

SUMMARY
POLICIES & PROCEDURES
PRESERVATION EASEMENT PROGRAM



For a set of the Foundation's complete Policies and Procedures of the Preservation Easement Program, please contact:

Colorado Historical Foundation
PO Box 363
Golden, CO 80403
www.cohf.org

NOTE

The donation of a conservation easement to the Colorado Historical Foundation may qualify for treatment as a charitable contribution under the Internal Revenue Code. The Foundation strongly urges all potential easement donors to retain legal counsel to provide legal advice concerning taxation and other legal issues pertaining to conservation easements. The Foundation cannot provide legal advice to potential donors.

A. APPLICABILITY OF THESE POLICIES AND PROCEDURES

Notwithstanding the general policies and procedures set forth herein, the Foundation reserves the right to waive any requirement or impose additional requirements in connection with the acceptance or administration of any easement.

The Foundation reserves the right to accept or reject any proposed easement in the exercise of its discretion.

B. PROPERTY QUALIFICATIONS

1. Criteria of Eligibility

- a. Properties must meet the eligibility criteria set forth in Colorado Revised Statutes, §§ 38-30.5-101 *et seq.*
- b. If a property (historical or archaeological) is located within a historic district, a separate determination of significance, using National Register criteria of eligibility, must be made to assure that it is contributing to the district. Inclusion of a property within a historic district by itself is not sufficient cause for acceptance.

2. Property Environment

A property should be accompanied by sufficient surrounding land to assure an uninhibited public view of the important historical, archaeological, or architectural features.

3. Property Condition

A property should possess integrity of design, structure, materials, and workmanship. The Foundation may enter into a contract to execute a conservation easement for any property not found to be in sound condition at the time an easement is proposed by a donor. The contract shall stipulate the needed improvements prior to the execution of the easement.

4. Property Types

The Foundation should seek and accept easements on all manner of building, structure, site, right of way, land, and other property types in Colorado, including (by way of example and not limitation):

- a. Buildings: exteriors and/or interiors of buildings used for residential, commercial, industrial, religious, agricultural, and other purposes.
- b. Structures: bridges, mining apparatus, towers, water wheels, mining and milling remains, dams, etc.
- c. Sites: archaeological sites that are above ground and below ground.
- d. Rights of Way: roads, railroads, trails, paths, canals, etc.
- e. Land: historically important land areas such as battle grounds, fortification sites, meeting areas, Indian sacred areas, etc.
- f. Other Property: real property that encompasses, represents or provides the scenic open space for persons, places, or events important in the history or prehistory of the state or nation.

C. DONOR QUALIFICATIONS

1. The Foundation expects easement donors to share the Foundation's interest in preserving the property being proposed for an easement.
2. The Foundation may request evidence of a prospective donor's financial resources to maintain in a proper manner a property on which an easement is proposed.
3. The Foundation may, at the time that a donation of an easement is being considered, require that an owner and encumbrance report be prepared and submitted by the prospective grantor.
4. Ownership

Easements may be accepted for properties having single or subdivided ownership or long-term renewable leaseholds.

- a. Subdivided Ownership: Easements will be accepted for a property having subdivided ownership provided that the entire property is placed under easement, property conveyances are received from all property owners, and that an association of property owners, with the power to act for all the property interests, has been formed which will be responsible for complying with the terms of the easement.
- b. Leasehold Interests: Easements may be accepted on properties subject to long-term leases provided that all parties having an interest in the property and being affected by its terms become a party to the easement contract.

D. ADMINISTRATIVE ARRANGEMENTS

The Foundation requires an application and a negotiation fee and an endowment contribution sufficient to cover the costs of administering the easement in perpetuity. The application and negotiation fees must be paid in advance, in accordance with

Section E below. Normally, the entire endowment contribution and any other assessments (see Section F below) must be paid prior to or upon execution of the deed of easement.

E. APPLICATION AND NEGOTIATION FEES

The Foundation will require the donor of a conservation easement to pay fees to cover the Foundation's costs in considering an easement application and negotiating, executing, and recording the easement.

1. **Application Fee (for tax-motivated easements):** The Foundation will charge a non-refundable fee of \$250 due upon the filing of an easement application. The fee will cover the expenses incurred in reviewing the application for conformance with the Foundation's general acceptance criteria. Applications will not be considered by the Foundation until the fee is paid in full.
2. **Negotiation Fee (all easements):** The Foundation will charge a fee of \$4,000 due upon entering into negotiations and refundable in the event that the Foundation terminates the negotiations. The negotiation fee will cover the costs of site visits, preparation of initial reports, architectural evaluation, preparation of a photographic record, preparation of legal documents, execution of easement documents, and recording of the executed deed.

F. ENDOWMENT/STEWARDSHIP CONTRIBUTIONS

The Foundation requests an endowment contribution to cover the costs of administering the easement in perpetuity. The Foundation's goal is to assure a total endowment fund sufficient to defray the cost of administering, and if necessary, defending the entire easement portfolio. The suggested amount of the endowment contribution is based on a percentage of the appraised value of the property immediately prior to the easement donation.

1. Endowment contributions may be based on the following schedule:

Appraised Value of Property	Endowment Contribution
Less than \$500,000	\$7,500 (minimum)
\$500,000 - \$2 million	1% of appraised value
\$2 million - \$6 million	1% of first \$2 million plus ½% of additional value
Over \$6 million	Negotiable, but not less than \$40,000

2. In addition to the above endowment contribution, the following additional amounts will be assessed when the easement involves the following:
 - a. Easement Amendments: \$4,000 per amendment
 - b. Interior Easement: \$5,000
 - c. Multiple Buildings:
 - 2-3 structures: +\$1,500
 - 4-7 structures: +\$3,000
 - 7 or more structures: +\$5,000
 - d. Complicated Owner Structure +\$2,000 (min.)
 - e. Travel Consideration – at the discretion of the Foundation

3. The amount and purpose of the endowment contribution may be defined by an endowment contribution agreement to be executed by the donor and the Foundation at the time of the easement donation. It is the Foundation's objective to apply the interest generated by the pooled endowment contributions to administer its easement portfolio in perpetuity, but the Foundation reserves the right to devote these funds to other Foundation purposes.

G. DEED OF CONSERVATION EASEMENT

The Foundation uses a standard Deed of Conservation Easement to acquire its real property interests. The provisions of this standard deed represent collective wisdom and experience of a number of easement-accepting organizations across the nation, including the Foundation's own twenty-five years of experience. The Foundation tailors each deed of easement to the particular property in question and attempts to accommodate a donor's reasonable requests for modification of the standard deed. However, there is a presumption in favor of the standard provisions, and any requests for modifications that would alter basic Foundation policy or supervisory powers will not be considered. Language contained in the deed forms the basis for the negotiations between the real property owner (grantor or donor) and the Foundation (grantee or donee). A fully executed deed will precisely describe the property interests being conveyed and the duties, responsibilities, and obligations which have been agreed upon by the contracting parties. Some of the central provisions of the standard Deed of Conservation Easement are discussed below.

1. Standards of Maintenance

- a. Paragraph 1.2 of the deed, in conjunction with the graphic attachments (photographs, drawings, maps, etc.), establishes a permanent reference with respect to the condition of the property upon execution of the agreement. Ordinarily, a property is maintained in the condition depicted in the graphic attachments; however, the Foundation may require that a property be improved (restored, rehabilitated, etc.) in which instance a set of architectural drawings or other appropriate graphic attachments will be included as an exhibit to the deed to define the nature and scope of the required improvements.
- b. Paragraphs 2.1 – 2.2 of the deed specifies the manner in which changes to the property (construction, repair, refinishing) must or can take place. Property owners are required to follow the Secretary of the Interior's Standards for the Treatment of Historic Properties (protection, stabilization, preservation, rehabilitation, restoration, or reconstruction) as is appropriate to the situation.

2. Violations

Paragraph 6.2 of the deed authorizes the Foundation to take certain corrective actions in the event that the property owner violates any of the covenants or restrictions contained in the agreement. Such actions include filing notices, initiating suits, and actually correcting the violations.

3. Insurance Coverage

The Foundation will require property and personal liability insurance (Paragraph 2.3), naming the Foundation as an additional insured or a loss payee thereunder as applicable.

- a. Property Insurance: At minimum, the Foundation will require the following insurance Coverage:

Grantor at its expense shall: "keep the Property insured by an insurance company rated 'A VII' or better by Best's and also acceptable to the Grantee, under a form of full replacement cost insurance policy against risk of physical damage to those aspects of the Property that are governed by this Easement in form and in such amount as may be required by Grantee."

- b. Comprehensive Public Liability Insurance: At minimum, the Foundation will require the following insurance:

Grantor at its expense shall "carry and maintain Comprehensive Public Liability Insurance under a policy issued by an insurance company rated 'A VII' or better by Best's and also acceptable to the Grantee with coverage per person per occurrence of not less than \$1,000,000.00 combined single limit, or such greater amount as may reasonably be required by the Grantee from time to time."

4. Insurance Proceeds

As set forth in the Deed of Conservation Easement, the Foundation will receive a portion of the proceeds of any insurance recovery according to the proportionate value of the Foundation's interest established at the time of the easement donation. The Foundation will commit its share of the proceeds in support of the conservation purposes of the easement program or the Foundation's other activities.

H. CONTRACT FOR DEED OF CONSERVATION EASEMENT

Occasionally, it will be in the interest of the Foundation and a property owner to enter into a Contract for a Deed of Conservation Easement. Such a contract, patterned closely upon the deed itself, binds the contracting parties to enter into a Deed of Conservation Easement at some specified future date when certain conditions have been met by the property owner, as for example, when specified repairs have been undertaken on a property. Application and negotiation fees as well as endowment contributions required for deeds will be also required for contracts for deeds. In that event, no additional endowment contribution will be required upon execution of the deed.

I. ACCEPTANCE SCHEDULE

Applications for tax purposes will be accepted anytime during the year subject to the following conditions:

1. Easements to be Recorded Prior to the End of the Calendar Year:

Property owners seeking recorded easements prior to the end of the calendar year must have submitted applications by October 31 of that year. All documents must have been fully executed by December 15 of that year. The Foundation will act upon

applications received after October 31 and documents executed after December 15 provided that grantor pays a late fee assessment in an amount equal to the Application and Negotiation Fees (in effect doubling those fees) and does not hold the Foundation responsible for recording the deed of Conservation Easement prior to the end of the calendar year.

2. Easements to be Recorded at the Convenience of the Foundation:

Property owners seeking recorded easements at the convenience of the Foundation may submit applications any time during the year.