

**From:** [Ron Stewart](#)  
**To:** [LU Land Use Planner](#)  
**Cc:** [Sheehan, Jack](#)  
**Subject:** [EXTERNAL] Kanemoto Estates Conservation Easement Termination  
**Date:** Monday, March 13, 2023 10:14:44 AM

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Please forward my comments below to the Planning Commission. Thanks

March 13, 2023

Members of the Boulder County Planning Commission:

I am writing to support the termination of the Kanemoto Estates Conservation Easement. I feel the termination is consistent with long standing planning objectives shared by Boulder County and the City of Longmont and is in the current best interest of both entities.

In the 1990's I served as a Boulder County Commissioner and one of my areas of emphasis was the development of intergovernmental agreements with communities throughout Boulder County. The goal was to adopt growth management agreements that allowed for urban level growth within the cities and towns adjacent to other urban lands such as the neighborhoods around Kanemoto Estates and for open space areas surrounding the areas of development. These agreements furthered the goals and policies of the Boulder County Comprehensive Plan.

With some communities, including Longmont, we also developed IGAs that called for the Transfer of Development Rights to both direct future urban development and to assist with the preservation of open space. We were successful in developing IGAs with all communities in Boulder County and those IGAs helped shape the landscape of Boulder County today.

The termination of the Kanemoto Estates Conservation Easement is totally consistent with all the agreements that existed with Longmont over the years. Kanemoto Estates is within Longmont's planning area and has been for decades. Termination of the easement will allow Longmont to determine appropriate development for the parcel. Further, termination will help with further open space preservation through the use of Transferable Development Rights. The inclusion of Kanemoto Estates in the Longmont Planning Area in those IGAs and the designation of this property as a Transferable Development Right Receiving Site indicate that, for decades, future development of this area was contemplated by both the County and the City of Longmont, and that the determination of land uses and the eventual site plan were deemed to be the ultimate responsibility of the City.

Furthermore, at least three other conservation easements in Longmont's Clover Basin Neighborhood were terminated under the TDR IGA to allow development adjacent to other urban development in the neighborhood.

I encourage you to support the docket before you for the termination of the Kanemoto Estates Conservation Easement.

Thank you,

Ron Stewart  
Longmont

## Hippely, Hannah

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**Subject:** FW: [EXTERNAL] Kanemoto Estates Opposition

Dear Boulder County Planning Commission and Boulder County Commissioners,

I am **opposed** to the termination of the Kanemoto Estates Conservation Easement (CE) on the following grounds.

- 1) The Kanemoto CE contract only allows termination under conformance with the Boulder County Comprehensive Plan (BCCP). The BCCP is Statutory Law in Boulder County. The Kanemoto CE was established in 1982 utilizing the NUPUD/CE designation (pg Ag-2) which under the BCCP requires Boulder County to Conserve and Preserve (pgs CG-3, AG-4, GE-10, OS-1) the CE indefinitely (pg AG 1.13). After an exhaustive review of the BCCP there are over 35 references requiring Boulder County administrators to preserve agricultural properties especially those protected by the NUPUD/CE designation ( pg PPA-2, 2.03, 2.04). You are all familiar with the BCCP Law. There is no need to list the 35 plus references here.
- 2) The transfer of the 1982 CE into the Longmont CSA/LPA in 1996 was a Legal Violation of the previously established NUPUD/CE. The Kanemoto Conservation easement is protected under the preexisting conditions of the BCCP. These legal protections have not changed since 1978 (pg IN-1) and in fact have been reinforced several times since 1978.
- 3) Contrary to the Jan 3, 2023 statement by Mr. Sheehan of POS there is no reference in Provision A of the Kanemoto contract allowing for termination by MERGER. In fact the Colorado Legislature in 2019 forbids Merger of CEs when a tax consideration has been employed. **HB19-1264, C.R.S. 38-30.5-107**. The BCCP encourages the issuance of a Tax benefit as a method of securing CEs. (pg OS-7) By legal convention a court will likely assume a tax benefit was received *unless proven otherwise*. The Boulder County Commissioners will need to demand a tax document from the original owner, Colorado Dept of Revenue or IRS to prove no tax benefit was gained in the original CE transaction. Otherwise termination by Merger is forbidden.
- 4) The IGA TDR expired in 2016. Using the Kanemoto property as a TDR receiving site is non-enforceable. Failure to renew the TDR for 7years is either negligence or proof that Boulder County had no intention of continuing the TDR process. Which is it?
- 5) The Kanemoto Property is designated by BOTH Boulder County (Docket DC-18-002) and the USDA as Prime Farm Land (BCCP Map 31) which places it in the category of Nationally Significant Agricultural Land. The BCCP disallows the placement of Nationally Significant Agricultural Lands into TDR receiving sites. (PPA 3.04) The BCCP also requires Boulder County administrators to conform to State and National programs preserving agricultural properties. (pg AG-5, AG 1.07)
- 6) Paragraph 3 of the Kanemoto CE contract requires that both Provision A **AND** Provision B must apply. There is no severability clause, so both Provision A **AND** B are required to manipulate any change in the contract. Provision B of the Kanemoto Contract does not provide for any termination of the Conservation Easement. It only allows for a *Transfer* of the Conservation Easement. Conservation Easements can only be *Transferred* to entities authorized by the State of Colorado Department of Conservation as having a recognized Conservation mission. Since the CE

can only be *Transferred* to a qualified entity, the use of the term Terminate in paragraph 3 is understood to only apply when the CE is *impossible* to maintain. This is explained in the IRS code 170(h), the Boulder County POS CE Program Policies and Practices, Restatement (Third) of Trusts (2003), Uniform Law Commission, Uniform Trust Code, Restatement (Third) of Property Servitude. (2000). In these references Judicial review and Cy Pres doctrine are required. If any ambiguity is perceived with interpretation of the *terminate* vs *transfer* contract language, Colorado Contract Law requires the only resolution is by a Jury Trial. It can not be interpreted or clarified by a judge or other governmental administrative body.

7) The POS Policies and Practices has evolved to support the BCCP. There are 33 reference to CE perpetuity in the POS document which also requires Judicial Review concerning any form of CE Termination to prevent conflict with State and National law or: pg 6 #5. *Jeopardize Boulder County's 'qualified holder' status under State of Colorado and IRS regulations or undermine the public's confidence in the County as a holder of **perpetual** conservation easements;*

8) The BCCP has also designated the one mile strip of Airport Rd from Rt 119 north to Pike Road as a *View Protection Corridor*. (Map 33) It is apparent that Boulder County has thoroughly Corrupted the northern 1/2 mile of this VPC. The views have been permanently obstructed by multiple housing developments. This is an undisputed violation of the approximately 15 BCCP provisions requiring the preservation of scenic views along this corridor. (pgs TR-6 TR 8.03, ER-5 ER 1.04 etc.) In addition to this Kanemoto proposal for a high density development with multiple story buildings, Boulder County has continued violating the VPC with the recent approval of the Westview Acres subdivision.

9) The BCCP applies a geologic building constraint (pg GE 2, Map 15) to the Kanemoto property due to *High Soil and Bedrock Swell Potential*. Building approval **requires** evaluation by a professionally registered geologist. (pg NH 2.01.04). Has Boulder County received a report detailing the building constraints required for this property. Is this land suitable for safe housing construction? If no clearance has been received approval to build on this property is forbidden.

10) We are all aware of the absolute devastation caused by the recent Marshal Fire. Rather than continue with a focus on high density development, would it not be wise to reconsider the housing setback requirements? The housing in Colorado is much too congested.

11) Continuing research through the Boulder County Clerk's office has revealed a very significant number of missing Boulder County CEs over the last few decades. Due to the issues mentioned above there will be retroactive research to determine if this great number of terminated CEs were properly managed or if their termination was motivated purely to create a multimillion dollar tax base and to feed multimillion dollar funds into Boulder County POS. The residents of Boulder County are questioning whether this may be a legal Breach of Trust concerning the fiduciary responsibility of Boulder County to protect and preserve the Landed Treasures of Boulder County.

Thank You,  
Norman C. Gee  
1908 Redtop Ct.  
Longmont, CO. 80503

## Hippely, Hannah

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**From:** Lynn Donnelly <lynn\_donnelly@yahoo.com>  
**Sent:** Friday, March 10, 2023 4:36 PM  
**To:** LU Land Use Planner  
**Cc:** Beyond Clovercreek  
**Subject:** [EXTERNAL] KanemotoEstates

To Whom It May Concern:

I fail to understand how the development of this property on Airport Road fulfills Boulder County's Conservation Easement Program Vision of "contributes significantly to maintaining the rural character of Boulder County, providing scenic open space for the public, continuing agricultural uses, protecting important historic and cultural features and protecting relatively natural habitat, such as forest land, wetlands, riparian corridors and other wildlife habitat."

I fail to understand how the development of his property on Airport Road fulfills Boulder County's Conservation Easement Program Goals of

- "Protecting natural resources, agricultural lands and scenic open spaces that meet Comp Plan goals and POS goals:
- Managing uses in designated areas to protect open space values for public benefit and
- Reducing density and development where additional development is incompatible with Comp Plan and POS goals."

I would appreciate it if you could explain this at the public hearing if you can.

I would also like to know if taxpayers paid for this easement & if so how you intend to reimburse taxpayers if you cancel the easement?

If the land was donated & received tax credits how is that adjusted now if you cancel the prior easement agreement?

Why have any conservation easements anywhere in the county if they can be overridden at any time?

Why should taxpayers continue to buy open space when the county doesn't conserve conservation areas it already has in its possession?

A disappointed & and disenchanting Boulder County taxpayer,  
Lynn Donnelly

**From:** [Jackie Evensen](#)  
**To:** [Hippely, Hannah](#)  
**Cc:** [Jack Bestall](#)  
**Subject:** [EXTERNAL] Annexation hearing for Bestall Collaborative Wednesday  
**Date:** Monday, March 13, 2023 12:06:13 PM

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Hi Hannah,  
Here is a letter to support the annexation.

12:03 PM (0 minutes ago)



Jackie Evensen <[jackie@jackieevensen.com](mailto:jackie@jackieevensen.com)>

to hippely, Jack



Good afternoon,

I am writing this letter in support of the Kanemoto Estates annexation on Airport Road. As a West Longmont resident, local Realtor in town and volunteer with the LDDA on specific events, I welcome new ideas and strategies to make life better for the residents of Longmont.

Jack Bestall's project upon its completion would add many things to a section of the city that currently has little affordable for sale units, rental units and a childcare center. Annexation would move the project forward and work toward meeting the Envision Longmont's plan of 20% attainable housing, a reduced carbon footprint and early childhood education. A neighborhood with a built in childcare option for residents would be fantastic for young families trying to put down roots in Longmont. The incorporation of walking paths integrating into the Longmont trail system is also a great addition and benefit.

For these reasons, I would urge Council to support this plan and use all means including a Master Development Agreement that could capture all of the benefits and expectations to move forward.

Bestall Collaborative is a great addition to our city and I look forward to seeing this and other projects come to fruition.

Sincerely,  
Jackie Lagasse Evensen  
Realtor  
Live West Realty

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**Jackie Lagasse-  
Evensen**  
REALTOR® | SRES



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*"My priorities are simple.  
They're yours."*