

FLAGSTAFF COUNTY

BYLAW 01/18

THE CONSERVATION EASEMENT PROGRAM BYLAW

BEING A BYLAW OF FLAGSTAFF COUNTY, PROVINCE OF ALBERTA, IN RELATION TO THE ESTABLISHMENT OF A MUNICIPAL CONSERVATION EASEMENT PROGRAM.

WHEREAS, pursuant to Section 3 of the Municipal Government Act, the purposes of a municipality are to provide services, facilities or other things that, in the opinion of Council, are necessary or desirable for all or a part of the municipality;

AND WHEREAS, pursuant to Sections 28-35 of the Alberta Land Stewardship Act, Flagstaff County is qualified to hold conservation easements for the purposes of environmental, scenic, and/or agricultural land conservation;

AND WHEREAS, Flagstaff County's Municipal Development Plan establishes the value of using conservation easements to protect the County's environmentally and agriculturally significant features;

AND WHEREAS, Flagstaff County deems it desirable to create a program to facilitate the grant of conservation easements by County Landowners to the County;

NOW THEREFORE the Council of Flagstaff County, in the Province of Alberta, duly assembled, enacts as follows:

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Section I – Title and Definitions

1. Title

This Bylaw may be cited as the Conservation Easement Program Bylaw.

2. Definitions

In this Bylaw, unless the context otherwise requires:

- a) "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.
- b) "Conservation Easement" means the agreement entered into by the County and a Landowner pursuant to Sections 28-35 of the *Alberta Land Stewardship Act*.
- c) "Council" means the Council of Flagstaff County.
- d) "County" means Flagstaff County.
- e) "Easement" means a conservation easement granted by a Flagstaff County Landowner to Flagstaff County under this Bylaw.
- f) "Environmentally Significant Areas" means the areas identified and mapped by the County as such in the Municipal Development Plan.
- g) "Environmentally Significant Features" means the natural areas, objects, and processes identified in Section II of this Bylaw.
- h) "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.
- i) "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.
- j) "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.
- k) "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.
- l) "Qualified organization" means an entity eligible to hold conservation easements pursuant to Section 28(c) of the *Alberta Land Stewardship Act* and includes Flagstaff County.
- m) "Restriction" means a limitation of activities on, or uses of, the parcel that is subject to the conservation easement.

Section II - Purposes

1. Alberta Land Stewardship Act Purposes

In accordance with Section 28(1) of the *Alberta Land Stewardship Act*, conservation easements established under this Bylaw will be for one or more 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 agricultural purposes; 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.

2. Flagstaff County Conservation Goals

Further to Section II - 1 above, easements accepted by Flagstaff County shall be acquired to support conservation of the following environmentally sensitive features and/or agriculturally important features:

- Areas of moisture-loving vegetation along the edge of waterbodies (i.e., riparian areas), including stream and river banks, and lake shorelines;
- Coulee systems, ravines, and natural drainage systems;
- Environmentally Significant Areas identified in the Municipal Development Plan;
- Farmyard shelterbelts;
- Groundwater recharge areas;
- Important patches of native vegetation, large trees, tree stands, brush or shrubland;
- Large intact blocks of natural vegetation;
- Local food production capacity;
- Natural flood zones;
- Productive agricultural soils, grazing lands, and tame forage;
- Rivers, lakes, and streams, especially those associated with the Iron Creek or Battle River Watersheds;
- Sensitive or critical wildlife habitat;
- Unfragmented agricultural parcels;
- Wetlands and their associated uplands;
- Wildlife movement areas or corridors;
- Other Environmentally Significant Features as determined by Council; and
- Other agriculturally important lands as determined by Council.

Section III - Application and Approval

1. Expression of interest

- A Landowner interested in granting an Easement to the County shall provide the County with a Statement of Intent.
- A Statement of Intent shall include, but not be limited to:
 - The Landowner's name and contact information;
 - A brief description of the property location;
 - A brief summary of the conservation values an Easement on the property could protect; and
 - A brief summary of the restrictions the Landowner is willing to include in the Easement agreement.
- The Statement of Intent shall be brought to the Agricultural Service Board at its next meeting for consideration.
- If the Agricultural Service Board determines an Easement of the type described in a Statement of Intent could fit the County's purposes, the following will occur:
 - A County staff member will negotiate the potential Easement on the County's behalf; and
 - Potentially affected parties that should, in the Agricultural Service Board's opinion, be notified of the potential agreement, will be identified.

2. Recommendation from the Agricultural Service Board

- Draft Easements shall be brought before the Agricultural Service Board, with an explanation of any significant deviations from the Template Conservation Easement Agreement.
- The Agricultural Service Board will initiate any internal review of the Easement agreement it deems necessary to inform its recommendation.
- After receiving a draft Easement, the Agricultural Service Board shall either:
 - Approve the draft Easement for recommendation to Council; or
 - Identify areas requiring further negotiation.

3. Approval by Council

- A draft Easement recommended by the Agricultural Service Board shall come before Council at their next regular meeting, along with:
 - A report from staff, including any actions taken to notify the affected parties as directed by the Agricultural Service Board; and
 - A draft resolution to accept the grant of the Easement as drafted.
- If by a majority vote Council accepts the resolution, they will direct the Chief Administrative Officer to sign the Easement agreement on behalf of the County.

4. Conditions of approval

- Council shall not approve receiving the grant of an Easement unless the following criteria have been met:

- Council is confident the County has the capacity to negotiate and steward the Easement;
- The purposes of the Easement align with the allowable purposes as laid out in the Alberta Land Stewardship Act;
- The purposes of the Easement align with the conservation goals of the County; and
- Council has received a recommendation from the Agricultural Service Board in favour of the Easement.
- No staff member, Agricultural Service Board member, nor Council member may participate in any deliberation associated with the acquisition of an Easement under this Bylaw where the person, a member of the person's family, or an organization with whom the person is affiliated has a financial interest.

Section IV - Negotiation of the agreement

The County shall appoint a staff member to represent the County in the negotiation of the Easement agreement, and to guide the agreement through the County approval process.

1. Agreement Template

- The County shall maintain a Template Conservation Easement Agreement and make that Template available to any County Landowner interested in granting an Easement.
- Although each potential Easement shall be considered and negotiated based on the unique characteristics of the parcel, the Landowner's needs, and the current state of affairs, each negotiation will nonetheless be based on the Template Conservation Easement Agreement.
- The Template Conservation Easement Agreement shall contain at least the following sections:
 - A context-setting preamble
 - Interpretations and definitions
 - The grant of the conservation easement
 - A statement of the purpose of the Easement
 - Rights reserved by the Landowner
 - Management and administration requirements of the Easement
 - A statement of the Landowner's obligations
 - A statement of the County's obligations
 - Description of indemnifications
 - Costs
 - General matters
- The Template Conservation Easement Agreement shall contain the following attached Schedules:
 - Restrictions and Covenants on Use of Land
 - Property Management Principles
 - Permitted Encumbrances
 - Map of the property and conservation easement area
 - Any Dower Affidavit, Affidavit of Execution, and Conservation Easement Registration Regulation forms as are required
- The County will only consider Easements granted in perpetuity.

2. Required documentation

- Each Easement agreement shall at a minimum be accompanied by:
 - Any such land survey as would be required to clearly articulate the location of the Easement on the parcel;
 - A Baseline Documentation Report that speaks to the current state of the relevant environmentally sensitive features and agriculturally important features, and which follow any guidelines outlined in the Conservation Easement Program Procedures Manual;
 - A postponement of any mortgage or lien on the property such that the Easement would survive the default of said encumbrance; and
 - A dowry affidavit that would ensure the Easement endures despite any dowry proceedings.

3. Restrictions and Covenants

- Although each Easement agreement shall be unique, and drafted by way of a negotiated discussion between the Landowner and the County, each agreement must nonetheless speak to the following land use restrictions and covenants in favour of the parcel's conservation values:
 - Prohibition of subdivision (or further subdivision) of the parcel;
 - Strict limitations on the building of future structures, with sensitivity to the potential need for agricultural outbuildings, and minor residential additions;

- Strict limitations on roads and trails;
- Strict limitations on wildlife disturbance;
- Prohibition of future mining or excavation or similar surface disturbance;
- Covenants on the management of vegetation, including crops, pastures, invasive species, trees, and riparian vegetation;
- Strict limitations on the drainage or diversion of water;
- Prohibitions on the degradation or pollution of water;

Section V - Compensation and Costs

1. Compensation

- As Flagstaff County is a qualified donee under Section 149.1(1) of the Income Tax Act, all Landowners donating an Easement to the County will receive at minimum an official donation receipt equal to the full value of the Easement.
- The financial value of the Easement shall be determined by a qualified appraiser acceptable to both the Landowner and the County;

2. Costs

- Except in extraordinary circumstances, the Landowner will be responsible for the costs associated with the required Easement appraisal, land survey, legal affidavits, and baseline report.
- The Landowner and the County will each be responsible for any legal, accounting, consulting or other related expenses they incur in the process of the negotiation and grant of the Easement.

Section VI - Taxation

- Assessment of parcels subject to an Easement will continue to follow the County's established policies on assessment.
- After the grant of the Easement, the Landowner will continue to be responsible for any municipal taxes, payable at the rates set by County policy.

Section VII - Rights and Responsibilities

- The rights and responsibilities of the Grantor and the Grantee with relation to the Easement will be included in each Easement agreement, but in each case shall include the following:
 - The Landowner shall retain all rights and opportunities to use and/or dispose of the land except as granted or restricted in the Easement agreement;
 - The County shall acquire the right of access for the purposes of monitoring, or to assess or address infractions of the Easement agreement;
 - The Landowner shall receive advance notification if the County plans to exercise its right of access; and
 - The County may assign the Easement to another qualified organization if deemed necessary by Council.

Section VIII - Planning and Development

- Applications for rezoning or changes to land use which may affect land encumbered by a conservation easement held by the County will require:
 - A setback of sufficient size to mitigate any potential negative impacts on the conservation values identified within the Easement.
 - Specific consideration of how any potential, negative impacts on the conservation values identified within the Easement will be mitigated.
- All new Area Structure Plans, Intermunicipal Development Plans, and Intermunicipal Collaboration Frameworks shall contain specific consideration of how lands subject to existing or future conservation easements shall be treated, and how the conservation values for which those conservation easements were established are respected.
- All new Area Structure Plans, Intermunicipal Development Plans, and Intermunicipal Collaboration Frameworks shall list the conservation easement tool as one potential mechanism for accomplishing the County's environmental and agricultural conservation goals.

Section IX - Administration

1. Recordkeeping

- Each Easement agreement shall be assigned a unique identification number for the purposes of tracking the agreement administratively by the County.
- In the case of an Easement affecting multiple parcels, the Easement agreement number shall be recorded with each Roll Number that is subject to an Easement under this Bylaw.

- All documents associated with the Easement agreement shall be filed at the County with the Easement agreement including, but not limited to, the Baseline Documentation Report, all monitoring reports, any applicable management plan, any relevant affidavits, and any infraction reports or enforcement orders.

2. Required Registration

- An Easement granted to the County under this Bylaw shall be registered under the Land Titles Act with the Registrar of Titles and will run with the land in perpetuity.
- If an Easement is modified or is terminated, the County shall register a copy of the document effecting the modification or termination with the Registrar of Titles.

3. Notification

- Notice of the intent to pursue an Easement agreement will be provided to those Landowners immediately adjacent to the subject parcel within thirty (30) days of the Agricultural Service Board decision to do so.
- Notice of the intent to register an Easement shall be provided to the Minister of Infrastructure and Minister of Transportation and any other parties as required by Alberta Regulation 129/2010, the *Conservation Easement Registration Regulation*, or its applicable successor.

4. Promotion and Reporting

- The opportunity to participate in the Flagstaff County Conservation Easement Program will be made known to all County landowners.
- Statistics on the Flagstaff County Conservation Easement Program activity shall be provided to landowners annually, and shall include, but not be limited to, the numbers of applications to the program, agreements under negotiation, agreements complete, and acres conserved, as well as the conservation impact.

Section X - Stewardship

1. Communication

- The County shall identify a County liaison for each Easement agreement who shall be responsible for communication with the Landowner.

2. Monitoring

- All Easements acquired under this Bylaw will be monitored by the County on an annual basis to assess the current status of the parcel, or portion of the parcel, that is subject to the Easement.
- Monitoring of Easements will be based on the Conservation Easement Monitoring Template and guidelines in the Conservation Easement Program Procedures Manual.

3. Enforcement

- The County shall take all necessary action to identify and address infractions of Easement agreements.
- The County's Agricultural Fieldman will represent the County for the purposes of enforcing an Easement agreement.
- If and when the County becomes aware of an apparent infraction of an Easement agreement, the Landowner will be notified immediately of the infraction and of the required corrective action.
- Each Easement agreement will articulate an enforcement hierarchy that begins with on-going communication, escalating to bargaining in good faith, and ultimately to remedies sought through the courts.
- Written records shall be maintained of all infractions and enforcement orders.

4. Amendment

- If either the Landowner or the County wish to amend the Easement agreement, such an application must be brought before the Agricultural Service Board for consideration.
- Amendments to the Easement agreement shall require the written consent of both the County and the Landowner.
- Amendments to an Easement agreement must be approved by Council.
- Amendments to the Easement agreement will only be considered by Council if:
 - There is a recommendation in support of the amendment from the Agricultural Service Board;
 - The County is fully aware of the financial and legal liabilities they would incur as a result of the proposed change;
 - The conservation values which the Easement was granted to protect are not, on the whole, diminished; and

- o The credibility of the Flagstaff County Conservation Easement Program would not be unduly and adversely affected.

Section XI - Enactment

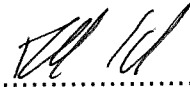
This Bylaw shall come into force and effect when it receives third reading and is duly signed.

Read a first time this 14 day of February, 2018.

Read a second time this 14 day of February, 2018.

Read a third time and finally passed this 14 day of February, 2018.

FLAGSTAFF COUNTY



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S. Amstutz
Chief Administrative Officer