

**POLICY OF THE LAND TRUST OF THE UPPER ARKANSAS IN REGARD TO
CRITERIA FOR ACQUISITION OF CONSERVATION EASEMENTS**

The purpose of the Land Trust of the Upper Arkansas (LTUA) is to advance the conservation and stewardship of agricultural lands, wildlife habitat, open space, scenic beauty and other diminishing natural and historical resources.

There are two significant issues involved in land conservation and protection; (1) selection of qualified properties, and (2) preserving the Land Trust's status as a qualified land conservation organization by the IRS and in eyes of the community.

To accomplish these goals, the Land Trust of the Upper Arkansas has developed land protection criteria that will assist the Land Trust in evaluating properties for their conservation values and which will enhance the ability of the Land Trust in protecting these values in perpetuity. U.S. Internal Revenue Code Section 170(h) is the basis of the Land Protection Criteria.

U.S. Internal Revenue Code Section 170(h)(4) stipulates:

- (A) In General.- For the purposes of this subsection, the term "conservation purpose" means -*
- (i) the preservation of land areas for outdoor recreation by, or the education of, the general public,*
 - (ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,*
 - (iii) the preservation of open space (including farmland and forest land) where such preservation is -*
 - (I) for the scenic enjoyment of the general public, or*
 - (II) pursuant to a clearly delineated Federal, State or local government conservation policy, and will yield a significant public benefit,*
 - (iv) the preservation of an historically important land area or a certified historic structure.*

Because the LTUA has been granted appropriate federal tax status, we can offer tax incentives to many people who protect open land. At the same time, we also have a legal and ethical obligation to insure that our land protection programs result in real public benefits, and that the Land Trust can carry out this protection in perpetuity. Each property must be evaluated with great care.

The following are requirements to qualify for consideration of a conservation easement by purchase or donation:

1. Lands that provide a significant public benefit.
2. Landowner accepts and agrees to the Land Trust's level of protection of the conservation values, and the Land Trust's ability to enforce the terms of the conservation easement.

In addition, a site must have value in one or more of the following categories:

1. Lands that are in active ranching or other agricultural or forestry use.
2. Lands that include important wildlife habitat or known wildlife migration routes.
3. Lands with certified historic sites or structures, or which are adjacent to lands of certified historical value, and that are necessary for the protection of the items of historical interest.
4. Lands that are valuable to a community as open space, to protect scenic vistas and scenic enjoyment, and to provide open space buffers against development.
5. Lands that contain significant natural habitat, a property in a relative natural state, or one that contains rare, endangered or threatened species.
6. Lands that share a boundary with, or which are in close proximity to public lands or other public preserves.
7. Wetlands, waterways, and waters of the United States or other lands necessary to provide for the protection of water quality and ongoing traditional water uses.
8. Lands which are adjacent to or in close proximity to private land that is already permanently protected or that is likely to be protected in the foreseeable future.
9. Lands that provide access to public lands for outdoor recreation and/or education values.

AGRICULTURAL LANDS – Additional Points for Consideration:

- Lands are in active agricultural use or an example of history agricultural use.
- Agricultural operation is viable either as a stand alone entity or makes up a significant portion of the family income.
- Property has adequate water rights to support the agricultural operation. If not, can property be restored to native vegetation through contingency measures.
- Lands are located along major highways or county roads.

PHASING AS RELATES TO THE COLORADO STATE TAX CREDIT PROGRAM

Phasing, done correctly, can be an important way to put lands into conservation easements when sufficient money for purchasing the land out right, or purchasing the value of the development rights is not available. Phasing can also be used to allow a landowner the ability to put land into easement in increments as a part of “testing the waters” process, or for estate planning needs.

The following criteria must be met for phasing:

- Each project or phase must qualify under the conservation purposes test of section 170 (h) of the U.S. Internal Revenue Code.
- A written planning agreement between the landowner and LTUA for the properties must be done to avoid undesirable development or development in undesirable locations. Plans must provide an overview with end goals to avoid problems with the addition of unidentified or unanticipated reserved rights.
- Phasing must not lead to long –term monitoring and enforcement problems.
- Phasing must not result in projects that give the appearance of being driven more by money than for conservation purposes.
- An agreement the landowner and LTUA that spells out the endowment and transaction costs must be put into place.
- If possible, phased projects must be consolidated into one ownership or entity.

PROPERTY SIZE

There is no minimum property size required for the Land Trust of the Upper Arkansas to acquire the conservation easement. However, the land in question must be large enough to have a significant impact on the values for which it was selected. Smaller parcels adjacent to larger lands in public ownership and which have significant conservation values will be given more consideration. This applies to lands adjacent to other lands already in conservation or as a part of a large project.

The Board of Directors must make a determination for each site on an individual basis.

Adopted by the Board of Directors of the Land Trust of The Upper Arkansas -----