FLAGSTAFF COUNTY CONSERVATION EASEMENT PROGRAM

PROCEDURES MANUAL

December 2017

A guidance document to support the operations of the Flagstaff County Conservation Easement Program

Prepared for Flagstaff County by the Miistakis Institute

Disclaimer

This procedures manual and the associated templates were constructed using the best available knowledge at the time of their creation, but as information will change constantly and circumstances vary, they come with no warranties or guarantees from the Miistakis Institute for their accuracy. The Miistakis Institute strongly recommends that these guidance materials be viewed as "living documents" with on-going maintenance and refreshment by Flagstaff County.

Also, nothing in this guide should be construed as legal advice nor a replacement for the necessary legal counsel required in a conservation easement agreement negotiation.

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1.0 INTRODUCTION

1.1 Why This Manual

The Flagstaff County conservation easement program has been well structured, with good supporting policy and several associated templates. However, there are still many decisions that need to be made as the County moves into operating the program.

This Procedures Manual is intended to provide operational guidance to any Flagstaff County staff person who is discussing, negotiating, monitoring, or enforcing a conservation easement held by the County. It explains the entire process of acquiring, holding, and stewarding conservation easements, specifically from the Flagstaff County perspective. It also provides explanations of the elements of the various program templates, and gives guidance when there are 'forks in the road' – many possible right answers based on the land, landowner, and specific circumstances.

1.2 How This Manual is Structured

The Procedures Manual is structured around the actual operation of a conservation easement program, and the negotiation and stewarding of a given conservation easement. The main sections are:

The Application and Approval Process

This section explains the tasks that must be undertaken by County personnel as a landowner brings forward a proposal to grant a conservation easement to the County, including the steps in the review and approval of the agreement.

The Drafting Process

This section explains the tasks that must be undertaken by County personnel as they negotiate an draft a conservation easement agreement, register it to bring into effect legally, and work internally with other County personnel and departments.

The Caretaking Process

This section explains the tasks that must be undertaken by County personnel *after* a conservation easement has been granted, and the monitoring, enforcement, and on-going landowner communication begin.

1.3 Beyond This Manual

This Manual is intended to work in conjunction with several other resources. First and foremost is the *Flagstaff County Conservation Easement Program Bylaw*, which is the legal underpinning of the program. As well, there are templates for

- The Conservation Easement Checklists (a quick summary of the tasks in this manual)
- Conservation easement agreement (to which the Drafting section refers)

- Baseline Documentation Report (including another manual specific to this report)
- Monitoring Report

There are also several key resources to which County personnel can refer to get a bigger picture of the conservation easement tool. These include:

- The Conservation Easements in Alberta web guide (www.ce-alberta.ca)
- Conservation Easement Guide for Municipalities (www.communityconserve.ca/completed-projects/ceguide/)
- The Alberta Land Stewardship Act (enabling legislation for conservation easements in Alberta)
- The Alberta Conservation Easement Registration Regulation

Both the Miistakis Institute (www.rockies.ca) and the Environmental Law Centre (www.elc.ab.ca) have worked extensively on conservation easements in Alberta, and staff at both organizations can answer questions.

1.4 A Living Document

Flagstaff County should consider this Manual a 'living document', meaning it should grow and evolve as the Conservation Easement Program does. At the very least, it should be updated to reflect any changes in either the provincial legislation (the *Alberta Land Stewardship Act*) or the County bylaw (*Flagstaff County Conservation Easement Program Bylaw*).

As County personnel become more experienced and comfortable with promoting, acquiring, and stewarding conservation easements, this Manual should reflect their learnings and their suggested changes to the program and the templates.

2.0 THE APPLICATION AND APPROVAL PROCESS

2.1 APPLICATIONS to the conservation easement program

2.1.1 How a landowner applies to the program

A person owning land in Flagstaff County, and who is interested in granting a conservation easement to the County, applies to the County's Conservation Easement Program by first submitting an '**Statement of Intent**.' The Agricultural Fieldman who is the designated contact for the Program receives the application, ensures that it has all the required information, and brings it before the Agricultural Service Board at its next scheduled meeting.

The Statement of Intent must include, at least the following items:

1. The Landowner's name and contact information;
    - This must be the name/contact of the person who actually owns the parcel to which the conservation easement would apply (i.e., this cannot be someone who is leasing the land, or renting a property on the land).
2. A brief description of the property location;
    - This should include the legal land description, as well as approximately where on that parcel the conservation easement would apply. Remember that a conservation easement does not have to apply to the entire parcel.
    - Approximate descriptions could include "the south half of the quarter", "the shelter belts on the property", "the entire parcel", "everything east of the river".
    - The final detailed description of the property will happen during the drafting of the agreement.
3. A brief summary of the conservation values an Easement on the property could protect;
    - This will help guide the drafting of the actual agreement, and should include the landowner's perspective on the environmental or agricultural features of the property which they hope to be conserved by the Easement.
    - For guidance on developing this statement, you can direct the landowner to the Flagstaff County Conservation Goals contained within he Bylaw. The more the landowner can relate their goals to the County goals expressed there, the easier it will be to craft the purposes of the Agreement.
4. A brief summary of the restrictions the Landowner is willing to include in the Easement agreement.
    - The goal here is for the landowner to consider the types of restrictions they would agree to *in advance* of the more detailed negotiations that will occur during the drafting of the actual Agreement.
    - Be clear to the landowner that this is *not a commitment* on their part at this stage. They are simply expressing their comfort level with the various restrictions.
    - In preparing this, there are three categories of restrictions that should be considered by the landowner here:
        i. The minimum restrictions which the Bylaw requires;

ii. The restrictions in the Template Conservation Easement, which include several options and alternate wordings; and
iii. Restrictions which are not included in either of the first two categories, but which the landowner may wish to include.
    - This is not intended to be a detailed list of restrictions, simply a brief statement of the kind of restrictions they would like to pursue.

After the Application is received, the Ag Fieldman should bring it to the attention of the Chair of the Agricultural Service Board (ASB) in a timely manner, as the ASB must consider it at their next scheduled meeting.

2.1.2 Considering a conservation easement

The development of a conservation easement agreement is a significant undertaking for both the landowner and the County. Neither party wants to undertake detailed work before there is at least a conceptual alignment between the County's and the landowner's goals. Therefore, the next step is to have the ASB ensure the proposed conservation easement is at least conceptually aligned with the County's goals and abilities.

To assist in this step, the Ag Fieldman should look to the Conditions of Approval in the Bylaw, knowing that the ASB will base their preliminary assessment – and Council will base their final approval – on these high-level considerations:

1. Council is confident the County has the capacity to negotiate and steward the Easement;
    - As the Conservation Easement Program proceeds, the County may acquire several conservation easements, and must stay conscious of their ability to adequately secure and steward conservation easements.
    - This means not all conservation easement applications from landowners will be accepted.
2. The purposes of the Easement align with the allowable purposes as laid out in Alberta Land Stewardship Act;
    - A conservation easement cannot be used for any and all purposes; the *Alberta Land Stewardship Act* lays out the allowable purposes which include:
        - The protection, conservation and enhancement of the **environment**; and
        - The protection, conservation and enhancement of **agricultural land** and land for agricultural purposes
    - The detailed purpose clauses are contained in Appendix X for this manual, *Conservation Easements Under the Alberta Land Stewardship Ac*t, Section 29(1)
3. The purposes of the Easement align with the conservation goals of the County; and
    - It is important to remember that a conservation easement is a *tool* for accomplishing your conservation goals – it does not create these goals.
    - The ASB and Council will look to ensure the eventual conservation easement agreement supports the conservation goals laid out in the Conservation Easement Program Bylaw.
4. Council has received a recommendation from the Agricultural Service Board in favour of the Easement.

- Ultimately, Council will be looking to get a recommendation from the Agricultural Service Board as to whether they should approve the conservation easement agreement as drafted.
- This means the ASB will be looking to the Ag Fieldman to provide the information they feel they need to make this recommendation

At this stage, If the Agricultural Service Board determines an Easement of the type described in a Statement of Intent could fit the County's purposes, they will require the following:

1. They will direct that the County appoint a staff member to negotiate the potential Easement on the County's behalf (most likely, an Ag Fieldman);
2. They will direct that any potentially affected parties that should, in their opinion, be notified of the potential agreement, be identified.

The Ag Fieldman now becomes the 'point person' on the conservation easement negotiation. This means s/he will be responsible for all conversations with the landowner, and for negotiating the draft conservation easement (see *The Drafting Process*, p.13)

One final thing to note is that no one who has a financial interest associated with the proposed conservation easement may be involved in the consideration, negotiation, or approval of the agreement.

2.2 APPROVING a conservation easement

Once a conservation easement has been drafted, it is brought forward for approval[1]. The approval of the conservation easement involves two steps: a recommendation from the Agricultural Service Board, and then an approval from Council.

2.2.1 Recommendation from Agricultural Service Board

When the draft conservation easement is brought before the Agricultural Service Board by the Ag Fieldman, the ASB will either:

- Approve the draft Easement for recommendation to Council; or
- Identify areas requiring further negotiation.

Because the Agricultural Service Board has already conceptually approved the intent of the conservation easement, and the Ag Fieldman has used the Template Conservation Easement agreement, the focus of the ASB review will be on deviations from the Template. In order to facilitate this review, the Ag Fieldman will provide a report with the draft conservation easement that outlines the differences (if any) from Template agreement.

[1] As this section deals with 'Approval', we are skipping past the entire "negotiation process", which is, of course the larger part of the work in securing a conservation easement.

The Ag Fieldman's report should include:

- Any deviations from the Template conservation easement agreement;
- A summary of any actions taken to notify the affected parties as directed by the Agricultural Service Board;
- A summary of the reviews of the draft conservation easement from other County departments;
- The appraised value of the conservation easement (the amount for which the County will issue a tax receipt); and
- Any other items that, in the opinion of the Ag Fieldman, the ASB would need to make a valid recommendation.

At the conclusion of the meeting, the Agricultural Service Board will make a determination on the draft conservation easement. If they conclude that further negotiation is required, they will direct the Ag Fieldman as precisely as possible as to what aspect of the draft agreement requires further negotiation.

If the ASB determines they will make a recommendation for approval of the proposed conservation easement, they will capture that recommendation in their minutes and forward that recommendation to Council for their next meeting, along with the Ag Fieldman's report, and a draft resolution accepting the easement.

2.2.2 Approval by Council

The actual approval of the conservation easement is made by Council in the course of a regular meeting. The draft agreement recommended by the Agricultural Service Board will come before Council along with:

1. The report from staff presented to the Agricultural Service Board; and
2. A draft resolution to accept the grant of the Easement as drafted.

After any necessary discussion and clarifications, Council will vote to accept the Resolution. If the vote is carried by a majority, Council will then direct the Chief Administrative Officer to sign the Easement agreement on behalf of the County.

3.0 THE DRAFTING PROCESS

3.1 DRAFTING the Agreement

3.1.1 Choosing Between Options

AGRICULTURAL VS ENVIRONMENTAL CONSERVATION EASEMENTS

The Alberta Land Stewardship Act allows three types of conservation easements (***environmental***, ***scenic/aesthetic***, and ***agricultural***), and Flagstaff County has chosen to focus its program on Environmental and Agricultural conservation easements. This actually creates three different types of conservation easements: Environmental, Agricultural, and Agri-Environmental – the last one being a hybrid of purposes.

Virtually all clauses in a conservation easement agreement will be the same regardless of the type, but there will be some critical differences depending on whether it is an Environmental, Agricultural, or Agri-Environmental conservation easement. These differences will be primarily in the purpose, restrictions, and property management principles sections.

This manual and its associated templates will identify those areas, and will provide suggestions on which wording would be most appropriate for each area. However, throughout, you should be conscious of the following circumstances:

- Within the *conservation easement agreement*, the sections that speak to the conservation easement purpose must be aligned, which includes:
    - Introductory statements (item D under the 'Whereas' ' clauses) which reference the Flagstaff Conservation Goals
    - Purpose Statement (Part 3) which identifies which type of conservation easement this will be
- For hybrid conservation easements (those that have more than one ALSA-approved purpose), are there contradictions in the "Environmental" restrictions / principles vs the "Agricultural" restrictions / principles?
    - E.g., are efforts to maintain certain agricultural options negatively affecting habitat?
- The federal Ecological Gifts Program (see *EcoGift Certification*, p.41) is only available for Environmental conservation easements.
- For agricultural operations that are certified organic, certain management principles may be required.

3.1.2 The Conservation Easement Template

Each conservation easement negotiation starts with the Flagstaff County *Conservation Easement Template*. In an actual easement negotiation, the changes you make to the template will largely be in the *Schedules*, as these are the places where you will make the agreement specific to the landowner and their parcel.

The following section outlines what each part of the conservation easement agreement contains. It also identifies where you may be required to make changes for an actual negotiation, and provides guidance on what those changes might look like.

This section makes direct reference to the Conservation Easement Template, so it is best to have that open at the same time.

INTRODUCTORY SECTION

This section sets the context for the agreement, stating who the parties to the agreement are, establishing the authority for the agreement, identifying the parcel(s) and its ownership, and stating the general purpose for the conservation easement.

What you will/might change

- Enter the date of the agreement
- Add the name of the Grantor
    - This might be an individual or a corporation, but will be the person/entity that owns the land and is granting the easement.
- Add the legal land description of the property
    - At this point, you are not required to enter the *specific* area to which the conservation easement will apply.
    - Here you are simply listing the Property on which the easement will be placed, and identifying its connection to the Grantor.
    - Include the land description for all parcels that will in part or in whole be subject to the easement.

PART 1 - INTERPRETATIONS

This section clarifies the terminology used in the agreement, and identifies all the pieces that will be added to the main document and be part of the agreement ("Schedules").

What you will/might change

- Part 1.1(d) under the Definitions is the "Conservation Easement Area" and requires you to fill in a short description (e.g., 14-2-23-1-W5)
    - If the conservation easement covers the entire parcel, you can omit this section and any reference to Conservation Easement Area.

PART 2 – GRANT OF CONSERVATION EASEMENT

This section is the confirmation that the conservation easement will actually be enacted. It lists the term of the easement (which is "in perpetuity" as required by the *Flagstaff County Conservation Easement Bylaw*), states that it will run with the land regardless of ownership, and commits you to registering the

conservation easement with the Land Titles Office (for details on that task, see *Registering the easement with land titles*.)

What you will/might change

You are unlikely to change anything in this section.

PART 3 – PURPOSE

This section confirms the purpose of the conservation easement, and ties that purpose specifically to the Conservation Easement Area[2].

The Alberta Land Stewardship Act allows conservation easements to be granted for only the three listed purposes (environmental, agricultural, and/or scenic/aesthetic). However, a given conservation easement may only be for one or two.

For this section:

- Choose the purpose(s) for which this conservation easement is being created;
- Note that most of Flagstaff County's conservation easements will be for "environment" AND "agricultural land";
- You or the landowner may wish to be more specific about this easement and choose to add specific conservation values;
    - If so, ensure those values match the Flagstaff County Conservation Goals listed in the *Flagstaff County Conservation Easement Program Bylaw*.

What you will/might change

- The portion in the square brackets – "the environment, the natural scenic or esthetic values, or agricultural lands" – needs to be adapted to reflect if this conservation easement is intended to serve one, two or all three of these purposes.

Allowable Conservation Easement Purposes

Under the Alberta Land Stewardship Act, a conservation easement in Alberta may be granted for any of the following purposes:

(a) the protection, conservation and enhancement of the environment;

(b) the protection, conservation and enhancement of natural scenic or esthetic values;

(c) the protection, conservation and enhancement of agricultural land or land for

[2] Recall that a conservation easement need not apply to an entire parcel; the Conservation Easement Area refers to that portion of the parcel to which the conservation easement restrictions will apply.

agricultural purposes;

(d) providing for any or all of the following uses of the land that are consistent with the purposes set out in clause (a), (b) or (c):

(i) recreational use;

(ii) open space use;

(iii) environmental education use;

(iv) use for research and scientific studies of natural ecosystems.

PART 4 – RIGHTS RESERVED BY THE GRANTOR

By definition, a conservation easement leaves all of a landowner's existing rights and opportunities intact, expect those explicitly affected by a clause in the agreement. However, it is good practice to state what that means. This section explicitly states that those rights of use, possession and enjoyment still rest with the landowner.

It also explicitly states that the conservation easement does not require the landowner to allow general public access on to the property.

What you will/might change

- Although the landowner is not required to allow public access, for some landowners, their future vision of the property includes public access.
    - It is recommended that if a landowner *does* want to allow for public access, that this provision is included in the Property Management Principles or Restrictions and Covenants.
    - The reason for this is to ensure there are limitations on the type and amount of access, such that the conservation values are not unduly affected (for more detail on this, see *Restrictions and Covenants on Use of Land*, p.19)

PART 5 – MANAGEMENT AND ADMINISTRATION OF THE CONSERVATION EASEMENT

As the title suggests, Part 5 lays out how the conservation easement agreement will be managed and administered. Specifically that means three areas of guidance: 1) the documents attached to the agreement that will guide management, 2) how enforcement of the agreement will occur, and 3) how the agreement can be amended.

What you will/might change

- How each of the document types referred to above (Restrictions and Covenants on Use of Land, Property Management Principles, Management Plans, Baseline Documentation Report) might be changed will be dealt with in their own sections, below.

PART 6 – GRANTOR'S OBLIGATIONS

As well as the restrictions on the use of the land, the Grantor (the landowner) has three specific obligations to the County. They must 1) maintain the property in good order and address breaches, 2) provide the County with notice of their intent to sell the property, and 3) guarantee that the property is free of contamination.

What you will/might change

You are unlikely to change anything in this section.

PART 7 – OBLIGATIONS OF THE GRANTEE

Similar to Part 6, the Grantee (the County) has certain obligations. These include revolve around the possibility that the County can no longer hold the easement. In this case, the County will find another 'qualified organization', and take into account the Grantor's (landowner's) preferences for which organization that is.

This clause is required by the legislation (Alberta Land Stewardship Act), and is aimed at primarily at non-profit organizations that may be forced to wind up operations for lack of resources.

What you will/might change

You are unlikely to change anything in this section.

PART 8 – INDEMNIFICATION

A standard clause in most any contract, Part 8 provides indemnification for both parties (Grantor and Grantee), holding each other blameless should something untoward occur in the meeting the obligations of the agreement.

What you will/might change

You are unlikely to change anything in this section.

PART 9 - COSTS

Part 9 of the agreement covers costs of three different types: 1) property taxes, 2) legal costs, and 3) costs of restoring damaged ecosystems.

What you will/might change

- In 9.1, you have the option of referring to the just the Property (in the case of the conservation easement applying to the whole property), or adding a reference to the Conservation Easement Area (in the case where the conservation easement applies to only a portion of the property.

PART 10 – GENERAL MATTERS

As the title implies, these are a handful of clauses that relate to good practices in contracts and agreements, as well as the contact information.

What you will/might change

- Add the address, phone number, fax number, and email at which the Grantor (the landowner) would like any notices or communications directed to.
- Ensure that the information for the County is correct.

SIGNATURES

The agreement is executed when the signatures of both the Grantor (the landowner) and the Grantee (the CAO on behalf of the County).

What you will/might change

- Obtain the signature of the Grantor (the landowner).
- Obtain the signature of the Chief Administrative Officer on behalf of the County.
- Have both signatures witnessed
- Date the agreement.

SCHEDULE A

In many ways, Schedule A is the core of the conservation easement; this section lays out the restrictions (and requirements[3]) that the grant of the conservation easement imposes on the landowner.

What you will/might change

- Several of the restrictions in the template have options; you will need to choose which is the best option for a given conservation easement agreement;
- Some restrictions make reference to [the Property][Conservation Easement Area]; you will have to choose the appropriate phrasing;
- Some restrictions may make reference to a specific area of the Property or Conservation Easement Area, which you will have to identify on the map in Schedule D;

3.1.3 Baseline Documentation Report

[3] Remember that unlike a restrictive covenant, a conservation easement can both prohibit AND require land management actions.

The Baseline Documentation Report (or BDR or Baseline) is the reference document against which all monitoring of the conservation easement agreement will be done. A stand-alone guidance document and *Baseline Documentation Report Template* have been created to assist in the development of the BDRs.

The County may conduct the baseline assessment themselves, or may hire out the creation of the Baseline Documentation Report.

A key question to determine is the timing of the Baseline Documentation Report. Ideally the BDR is done prior to the signing of the conservation easement. However, circumstances such as weather conditions may dictate that the BDR must be delayed. In these cases, there should be a clear indication of when the report will be created.

3.1.4 Schedule A: Restrictions and Covenants on Use of Land

The core essence a conservation easement, restrictions and covenants include what the landowner *cannot* do or *must* do as a consequence of granting the conservation easement.

CONNECTING RESTRICTIONS AND CONSERVATION GOALS

It is vitally important that the restrictions in a conservation easement – and indeed the whole conservation easement agreement – clearly support the County's existing conservation goals. In other words, this is a tool to help accomplish goals you already have, not create new goals.

For this reason, every restriction or land management requirement should be clearly connected to a pre-existing conservation goal, with an understanding of the risk which the restriction is intended to mitigate. The following table connects the template restrictions with the

Conservation Features of Concern	**Risks**	**Restrictions**
Environmentally Significant Areas identified in the Municipal Development Plan;	Subdivision; vegetation removal; drainage; building; other development (industrial; commercial); recreation; invasive species.	1, 2, 3, 4, 7, 12, 13, 14, 17, 18
Farmyard shelterbelts;	Removal of vegetation; overgrowth; age of stand	3
Groundwater recharge areas;	Vegetation removal; cultivation; gravel removal	1, 2, 3, 4, 7, 8, 9, 17
Important patches of native vegetation, large trees, tree stands, brush or shrubland;	Building, vegetation removal; overgrazing; cutting all trees; not managing forests; recreation	2, 3, 4, 6, 12, 13, PMP
Large intact blocks of natural vegetation;	Subdivision; building development, vegetation removal; improper grazing techniques	1, 2, 3, 4, 6

Local food production capacity;	Subdivision; residential, industrial or commercial development; pollution;	1, 2, 5, 6, 8, 18, PMP
Natural flood zones;	Subdivision; building in flood zones; removal of buffers that filter pollutants	1, 2, 3, 4, 7, 8, 9
Productive agricultural soils, grazing lands, and tame forage;	Subdivision; residential, industrial or commercial development; improper agronomic and grazing management	1, 2, 5, 6, PMP
Rivers, lakes, and streams, especially those associated with the Iron Creek or Battle River Watersheds;	Subdivision; development or incompatible land uses in riparian zones; vegetation removal; water diversion;	1, 2, 3, 4, 7, 8, 9
Sensitive or critical wildlife habitat;	Subdivision, building, vegetation removal; poor grazing management; drainage; excessive noise; impeded movement; recreation	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, PMP
Un-fragmented agricultural parcels;	Subdivision; Residential, industrial or commercial development	1, 2
Wetlands and their associated uplands;	Subdivision, building, vegetation removal; drainage; recreation	1, 2, 3, 4, 6, 7, 8, 9. 12, 13
Wildlife movement areas or corridors;	Subdivision; building; fragmentation of natural vegetation and water features; impeded movement	1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, PMP
[Other environmentally significant features as determined by Council]; and		
[Other agriculturally important lands as determined by Council].		

GUIDANCE ON THE RESTRICTIONS AND COVENANTS TABLE

Category	Restriction	Drafting Notes
Subdivision	1. The Grantor shall not make, pursue or permit any application for subdivision of or other course of action designed to partition or subdivide any part of the [Property/Conservation Easement Area].	▪ This is a standard and primary conservation easement clause.
Building	2. The Grantor shall not conduct nor permit any development or construction on the [Property/Conservation Easement Area] including, but not limited to, a dwelling or other building or other structure.	▪ This is a standard and primary conservation easement clause. ▪ It is possible to refine this clause by exempting and allowing a designated future building envelope. This should be small enough, and appropriately placed, such that it has a benign impact on the conservation values the conservation easement is designed to protect. o The precise location of the this envelop should be identified. ▪ It is possible to refine this clause by exempting out-buildings and accessory structures necessary for on-going agricultural operations
Vegetation Management / Cropping / Hay / Grazing	3. The Grantor shall not conduct, pursue or permit the cutting, removal or destruction of vegetation, including trees, shrubs or grasses, on the [Property/Conservation Easement Area] except as required by law or as detailed in a Management Plan. [As shown on map in Schedule D and described in the Baseline Documentation Report.] AND / OR 4. The Grantor may not till, break, clear, cultivate or convert to cropland the [Property/Conservation Easement Area] or a portion of the Conservation Easement Area [as shown on map in Schedule D and described in the Baseline Documentation Report.]	▪ Different conservation easements will have different purposes, and or be applied to parcels with different vegetation management regimes. ▪ The clause restricting vegetation management should be chosen based on location/land use history: • 3. would be used in Parkland type vegetation communities – a mix of trees, shrubs and open grassy areas; • 4. would be used in grassland type vegetation communities or tame pasture/hayland that is intended to stay in permanent cover; and • 5. would be used for predominantly farmed land. ▪ In order to both protect the conservation

	AND / OR 5. The Grantor may, using best known agronomic practices continue to cultivate the crop, hay or tame producing areas on the [Property/Conservation Easement Area] [as shown on map in Schedule D and described in the Baseline Documentation Report.] AND/OR 6. The Grantor may use the [Property/Conservation Easement Area] for grazing in a manner which ensures the vegetation communities remain healthy and robust and does not contravene any other restrictions set out in this Conservation Easement Agreement. The Parties agree that the Alberta Rangeland Health Assessment protocols, or its replacement, is the tool to measure the health of grazed areas.	values, and assure a shared vision of the future land management, the parties may choose specific assessment tools or management plans be part of this restriction.
Water drainage or diversion	7. The Grantor shall neither: a. conduct, pursue or permit any alteration, diversion or drainage of water courses or bodies on or under the [Property/Conservation Easement Area], excluding the need of water wells for domestic purposes or agricultural use; nor b. apply or permit the application to any applicable government body to alter, divert or drain any water courses or bodies	▪ This is a standard and primary conservation easement clause. ▪ The attached wording is designed to ensure an agricultural operation can continue largely unaffected if it maintains the water management regime employed thus far.
Water degradation or pollution	8. The Grantor shall not conduct, pursue or permit any uses or activities that would pollute or degrade the water courses or bodies on or under the [Property/Conservation Easement Area], the Parties agreeing that Grantee in its reasonable opinion may determine which uses or activities are	▪ This is a standard and primary conservation easement clause. ▪ The attached wording is designed to ensure no land use – regardless of what it is – can pollute the land or water ▪ It also allows the County to use its discretion to determine if a proposed land use might logically lead to pollution

	prohibited by this section. Grantee will provide the Grantor with reasons for prohibiting uses.	discharges prohibited under this clause, BUT the County must provide those reasons to the landowner
Riparian Zone Management	9. The Grantor shall not conduct, pursue or permit any disturbance of vegetation or soil on shorelines or watercourses or water bodies in the [Property/Conservation Easement Area]. The Grantor will ensure all land use activities maintain or improve the health of riparian vegetation communities and do not contravene any restrictions set out in this Conservation Easement Agreement. The Parties agree that the Alberta Riparian Habitat Management Society Riparian Health Assessments for Streams and Small Rivers and Riparian Heath Assessments for Lakes, Sloughs and Wetlands protocols or their replacements, is the tool to measure the health of riparian areas.	▪ The parties may/may not choose to use a riparian health assessment as part of the restriction. ▪ However, the parties should be clear how, in the absence of such an assessment, the Parties will know an infraction has or has not occurred.
Wildlife Disturbance	10. The Grantor shall not conduct, pursue or permit any activity making or causing noise, glare, obstruction or odour on the [Property/Conservation Easement Area] which may be reasonably anticipated to disturb wildlife patterns, the Parties agreeing that Grantee in its reasonable opinion may determine which activities are prohibited by this section. Grantee will provide the Grantor with reasons for prohibiting activities.	▪ The County may want to be more specific about the activities which they are seeking to restrict; ▪ The challenge here is to: ▪ 1. Be sure the specific restriction mitigates the risk to the identified wildlife species/population ▪ 2. Maintain the general restrictions as well, as this clause will need to apply decades from now, when wildlife management knowledge has advanced.
Fencing	11. The Grantor shall not construct or place or permit the construction or placement of any wildlife proof fence within the [Property/Conservation Easement Area]. For better certainty, this clause does not obligate the	▪ It is possible, but not recommended, to be more specific with fencing restrictions; again, wildlife management knowledge will evolve, and it is the principle of not precluding movement which must endure.

	Grantor to replace fences existing in the [Property/Conservation Easement Area] prior to the date of this Agreement; however, any repairs or replacements of existing fences carried out by the Grantor shall be in compliance with this section. Wildlife proof fences may only be erected to protect feedstock and grain, with prior written consent of the Grantee.	
Vehicles	12. The Grantor shall not operate or permit the operation of motorized vehicles on the [Property/Conservation Easement Area] [except for fence maintenance purposes as described in clause 13] and/or [except for the use of farm equipment for the cultivation, seeding and harvesting of crops or hay.]	▪ In some cases, the County will want to ensure no motorized vehicle use is allowed in order to protect the parcel's conservation values. ▪ In other cases, the County may want to caveat this restriction in order to allow vehicle use that supports the agricultural operation on the land. ▪ In these cases, the wording should be specific to the allowable vehicle uses; simply removing this clause will create a potential future liability to unrestricted vehicle use that may predictably damage the parcel and its identified conservation values.
Trails	13. The Grantor may maintain a reasonable trail, as shown in the Baseline Documentation Report along the property lines for fencing purposes. The Grantor may also maintain a passive recreational trail (walking, x-county skiing) as shown in the Baseline Documentation Report along the property lines for fencing purposes. If such trails are to be created it will be done through a mutually agreed upon management plan.	▪ This clause allows for pre-existing, defined-purpose trails to be maintained on the property. ▪ Trails are assumed to be a path, track or unpaved lane. ▪ The attached wording provides for two examples: a fence-line trail required for fence maintenance, and a recreation trail. ▪ When creating a trail opportunity on the conservation easement property, the County should use the following guidelines: • a. State the purpose of the allowed trail (fencing, recreation, walking, x-country skiing); • b. Ensure the trail is referenced in the Baseline Documentation

		Report; • c. Coordinate the wording and restriction with those related to public access and vehicle use; and • d. State if new trails can be created, and if so under what conditions, and to what degree (again, ensuring this does not conflict with the conservation purposes).
Chemicals and invasive spp. management	14. The Grantor shall not conduct, pursue or permit any application or deposit of any chemical pesticides, fertilizers, or other chemicals on the [Property/Conservation Easement Area] except as required by law, and then only in the amounts and with the frequency of application which constitutes the minimum necessary to accomplish compliance with the law or as detailed in a Management Plan. OR 15. The Grantor will follow best known agronomic management practices, following all label requirements when using pesticides, including herbicide, insecticides, and fungicides, and fertilizers for crop production purposes. The Grantor will keep records of these applications. OR 16. The Grantor will produce crops using best known organic practices. The Grantor will ensure all weeds listed in the Alberta Weed Act and those designated by the County are controlled.	▪ This clause ensures that chemical applications on the property are restricted unless they are required for invasive species management or in a manner consistent with the conservation goals and other restrictions. • Recall that a management plan need not be complex, and can simply state the intended practices, specific locations in the property, and any other applicable management guidelines. ▪ If the situation is more complex than allowed for in a single clause's wording, the County (and the Grantor) may choose to attach a management plan detailing how and under which circumstances chemicals may be applied to the land. ▪ The County should use the clause options presented as follows: • 14. Use this clause in cases where the complexity of the situation requires a designated management plan; • 15. Use this clause when the County is seeking a simple but encompassing limitation to chemical applications; and • 16. Use this clause in cases where the property is, or will be, subject to organic management practices and/or restrictions.

Surface Disturbance	17. The Grantor shall not carry out nor permit any soil disturbance [except for cultivation – *if allowed in the CE*], excavating, dredging or mining of sand, gravel, minerals, rock, or any other materials within the Conservation Easement Area. The Grantor shall not carry out or permit seismic operations or any other exploration or drilling for oil and gas or the extraction thereof on the [Property/Conservation Easement Area] unless the Grantor is required to do so by law. Any right of entry to the [Property/Conservation Easement Area] for the purposes of mining or drilling for, or extraction of oil and gas required by law must be conducted pursuant to the Alberta Surface Rights Act and shall follow the management practices prescribed by the EUB in Revised Guidelines for Minimizing Disturbance on Native Prairie Areas, Informational Letter # 2002-I or its replacement.	▪ This clause essentially covers two common threats to the conservation values: oil and gas exploration, and sand and gravel mining. ▪ It will be tempting as a municipality to remove restrictions on sand and gravel extraction, but allowing this wholesale land disturbance ***would negate all other conservation clauses and purposes***. ▪ The oil and gas exploration clauses are to ensure that the interest securing surface access is held to the highest standard possible. ▪ Recall that as the County now has an interest in this parcel, they have the right to press the exploration proponent for the highest level of sensitive practices possible (limited footprint, high-quality reclamation, consideration of directional drilling, etc.)
Pollution	18. The Grantor shall not place or permit the placement of garbage, waste, debris or refuse, whether human or non-human produced, on the [Property/Conservation Easement Area] other than the appropriate spreading of composts or manures in accordance with a provision in a Management Plan.	▪ This clause simply prevents the property from being used for the storage of garbage or waste. ▪ As 'manure' is a form of waste, there is an exemption for the agricultural use of manure spreading, but requires a management plan. • Recall than a management plan need not be complex, and may simply state the required practices, areas that might be off limits, guidelines to be used, etc.;

OTHER CONSIDERATIONS

As well as connecting directly with the conservation goals of the County, both parties to the conservation easement agreement should be open to new clauses which the landowner/grantor may desire.

The following are three such clauses that the Parties may want to consider.

Public access – While Public Access is not one of the Conservation Features of Concerns, this is an important topic for some landowners. Conservation easements do not inherently require or deny public access. Many Grantees are silent on the topic or adamant that it is the landowner's decision. Some landowners may want a specific statement on public access in the Restrictions or Property Management Principle schedule

Sample wording for such a clause could be: "The Grantor may choose to guide or provide access for education opportunities on the Conservation Easement Area. The parties agree any public access will be done in a manner that does not contravene any part of this agreement."

Hunting – While Hunting is not one of the Conservation Features of Concerns, this is an important topic for some landowners. Provincial laws on hunting are clear and a conservation easement cannot enable anything more than what is in the regulations. However a landowner may want to further restrict hunting access or potential.

Sample wording for such a clause could be: "The Grantor may, at their discretion, allow hunting for ungulates in accordance with provincial hunting regulations, but shall not conduct, pursue or permit any hunting, killing trapping of other animals, including birds, on the Property/Conservation Easement Area except as required by law or with the prior express written consent of Grantee, and then only for habitat management purposes. (e.g., rodent control)."

Habitat Restoration – While habitat restoration is not one of the Conservation Features of Concern, this is an important topic for some landowners. Areas that a Grantee will want to be sure of include that any seed planted for restoration purposes are not at all invasive, and that the species combination is appropriate for the area. The Grantee may also want to consider that for any areas where restoration is carried out that those acres now be treated like natural stands and can no longer be cultivated.

Sample wording for such a clause could be: "The Grantor [Parties] have identified area X that would benefit from being restored to natural plant species. The Parties will develop a restoration management plan before introducing any new seed on any portion of the Property/Conservation Easement Are. The management plan will ensure no restoration actions will contravene any other restrictions set out in this Conservation Easement Agreement and that once established the restored acres will be added to the count of natural vegetation acres."

3.1.5 Schedule B: Property Management Principles

As well as being *restrictive* in nature (things you can't do), a conservation easement can be also be *positive* in nature (things you must do). The Property Management Principles – or PMP's – are an important contribution to that dynamic of the conservation easement agreement.

A conservation easement's Restriction and Covenants on Use of the Property (i.e., the Restrictions) cannot foresee all management issues into the future. The Property Management Principles section provides guidance with respect to activities and uses that, while they are restricted in Schedule A of the agreement, there are some circumstance where they would be permitted.

This section can also be used to describe or provide clarity to retained rights, activities, and/or uses that the Grantor or County would like to describe explicitly. For this reason, this section is tends to be more customized than the Restrictions list.

DEFAULT PROPERTY MANAGEMENT PRINCIPLES

The Property Management Principles section in the template conservation easement (Schedule B) contains the following default statements.

Category	PMP	Drafting Notes
Grazing	1. The Grantor has historically grazed and intends to continue grazing the property using sustainable grazing practices. The Grantor has shared their grazing management plan with the Grantee. The Grantee is available as resource to the Grantor in the development or adaptation of a grazing management plan	▪ If grazing is allowed on the conservation easement property, there should be a requirement for, and a reference to, a grazing management plan. ▪ Recall that a management plan need not be complex, and can simply outline the grazing philosophy being used, reference certain guidelines, reference assessment standards, identify areas subject to / not subject to grazing, etc.
Forest harvest and tree removal	2. The Grantor may, in a manner consistent with good forestry practices and the terms of this Agreement: a. Cut trees for posts and poles for limited repair and maintenance of Authorized Fencing on the Property; b. Cut or prune trees and brush that constitute a hazard to persons, fencing or trails; c. Carry out selective tree harvesting provided it is carried out in accordance with a forest management plan prepared by a registered forester with the goal of maintaining the Conservation Values of the Property, and approved in writing by the Grantee; d. Cut and use or dispose of limited	▪ If removal of trees at any scale is permitted on the property, there should be reference to practices required. ▪ This includes minor instances of tree removal such as trees used for posts, Christmas trees, etc. ▪ Keep in mind that the County conservation values include brush and shelter belts. ▪ Recall that a management plan need not be complex, and can simply outline the limits on tree removal, locations where this is permitted, reference certain guidelines, reference assessment standards, etc.

	standing and downed trees for firewood for the Grantor's personal use and yard maintenance; or e. Carry out brushing with the written consent of the Grantee.	
Existing fencing	3. The Grantor may maintain, replace and repair fences on the periphery of the Property as they are on the date of this Agreement and as documented in the Baseline Documentation Report. No additional fencing shall be placed on the Property unless it is beneficial to the protection of the riparian zones or young vulnerable trees, and written consent is obtained from the Grantee. Fencing may be maintained, replaced or repaired in the same location as at the date of this Agreement, provided that no maintained, replaced or repaired fence on the Property shall, without the written consent of the Grantee: a. Create any kind of a wildlife-proof barrier, [except in a possible future X acre developable parcel as needed to control or prevent damage to stored feed supplies or domestic gardens]; or b. Exceed a height of 1.4 meters, [except in a possible future X acre developable parcel or where the terrain requires].	▪ This PMP allows the landowner (Grantor) to maintain their existing fences. ▪ If there is an allowed development envelope (e.g., a small area where a future house would be allowed), the subsequent clauses here would allow a different fencing standard around the house.

OPTIONAL PROPERTY MANAGEMENT PRINCIPLES

Either the County or the Grantor may wish to include additional Property Management Principles. Remember that these must all be supportive of the conservation goals and conservation values which the conservation easement was established to protect.

At this scale, PMP's tend to be quite property specific. However, some relatively common areas where PMP's may be deemed desirable include:

- Recreation use;
- Public access;
- Pest management; and
- Food production.

PMP's may also be used to reference the need for management plans as concerns arise – e.g. a specific invasive species management plan or a change in management approach (e.g., going from summer to winter grazing).

3.1.6 Management Plans

As noted at several pints thus far, the conservation easement agreement may contain references to potential or required management plans. The following is some overarching guidance on the use of management plans within a conservation easement agreement.

MANAGEMENT PLAN VS RESTRICTION

It may be confusing as to when something should be covered by a management plan, and when it should be covered simply by stating a restricting (or Property Management Principle). In general, restrictions are 'forever' and management plans are not. Under normal circumstances, a restriction will persist no matter. However, a management plan should cover things that are not forever. These are activities that have a life cycle (a beginning and an end), and are subject to change based on changing conditions, the response of the land, etc.

MANAGEMENT PLAN MAY ALREADY EXIST

Landowners already have various plans and adopted guidelines that provide them guidance in how they manage their land. It's a good rule of thumb that if the management regime thus far has maintained the conservation values, it should likely continue on. Wherever possibly, and if they serve the necessary purpose, simply make reference to the management plans the landowner is already using. Possible examples of this include recommendations from Range Health Assessments or Riparian Health Assessments.

MANAGEMENT PLANS CAN BE SIMPLE

The term 'management plan' conjures up images of a shelf full of (usually dusty) binders. Keep in mind that these can be quite simple, and may in fact simply be a way to include certain guidance in the conservation easement agreement. For example, a management plan my simply saw where a permitted activity is allowed to occur on the property, and for what period of time. Or a management plan may be a one-pager simply stating the parties "agree to X direction provided by a Council decision."

3.1.7 Schedule C: Permitted Encumbrances

In general, the permitted encumbrances should be those that are found on the existing title. They should be transcribed into Schedule C exactly as they are found on the title at the time the conservation easement is signed.

3.1.8 Schedule D: Map

The map included in Schedule D is the comprehensive context picture for the conservation easement agreement. It should include an aerial photograph overlain but elements that are vital to the conservation easement agreement. These might include:

- The boundary of the property;
- The boundary of the conservation easement area;
- Major land uses such as roads, agricultural fields, fences existing buildings, etc.;
- Major conservation elements such as key habitats, tree stands, wetlands, etc.;
- Exceptions or future allowances on the conservation easement property such as a future building envelope, future trail allowance, etc.

3.2 EFFECTING the Conservation Easement

Once the conservation easement agreement has been drafted, both the landowner (Grantor) and the County (Grantee) have a handful of tasks needed to make the draft agreement both legally sound and binding.

3.2.1 Clearing the Legal Claims

REQUESTING A MORTGAGE POSTPONEMENT

If there is a mortgage on the property, simply registering the conservation easement may inadvertently put it at risk. Encumbrances registered on a property's title are usually weighted based on chronological order – i.e., earlier encumbrances take precedence. In the rare circumstance a mortgage is registered prior to the conservation easement, and then there is a default, bank can ignore the easement in disposing of the property.

To avoid this, the County must secure a "mortgage postponement" from any mortgages on the title that occur prior to the conservation easement. This will move the conservation easement ahead of the mortgages in the event of a foreclosure.

The resource package attached to this manual include two critical documents: 1) a draft letter to the bank, and 2) a template Form 17. The Form 17 is what the bank needs to file with land titles.

Do not assume you can just send the letter! Contact the bank first and ask for the person who would deal with this. Explain the entire process to them first, so there are no surprises.

The key point to emphasize to the bank is that this should pose no risk to them. As long as the value of the land after the easement is greater than the value of the mortgage, they are at no risk, as the conservation easement does not in any way restrict the sale or disposition of the property.

DOWER AFFIDAVITS

In some cases, the landowner's lawyer may raise the question of whether there is a spouse with a potential claim

EXECUTION AFFIDAVITS

Given the magnitude of the commitment, a simple signature on the part of the Grantor (landowner) is not sufficient. Their lawyer will likely direct them to include an Execution Affidavit. If not, you should request that they do so. A template is included in the resource package.

3.2.2 External Notifications

There are a handful of notifications required to be given to parties outside of the conservation easement agreement parties. Some of these are required under the Alberta Land Stewardship Act, some under the Flagstaff Conservation Easement Program Bylaw, and some are just good practice.

GOVERNMENT OF ALBERTA AGENCIES

The *Conservation Easement Registration Regulation* (Alberta Regulation 129/2010) requires anyone planning to register a conservation easement to provide notification to the Minister of Infrastructure and the Minister of Transportation[4]. This notification must be provided at least 60 days before the conservation easement is provided to Land Titles for registration.

Delivery must be by registered mail, courier or personal delivery. Whatever form you use, make sure you have some way to know and record that the notification was received.

The *Form 1 Template* in the resource package can be used to provide this notification. A copy of that Regulation is also included in the resource package, but you should keep an eye on the actual Regulation to monitor if new requirements arise.

Two things to be aware of.

[4] The Regulation also requires that notice is given to the Minister of Municipal Affairs in the case of a Special Area, or the Council of a Metis Settlement in the case of a parcel under their jurisdiction. Neither of these apply in the case of Flagstaff County. Additionally, the Council of the municipality must be provided notice, but this requirement is waived if the municipality is one of the parties to the agreement.

First, this is a requirement for *notice* only, not a submission for approval. Nothing in either the Act or the Regulation suggests anything otherwise.

Second, you can request from these agencies that the 60 day period be waived (not the notice, just the time period). A template letter for this waiver request is included in the resource package. If you do request a waiver, it is possible that the agency will request additional information, which you may need to provide to secure the waiver. However, recall that this still only amounts to a notification, not a request for approval.

FLAGSTAFF COUNTY CONSERVATION EASEMENT PROGRAM BYLAW

Under the *Flagstaff County Conservation Easement Program Bylaw*, the County must provide notice of the intent to pursue a conservation easement to any landowner whose property is adjacent to the conservation easement property. This must happen within 30 days of the Agricultural Service Board decision to pursue a conservation easement agreement with an applicant landowner.

OTHER INTERESTS

If that conservation easement property abuts another municipality, it is also good practice to notify the Council of that municipality of the County's intent to pursue a conservation easement.

3.2.3 Registering the Conservation Easement with Land Titles

For the conservation easement to actually take effect, it must be registered with the Registrar of Titles (i.e., the Land Titles office). Work with County administration to use Flagstaff County's existing processes for filing documents with land titles.

Some qualified organizations choose to file their Baseline Documentation Report and management plans with the actual easement on title, but this is not required. One value of doing so is that anyone pulling the title (like a prospective buyer) will be fully informed without needing to contact the County for additional records.

When a conservation easement is filed with Land Titles, it must be accompanied by a *Form 2: Declaration by the Grantee*. A template of this form is included in the resource package.

3.3 WORKING with other County Departments

As well as working with external agencies and interests, it is important to coordinate with other departments within the County. Some of these procedures are required by the *Flagstaff County Conservation Easement Program Bylaw*, and some are good practices that will ease the process for everyone involved.

3.3.1 Internal Review of the Conservation Easement

In order to ensure all County departments are clear about the proposed conservation easement, the draft agreement should be circulated to at least the following departments/services.

PLANNING AND DEVELOPMENT

The parcel on which the conservation easement will be granted will already be subject to land use districting at the least, and possibly advanced planning documents such as an Area Structure Plan.

The proposed conservation easement should be forwarded to the Planning and Development department for their information.

Questions for the planning department can include:

- Do they see any conflicts between the proposed conservation easement and any existing or proposed land use concepts for the area?
- How do they see the conservation easement supporting any agricultural or environmental conservation planning policies in place?

It can be helpful to provide the planning department in advance with the following documents:

- The conservation easement excerpts from the *Alberta Land Stewardship Act*;
- The *Flagstaff County Conservation Easement Program Bylaw*
- The *Guide to Municipal Conservation Easement Programs*

LEGAL COUNSEL

As well as the due diligence review that is important for any contract the County plans to sign, the County's legal counsel should be asked to consider:

- Are there other legal requirements of the County which this agreement will affect?
- Do the legal contract aspects of the conservation easement granting procedure conform to the other legal contract norms and standards of the County?

It can be helpful to provide legal counsel in advance with the following documents:

- The conservation easement excerpts from the *Alberta Land Stewardship Act*;
- The *Conservation Easement Registration Regulation* (Alberta Regulation 129/2010)
- The *Flagstaff County Conservation Easement Program Bylaw*
- The *Flagstaff County Conservation Easement Program Procedures Manual*
- The templates from the resource package

3.3.2 County Recordkeeping

Anyone who will deal with the internal storage and tracking of the agreement should also be contacted, at the very least for a heads-up, but also to request clarification on matters that may affect them.

This would primarily include the records clerk who will be required to file the information at the County level, and liaise with the Land Titles Office.

Questions for those personnel could include:

- Are the record numbers provisionally attached to the agreement correct?
- Are there any new record-keeping procedures that need to be considered?

3.3.3 Annual Reporting

For reasons of both promotion and transparency, information about the conservation easement program should be provided to County citizens.

A well as any promotion which the Agricultural Fieldmen deem appropriate, the Flagstaff County Conservation Easement Program Bylaw requires the following information be provided annually – ideally in the Annual Report:

- Number of applications to the program;
- Agreements under negotiation;
- Agreements complete;
- Acres conserved;
- Conservation impact (this can be a narrative description of the gains made toward the County's agricultural and environmental conservation goals); and
- Any other information the Agricultural Fieldmen think is vital to represent and promote the program.

4.0 THE CARETAKING PROCESS

4.1 STEWARDING the Conservation Easement

Shifting from "Drafting " the conservation easement to "Stewarding" the conservation easement means shifting from short-term, concentrated work, to long-term, irregular work. Some of this work will be assured (monitoring), some may never occur (amendments), and some may only occur a long ways down the road (infractions).

4.1.1 Monitoring the Conservation Easement

'Monitoring' means assessing the conservation easement property against the Baseline Documentation Report. The *Flagstaff County Conservation Easement Program Bylaw* requires that on-going monitoring happen every year.

Monitoring visits and results will be recorded using the Conservation Easement Monitoring Report Template (included in the resource package). The Template has the following sections:

INTRODUCTION

The introductory section of each monitoring report will include the property identification, landowner contact information, as well as the date of the site visit, and the name of the person conducting the monitoring.

PAST ISSUES AND CONCERNS

AS more and more monitoring reports are created, they should clearly connect back to the previous reports. This section identifies in summary the past issues, then describes what current actions are being taken with regard to those issues.

SITE VISIT

Each monitoring report should be based on a site visit to the property. This section captures the details of the visit.

Landowner Relations

Your best source of information about the property since the last visit id the landowner (or land manager) themselves. The 'Landowner Relations' section includes information about and from the landowner. There is an interview guide in the Template to follow.

Restrictions and Principles Monitoring

The heart of the monitoring report is the Restrictions and Property Management Principles Monitoring. There are two tables that guide the assessment here. For each, indicate how you assessed the property

against the restriction/principle, whether or not an infringement or infraction occurred, then any necessary notes to explain the assessment. In each case, include a photo that visually represents the status of the property relative to that restriction/principle.

Management Plan Status

There may or may not be management plans attached to the conservation easement. If there are, note that, and briefly describe how they are working (issues?). If the plan has expired, note that.

Wildlife and Water

In these two sections gather narrative information about these ecological features. For wildlife, list any species from the BDR that either the monitor or the landowner has seen the last visit. For water, report any water quality assessments or reports that have been conducted, and briefly what the results of those have been.

Significant Changes

A comparative read of the details of the current and past monitoring reports will give the reader a picture of the changes that have taken place – an onerous task. In this section, briefly described the significant changes that have taken place that might have relevance to the conservation values. Items that might be mentioned her would include, new buildings or roads, changes in species complement, new fences, significant land use changes adjacent to the property, movement of water courses, etc.

These changes are recorded in a table under the categories: Natural Changes, Land Use Changes, and Easement Violations.

MONITORING REPORT SIGN OFF

The monitoring report should not be viewed as a critique of the landowner and their practices. Rather, it is a shared discovery of the changes in a property that the County and the landowner are working together to conserve.

For that reason, both parties must sign off on the monitoring report. The County representative declares their diligence in ensuring accuracy; the landowner declares that they have had the change to read through and voice their concerns.

The monitor should consider the concerns of the landowner, and judge whether they warrant changes in the report. Even if they do not, those concerns must be captured at the bottom of this section.

4.1.2 Dealing with Infractions of the Conservation Easement

Flagstaff County conservation easements are agreed to in perpetuity, which means an infraction is virtually a certainty at some point in the life of the agreement. The *Flagstaff County Conservation Easement Program Bylaw* and the easement agreement itself lay out the County's rights and responsibilities in the

case where the landowner is acting in contravention of the terms of the easement – in other words, there is an *infraction* of the conservation easement.

Two facts regarding easement violations are important to bear in mind:

1. The vast majority of easement infractions occur with a subsequent landowner, not the one who granted the easement in the first place; and
2. The vast majority of infractions are due to a lack of awareness, rather than malicious intent.

These two points should guide all County interaction with landowners with regard to suspected infractions of a conservation easement agreement.

In case of a suspected infraction, the County should take the following steps.

IDENTIFY THE INFRACTION

The County has the right to access the property to assess the conservation easement for infractions at any time if it is with the landowner's permission, or with two days' notice even without permission. You should always seek permission first.

If you find an infraction, the first step is to let the landowner know about it. The agreement requires the County to describe the default in reasonable detail and stipulate the steps which need to be taken by the Grantor to remedy the default. Again, the agreement requires you give the landowner 60 days to comply.

If you suspect, that an infraction is likely to occur (but has not yet occurred), note that, as you may need to apply to courts to prevent it.

File this written notice with the applicable conservation easement file in the County office.

ENFORCING THE REQUIRED REMEDIAL STEPS

In the majority of cases, the landowner will comply, usually because they were unaware that there was an infraction of the conservation easement agreement. If, after 60 days, the landowner has not conducted the required steps, the County's legal counsel should be engaged (if that have not already been).

The legal remedies available at this point are to:

- Apply for "injunctive relief" (essentially a court-ordered prohibition of activity deemed to be the issue);
- Any other legal means available to the County as a party to this contractual agreement.

The conservation easement agreement requires the Grantor (the landowner) to bear the costs of remedying the issue. As well, these costs can be the costs of ecological restoration.

One final thing to note is the agreement does not fail simply because the County chooses not to enforce a provision of the agreement.

4.2.3 Amendments

Amendments of a conservation easement are possible under the *Alberta Land Stewardship Act*, but they are not to be undertaken lightly[5]. The reason the Act allows amendments is the recognition that the land, knowledge of land management, the surrounding circumstances, etc. can all change, and conservation easements may need to change to continue to capably maintain its original conservation values.

If an change in the conservation easement is deemed necessary:

- Ensure the landowner is in agreement with the change (both parties must agree to the change) – this agreement must be in writing;
- Determine:
    - All implications for the conservation values for which the conservation easement was initially created;
    - All legal and financial implications for both the County and the landowner (for example, determine if there is a change in use approval required from the EcoGifts program);
    - All implications for the credibility of the Flagstaff County Conservation Easement Program;
- Bring the proposed change before the County's Agricultural Service Board for consideration;
- If the ASB is in favour of the change, secure their recommendation to Council; then
- Bring the change before Council for their approval.

Once an amendment is approved at the County level, it must be submitted to the Land Titles office.

4.2 WORKING with the Landowner

4.2.1 Maintaining communication

It is difficult to overstate the importance of on-going communication with the landowner. This can increase conservation outcomes, reduce costs, avoid costly and damaging infractions, foster learning on both sides, augment the County's reputation.

As well as the general communication tasks identified throughout this guide, there are two specific communication tasks which you should undertake very proactively:

- The agreement requires that the landowner give the County 30 days' notice before they sell the property – make sure the landowner is aware of the requirement;
- Immediately contact new owners (and even the realtor when the property goes up for sale) to explain that a conservation easement exists on the property, that it is perpetual, and what that means for the parcel.

4.2.2 Being Clear on Costs

[5] Changes can trigger significant legal and tax ramifications.

There can be significant costs on the part of the landowner when the 'donate' a conservation easement. It is important for them to be aware of these right at the outset, so they can factor those into their planning. These include:

- Land value appraisal;
- A Baseline Documentation Report;
- Review by their lawyer; and
- Review by their accountant or financial/estate planner.

4.2.3 Appraisal / valuation of the easement

Although the landowner will be responsible for their appraisal, be sure to advise them of the need for a certain type of appraiser / appraisal. This is important as they get further down the road, and may find that an informal or even 'normal' will not be effective. They should be sure to

- Retain a qualified appraiser
- Retain an appraiser with experience with conservation easements (not all appraisers have this experience);
- If the grant of the conservation easement is to be certified as a gift of ecological property (an EcoGift), they need an appraiser who has experience with the EcoGifts program;
    - The program reviews and certifies the appraisal; knowing what is required in advance can save time and frustration.

4.2.4 Issuing a tax receipt

The Canada Revenue Agency stipulates exactly what must be on a donation receipt for it to be eligible to be applied to a donor's taxes. There are also extra requirements when the donation is either:

- A gift of property rather than cash; and/or
- A gift where they receive both cash compensation (called 'advantage') and tax receipt compensation.

Ensure the receipt which the County issues to the landowner who grants the conservation easement has the following information:

- A receipt number (Receipt No. XXX)
- The County's legal name
- The County's official address
- Charity or qualified donee address
- Date gift received
- Donor name (first and last name, and initial)

- Donor address
- Amount of gift (fair market value of property)
- Eligible amount of gift (fair market value of property)
- Description of property received by charity or qualified donee
- Appraiser name
- Appraiser address
- Date receipt issued
- Location receipt issued
- Authorized signature
- "Canada Revenue Agency www.cra-arc.gc.ca/charitiesandgiving"
    - This line, verbatim, must be included at the bottom of the receipt.

If the landowner is receiving ***both*** cash and a tax receipt, then replace "Amount of gift (fair market value of property)" above with the following two lines:

- **Line A** Amount of gift (fair market value of property)
    - I.e., the total value of the conservation easement
- **Line B** Amount of advantage to donor (cash/fair market value of property)
    - I.e., the amount of cash the landowner received.

4.2.5 EcoGift Certification

The landowner may wish to have their grant of the conservation easement certified as a gift of ecological property (i.e., an EcoGift). This will entitle them to significantly increased tax benefits and a guarantee of the appraisal amount (so CRA cannot audit the receipt amount later on).

This process can require significant waiting periods, as the landowner needs to contact the Canadian Wildlife service and have them visit, assess and certify the property as ecologically sensitive.

Ensure the landowner knows this can be a lengthy process (perhaps 2-3 months).

Information on the EcoGift program can be found here:

http://www.ce-alberta.ca/question/24/

… here:

http://www.ce-alberta.ca/resources/ (scroll down to 'Eco-Gift Resources')

… and here:

https://www.canada.ca/en/environment-climate-change/services/environmental-funding/ecological-gifts-program.html

5.0 GLOSSARY

The following terms (mostly taken from the *Flagstaff County Conservation Easement Program Bylaw*) are used in this manual:

"Baseline Documentation Report" means a report completed at the outset of the conservation easement granting process which identifies the conservation values of the land, and against which subsequent monitoring will occur.

"Conservation Easement" means the agreement entered into by the County and a Landowner pursuant to Sections 28-35 of the *Alberta Land Stewardship Act.*

"Council" means the Council of Flagstaff County.

"County" means Flagstaff County.

"Easement" means a conservation easement granted by a Flagstaff County Landowner to Flagstaff County under the Bylaw.

"Environmentally Significant Areas" means the areas identified and mapped by the County as such in the Municipal Development Plan.

"Environmentally Significant Features" means the natural areas, objects, and processes identified in the Bylaw.

"Grantee" means an organization qualified to receive grants of a conservation easement as defined in Section 28(a) of the *Alberta Land Stewardship Act*, and which in this Bylaw means the County.

"Grantor" means the person granting a conservation easement as defined in Section 28(b) of the *Alberta Land Stewardship Act*, and which in this Bylaw means a Landowner.

"Infraction" (or "Infringement") means a case where the landowner is knowingly or unintentionally acting in contravention of the terms of the easement.

"Landowner" means a person who owns a parcel in Flagstaff County and who wishes to grant or has granted a conservation easement in respect of all or part of that parcel to the County, or a person who acquires such a parcel.

"Monitoring report" means a report on the current state of the land and its conservation values relative to the conservation easement agreement produced based on a regular review of the parcel conducted by the County.

"Qualified organization" means an entity eligible to hold conservation easements pursuant to Section 28(c) of the *Alberta Land Stewardship Act*, and includes the County of Flagstaff.

"Restriction" means a limitation of activities on, or uses of, the parcel that is subject to the conservation easement.