

AGENDA ITEM SUMMARY

February 19, 2019

City Council

STAFF

David Myers, Land Conservation Manager
John Stokes, Natural Resources Director
Tawnya Ernst, Real Estate Specialist III
Ingrid Decker, Legal

SUBJECT

Second Reading of Ordinance No. 020, 2019, Authorizing the Second Amendment to the Long View Farm Open Space Covenants, Conditions and Restrictions.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on February 5, 2019, amends the Long View Farm Open Space Covenants, Conditions and Restrictions to correct an error in the legal description. The acreage total (478.5 acres) in the legal description is correctly described by the first amendment but it also contains an incorrect exception of 50 acres. Removing the exception and the first sentence will correct the error in the legal description. The second amendment with the correct legal description is attached to the Ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, February 5, 2019 (w/o attachments) (PDF)
2. Ordinance No. 020, 2019 (PDF)

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SUBJECT

First Reading of Ordinance No. 020, 2019, Authorizing the Second Amendment to the Long View Farm Open Space Covenants, Conditions and Restrictions.

EXECUTIVE SUMMARY

The purpose of this item is to amend the Long View Farm Open Space Covenants, Conditions and Restrictions to correct an error in the legal description. The acreage total (478.5 acres) in the legal description is correctly described by the first amendment but it also contains an incorrect exception of 50 acres. Removing the exception and the first sentence will correct the error in the legal description. The second amendment with the correct legal description is attached to the Ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

In 1997 Natural Areas partnered with Larimer County and the City of Loveland receiving a GOCO grant to purchase the Long View Farm. As a condition of the GOCO grant a conservation easement was deeded and held by the Legacy Land Trust (LLT). The property was transferred to Colorado Open Lands (COL) from Legacy Land Trust along with the rest of LLT's portfolio in 2016. During the review of the LLT conservation easements, COL determined that the legal description for this property was inaccurate. A First Amendment was recorded in 2014, intended to fix the legal description by replacing it with the correct version. The First Amendment also removed .071 acres from the easement for a CDOT road construction project. Unfortunately, while the First Amendment corrected a portion of the legal description, it did not correct all mistakes. This Second Amendment will correct all inaccuracies in the legal description.

Colorado Open Lands has been working with GOCO to amend the Conservation Easement to correct the legal description. The City of Fort Collins co-owns the Long View Farm with the City of Loveland and Larimer County. GOCO requires prior approval from the landowners before moving forward with the amendment. Once GOCO has the approval from the three agencies, they will give their final approval and the amendment will be sent back to the City for signatures and recording.

BOARD / COMMISSION RECOMMENDATION

At its January 9, 2019, meeting, the Land Conservation & Stewardship Board voted unanimously to recommend City Council adopt the Ordinance.

ATTACHMENTS

1. Long View Farm Open Space Map (PDF)
2. Land Conservation and Stewardship Board, Minutes (January 9, 2019 Excerpt) (PDF)

COPY

ORDINANCE NO. 020, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE SECOND AMENDMENT TO THE LONG VIEW FARM
OPEN SPACE COVENANTS, CONDITIONS AND RESTRICTIONS

WHEREAS, in 1997 the City of Fort Collins, Larimer County and the City of Loveland jointly purchased approximately 478.5 acres of land located west of College Avenue and south of County Road 32, now known as Long View Farm Open Space (the “Property”); and

WHEREAS, the Board of the Great Outdoors Colorado Trust Fund (“GOCO”) awarded Larimer County a grant to assist with the acquisition of the Property; and

WHEREAS, as a condition of the grant GOCO required the owners of the Property to execute and record a deed restriction to protect the Property from uses contrary to the purposes of the grant; and

WHEREAS, on October 2, 2001, the City Council approved Ordinance No. 146, 2001, authorizing a Declaration of Covenants, Conditions and Restrictions on the Property (the “CCR”), with enforcement rights held by Legacy Land Trust (“LLT”); and

WHEREAS, all parties signed the CCR and it was recorded on November 15, 2001; and

WHEREAS, in 2014, when LLT was in the process of transferring its property holdings to Colorado Open Lands (COL), COL discovered that the legal description attached to the CCR was not accurate, and not consistent with what the City Council approved; and

WHEREAS, on October 7, 2014 the parties recorded an Amendment to the CCR to correct the legal description (the “First Amendment”); and

WHEREAS, COL has now determined that the legal description that was attached to Ordinance No. 146, 2001, and to the First Amendment, was also not accurate, as it incorrectly excerpted out a portion of the Property; and

WHEREAS, COL is working with GOCO on a Second Amendment to the CCR to correct the legal description; and

WHEREAS, the proposed Second Amendment is attached hereto as Exhibit “A” and incorporated herein by this reference, and the corrected legal description of the Property intended to be encumbered by the CCR is attached as Exhibit A-3 to Exhibit A; and

WHEREAS, Section 23-111(a) of the City Code authorizes the City Council to sell, convey, or otherwise dispose of any and all interests in real property owned in the name of the City, provided that the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, at its regular meeting on January 9, 2019, the Land Conservation and Stewardship Board voted to recommend the City Council adopt this Ordinance approving the Second Amendment to the CCR.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds that executing the Second Amendment to the CCR to correct the legal description of the Property is in the best interests of the City;

Section 3. That the Mayor is hereby authorized to execute the Second Amendment to the CCR in substantially the form attached hereto as Exhibit A, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or to effectuate the purposes of this Ordinance, including, but not limited to, any additional necessary changes to the description of the property interests to be conveyed, as long as such changes do not materially increase the size or change the character of such property interests.

Introduced, considered favorably on first reading, and ordered published this 5th day of February, A.D. 2019, and to be presented for final passage on the 19th day of February, A.D. 2019.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 19th day of February, A.D. 2019.

Mayor

ATTEST:

City Clerk

**SECOND AMENDMENT
TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
THE UTE FARM/ONE PUTT PROPERTY – PORTIONS OF LONGVIEW FARM**

THIS SECOND AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE UTE FARM/ONE PUTT PROPERTY (“**Second Amendment**”) is entered into this ____ day of _____, 2018, by and between the COUNTY OF LARIMER, COLORADO, THE CITY OF FORT COLLINS, COLORADO AND THE CITY OF LOVELAND COLORADO (collectively, the “**Declarant**”) and COLORADO OPEN LANDS, a Colorado nonprofit corporation (“**COL**” or “**Land Trust**”), the address of which is 1546 Cole Blvd. #200 Lakewood, CO 80401, as successor by merger to Legacy Land Trust, a Colorado nonprofit corporation. The following exhibits are attached hereto and hereby incorporated within:

- Exhibit A-3- Corrected Description of the Amended Property
- Exhibit D - Description of CDOT Property
- Exhibit H - GOCO Consent to Second Amendment

RECITALS

- A. The Declarant is the owner of certain property encumbered by the Declaration of Covenants, Conditions and Restrictions (the “**Original Property**”) which was recorded November 15, 2001 as Reception No. 2001103042 (the “**Original Declaration**”). The Original Declaration contained terms and provisions intended to preserve the natural, scenic, agricultural, open space, wildlife habitat and passive outdoor recreational values of the land subject to the Original Declaration. Rights of enforcement under the Original Declaration were granted to Legacy Land Trust, a Colorado nonprofit corporation (“**LLT**”).
- B. The Declarant and LLT entered into the Amendment to Declaration of Covenants, Conditions and Restrictions for the Ute Farm/One Putt Property recorded October 7, 2014 as Reception No. 20140057499 (the “**First Amendment**”). The First Amendment served to correct an error in the description of the Original Property and to release .071 acres of the Original Property to allow for the completion of a road improvement project by the Colorado Department of Transportation (the “**Amended Property**”). The Original Declaration as amended by the First Amendment is hereafter referred to as the “**Declaration**”.
- C. Colorado Open Lands, a Colorado nonprofit corporation (“**COL**”), is the successor by merger to LLT and is the holder of the rights of enforcement described in the Declaration.
- D. COL and the Declarant have determined that there are additional errors in the description of the Amended Property. COL and Declarant desire to further amend the Declaration to correct these errors.

NOW, THEREFORE, in accordance with the foregoing, the covenants and considerations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the undersigned hereby amend the Declaration as follows:

1. **Exhibit A-2** to the Declaration is hereby deleted in its entirety and replaced with **Exhibit A-3**. The property described on Exhibit A-3 (less the CDOT Property described in Exhibit D) is the property that was intended to be, and which is encumbered by the Declaration.
2. All defined terms used herein shall have the same meaning as set forth in the Declaration unless expressly provided to the contrary herein.
3. Declarant and COL hereby ratify and confirm this modification to the terms and provisions of the Declaration.
4. Except as modified by this Second Amendment, the terms and provisions of the Declaration shall remain in full force and effect.
5. The State Board of the Great Outdoors Colorado Trust (the “**Board**”) contributed to the acquisition of the Original Property by Declarant. In accordance with the requirements of the Declaration, the Board has given its written approval to this Amendment, as evidenced by the Consent attached hereto as **Exhibit H**.

(SIGNATURE PAGES FOLLOW)

IN WITNESS WHEREOF, this Second Amendment to the Declaration is executed as of the day and year first above written.

**DECLARANT: BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LARIMER,
COLORADO**

Date: _____

By: _____
Chairperson

ATTEST:

Deputy Clerk of the Board

STATE OF COLORADO)
)ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ___ day of _____, 201__ by _____, Chairperson, Board of Commissioners of Larimer County, Colorado, as Managing Entity.

Witness my hand and official seal.
My commission expires: _____

Notary Public

DECLARANT: CITY OF LOVELAND, COLORADO

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by
_____, Mayor, City of Loveland, Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

DECLARANT: CITY OF FORT COLLINS, COLORADO

Date: _____

By: _____
Mayor

APPROVED AS TO FORM:

City Attorney

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__ by _____, Mayor, City of Fort Collins, Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By: _____
Name: Anthony P. Caligiuri
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by Anthony P. Caligiuri as President of Colorado Open Lands, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

- Exhibits attached:
Exhibit A-3 - Corrected Description of Amended Property
Exhibit D - Description of CDOT Property
Exhibit H - GOCO Consent to Second Amendment

EXHIBIT A-3
CORRECTED DESCRIPTION OF AMENDED PROPERTY

A tract of land located in Section 23, Township 6 North, Range 69 West of the 6th P.M., Larimer County, Colorado being more particularly described as follows:

Considering the East line of the Southeast quarter of said Section 23 as bearing South 00°16'24" West from a 3" brass cap at the East Quarter corner of said Section 23 to a 3" brass cap at the Southeast corner of said Section 23 and with all bearings contained herein relative thereto: Commencing at the Southeast corner of said Section 23; thence along the South line of said Southeast quarter, South 89°18'09" West 50.01 feet to the West right-of-way line of U.S. Highway 287; thence along said West right-of-way line, North 00°16'24" East, 30.00 feet to the Northerly right-of-way line of 71st Street, said point being the Point of Beginning;

thence along said Northerly right-of-way line, South 89°18'09" West, 100.50 feet to a curve concave to the South having a central angle of 25°37'34", a radius of 305.00 feet and the chord of which bears South 76°29'23" West, 135.28 feet;

thence continuing along said Northerly right-of-way line and the arc of said curve 136.41 feet to a point on the South line of said Southeast Quarter of Section 23;

thence along the South line, South 89°18'09" West, 2362.39 feet to the South Quarter corner of said Section 23;

thence along the South line of the Southwest Quarter of Section 23, North 89°19'35" West, 1306.95 feet to the West 1/16 corner between Section 23 and Section 26;

thence North 00°11'51" East, 2650.27 feet to the Center West 1/16 corner of Section 23;

thence, North 00°11'54" East, 2636.51 feet to the West 1/16 corner between said Section 23 and Section 14;

thence along the North line of the Northwest Quarter of said Section 23, North 89°21'56" East 1319.70 feet to the North Quarter corner of said Section 23;

thence along the North line of the Northeast Quarter of said Section 23, North 89°29'53" East, 2588.28 feet to a point on the West right-of-way line of said U.S. Highway 287;

thence along said West line, South 00°16'06" West 2654.25 feet;

thence continuing along said West line, South 00°16'24" West 2623.63 feet to the Point of Beginning, County of Larimer, State of Colorado.

LESS AND EXCEPT the Colorado Department of Transportation (CDOT) Property described in the attached **Exhibit D**.

EXHIBIT D

Description of CDOT Property

Project No. FSA 392A-016
PARCEL NUMBER:RW-1
Project Code: 18800
Date: July 17, 2013

A tract or parcel of land No. RW-1 of the Department of Transportation, State of Colorado, Project No. FSA 392A-016 containing 0.071 acres, more or less, located in the Northeast Quarter of Section 23, Township 6 North, Range 69 West, of the 6th Principal Meridian, in the County of Larimer, State of Colorado, said tract or parcel being more particularly described as follows:

Commencing at a point, whence the Northeast Corner of said Section 23 (3" Brass COOT Cap in a monument box), bears N 89°07'00" E, a distance of 50.01 feet, said point being on the North line of said Section 23, and on the existing westerly right-of-way line of U.S. Highway 287, also being the POINT OF BEGINNING;

1. Thence along said existing right-of-way line, S 0°10'01" E a distance of 112.25 feet;
2. Thence S 89°49'59" W a distance of 41.66 feet;
3. Thence N 00°10'01" W a distance of 37.58 feet;
4. Thence N 46°31'40" E a distance of 34.57 feet;
5. Thence N 00°10'01" W a distance of 51.27 feet, to a point on the North line of said Section 23;
6. Thence along said section line, S 89°07'00" E a distance of 16.50 feet, to the POINT OF BEGINNING.

The above described tract or parcel of land contains 3,098 square feet (0.071 acres), more or less.
Basis of Bearings: Bearings are based on the west line of the Northwest Quarter of Section 24, Township 6 North, Range 69 West, of the 6th Principal Meridian, between the West Quarter Corner of Section 24, a found 3" Brass CDOT Cap in a monument box, bearing N0°10'01" W, to the Northwest Corner of Section 24, a 3" Brass CDOT Cap in a monument box.

Prepared for and on behalf of the
Colorado Department of
Transportation Terry R. Maw, PLS #31161
Farnsworth Group, Inc.
4655 Forge Road, Suite 150
Colorado Springs, CO 80907

EXHIBIT H
GOCO Consent to Second Amendment

(attach)