 2017

AGENDA ITEM NUMBER: 3B

STAFF: Ann Bollinger, Open Space Administrator

REQUEST: **For Discussion Only:** Conservation Easements 101:
Discussion on the use of conservation easements as a land protection tool and the process of creating a conservation easement

GENERAL DISCUSSION:

The Open Space Program owns several properties (Ambrose Carson River Natural Area, Prison Hill Recreation Area and Silver Saddle Ranch) and owns a partial interest in one property (Horsecreek Ranch) which are subject to terms and conditions set forth in conservation easements. Additionally, the Open Space Program has discussed using a conservation easement as tool to preserve important landscape values on other properties. The intent of this agenda item is to provide a thorough introduction into conservation easements for the committee members and the public.

The presentation will be led by Ms. Alicia Reban, Executive Director with Nevada Land Trust. Ms. Reban will emphasize a few items from the best-practice angle:

- One way to look at conservation easement negotiations is to understand that there are essentially two basic negotiating models:
 - 1) Position-based negotiations (which assume that the world is a zero-sum game; i.e., there will be a winner and a loser in each transaction)
 - 2) Interest-based negotiations (which seek to maximize the benefits of a transaction for everyone involved; i.e., a win-win situation is the desired outcome)
- The negotiating approach will dictate what the resulting conservation easement will look like and perhaps how the relationship between the organization and the landowner is established. Keep in mind that parties can drive hard bargains and still achieve a win-win solution.
- Each conservation easement restriction should be evaluated with respect to four basic questions:

- 1) Is the restriction necessary to protect the property's conservation values? For example, if the easement is intended to meet the conservation purposes test for scenic values, is a prohibition on the ownership of domestic animals necessary?
- 2) Is the restriction necessary, given the land trust's mission and goals for the property? For example, if the easement is intended to further the organization's mission of conserving important habitat for rare, threatened or endangered species, is a prohibition on home occupations necessary?
- 3) Is the restriction capable of being monitored? Could a site inspection or scientific analysis determine if the restriction has been violated? For example, restrictions in an easement that prohibit hunting or the use of off-highway vehicles on a protected property are difficult to monitor.
- 4) Is the easement holder willing to go to court to enforce the restriction?

Ms. Reban also recommended a few resources that may be of interest to the committee.

- Conservation Easement Drafting and Documentation by Jane Ellen Hamilton, Esq. Copyright 2008, Land Trust Alliance.
 - Pages 72-79: Columbia Land Conservancy – Conservation Easement Checklists
 - Pages 178-200: Conservation Easement Diagram
 - Due to copyrights, please reference the document online at:
http://www.uvm.edu/rsenr/nr378/Feb14/CE_Drafting_lo.pdf
- Conservation Options: A Landowner's Guide to Conserving Your Land for Future Generations by The Land Trust Alliance. Copyright 2016, Land Trust Alliance.
 - This document isn't available online, but staff is seeking permission to share. Similar documents are online.

RECOMMENDED ACTION: This agenda item is for informational purposes only. No formal action can be taken at this time.