



CITY OF MOOSE JAW

The Conservation Easement Bylaw

Bylaw No. 5113

Date of Passage August 28, 2000
(effective date August 28, 2000)

Disclaimer:

This information has been provided solely for research convenience. Official bylaws are available at the Office of the City Clerk and must be consulted for purposes of interpretation and application of the law.

BYLAW NO. 5113

**A BYLAW OF THE CITY OF MOOSE JAW TO
AUTHORIZE THE CITY OF MOOSE JAW TO
GRANT A CONSERVATION EASEMENT
WITHIN THE MEANING OF
THE CONSERVATION EASEMENTS ACT**

WHEREAS the Council of the City of Moose Jaw has been presented with a petition pursuant to section 88 of *The Urban Municipality Act, 1984*:

AND WHEREAS the prayer of the said petition provides that:

“THAT whereas the City of Moose Jaw is the owner of Land legally described as “The whole of Section 20, Township 16, Range 26, West of the Second Meridian, Saskatchewan, 640 acres, except: Firstly: all that portion which lies to the South and West of a surveyed line shown on Plan 70MJ03423, Secondly: out of the North East quarter, 10.3 acres, Parcel A and 0.26 acres, Parcel B, taken for the Roadway on Plan 67MJ12400, Thirdly: all that portion of the North East and North West quarters of Section 20 shown as Parcel A on Plan 78MJ07626, Mines and Minerals excepted by 98MJ12276 as to the East Half, Minerals I the Crown as to the West Half” and which land is hereafter referred to as the “Wild Animal Park Land”.”

AND WHEREAS the petition further requests that the Council for the City of Moose Jaw, in the Province of Saskatchewan, introduce a bylaw and thereafter take the necessary steps to submit the bylaw to the electorate, which bylaw shall provide as follows:

1. That the City of Moose Jaw grant, in perpetuity, a Conservation Easement Agreement, as defined in *The Conservation Easements Act*, on the Wild Animal Park Lands;
2. That the Conservation Easement Agreement will protect, enhance or restore the habitat that is critical to the survival of rare, threatened or endangered plants or animal species (ie. the Burrowing Owl and the Black Tailed Prairie Dog), and will retain and protect significant plants, animals, historical, archaeological or geological features of the land;
3. That the Conservation Easement Agreement will not allow for residential, industrial or golf course development.

AND WHEREAS section 88 of *The Urban Municipality Act, 1984* provides that the Council shall introduce a bylaw in accordance with the request of the petitioners;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CITY OF MOOSE JAW ENACTS AS FOLLOWS:

Title

1. This Bylaw may be referred to as "The Conservation Easement Bylaw".

Definitions

2. In this Bylaw, in any supplemental or amending Bylaws, and in any schedules attached hereto, the following words and terms shall have the following meanings unless there is something in the subject matter or context inconsistent herewith:

- (a) the term "**City Clerk**" means the person appointed as the City Clerk for the City of Moose Jaw or his/her duly authorized representative or designate;
- (b) the term "**Conservation Easement Agreement**" means a conservation easement within the meaning of section 3 of *The Conservation Easements Act*;
- (c) the term "**Department**" means the Saskatchewan Department of Environment and Resource Management or the department over which the Minister responsible for *The Conservation Easements Act* presides, as the case may be;
- (d) the term "**Notice of Conservation Easement**" means a conservation easement notice within the meaning of section 7 of *The Conservation Easements Act*;
- (e) the term "**Notice of Intent**" means a notice of intent within the meaning of section 8 of *The Conservation Easements Act*.

Execution of conservation easement agreement

3. The Mayor and City Clerk are authorized to execute on behalf of the Municipal Corporation of the City of Moose Jaw, a Conservation Easement Agreement substantially in the form of the document appended hereto and identified as Schedule "A".

Compliance with The Conservation Easements Act

4. The City Clerk is hereby authorized, on behalf of the Municipal Corporation of the City of Moose Jaw, to:

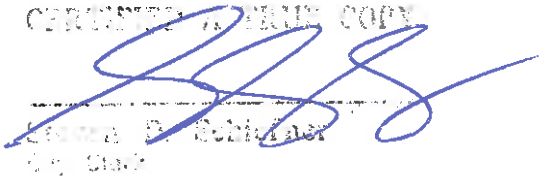
- (a) deliver an executed copy of the Conservation Easement Agreement to the Department;
- (b) pay the fees prescribed in the regulations to the Department;
- (c) provide the Department with the Notice of Conservation Easement;
- (d) serve a Notice of Intent on all persons with interests appearing on the certificate of title respecting the land against which the Notice of Conservation Easement is proposed to be registered;
- (e) submit for registration the Notice of Conservation Easement in the appropriate land titles office;
- (f) take such other measures as may be necessarily incidental to comply with the provisions of The Conservation Easements Act.

Coming into force

5. This Bylaw comes into force and effect upon passage.

PASSED AND ENACTED ON THE 28TH DAY OF AUGUST, 2000.

CONFIRMED TRUE COPY


Steven D. Schiefner
City Clerk

(Sgd.) "Ray Boughen"
MAYOR

Seal

Done July 19/01

(Sgd.) "Steven D. Schiefner"
CITY CLERK

READ a first time the 28th day of August, A.D. 2000

READ a second time the 28th day of August, A.D. 2000

READ a third time the 28th day of August, A.D. 2000

THIS AGREEMENT MADE THIS 2nd day of May, 2001.

BETWEEN:

**THE MUNICIPAL CORPORATION OF
THE CITY OF MOOSE JAW**

**(hereinafter referred to as the "Grantor")
OF THE FIRST PART**

AND:

**THE MUNICIPAL CORPORATION OF
THE CITY OF MOOSE JAW**

**(hereinafter referred to as the "Holder")
OF THE SECOND PART**

CONSERVATION EASEMENT AGREEMENT

WHEREAS:

1. The Grantor is the registered owner of an estate in fee simple of land in the Province of Saskatchewan in respect of which the Grantor wishes to grant a Conservation Easement pursuant to the provisions of *The Conservation Easements Act*;
2. The Holder is a municipal corporation and, as such, is authorized to hold a Conservation Easement within the meaning of *The Conservation Easements Act*;
3. The Grantor and the Holder wish to enter into a Conservation Easement Agreement within the meaning of *The Conservation Easements Act* that:
 - (a) grants rights and privileges to the Holder respecting certain lands that relates to the purpose for which the Conservation Easement is granted; and
 - (b) imposes obligations, either positive or negative, on the Grantor or Holder respecting certain land that relate to the purpose for which the Conservation Easement is granted.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND SCHEDULES

1.1 In this Agreement, in any supplemental or amending agreements, and in any schedules attached hereto the following words and terms shall have the following meaning unless there is something in the subject matter or context inconsistent therewith:

- (a) the term "Agreement" means this Conservation Easement agreement, as same may be amended from time to time;
- (b) the term "City Solicitor" means the person appointed as the City Clerk/Solicitor for the City of Moose Jaw or his/her duly authorized representative or designate;
- (c) the term "Conservation Easement" means a conservation easement within the meaning of *The Conservation Easement Act*;
- (c) the term "Native Vegetation Cover" means any area covered by native plant species, including any area of land not previously broken;
- (d) the term "Wild Animal Park Lands" means those certain lands comprising, approximately, 229.76 hectares (567.66 acres) situated within the City of Moose Jaw and legally described as follows:

"Parcel A:

Firstly: All those portions of the North East and North West Quarters of Section 17, Township 16, Range 26, West of the Second Meridian, Saskatchewan, which lie to the North of a surveyed line as shown on Plan 70MJ03423

Undivided one half interest in mines and minerals excepted by DM 6148 as to the North East Quarter

Undivided one half interest in Mines and Minerals (except coal) excepted by DN 4940 as to the North West Quarter

Remaining mines and minerals excepted by 76MJ01752

Secondly: All those portions of Section 20, which lie to the South and West of Surveyed line on Plan 70MJ03423,

Except: out of the NW Quarter 20, 0.807 ha and out of SW Quarter 20, 0.810 ha for Roadway on Plan 85MJ11613

Mines and Minerals Excepted by 98MJ12276 as to NE and SE quarters

Minerals in the Crown as to NW and SW quarters; and

Parcel B:

"The whole of Section 20, Township 16, Range 26, West of the Second Meridian, Saskatchewan, 640 acres, except:

Firstly: all that portion which lies to the South and West of a surveyed line shown on Plan 70MJ03423,

Secondly: out of the North East quarter, 10.3 acres, Parcel A and 0.26 acres, Parcel B, taken for the Roadway on Plan 67MJ12400,

Thirdly: all that portion of the North East and North West quarters of Section 20 shown as Parcel A on Plan 78MJ07626.

Mines and Minerals excepted by 98MJ12276 as to the East Half.

Minerals in the Crown as to the West Half."

2.0 GRANT OF EASEMENT

- 2.1 Subject to the terms and conditions of this agreement and the provisions of *The Conservation Easements Act*, the Grantor grants to the Holder, by way of this agreement, a Conservation Easement over, under on or through the Wild Animal Park Lands.
- 2.2 Subject to the terms of this Agreement and the provisions of *The Conservation Easement Act*, the Conservation Easement restrictions apply to the whole of the Wild Animal Park Lands.
- 2.3 Subject to the provisions of this Agreement and *The Conservation Easements Act*, this Conservation Easement runs with the Land and is enforceable by the Holder against the Grantor or any subsequent owner of the Wild Animal Park Lands or any portion of them.

3.0 PURPOSE OF THIS CONSERVATION EASEMENT AGREEMENT

- 3.1 The purpose of this Agreement is to:
- (a) ensure that the present natural habitat and foraging areas on the Wild Animal Park Lands will be preserved in perpetuity and to prevent any use or activity on the said lands that would significantly impair, alter, disturb or interfere with the natural ecosystem and the wildlife habitat; and
 - (b) protect, enhance or restore any habitat on the Wild Animal Park Lands that is critical to the survival of rare, threatened or endangered plants or animal species (ie. the Burrowing Owl and the Black Tailed Prairie Dog); and
 - (c) retain and protect significant plant, animal, historical, archaeological or geological features of the Wild Animal Park Lands.
- 3.2 Except as may be specifically provided for pursuant to the terms of this Agreement and in accordance with the provisions of *The Conservation Easement Act*, nothing contained herein shall otherwise limit or affect the Grantor's rights accruing from ownership of the Wild Animal Park Lands, including the right to engage in or permit, or invite others to engage in all uses of the Wild Animal Park Lands.

4.0 TERM OF THIS AGREEMENT

4.1 Subject to Article 14.0, the term of this Agreement shall commence on the effective date and continue thereafter in perpetuity within the meaning of The Conservation Easement Act.

5.0 MAINTENANCE OF WILD ANIMAL PARK LANDS

5.1 The Grantor shall be responsible for the general maintenance, upkeep and repair of the Wild Animal Park Lands.

6.0 PROHIBITED ACTIVITIES, PRACTICES AND USES

6.1 The following activities, practices and uses are inconsistent with the purposes of this Conservation Easement and the Grantor undertakes and agrees to not conduct, pursue or permit the following activities on the Wild Animal Park Lands:

- (a) The Grantor shall not construct, pursue, or permit any residential, industrial or golf course development on the Wild Animal Park Lands.
- (b) The Grantor shall not cultivate or disturb the permanent grass and natural cover on any portion of the Wild Animal Park Lands containing Native Vegetation Cover.
- (c) The Grantor shall not construct, pursue, permit, or suffer the construction of fencing which, in the opinion of the Holder, would unduly restrict wildlife movement, save and except the construction of such fencing to protect haystacks or similar stacks of feed.
- (d) The Grantor shall not conduct, pursue, permit or suffer any uses or activities, save and except such agricultural activity herein permitted, that would pollute, degrade, or cause unreasonable or detrimental effects on riparian habitat, natural water courses, wetlands or bodies of water, whether surface or subsurface.

- (e) The Grantor shall not conduct, pursue, permit or suffer the use of chemical herbicides, pesticides, or fertilizers save and except where necessary for reasonable ranching activity, including the use of herbicides to control weeds cover on any portion of the Wild Animal Park Lands containing Native Vegetation Cover and then only in the amounts and with that frequency of application which constitutes the minimum necessary to accomplish weed containment or control.
- (f) The Grantor shall not conduct, pursue, permit or suffer any uses or activities that would alter, harm, destroy or remove any prehistoric artifacts including bones, stone circles, or any other archaeological or paleontological features or resources, except as may be required by law.
- (g) The Grantor shall not conduct, pursue, or permit the introduction of non-native plants species on any portion of the Wild Animal Park Lands containing Native Vegetation Cover.
- (h) The Grantor shall not conduct, pursue or permit the introduction of any non-native animal species, save and except the introduction of cattle, pigs, sheep, poultry, bison, and/ or horses.
- (i) The Grantor shall not conduct, pursue, permit or suffer the hunting, killing, trapping or collection of any birds of prey, or federally or provincially designated vulnerable, threatened or endangered species of plants or animals.

7.0 PERMITTED ACTIVITIES, PRACTICES AND USES

7.1 Without limiting the generality of Article 3.2, the Grantor may conduct the following activities, practices and uses on the Wild Animal Park Lands:

- (a) The Grantor shall be entitled to pasture livestock following accepted management practices on the said lands.
- (b) The Grantor shall be entitled to conduct haying of vegetation following accepted management practices on the said lands.
- (c) The Grantor shall be entitled to permit access to the Wild Animal Park Lands by designated groups or individuals, with prior permission of the owner, or through the use of signage which would outline the conditions of access for such groups or individuals.

8.0 RIGHTS AND PRIVILEGES OF THE HOLDER

8.1 Subject to Article 8.2, the Grantor hereby authorizes the Holder and its servants, agents, contractors, workmen and representatives and their respective vehicles and equipment to have access to the Wild Animal Park Lands and to enter on the said lands at any time and from time to time after execution of this Agreement for the sole and limited purpose of:

- (a) enhancing or restoring any habitat on the Wild Animal Park Lands that is critical to the survival of rare, threatened or endangered plants or animal species (ie. the Burrowing Owl and the Black Tailed Prairie Dog); and
- (b) retaining or protecting significant plant, animal, historical, archaeological or geological features of the Wild Animal Park Lands.
- (c) undertaking observations or ecological studies of natural resources protected by this Agreement;
- (d) the right to place signs on the Wild Animal Park Lands which identify the lands as being protected by this Agreement. The number and location of such signs are subject to the Grantor's prior approval.

8.2 In exercising the rights set forth in article 8.1, the Holder shall:

- (a) ensure that all works are undertaken in a manner that will not unreasonably interfere with the use of the Wild Animal Park Lands by the Grantor;
- (b) provide the Grantor with a minimum of seven (7) clear days notice prior to entry upon the Wild Animal Park Lands except in the event entry is necessary to prevent immediate damage to or immediate destruction of the wildlife habitat.

8.3 The Holder shall bear all costs of administering the provisions of this Agreement and any work done or related to the privileges and rights described in clause 8.1.

9.0 ASSESSMENTS AND TAXES

9.1 The parties acknowledge that the Wild Animal Park Lands are currently exempt from taxation as municipal property. However, the parties agree that in the event the Wild Animal Park Lands become subject to taxation, the Holder shall pay all municipal taxes, rates, charges and assessments levied on or assessed against the Wild Animal Park Lands.

10.0 DONATION OF CONSERVATION EASEMENT

- 10.1 The Grantor grants and gives this Conservation Easement to the Holder freely, voluntarily, without any consideration or conditions, under seal, by way of gift.
- 10.2 This Conservation Easement Agreement does not constitute a *Certificate for Donation of Ecologically Sensitive Lands* within the meaning of the *Income Tax Act (Canada)* and the Holder does not warrant, represent or hold out to the Grantor that the Wild Animal Park Lands are “Ecologically Sensitive” nor the availability of an income tax deduction for the purposes of the *Income Tax Act (Canada)*.

11.0 BREACH

- 11.1 In the event the Grantor conducts, pursues or permits any prohibited activity, practice or use as set forth in Article 6.1, the Holder may, but is not obligated to do so, notify the Grantor in writing of such actions. Upon receipt of such notice the Grantor agrees to immediately cease such actions.
- 11.2 The obligations in this Conservation Easement, whether positive or negative, may be enforced by an action in the Court of Queen’s Bench by the Holder, the Grantor, a subsequent owner, or in the court’s discretion, anyone else who is eligible to be a holder within the meaning of *The Conservation Easement Act* (hereinafter referred to as the “Enforcer”).
- 11.3 In enforcing this Conservation Easement, the Enforcer shall be entitled to apply for and obtain any relief or remedy set forth in *The Conservation Easements Act*, or any and all legal and equitable remedies.
- 11.4 The Enforcer may, without reasons, determine not to enforce any or all of the provisions of this Agreement or in *The Conservation Easements Act*, without liability. Any delay in enforcement shall not be construed as a waiver on the part of the Enforcer nor shall it constitute a waiver of or abrogate from any of the provisions of this Agreement.

11.5 Without derogating from any other rights of the Enforcer, in addition to any other rights, if the Enforcer reasonably believes that default will occur the Enforcer may apply for injunctive relief to prohibit or prevent default or the continuance of default.

11.6 The rights of the Enforcer under this Agreement and The Conservation Easements Act are continuing and may be exercised from time to time, and as many times as the circumstances may require.

12.0 SUBSEQUENT SALE OF WILD ANIMAL PARK LANDS

12.1 Subject to the provisions of The Conservation Easements Act, nothing in this Agreement precludes the Grantor from selling, conveying or relinquishing its interest in the Wild Animal Park Lands or any portion of such lands. The Grantor agrees to notify the Holder in writing of any disposition of interest in the said lands by sending written notice to the Holder. The Grantor further agrees to provide a copy of this Agreement to any subsequent purchaser of such lands.

12.2 The parties acknowledge and agree that this Conservation Easement runs with the Land and is enforceable by the Holder against any subsequent owner of the Wild Animal Park Lands or any portion of them.

13.0 ASSIGNMENT OF THIS AGREEMENT

13.1 This Agreement, and any of its rights or obligations, may be assigned by the Holder, subject to prior consultation with the Grantor, to anyone eligible to be a holder within the meaning of The Conservation Easements Act.

13.2 The Holder will make every reasonable effort to ensure that the party to whom it assigns this Agreement has the same goals of protection, enhancement or restoration of the natural ecosystem and wildlife habitat of the Land.

14.0 TERMINATION OF THIS AGREEMENT

14.1 This Agreement may be terminated by:

- (a) a written agreement between the Holder and the Grantor, or the Holder and a subsequent owner of the Land, as the case may be;
- (b) by court order pursuant to section 10(1)(b) of The Conservation Easements Act.

15.0 INDEMNIFICATION OF THE PARTIES

15.1 The Grantor shall indemnify and save harmless the Holder and all officers, employees, servants, agents and representatives of the Holder, whether past or present, against all claims, liabilities, losses, damages, costs, expenses and causes of action, whatsoever arising from the negligent, willful or other wrongful act or omission of the Grantor or any of the Grantor's employees, servants, contractors, agents, directors or officers, or arising from or in any way connected with the Wild Animal Park Lands.

15.2 The Holder shall indemnify and save harmless the Grantor from and against any and all claims, liabilities, losses, damages, costs, expenses and causes of action whatsoever arising from the negligent, willful or other wrongful act or omission of the Holder or any of the Holder's officers, employees, servants, agents and representatives arising from or in any way connected with the exercise of the Holder's rights and privileges granted pursuant to this Agreement.

16. INTERPRETATION

16.1 This Agreement shall for all purposes be construed and interpreted according to the laws of the Province of Saskatchewan and any cause of action arising under or by virtue of this Agreement shall be deemed to have arisen at the City of Moose Jaw in the Province of Saskatchewan and any such cause of action shall be tried in the Judicial Centre in which the City of Moose Jaw is situated.

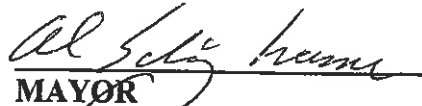
16.2 In this Agreement words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter (in the case of a corporation) and vice versa, all as the context and the parties hereto may require.

17. GENERAL PROVISIONS

- 17.1 It is understood and agreed by the parties hereto that this Agreement shall constitute the entire agreement between the parties.
- 17.2 No amendment to this Agreement shall be binding upon either party unless in writing and signed by the parties.
- 17.3 This Agreement and the provision provided for herein shall enure to the benefit of, apply to, and be binding upon the parties hereto and their successors, administrators, executors and permitted assigns, and each of them.
- 17.4 Each of the parties hereto shall bear all expense incurred by it in connection with this Agreement.

IN WITNESS WHEREOF the Grantor has hereunto affixed its corporate seal as attested to by the hands of its duly authorized officers on the day and year first above written.

**THE MUNICIPAL CORPORATION OF
THE CITY OF MOOSE JAW**


MAYOR


CITY CLERK

IN WITNESS WHEREOF the **Holder** has hereunto affixed its corporate seal as attested to by the hands of its duly authorized officers on the day and year first above written.

**THE MUNICIPAL CORPORATION OF
THE CITY OF MOOSE JAW**

Al Seligson

MAYOR

[Signature]

CITY CLERK

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