

**COMMUNITY TRAILS MEDIATION GUIDE, VOLUME ONE:  
"TOWARD A POLICY ON LOCAL TRAILS "  
GOLD HILL EDITION**



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## INTRODUCTION

### Overview

The *Community Trails Mediation Guide* is intended to support deliberation during any trails mediation process. This *Guide* supports the information needs of stakeholders with divergent yet converging interests, and is intended to support a coming together to meet both individual and community interests. In the most congenial sense, the purpose of the *Trails Mediation Guide* is two fold:

- Raise community awareness and action for local wildland trails; and,
- Support dispute prevention and resolution for landowners with trails.

In order to aid both in understand of and prevention of trail disputes, the *Trails Mediation Guide* raises awareness about the role of local historic wildland trails in community life and in ecosystem stewardship. In order to resolve disputes, the *Guide* provides a reference for landowners in addressing their own concerns and interests.

Trail disputes are complex problems. Trails emerge as travel corridors within intricate and dynamic, social and ecological systems. In this *Guide*, a particular type of trail is elucidated. Local, wildland trails are those that are locally used (rather than general public access trails) and have segments that traverse both public and private wildlands. Local trail systems can be strategically useful because control of a segment can impact the type and volume of use on an entire trail.

As discovered through an attempted trail resolution process, trail disputes rest in tensions that originate between notions of common pool resources and private property rights. The implications of unresolved trail disputes in the study area and beyond can create lingering effects. These effects may weaken the likelihood of adoption of community-based ecosystem stewardship by non-resource-dependent communities. Without access to a landscape, the emergence of attachment to place, a precursor of stewardship, is jeopardized.

Secondly, these effects may weaken federal agency capacity to manage wildlands. As it is, agency capacity to collaborate effectively is hampered by political forces that are not necessarily representative of the interests of citizens. National level economic forces that seem to hold sway over the appointment of administrators may not have the same level of control over decision-making at the local level.

Thirdly, and of critical social and ecological significance, the amenity and stewardship value of local access trails and their supply will likely deteriorate and dwindle for those that seek to reside in historic or newly forming clustered communities in rural settings. These are the individuals that do currently contribute, and could contribute significantly more under sound agency-collaborative leadership, to the restoration and preservation of wildlands. As a result of under-funded and politically destabilized agency capacity to steward, combined with a possible collapse in local attachment to place, a ripple effect could occur of lost opportunities to protect and restore our remaining viable ecosystems.

### Use of the *Community Trails Mediation Guide*

This *Trails Mediation Guide* resulted from participatory action research during a dispute resolution in Gold Hill, a small mountain community in the Front Range of Colorado. Within the *Trails Mediation Guide*, specific reference is made to the Gold Hill case to illustrate a strategy or a recommendation. Site-specific details should readily translate into general concepts that can benefit groups involved in planning and dispute resolution in other states.

The *Community Trails Mediation Guide* might help to maintain or restore harmonious community relations in shared use of wilderness. The *Guide* may be useful for mediators, community facilitators, land trusts, county open space and land use department, State trail programs and wildlife programs, Forest Service administrators and planners, and for staff of the Bureau of Land Management and the National Park Service.

This is the Gold Hill edition. A subsequent edition will serve the needs of the general public. The *Guide* may be useful in resolving trail use issues in other wildland settings and even for individuals residing in suburban or urban settings.

The *Trails Mediation Guide* is divided into three stand-alone volumes. That is each volume serves a particular purpose and can be understood without the need to read the other volumes. This volume, the first volume, provides recommendations for an informal policy on historic wildland trails used by the community of Gold Hill in Colorado. The second volume is a technical reference for preparing a local policy and for possible future trail dispute resolution efforts.

The third volume is also case-specific, but can be applied to understand ecosystem stewardship in other communities than Gold Hill. The third volume supports common interests in a landscape management. Volume Three details the historical and ecological attributes of Gold Hill as a foundation for encouraging ecosystem stewardship of threatened, yet restorable parts of an ecoregion, in this case, the Southern Rockies Ecoregion. Volume Three also presents management policy and guidelines for general access trails as an potentially adaptable model for community stewardship of local access trails.

### **Origins of the *Trails Mediation Guide* and the Case Example of Gold Hill**

This volume presents the case of a trail closure in the community of Gold Hill. Community members attempted to mediate the dispute, but the trail remains closed. The finding of a participatory action research project, intended to support the mediation process, provides the basis of the material found in the *Trail Mediation Guide*. Potential future impacts on the trail system of Gold Hill are also presented to further explain the need for a sound local policy, and to serve as a useful model in similar instances elsewhere.

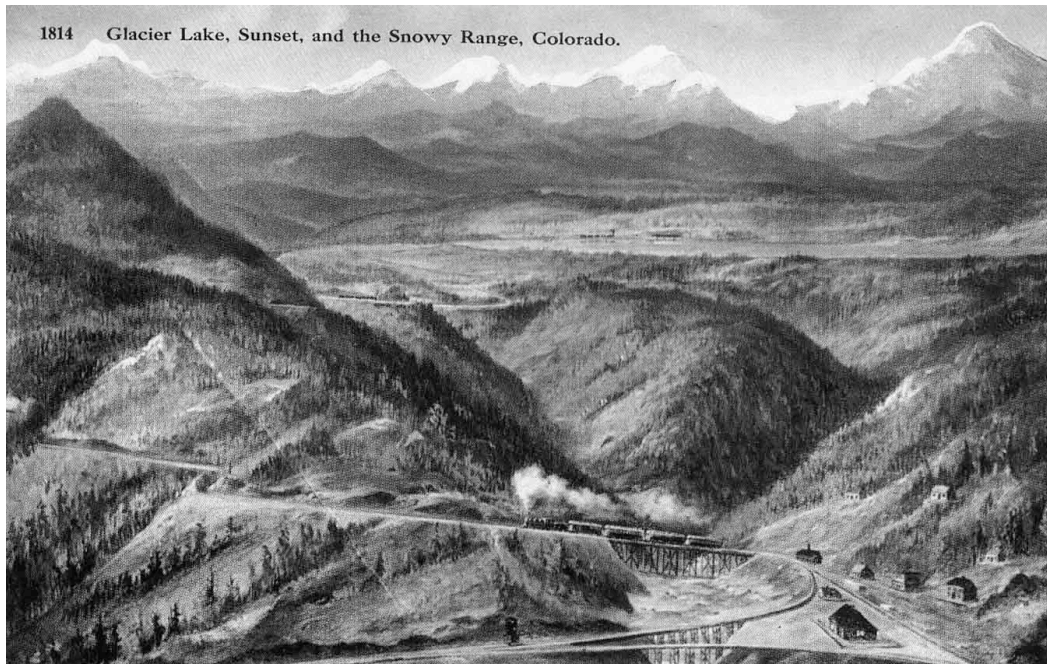
The content of this *Guide* is the result of research and practice for a Master of Science in Resource Policy and Behavior from the School of Natural Resources and Environment at the University of Michigan, Ann Arbor. The thesis evaluates the use of participatory action research in resolving environmental disputes. Its title is:

Attempted Mediation of a Local, Historic, Wildland Trails Dispute:  
Searching for Incentives and Options with Participatory Action Research

Environmental dispute resolution is a critical component of ecosystem preservation in that it administratively and procedurally recognizes the essential value of a communication link to local knowledge, expertise, and volunteer-ship. This thesis asserts that participatory action research (PAR) may enhance conventional environmental dispute-resolution practices because PAR offers the opportunity for locals to empower themselves with knowledge, and pursue stable social outcomes despite disparity between stakeholders.

Gold Hill is an historic Colorado Front Range community and the site of the first gold strike in the Nebraska Territory in 1859. Trails meander to and from the townsite into the montane forest landscape. Specifics regarding geography, climate and demographics can be found online at <http://www.city-data.com/city/Gold-Hill-Colorado.html>. Photos of Gold Hill may also be viewed at this site.

Locals and residents of the Boulder County Plains seek areas like Gold Hill for the restorative and athletic experience it affords. Gold Hill's trails are used for horseback riding, mountain biking, cross-country skiing, hiking, and occasionally for dirt bikes or ATVs. The more well known general public access trails, such as the public access Switzerland trail (see postcard below), allow for motorized vehicular use despite drawbacks to that unregulated use. The postcard illustrates the location of the North Trail dispute.



*The Snowy Range* - Postcard from the Pettem Collection.  
View of Glacier Lake Up Pennsylvania Gulch above Sunset;  
Just below area in which seven moose were sighted in February 2004.

Mountain bike and ORV use have recently surged in use across the landscape of Gold Hill. This has led to an increase in the public-to-local ratio of users on both private and public local trails. Mountain bikes and off road vehicles can impede the quality of life for other trail users and adjacent property owners. In Gold Hill, some local trails have been closed.

In late 2002, Gold Hill trail disputes existed on the North Trail, Rim Road and Emerson Gulch, and the East Trails on Horsfal and up towards Big Horn. Disputes on the South Trail towards Rocky Point and the two prongs of the Moccasin Trail into the Subdivision had been resolved. These trails were included in Trails Committee research in order to provide insight into trail usage patterns that resolved dispute and continued to work in ways that prevented dispute.

In the case of Gold Hill, a committee was formed to explore the local trails issue and to de-escalate a set of disputes that arose in 2002. The mission of the Gold Hill Trails Committee was “building relationships around trails.” The initial goals of the Committee were to:

- Depolarize existing trails disputes by redirecting energy constructively;
- Prepare the ground for working out individual agreements;
- Respond to trail concerns by conducting participatory action research;
- Share research with the Gold Hill community and others;
- Arrive at solutions among locals, face-to-face and in civil dialogue; and
- Construct the groundwork necessary to avoid future trail disputes.

Environmental dispute resolution is an effective approach to resolving complex disputes. There are sound reasons for cooperating rather than competing. Anyone's position is obviously related to what they perceive as their own rights and best interests, although the framework of understanding upon which this position is based may be erroneous. At the Trails Mediation Workshop, trail use advocates discussed the meaning of local, while those in opposition to common access to the North Trail did not. Table Two-A and Table Two B present the statements of local in opposition to trail access. Approaching a dispute with the hopes of resolving it can be mutually beneficial ways and especially appealing with greater understanding.

Mediation is a voluntary process in which those involved in a dispute jointly explore and reconcile their differences. The mediator has no authority to impose a settlement (Cormick, 1980, 27).

As locals explored the potential impacts that landowners might experience, a consistent theme emerged. Locals felt that use by individuals that they didn't know impacted their own experience on a trail and likely impacted landowners. By somehow creating a loose boundary delineating those within the community and those outside helped to restore a sense of balance to local use. Those outside the boundary could be integrated by living in the community or simply by coming to know locals well. In the case of the North Trail dispute, sharing common pool resources like trail systems relies on community integrity within the confines of a localized boundary of relationships. In this way, everyone shares a common perception about the role of trails for individuals and for community life.

In Gold Hill, a process of resolving disputes was implemented that initially relied on a Trails Mediation Workshop to gather local insights on trails. Much of that knowledge is found now in the *Trails Mediation Guide*. The Workshop was held in March of 2003. The workshop served to expand awareness about mutual interests.

An improved understanding of mutual interests can guide people to the most culturally, economically and ecologically sustainable outcome. Such a participatory outcome is likely to be fair, wise, credible and legitimate. Mutual interests turned into strategically effective options can "expand the pie" for landowners with trails, and for the community as a whole. Such agreements have the potential to leave everyone better off and no one worse off. This is the ideal and guiding principle of mediation. A framework for understanding the social and ecological aspects of wildland trails is provided in Appendix One-A.

## **UNDERSTANDING LOCAL TRAIL SYSTEMS**

### **Background Research**

The theories in this section on local trails distinguish a type of trail that has not received previous scholarly attention. In fact, in conducting a literature review on trails, very little research has been completed on ecological benefits or impacts, on the role of trails in human communities (either from an anthropological or a sociological perspective), or on of course, the local access trails described in this *Guide*. The theoretical framework provided in this section carves out a domain of understanding that merits further inquiry. The conclusions drawn in this exploration of trails from the ecological, social and demand side management perspective are independently drawn from observation in the case of Gold Hill, Colorado.

A local wildland trail is one that often traverses both public and private wildland and is accessed freely by a local community for non-motorized use, for connection to nature and for social visits. “Historic” implies use as found in the historic record and as reflected in the memories of older and previous residents. Wildlands are landscapes that reveal an abundance of ecological processes significantly surpassing indications of human activity. Wildlands satisfy the longing that urban or rural dwellers carry for experiences in nature. Such connection to nature requires a landscape scale sufficient to offer the experience of solitude.

The discussion delineates an area of inquiry that has not yet been triangulated by peer review and further research. This is emergent, grounded theory. The inferences are drawn from exploratory analysis of direct primary observation. These observations are presented for discussion and further exploration. The research is of an ethnographic, but highly generalizable quality. Trails are a ubiquitous phenomenon associated with mobile life forms. A fascinating book entitled *The Phenomenology of Landscape* (Tilley, 1994) does provide a rich resource on the archetypal attributes of trails.

The landscape is continually being encultured, bringing things into meaning as part of a symbolic process by which human consciousness makes the physical reality of the natural environment into an intelligible and socialized form....Histories, discourses, and ideologies are created and re-created through reference to the special affinity people have with an area of land, its topography, waters, rocks, locales, paths and boundaries.

(Tilley, 1994:67)

Still, a thorough understanding of the way in which “pathways” as symbols are deeply imbedded in human consciousness remains to be developed. The symbolic use of the word “trail” to signify movement in a new theoretical or experiential direction has not yet been thoroughly explored. The general public edition of the *Community Trails Mediation Guide* will include a more complete section describing a theory of local wildland trails. However, the next few sections should offer the reader a solid understanding of trail functions until such time as the next edition is published.

### **What is a Local Historic Wildland Trail?**

Wildland trails provide transportation corridors over the natural lay of the land. They differ from trails found in *designated* wilderness areas or national parks in that they are not planned or managed for the general public. Managed trails are designed to control the flow of water, to minimize soil erosion and to maximize trail user ease. By contrast, wildland trails emerge organically and are not engineered by people who live outside the social and natural context of the area.

Wildland trail systems exist because local community members have walked these paths for years, sometimes generations, to the point that they are visible from aerial photos. A wildland trail is a pathway through a landscape filled with a broad range of plants and wildlife and very little evidence of human activity. For as far as the eye can see, the landscape is relatively wild, intact and unmarred. In this landscape, wildland trails exist at an interface between humanness and wildness. They get people where they want to go in the relative silence of nature, without motorized vehicles, and are valued and sought after for that reason.

“We stand a few seconds longer in the icy night,  
just outside the glowing cabin  
caught perfectly between domesticity and wildness,  
as if that’s where we’re most meant to belong.”

(Bass, 2000, 43)

Wildland trails are the backcountry paths that surround and link historic communities. These evolving “social trails” typically share wildlife corridors. Wildland trails connect ecological features, joining high places with low places, riparian areas with lakes, and forests with meadows.

In Gold Hill, the local wildland trails are historic trails. “Historic” implies use recorded in historical documents and reflected in the memories of older and previous residents. The North Trail, for instance, is shown on both historic and contemporary maps. Community members plan picnics at favorite trail spots; they recount stories of their experiences along this trail.

Wildland trails emerge naturally in an unpremeditated way. They show signs of natural processes like plant growth and erosion and continue to change season to season, although they do also reach relative steady state at rock base.

### **Functions of Local Trails**

Wildland trails reveal and perpetuate the flow of individual human engagement with a natural landscape. They may be most akin to an ideal presented in a Colorado handbook for trail planners, *Planning Trails with Wildlife in Mind* (1998). They are the type of “trail that is contributing to the sustainability of an area in meeting people’s fundamental desire to experience nature while not compromising the ecological integrity of the area.” (Trails and Wildlife Task Force, 1998:25)

In the observations of this researcher, the functions of local non-mechanized, non-motorized wildland trails include ecological integrity, community connectivity and individual restorative experience. Local wildland trails decrease demand for public access trails and can mitigate degradation of trail experience and the need for trail maintenance on trail segments on public land. A local wildland trail also increases the likelihood of community-based ecosystem stewardship.

Nash in *Wilderness and the American Mind* (1967, 273) reflects on the value of wildland in its overwhelming scarcity. Wildland trail systems expand the available pool of recreational trails without spending money for public or land trust acquisition.

Wildland trails offer both solitude and belongingness, as well as opportunities for individual restorative experience. They are the arteries of human connectivity to a natural landscape in a time when demand for natural experiences is on the increase. Locals enter these areas with modest human tools, an attitude of reverence, and thoughtfulness with regard to interrelationship.

As well as connecting people to nature, localized use of wildland trails connects community members to each other. Residents describe chance encounters while walking through a natural landscape or being able to visit neighbors without getting into a car as tremendously meaningful experiences not only because of their attributes, but also because of their frequency. The sociocultural impact of local wildland trail loss should not be underestimated. The diagram entitled “Functions of Trail Customs” describes the potential impact of disruptions in trail custom. See Appendix One-C Understanding Trail Access and Appendix One-B: Functions of Trail Customs.

A local wildland trail increases the likelihood of stewardship of the wilderness landscape it traverses. Local repeat users of the trail become attached to it and more likely to engage in stewardship activities out of reverence for that resource. Based on personal observation, the percentage of traffic over a local wildland trail by a repeat user is greater than on a general public access trail. However, the overall volume of users is significantly less. Locals are more likely than non-locals to adopt routine stewardship activities for their neighboring landscape because of their proximity to the resource and the incentive to protect it.

### **The Role of Trails in Ecological Processes**

Trails can traverse a complex and dynamic, social and ecological landscape. The trails surrounding Gold Hill traverse both public and private land of montane forests and meadows. Many of the trails offer the chance to walk long distances in solitude along a shallow gradient seldom available at the altitude range of 8500 to 9000 feet in Boulder County.



Locals in Gold Hill and elsewhere are deeply connected to wildlands in their everyday lives, and whether this will endure along the Colorado Front Range is uncertain. Land use codes that support scattered development, agricultural use and fencing are reducing the likelihood that the precious balance will remain between people and wilderness.

In the Committee's research, local trails are referred to as local, historic, wildland trails for three reasons. These trails are locally used (rather than mapped, general public access trails). In the case of Gold Hill, these historic trails have been in use back into the nineteenth century when the first settlers came to the area if not before by the Arapaho and Ute. These trails traverse lands adjacent to wilderness areas and national parks with many essential qualities of wilderness.

“A wilderness ... [is] an area ... untrammelled by man,  
where man himself is a visitor who does not remain.”  
- The Wilderness Act of 1964

Wildlands offer opportunities for solitude and adventure while ensuring the viability of the ecosystem, and such opportunities are found in both officially designated wildlands, and in areas that contain wildland qualities. In the case of Gold Hill, wildland, montane forests surround the townsite. Montane forests are important wintering grounds for many local species. These forests are underrepresented in conservation in the Southern Rockies Ecoregion. Every opportunity to appreciate and protect lands that serve wilderness values merits attention.

## **The Role of Trails in Community Life**

### ***What is Community?***

The concepts presented in this section have been distilled from remarks by Gold Hill residents, the author's own experience, and the written expressions of anthropologists, sociologists and community practitioners.

A community is a collection of people grouped together by their own choice or by history. Community implies a specific locale, belongingness, identity, and active engagement by residents to meet individual and group needs. “Communityness” is “what people throughout the country sense they have lost and want to regain; and this alone suggests the key elements of community” (Moore, 2001: 72).

A community is the joining of people not necessarily of similar interests but of common daily experience. We can also speak in terms of community boundaries. Boundaries reflect a sense of safety and belongingness. (McMillan and Chavis, 1986) We feel familiar and at ease with people we know locally. Still, the composition of those who come to the town of Gold Hill varies frequently, especially with tourists at the store and on the roads. It is in the woods (on a local historic wildland trail) that residents are likely to encounter only locals and people they know by first name.

A community in order to have meaning cannot be applied to everything; it is not the same as a professional association, or church group or the shoppers who shop at Whole Foods. “Participation [in a community] implicates the whole person rather than segmental interests or activities.” (Selznick in Walter, 1997:71).

In Gold Hill, hospitality is a hallmark, and becoming “local” simply has to do with living around town or having lived around town. This open boundary may explain to some extent the reaction of many locals to the closure of the North Trail in a community that thrives on its openness. At this time, there does not exist an income threshold that precludes membership in the community. Many rental properties are available.

### ***Trails, Community and Attachment to Place***

Trails reflect the connections that exist among people who live in the community. The chart entitled “Local Historic Wildland Trail Functions” in the appendix presents a framework for the social functions of access to the landscape and explores possible adaptations to a disruption of these customs in terms of place and community attachment.

In Boulder County, both the Land Use Department and the Open Space Department seem to overlook the social phenomena of local trails in the foothills. These paths are referred to dismissively as “social trails” and are subject to trespass laws. Oral history would reveal otherwise. Social trails reflect normal interactional and ecological processes and are not a significant threat to wildlife or plant life. They are part of a living cultural experience.

These features of landscape and place are very important as the value systems of Gold Hill residents differ and one cannot claim an overarching culture or common habits of daily life or even very much daily interaction other than the school and the store. The land provides an overriding uniqueness and bonding that overcomes alienations on the social plane. (Brown and Perkins, 1992:284) The community functions of local trail access customs include:

- Engendering a sense of place and bonds to the natural environment
- Engendering a sense of community and the social bonds among community members associated with local nature experiences
- Maintaining rural mutual help structures
- Providing a sense of security by having locals (defined as those with whom one is familiar) on adjacent or traversing trails on your property especially when general public access trails are nearby
- Offering spiritual clarity and strength in the solitude of the wilderness experience
- Serving as a reservoir of potentiality for human experience in connectivity to a landscape (e.g. three nationally distributed herbal tincture lines began in the relationship between local women and the forests that surround Gold Hill)

“In cases of profound attachments to place, [a place might be] experienced as an extension of the self. Such attachments arise naturally in the context of daily experience.” (Brown and Perkins, 1992:282) The drive to and from “town” (Boulder) and walks on the web of wilderness trails all form a powerful source of attachment for many locals in Gold Hill.

“The soundscape is also a part of sense-of-place.” (Howarth, 1998:7) Residents become used to the sounds of a place and come to cherish them along with other sensory stimulation like the smell of dry pine, the feel of granite rocks or the crunch of twigs on a trail.

People are immersed in a world of places which the geographical imagination aims to understand and recover – places as contexts for human experience, constructed in movement, memory, encounter and association. There may be a strong affection for place (topophilia) or aversion (topophobia), but places are always far more than points or locations, because they have distinctive meanings and values for persons. Personal and cultural identity is bound up with place; a topoanalysis is one exploring the creation of self-identity through place. Geographical experience begins in places, reaches out to others through spaces, and creates landscapes or regions for human existence. (Tilley, 1994:15)

Precisely because locales and their landscapes are drawn on in the day-to-day lives and encounters of individuals they possess powers. The spirit of a place may be held to reside in a landscape. Familiarity with the land, being able to read and decode its signs allows individuals to know ‘how to go on’ at a practical level of consciousness or one that may be discursively formulated. People routinely draw on their stocks of knowledge of the landscape and the locales in which they act to give meaning, assurance and significance to their lives. The place acts dialectically so as to create the people who are of that place. These qualities of locales and landscapes give rise to a feeling of belonging and rootedness and a familiarity, which is not born just out of knowledge, but of concern that provides ontological security. (Tilley, 1994:26)

Place attachment is by definition specific to a particular locale, and is often created by a commonality of feeling and experience. Reliving experiences in particular buildings, forests, trail rest spots, meadows and along particular creeksides ties people together with a common memory of similar places. Frequency and shared time in these places increase the bond. A local trail affords this connection to the landscape and to others who share the same experience.

### **Customs of Trail Use in Gold Hill, Colorado** ***The Meaning of “Local”***

In local wildland trail use, there appears to be a strong need to know who is local. “Local” is a word used by community residents without needing to define it. For the purposes of clarifying the experience of local trails it seems important to give the word “local” a set of meanings and associated experiences. Localness reflects familiarity—with people, habits and social patterns. Familiarity creates a sense of security and comfort that has been part of having an open trail system in the area despite changes in demographics over the decades.

“It is our human relationships – the dignities that we grant to and expect from one another as neighbors – that are most fundamentally at stake here.”  
--excerpt from Trails Committee vision statement

Along the Colorado Front Range, as pressures for outdoor recreational use increase and growing numbers migrate to rural settings, private landowners one by one have been closing their land to access by surrounding local communities; their desire for privacy and safety is challenged by people they do not know. Customs of use require knowledge of who is local, now vanishing.

Fencing off private property has had the effect of disengaging the neighborly relationships that have been a hallmark of community life in the rural West. It has also impeded wildlife movement. Based on comments and discussions at the Trails Mediation Workshop, the distinction between local and non-local was critical to solving disputes. New landowners are unlikely to approve the use of trails if it means unfamiliar individuals will be crossing their property. Locals tend to exhibit defensive structuring (Landecker, 1950) towards outsiders in an attempt to preserve customs and resources. A critical strategy for resolving trail disputes is facilitating the integration of a new landowner and their comfort with understanding the value of being a “local.”

A local belongs to a group of people who reside in small scale proximity and are all familiar with one another. Locals form a sort of extended family – a stark contrast to the prevalent experience of anonymity in our contemporary culture. They have established a network of safety, friendliness, bonding and frequent conversation. “The strongest predictors of sense of community [are] expected length of community residency, satisfaction with the community, and number of neighbors one could identify by first name.” Safety is inversely related to a sense of anonymity: the less anonymous everyone is, the more safe they feel. (McMillan and Chavis, 1986:6)

Locals share a history of values, actions and alliances. They experience a similar sense of community and attachment to place; they reside in the same social and ecological landscape. “Bounding the local” appears to be particularly important in resolving trail access disputes. Bounding the local implies:

- Social reciprocity in a particular sphere of action
- Boundaries that separate, keeping in mind that diversity implies separation
- Local traditional customs in contemporary terms
- Attachment to place

Bounding the local also defines the community’s capacity for stewardship of natural resources.

Gold Hill’s cohesiveness as a community arises primarily from residency and participation in place-based activities like outdoor recreation, going to the one-room schoolhouse as a child, neighborly exchanges, local concerts, and community events ranging from school plays, the Fourth of July pancake breakfast and parade, hiking, biking, fire protection, and dances to child care groups and writing clubs. The bonds of social reciprocity include intertwined family lives and the actual lived experience of common sayings like “it takes a village to raise a child.”

Local trails customs reflect a set of values, a lingering history, the capacity to integrate newcomers, and the need to preserve the amenity value of local access. In Gold Hill, local wildland trail access customs are now under threat due to the growing demand for recreational access on Boulder County open space.

Local trail use advocates are concerned with the sense of community (neighborliness versus fear), local trails access and type of access. Locals want to be able to ride horses or bikes or walk their dogs. At the same time, they do not like the high-speed mountain cruisers that come through on the local trails or the downhill bicyclist impacts on the tranquility and condition of the trails. Neither local trail use advocates nor landowners want to see motorized vehicular use on the local trails.

The commons is a social institution, a way of perceiving, managing and organizing the relationship of the community and the environment, and is a level of organization of human society that includes the nonhuman (Snyder in Walter, 1997: 80).

The commons as an approach to organizing human society requires a base of trust and partnership (Walter, 1997:81).

Local customs are like guidelines. Customs reflect human aptitude for discernment under conditions of uncertainty. Local customs are ways of doing things in everyday life and on the occasion of special and seasonal events. An example of a customary agreement is the self-monitored, weekday-only use by locals of a pond on private property.

Rules do not necessarily create wise and stable outcomes if they have to be enforced rather than simply being integrated into customary practice in day-to-day life and routines. Trying to establish guidelines of use that are enforced externally rather than internally does not result in an efficient and peaceful outcome.

Local custom is not an inflexible right, but rather a flexible process of social adaptation possible in settings where everyone is familiar with each other. The standard for a rule is “a reasonable person can reasonably determine who is right.” (Conservation Resource Center attorney and former member of the Policy Committee on the State Trails Committee) Mechanisms for ensuring this level of understanding include local custom. In transitional or crisis times over trail access, signage can support local custom by specifying the preferences of landowners with regard to access. A series of signs on a trail can encourage passerbys to actually see the notice that they might have missed on the first sign. A series of signs could also tell a story of the historical, sociocultural and ecological qualities of the community and landscape that is nearby. Such a series of signs could be developed and installed by locals on public land trails as a way of greeting non-locals to the area in a way that is more integrating than a Forest Service or other sign by a larger state or governmental or even county agency.

The question is not “at what point does informal custom become a formal right?”(Colorado Based Tax Easement Credit Broker), but rather, what social cues already exist that do not require an individual to stand on the soapbox of externally given rights and rather allow for true understanding, compassion and give and take in the situation at hand? What is the role of local custom in creating stable environments of both a community and social nature? What is the role of local trail custom in ecological stewardship and community viability?

While sense of place comes from the meaningful interaction we have with a landscape, sense of community comes from the “meaningful interaction we have with those we know.” (Moore, 2001:71) In order to understand Gold Hill customs, the Trails Committee gathered together their own recollections of proper etiquette when traversing another’s land, the land that the owner is responsible legally and morally to steward for future generations. Chart 1 presents a proposed trail use etiquette *Guide* to reassure locals and landowners alike about how it is that we treat each other on trails.

The suggestions were collected by members of the Trails Committee and also originate in notes from workshop discussions recorded on flipcharts. Two other sources include information that came from the commentary boards upon which participants could randomly write during the Trails Mediation Open House and Workshop. The rest is information from notes in or attached to the original working document version of the Trails Booklet used at the workshop. The original phrases offered by locals have been recorded verbatim.

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Table One-A  
TRAIL USE ETIQUETTE

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- “Do nothing that will make anyone else uncomfortable.”  
Blue Bird Cottage (Gold Hill Inn (1920s) house rule. (Pettem, 2000:149)
  - Lessen the sights and sounds of your visit.
  - Give uphill hikers the right of way.
  - Maintain courtesy towards others.
  - Travel alone or in small groups of two to four.
  - Take pride in preserving wilderness landscape.
  - Wear subdued colors that go with the earth’s colors in the landscape.
  - Preserve the beauty and solitude.
  - Step off the trail on the lower side when encountering horses.
  - Bikers stay away from horses on trails. Horses spook easily.
  - No horses unless they have been fed certified, weed-free grain or hay.
  - Horseback riders should scatter manure piles.
  - Keep your dogs on leash on private property.
  - Bicyclists and horses do not ride in wet conditions.
  - Use existing trails.
  - Avoid meadows and wet areas.
  - Just like on public lands, avoid short cutting of switchbacks.
  - No shortcutting. Shortcuts are new scars on the land that are susceptible to erosion and lingering devegetation.
  - No fires on private land.
  - Practice the “Leave No Trace” ethic
  - Take nothing but pictures, leave with only fond memories. Pack out all garbage. Of course, no dumping even if the old timers left us cool archeological remains due to their practice of dumping.
  - Do not even leave compostable materials as they are unsightly.
  - Wait until you are back home to go. If emergency, bury waste and absolutely no toilet paper is to be left anywhere. Carry trash bags if necessary.
  - Do not deface or remove any natural features.
  - Don’t take anything.
  - Do not disturb any archeological sites.
-

Table One-B  
 GOLD HILL CASE EXAMPLE: LANDOWNER APPROACHES TO TRAIL ACCESS

	Social Stability	Approach Type	Signage	Type of Access Permitted	Liability Protection for Landowner	Advantages	Disadvantages	Example
5	Stable unless ownership changes or and/or volume or type of use changes	Local Custom; open access with socially modulated controls	None	Open; Understood no motor vehicles; Locals only ones who know & use trails.	Property Insurance	Friendly rapport, trust, community, integrity	Difficult to restrict outsider use especially with growth in mountain biking; May create prescriptive use rights through permissive use?	South Trail; Horsfal Loop; Emerson Gulch until 2002; North Trail Until 2002
4	Relatively Stable	Adapted Local Custom	Permission granted sign	Open; No motor vehicles, walk bikes	Property Insurance	Informs on types of use permitted; friendly.	Test and refine signage	Moccasin Trail
3	Stable until next generation builds	Familiar Locals Know Of Access; Fencing	No trespassing signs posted	Open; No motor vehicles; watch for horses.	Property Insurance	Worked for 40 years; owner retains protection from adverse possession	Confusing; unaesthetic.	Western South Trail
3	Unstable	Permission Granted On Family or Individual Basis	No trespassing signs posted	By agreement	Property Insurance	Harmony in individually negotiated balance of use.	Cumbersome; Potential for community divisions and cliques.	Emerson Gulch Since 2002
4 - 3 - 2	Stable; but allows general public which may destabilize other local trails	Conservation Easement	Permission Granted Signage	Tailored	Under Article 41 of Colorado Recreational Use Act.	Liability risk transferred to public entity; allows income and property tax reductions.	General Public Access Required	None around Gold Hill: County Atty personal property along Arkansas River.
1	Unstable	Fencing, Patrol, Dogs	No Trespass Posted	None; locals occasionally use anyway	Property Insurance	Gives Appearance of Control	Undermines People to nature connection; tense	One segment of North Trail since 2002

LEVEL OF ACCESS:	full access	few restrictions	partial	many restrictions	no access
	5	4	3	2	1

## **THE NEED FOR A LOCAL TRAIL POLICY: GOLD HILL CASE Newcomers Attracted by Area's Beauty and Accessibility**

Gold Hill sits just minutes away from the Indian Peaks Wilderness and Rocky Mountain National Park. Boulder is only twenty minutes away down a valley ridge road of exceptional vistas, one of the most beautiful drives in Boulder County. Gold Hill is served by four county-maintained highways. High-speed internet service is available through the local phone company, making the location suitable for the contemporary workforce and lifestyle. The Denver International Airport, a well-served, central air traffic hub, is an hour and fifteen minutes away.

Gold Hill's placement on a ridge is relatively level and sun filled, making it a very pleasant area in which to live and hike. In the winter, the fog and smog line falls just below the ridge, leaving Gold Hill bathed in radiant blue skies and pure air; in the summer, the montane forests emerge as a haven for the high country experience of wildlife and plant life. Gold Hill as a town is little populated and surrounded by national forest. The townsite itself is quaint, unique and a National Historic District. Gold Hill's people are diverse in occupational status, educational background and origin, if not so diverse in ethnicity.

Land values are increasing due to constraints on availability of buildable lots. Rent prices are lower than in Boulder, keeping the area still accessible to households of modest income. Still, only well-financed buyers can purchase land. Their disproportionate wealth compared to the local population could affect local customs and way of life. Future trail closures could be likely under this scenario.

### **Gold Hill Trails and Recreational Demand**

Gold Hill is an historic Colorado Front Range community and the site of the first gold strike in the Nebraska Territory in 1859. Trails meander to and from the townsite into the montane forest landscape. Specifics regarding geography, climate and demographics can be found online at <http://www.city-data.com/city/Gold-Hill-Colorado.html>. Photos of Gold Hill may also be viewed at this site.

Locals and residents of the Boulder County Plains seek areas like Gold Hill for the restorative and athletic experience it affords. Gold Hill's trails are used for horseback riding, mountain biking, cross-country skiing, hiking, and occasionally for dirt bikes or ATVs. The more well known general public access trails, such as the public access Switzerland trail, allow for motorized vehicular use despite drawbacks to that unregulated use.

Mountain bike and ORV use have recently surged in use across the landscape of Gold Hill. This has led to an increase in the public-to-local ratio of users on both private and public local trails. Mountain bikes and off road vehicles can impede the quality of life for other trail users and adjacent property owners. In Gold Hill, some local trails have been closed.

In late 2002, Gold Hill trail disputes existed on the North Trail, Rim Road and Emerson Gulch, and the East Trails on Horsfal and up towards Big Horn. Disputes on the South Trail towards Rocky Point and the two prongs of the Moccasin Trail into the Subdivision had been resolved. These trails were included in Trails Committee research in order to provide insight into trail usage patterns that resolved dispute and continued to work in ways that prevented dispute. (See Chart in Volume Two, entitled "Approaches to Access by Local Landowners".)

### **Ineffective ORV policy on public lands**

As a result of PAR, the case provides grounded research into the role of trails in maintaining amenity value in rural communities, in preserving ecosystems and in sustaining community viability. Results of the process include written guidance for the community in preventing and resolving future trail disputes; these results may be generalizable. PAR results could raise awareness about locally emergent issues like trail access around which national organizations could mobilize. The effect of private control over public/private trails could also remedy concerns over ORV use on public lands.



In this case, PAR supports national initiatives to reduce the impacts of ORV use on public lands, by highlighting a potential alliance with locals. A critical finding of the PAR research in this case is that ORV use not only impacts ecological resources, but sociocultural ones as well. In addition, a common interest in conservation bridges the stakeholders in the Gold Hill dispute. The PAR component of the intervention reinforces ecological resilience at the ecoregional level through a connection to community-based ecosystem stewardship in a non-resource dependent community. In this case, PAR may contribute to local, county and state policy to prevent dispute on local historic wildland trails. Legislative initiatives could go a long way to preventing community disintegration that has resulted from residential sprawl and aggressive recreational imperatives in open space and wildland areas across the Front Range of Colorado.

### **Old West and New West**

Gold Hill is comprised of residents who identify with both the old and new west. The old west included miners and ranchers. The new west includes telecommuters, recreation enthusiasts and environmentalists.

The social history of Gold Hill is reflected in those who live in Gold Hill today. The 1960s brought a new influx of residents to Gold Hill. “In the 1960s, environmentalists joined forces with the counterculture in arguing that bigger was not always better. Schummacher (and many others) espoused that less could be more. Preserving wilderness became an important symbol of reflecting upon humanity’s relationship to the earth” (Nash, 1982, 257). The shift called for a “‘deep’ nonanthropocentric concern for the entire ecosystem rather than a ‘shallow’ utilitarianism” (Devall in Stream of Environmentalism, 1987) in Nash, 1982:257). So as “in the 1840s, Mormons found freedom in the [desert] wilderness ... [the] counterculture [found freedom in the wildlands of] ... the 1960s”(Nash, 1982:262).

Differing drivers of recreation are drawing an influx of residents to Colorado, which is continuing to transform the old west. “In the Intermountain West, land ownership is changing from family-run cattle ranches to “second home” ranches for recreation, a trend that will influence conservation strategies” (Nature Conservancy, 2000, 2-2).

How will this new push for access to recreational opportunities affect Gold Hill? The stability of Gold Hill’s small clustered population, its long winters, and relatively difficult access up steep dirt roads have honed in residents a strong sense of Gold Hill identity. These residents share a commonly held appreciation for the landscape and its history. Of the 300 current residents in the area, most live a lifestyle of independence and self-sufficiency. There is no communal center in which resources are shared explicitly as, for instance, on a commune. Despite this, a strong sense of community exists.

### **Selling of Public Lands**

The Executive Branch in Washington, DC in 2006 has proposed the sale of public lands to offset the budget shortfalls. The target is 300,000 acres of National Forest.

“The administration has portrayed these lands as “isolated parcels,” but a review of the lands proposed for sale tells a different story; these are our prized public forests that were protected for all Americans to use and enjoy.” (Source: Campaign for America’s Wilderness, email, 3/14/06)

Gold Hill is surrounded by the Roosevelt National Forest, which includes lands in Boulder County that are proposed for sale. The exact location of proposed parcels around Gold Hill includes Section 1 of Township 1 North, Range 72 West. This parcel includes the lower elevations of the north slope of Big Horn Mountain and land to the North of Left Hand Creek between Rowena and Lick Skillet Road. Simply being included on the list does not mean the land would be sold. Still, the threat of sale exists now and could exist again in the future. The sale of adjacent forest lands to private interests could not only lead to uranium or gold mining, but also to residential development.

With the existing Boulder County land use code, uncoordinated, individualized residential development could not only increase population size, but could also disturb ecological and cultural process through scattered parcels of 35 acres rather than clustered development. The land could be developed piecemeal without a plan for cluster development. Without a plan, land development patterns could greatly affect wildlife habitat in the already threatened Southern Rockies Ecoregion montane as well as affect local trail systems. Increasing development inversely affects both local trail systems and local ecosystems.

### **Reinterpretation of RS2477**

In recent years, a federal law that grants anyone access to public land for the purposes of development or mineral extraction has been re-interpreted to allow oil and gas interests access to public lands. This reinterpretation of the 1866 law known as RS2477 has an impact on Gold Hill. It is the law that opened up access for landowners on Big Horn Mountain.

In order for RS2477 to apply, you must show that the road pre-existed private ownership. The caveat is that the road must never have been abandoned. (County Attorney, pers. conv., 2/03). From review of that case in February 2004, I have learned that abandonment must be demonstrated and the burden of proof falls upon the property owner claiming to prevent access. Routes cannot be abandoned through non-use. This law makes it even more important to develop an informal local trail policy in order to avoid the potential effects of increased outsider ORV or mountain bike trail use.

### **Boulder County Parks and Open Space Conservation Paradox**

An interesting outcome of the strong conservational sentiment in Boulder County has been that local government has centralized the work of landscape preservation. In Boulder County, recreational use advocates have a strong voice and considerable pressure exists to place recreation as a priority over conservation in the County. The paradox has left the County without land trusts, despite a population known to vote strongly in favor of conservation, even over recreation. For over thirty years, Boulder County chose to adhere to a set of long-range planning *Guidelines* and the Open Space Department receives and manages conservation easements.

As it stands, tax revenues fund Open Space acquisition. County citizens also support national and state environmental organizations, but this is as close as the citizens of Boulder County get to actively participating in the conservation that they seek to ensure. The weakness is the lack of balance in the localized and counterbalancing institutions that are brought to bear on conservation in the County. All the eggs are in one basket, so to speak, and that "basket" is the County Open Space Program. This level of concentration creates a vulnerable link that would benefit from redistribution across a broader band of County-based individuals and institutions. Boulder County is a large county reaching from alpine tundra to over-developed plains. Centralized management cannot respond quickly enough, or with sufficient creativity to the range of challenges that occur, even at what might appear to be a small scale, when looking at the national picture. Most effective and responsive work in conservation occurs at the small-scale level.

As a result, it might be beneficial to create umbrella land conservation organizations and land trusts in Boulder County to ensure adaptive, non-bureaucratic conservation well into the future. In addition to addressing the centralized ecosystem management structure of the County, such a trust could support local wildland preservation without the necessity of full county wide general public access.

### **The BLM and Boulder County's Proposed R&PPA Development**

As the Bureau of Land Management seeks to divest lands, it is of critical importance to recognize the role of local wildland trails, and to create mechanisms that ensure their protection. Of specific concern in Boulder County is a proposed Recreation and Public Purposes Act (R&PPA) project. The Boulder County Comprehensive Plan proposes a regional trail through the Gold Hill area. The regional trail would run from Sunshine to Four Mile Canyon through the Gold Hill East Trails Area. It would also serve the Betasso preserve by way of Bald Mountain under the planning category of a "Conceptual Trail Corridor." The Betasso Preserve is a high-density, heavily impacted mountain bike corridor straight up from Boulder. Traveling clockwise on the loop, a cyclist would then return to Boulder by way of Sunshine.

Going counter clockwise on the loop, the proposed alignment "skirts through Sunshine, then falls to Gold Run, by way of Big Horn in the East Trails Area. Gold Run Creek is the site of the first Colorado Gold discovery and runs through the historic town site of Gold Hill, then up the east side of Melvina Hill by way of Emerson Gulch, and down to the base of Four Mile Canyon where the route was to follow the old railroad grade"[to Sunset and the juncture of the Switzerland Trail] (Boulder County, 2004). "The segments between Sunshine and the bottom of Four Mile Canyon will have considerable topographic constraints, steep slopes and huge altitude gains and losses" (Boulder County, 2004). The County categorizes the section between Sunshine and Four Mile as a "Conceptual Trail Corridor to allow flexibility in trail routing and location" (Boulder County, 2004).

Such a regional trail would likely have a significant impact on ecological and cultural resources in the area, including the local trail system. Although there are plans to incorporate existing roads and drives, the sheer volume of potential recreationalists would likely degrade ecological, historic and cultural values in the area. The cultural impact is discussed above under Trail Customs. Additional information may be found under Gold Hill Customs of Trail Use Trail above.

The proposed alignment would also impact a location in upper Four Mile Creek where six to seven moose were observed (a sign of ecological restoration this far south along the Front Range and in the montane). In addition that area is an important habitat of montane willow carrs (Local Naturalist, pers. conv., 2/04). Willow carrs are the habitat of the veery, a rare bird, first sighted by western Europeans in Gold Hill in 1884. See also testimony regarding R&PPA proposal in the Appendix of Volume One.

### **CASE EXAMPLE: RECOMMENDATIONS FOR A GOLD HILL POLICY ON TRAILS**

The following policy proposal is written with a broad-brush to cover general areas of understanding, activity and intent. It is intended to guide the development of an informal policy for and by landowners with trails in their relationship to the community. The policy is meant to explicitly replace local custom only until such time as local customs suffice implicitly.

#### **The Community Supports Local Use of Private-Public Trails.**

Gold Hill supports the preservation of its local trail system with the consent of landowners. The local trail system consists of those trails that traverse both public and private land. Public trails are not part of this system, although they are also used by locals. The local trail system falls within the confines of the Gold Hill Fire Protection District, and is considered to be for local use only. The community is open to those who wish to move here and live here. Anyone is welcome regardless of race, ethnicity, country of origin, sexual preference or religion.

In terms of Gold Hill, locals involved with the Trails Committee and those who attended the Trails Mediation Workshop drew distinctions between local trails and general public access trails. Local trails had segments that ran on private land. This attribute allows local landowners with trails to control the type of use that they will allow on their land. This control can be beneficially used to control the impact that Off-Road Vehicle (ORV) use has had on public lands. This control can also keep local trails to low volume local use despite segments that cross public lands.

Low volume local use benefits community life: a rare quality in an increasingly suburbanized environment. Community life that is place-based exists in urban centers and in rural communities. It is worth protecting. Ecological restoration and preservation cannot effectively occur on the broad scale administrative level on which it has conventionally occurred. Local communities are critical to restoring balance in the use and maintenance of ecological resources upon which we all depend for water, food and air.

### **The Community Supports a Committee for Trails Stewardship**

The Gold Hill Trails Committee serves as a local trails resource group. Such a community group can serve as an informational resource for landowners with trails or options that they might want to use to protect themselves, while still serving the interests of the community. The same group could also serve to mediate disputes. The local resource group can serve as a centralized communication hub for all trail stakeholders, organizing meetings, workshops, and outreach. The likelihood of one or two well-informed and engaged individuals who would keep the coordinating function of the group afloat is strong. The purpose of the Gold Hill Trails Committee includes:

- Maintain collaborative relationships with all landowners with trails and quickly respond to concerns;
- Resolve disputes quickly in order to preserve the connectivity and integrity of trail system and the community;
- Educate and conduct outreach about local trail use & wilderness trail systems;
- Ensure that customs of use are sustainable ones:
  - Monitor impact of local trail use on ecosystem;
  - Create a log of trail events, routes, maintenance needs, dispute types, agreements for periodic review and discussion;
  - Establish a baseline of factors involved with local trail use for comparison purposes in the future;
  - Minimize outside use to minimize impact on ecological & cultural processes;
- Reflect upon wilderness experience.

The Gold Hill Town Meeting's Trails Committee has been the body that serves to convene and ensure the mediation process. The Committee's role is to generate involvement in dialogue. The Committee has attempted to expand the perception of possible options in all disputes, in order to best ensure that the community and its landowners reach the most wise and stable outcomes on all trail issues.

An example of recognizing and supporting a trail system lies in the national Rails-to-Trails effort. Such groups often begin as friends of a rail-to-trails project, much like the first members of the Gold Hill Trails Committee. In the case of Rails-to-Trails, meetings with abutters start to emerge. The whole process usually takes 15 to 20 years in order to successfully open a new Rail-to-Trail alignment. Projects have often stalled when towns form committees to push forward too quickly on the concept. He states that there is more success in using a slower, participatory process that searches for and involves all the stakeholders. We should not be discouraged if the process for understanding Gold Hill's trail system and resolving disputes is a slow one.

The Gold Hill committee also needs to work with other local agencies like the Fire Protection District and other Town Meeting Committees like Long Range Planning and Fire Mitigation.

Finally, a local elder has advised that it is becoming increasingly critical to establish legal authority for Gold Hill to administer and control likely changes upon the community. He and a recent County Commissioner strongly encourage the community to reconsider its position on establishing Gold Hill as a legal municipality. A young member of the community has expressed concurrence with this viewpoint after a conversation with the elder. Some fact-finding and cost-benefit review should be undertaken to re-evaluate this option now thirty years after the creation of the Gold Hill Town Meeting, Inc.

### **The Community Cooperates with Landowners who Own Trail Segments**

Many members of the local community are interested in resolving local trail disputes in cooperation with private landowners, and landowners are also interested in finding solutions. Based on the Trail Committee's research, a landowner may be more likely to keep a trail open for local use if:

- The landowner is familiar with the trail users (familiarity versus anonymity, local v. non-local, friend v. stranger, neighbor v. non community member).
- The trail users can converse with the landowner in neighborly way; increased speed, group size and noise can detrimentally affect the conversation interface (mountain bike groups, dirt bikes, ATVs, etc.). These factors also undermine a sense of personal boundaries and sense of place.
- Use of a trail is stable and predictable in time and volume (weekend hike, morning walk by same locals, etc).
- Conditions of use adhere to traditional use as created by implicit local customs of trail use like those in the Gold Hill area.

The second volume of this "*Trails Mediation Guide: Planning Reference or Preventing and Resolving Disputes*," presents options and strategies that might benefit landowners, while still supporting an open local wildland trail system. It also presents existing customs of trail use by Gold Hill locals.

On private land, the surest way to preserve corridors is to ensure that the landowner perceives a net benefit from this use. Benefits might simply be a sense of safety or the pleasure of rapport that a landowner experiences when locals are on the nearby trail. According to a representative of the Colorado Coalition for Land Trusts (CCLT), "most private landowners do not want public access" (CCLT, pers. conv., 3/13/04). To distinguish general public access trails from local wildland trails then becomes critical. The premise is that by minimizing impact on a landowner with trails, the more likely that landowner will be to keep a trail open for local use. More on working with landowners follows in the section on mediation.

In preparing the contents of Volume Two, data collection methods included gathering suggestions in interviews, at the workshops and trails group meetings, in private conversation and through mediator-conducted action research. The following chart summarizes the research and is generalizable to other locations than Gold Hill and Boulder County

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Table One-C  
STRATEGIES FOR TRAIL DISPUTE PREVENTION AND RESOLUTION

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- Liability Risk Management
    - Liability Waivers
    - State Trail and Recreation Easement
  - Private Land Access Permissions
    - Permission Granted Signs
    - Trail permissions to a Select Individual(s), Group(s) or Club(s).
    - Deed Restrictions or Mutual Covenants
  - Financial Offsets for Potential Financial and Psychological Costs to Landowner
    - Conservation Easement For Trails
      - Federal Easement Program
      - Colorado State Income Tax Deduction
    - Fee for Access
    - Purchase and Bridge Financing by a Land Trust
    - Other Acquisition Options
    - County Property Tax Abatement for Trails Exchange (see below)
  - Bypass and Trail Alternatives
    - Bypasses and the North Trail Bypass
    - Special Use Loop
- 

In terms of outreach to locals rather than non-locals, environmental and trails education could be done in support of local landowners with trails. This outreach would encourage responsibility regarding property damage, loud noise, fire danger and more.

### **The Community Conducts Outreach to Outsiders**

#### ***Mobilizing Local Users to Provide Interpretation for Outside Users.***

The question of outsider v. insider use has emerged in the Gold Hill Trails Workshop and also in other initiatives like Rails-to-Trails. Rails-to-Trails projects start by bringing people together and addressing fear of outsiders. This fear is often expressed as opposition to Rails-to-Trails projects on the East Coast (Advocate in Massachusetts, Rails-to-Trails, pers. conv., 3/12/03). The primary source of this opposition, an initiative with which the Massachusetts advocate was involved, came from individuals in wealthy gated communities along the rail grade.

Weekend ecotourists and ORV users visit Gold Hill for recreation and relaxation. The landscape is magnificent. Still, these individuals have little sense of place or community. The local community could align with other local communities to affirm the distinction and to protect the local resources from potential problems associated with random visitors. Trail advocates should ensure that the interests of locals are represented at state and national forums on trail use.

In response to the concern that local protectionism leads to class-based exclusivity, one might consider that there are no particular financial barriers to living in the mountains. Rather, a barrier exists between those who are willing to endure the hardships created by the terrain and the longer commute times in some cases. The hardships endured in these wildland settings bond residents and inure them to the difficulties. Residents in fact have an investment in the community, not in the form of money but of personal effort, social commitment, and shared viewpoint, and this form of investment must be seen as comparable to the landowner's investment. Permission to access local trails simply requires living in an area with local trails. In a stable local wildland system, low impact access to wildland landscapes may simply come with the territory, that is, come with choosing to live in these landscapes. "Overt coping with environmental demands creates an emotional bond to places" (Low and Altman, 1992:5).

The boundaries of membership in Gold Hill are wide open; exclusivity does not exist. Yet there is a sort of cultural self-selection that occurs in Gold Hill. On the relational dimension among people, place attachment may also derive from a sort of self-selection that occurs in those who choose to live in rugged, mountain settings. People who settle in the foothills are most often actively seeking to be immersed in connectivity to intense natural elements as a way of life. Historically, those who embraced the counter culture movement and chose to make the Boulder Foothills their home made that choice specifically, as did their predecessors, for other symbolic reasons. A place and its draw inspires a range of psychological responses, and may include an attempt find a haven from predominant trends elsewhere in more urban environments.

Local community members might work with local representatives of national biking organizations like IMBA that serve to educate bicyclists regarding respectful use. This is where the question of designating local access becomes most tricky. It seems likely that before any policy determination is made, the biking organizations would be strongly opposed to any restrictions on their use. So how does one educate them while also limiting their access? This may not be feasible. The proprietor of the Gold Hill General Store, whose business may be impacted by such clear cut restrictions, would also need to be involved in the discussion. Insuring that his commercial interests are met would be an imperative.

Locals need to play a key role in reducing the impact of trails use on private land, and of trail use that is motorized or on horseback. Locals play a crucial role in reducing the impact of uses that are contributing to degradation of the trail system.

### ***Trails Etiquette and Outreach***

An effective approach to addressing outsider use emerged at the Gold Hill Trails Mediation Workshop. The approach would be to conduct outreach with visitors that would raise their awareness of the daily lives of real people in the community. The critical concerns::

- Raising awareness about small community life;
- Raising awareness about landowner interests; and
- Raising awareness about ecological resources.

An elder of Gold Hill with an extensive system of trails on her large parcel of land offered suggestions and strategies for making the connection to visitors (A. F. S.). Signs and flyers are good vehicles. As previously discussed, cultural resource signs could inform visitors to the area about ways in which they can be most respectful and attentive to the needs of the local community. (See discussion of signage under “Collaborating with the Forest Service” in Volume Two.)

This local elder also suggested that in the case of Gold Hill, the General Store would be a good location for distribution of flyers and conducting one-on-one personal outreach. She also suggested that offering water to thirsty cyclists on the Gold Hill Store porch might be effective. She suggested a sign on wilderness etiquette and encouraged local volunteers to hang around sharing the idea with visitors and ecotourists.

### **The Community Integrates New Landowners with Trails**

The tradition of welcoming newcomers to the area is an important one. This helps to make newcomers feel at home and helps to support conditions that do not disrupt local harmony. In any instance of trail dispute, a property owner could be more willing to engage in a community of social reciprocity and openness if he or she were to feel a sense of invitation to and therefore trust in the community.

Emotional connection is a key determinant of community (McMillan and Chavis, 1986), and is an important element in building community spirit “A strong social fabric” is a key part of community (McMillan and Chavis, 1986). To be attached to a place fulfills a fundamental human need, and is one of the foundations of identity.

For locals, a useful social strategy would be to raise awareness about the community and its trail system with new area landowners who have trails on their land. This effort could go a long way towards preventing trail disputes. The material in Volume Two can serve as a useful reference for introducing new landowners to Gold Hill.

## **The Community Supports the Mediation of Trail Disputes**

### ***Overview***

In the past and as a policy, the Gold Hill Town Meeting's response to trails disputes has been to encourage a mediation process. Trail disputes are increasing in number and may be resolved and even prevented through principled application of environmental dispute resolution and a growing understanding of the social and ecological factors involved. At this time and until more formal county or state wide policies are formulated to address this issue, resolving trails disputes in Gold Hill can only occur in the context of individual arrangements by landowners. This can occur formally or informally, with individuals or the whole community. In September 2002, a local resident wrote:

“Our hope is to find a mutually satisfying middle ground  
where all in our community can share in the beauty and serenity  
of this mountain area that satisfies and nourishes the soul.”

The advantage of a mediated agreement is that it is the most flexible and customizable both to locals and to property owners. Such an agreement doesn't even require documentation. It could meet local needs for access without occasioning general public access. The only other forum for such a refined outcome lies in a reinterpretation of case law that differentiates on the basis of the local public and the general public.

Leaning towards the ideal outcome of creating mutual understanding and strong community bonds is not necessary. Rather, a trails mediation process could be rooted in the parties working out an agreement that meets their distinct and individual needs. A set of options exists independently of any preconceived notion that mutual interests might exist. And the possibility remains of an unexpected residual outcome – acknowledgement of individual realities and experience that lays the groundwork for mutual understanding.

The Gold Hill Town Meeting can be an effective forum in which the community might practice a respectful process of deliberation in preparation for resolving disputes. The community is growing in its knowledge of mediation, consensus-based decision-making, and interest-based bargaining. Those who seem to have an interest or the more familiarity with these approaches have been encouraged to assist in the process and to be part of a growing pool of facilitators for the community.

### ***Previous Mediation Efforts***

In late 2002 and early 2003, the Gold Hill trails mediation process focused on an attempt resolve a particular dispute. This led to a developed understanding of a range of disputes, and established a reference base for resolving dispute. The activities and research conducted in support of the Gold Hill trails mediation process form the foundation this *Trails Mediation Guide*.

The Gold Hill Trails Mediation Process could not have had a chance of succeeding without the engagement of the Trails Committee, which suspended judgment while the issues became more clear. Despite the fact that the particular dispute in question was not resolved, the process offered much learning for the community. The Gold Hill Trails committee was able to support the community in taking one step along that path.

The County Sheriff who advised on trespass is also a trained mediator who supported resolution of the issue. He advised: “Identify needs to the extent that you can and make an agreement and certify it in the court. The adversarial system means someone wins and someone loses” (2/20/04).



It is incumbent upon a mediator to bring all parties to the table. One of the aims of the Trails Booklet is to support a thorough consideration of the consequences of trail closure, and to look at the possibilities of meeting the needs of all interested parties.

The participatory action research on individual incentives seems to hold the greatest leveraging power in terms of engaging landowners to participate in dialogue. The Gold Hill Trails Committee has attempted to understand the best alternative to a negotiated agreement (BATNA, see below) of everyone involved in this trail dispute.

Whatever the level of agreement, the options presented in Volume Two form a foundation for constructing a wise and stable outcome in this case and possibly for other trails disputes in Colorado. In order to resolve these disputes, parties need to “invent options for mutual gain” (Fisher and Ury, 1981). Community-based participatory action research prior to an active mediation dialogue sets the stage for “inventing options.” The research contained within this *Guide* lays the groundwork for such dialogue.

### ***The Components of Good Process***

Deliberation and dialogue are an essential component of resolving disputes. The main thrust of a good process is to ensure that everyone is included, and that all viewpoints are heard. Mediation of a dispute can only be helped if those involved feel assured and confident that the process will be engaged with reasonable fairness.

A set of negotiation principles informs any mediation process, including an environmental mediation process. These principles were drawn from a popular book entitled: *Getting to Yes* (Fisher and Ury, 1981).

- Separate the people from the problem.
- Focus on interests, not positions.
- Invent options for mutual gain.
- Insist on objective criteria.
- Know your BATNAs (best alternative to a negotiated agreement).

*Guidelines* are helpful in creating a fair and safe container for dialogue, and could include “[reaching] a result not based on standards independent of will, [so that parties are] yielding to principle, not pressure...and support the use of objective criteria...” (Fisher and Ury, 1981, 13). “Differences in perception, feelings of frustration and anger, and difficulties in communication can be acknowledged and addressed” (Fisher and Ury, 1981, 14). A facilitated setting ensures that differing viewpoints are engaged without devolving into personal attack. In addition, and until conditions are right, discussions could occur by phone or in private meetings through “shuttle” mediation in which the mediator shares information back and forth without the parties actually meeting.

Belief in the likelihood of a wise and stable outcome requires faith in the mediator and in the process. In the case of Gold Hill’s trail disputes resolution process, a Feedback Log exists specifically for the purpose of addressing any evidence of bias or the perception of failure to adhere to these criteria or any proposed criteria. The Feedback Log can help refine the process and keep it on track until resolution is reached.

For mediation to work, all parties to a dispute must voluntarily engage the work of resolution. A dispute resolution process should encourage participation and model behaviors that support harmony and ethical decision-making. There is a path by which a community can create the space to practice wise and empowered conflict resolution. Room must exist for suspending judgment and not merely repeating entrenched positions until issues are fully understood. Translation of divergent points of view is essential and assumptions are best not left to stand without clarification and agreement.

A clear understanding of the alternatives for parties to negotiated agreement could bring the parties to the table. The evolving nature of one's best alternative (BATNA) has been discussed above and is an important opportunity for transformation. Trust in the process skills of the mediator(s) and, in the case of Gold Hill, trust in the research of the Trails Committee, is also an important component in supporting dialogue.

Community choice-making can blossom within the shared assumption of mutual good intent, and it can be obstructed by the presumption that disputes can't be resolved. Participants in a good process are encouraged to focus on positive memories rather than on problems. In terms of trails, people can be asked to consider favorite experiences and to think about the ways in which those experiences can be perpetuated. That is, it is most effective in mediation not to dwell too much on what doesn't work or what might not work, but rather to focus on what does work.

### ***Core Values in Participatory Process***

Participatory process is a foundation for environmental dispute resolution as part of the deliberation process. A critical component of dispute resolution is dispute prevention. Participatory process is a wonderful method for ensuring dispute prevention; it is rooted in a value system of participant equity and joint learning. The process goes by a variety of names, including citizen participation, public involvement and public participation.

The process is applicable at many levels of group decision-making and in a great variety of contexts. Its use is legislatively mandated at State and Federal levels of governance and is applied with greater or lesser degrees of competency. Public hearings, web sites & newsletters are often no more than public relations venues; they seldom offer in depth opportunities for co-learning and problem solving. A participatory process relies on consensus rather than majority vote. Participatory process:

- Seeks out and facilitates the involvement of those potentially affected;
- Involves participants in defining how they participate;
- Provides participants with the information they need to participate in meaningful ways;
- Communicates the interests and meets the process needs of all participants; and
- Communicates to participants how their input affected the decision.

(Source: International Association of Public Participation, IAP2)

### ***Understanding BATNAs***

The best strategy in resolving a dispute is to understand one's BATNA and the BATNA of other parties. One's best alternative to a negotiated agreement or BATNA (Fisher and Ury, 1981) can vary over time and can vary within a group. For instance, within the Gold Hill community, everyone's interests are not the same and their preferences for action are not either. Even so, mediation is often the best approach. The alternatives to a negotiated agreement are seldom especially appealing. And often, one's BATNA doesn't tend to a best use of one's time and energy.

Also, BATNAs are fluid. Individuals independently experience stages in the development of their BATNA. These stages involve sorting amongst a range of alternatives for the best alternative. And, even then, when an individual arrives at a distilled conclusion, confusion may still remain. There may not be just one BATNA, but rather something more like a toss up. As an alternative to this kind of confusion, full and creative exploration of an issue can make good sense. Then, mediating or negotiating makes even better sense.

For instance, in the case of trail disputes in Gold Hill and elsewhere, the community should keep in mind that the position of landowners can always evolve and change. Without this openness of mind, how can change be possible? Community members shouldn't stereotype the new landowner in a category type. Self-motivated incentives to negotiate could range from a sense of doing the right thing, a desire for sound leadership and or the respect of the community, the sheer pleasure of rapport with trail passersby, to security or some financial tax offset (See Volume Two).

### ***No Good Alternatives to Simply Resolving Trail Disputes***

Many community members may not have their trail preferences met peacefully if not through the mediation process. Alternatives to resolving the dispute include doing nothing, litigation and policy changes that ensure trail dispute prevention. To do nothing could lead to:

- More disputes and escalated retaliatory behavior;
- Litigation which is costly and rarely results in the highest possible good for individuals or a community;
- The gradual erosion of local trail systems not only in Gold Hill; this could also reduce opportunities to connect with each other out on walks and undermine an important stewardship prerequisite, the sense of attachment locals feel to where they live;
- Revisions to state or county land use policy that address trail dispute prevention will take time and organizational coordination with other groups. Policy changes (discussed in Volume Two and below) include property tax abatement and revised site plan review processes.

### **The Community Collaborates with Other Organizations;**

#### ***Identifying Common Interests with County Government and Other Organizations***

In addition to serving as a local resource, a local trails resource group could also serve to mobilize and coordinate collaboration with the local County, other agencies and nonprofits. The Gold Hill Trails Committee should work with the County and other agencies in areas in which interests align. Such a process might identify a common goal that might de-escalate the underlying tensions and reduce the number of trail disputes and find workable long-term solutions.

In the case of Gold Hill, locals could also explore common interests with horse associations, bike associations, the Keystone Trails Association, the Headwaters Trails Alliance in Grand County, the Estes Park Trails Alliance, the Colorado Trail Foundation in Golden among others. There also exists a trails and greenways listserv to which any group or individual interested in trails can subscribe. See the following sections in Volume Two of the *Community Trails Mediation Guide*.

#### Collaboration with State and Federal Agencies

Historic Certification

Collaborating with the Forest Service

The BLM and Boulder County's Proposed R&PPA Development

Technical Assistance Team

#### Collaboration with Boulder County

Overview

Conservation Paradox

County's Future in Ecosystem Stewardship and Local Trail Dispute  
Prevention and Resolution

Trail Mapping

Trail Mile Transfers and Purchases

Future Research and Action

### ***Potential to Partner with Boulder County***

Boulder County has been on the cutting edge of open space preservation efforts and is exemplary at this task at the national level. In addition, the Boulder Board of County Commissioners voted in favor of supporting the Gold Hill Trails Group Mediation effort on January 6, 2002. It would not be out of the reach of Boulder County citizens and voters to support the preservation of local trail systems in order to:

1. Preserve the rural character of unincorporated Boulder County;
2. Offset recreational demand for trails;
3. Preserve areas without drawing on property tax or sales tax reserves;

4. Encourage community-based stewardship of site specific resources of the montane which is under threat; and
5. Enhance community viability in historic communities that reflect a cultural resource. Once extinguished this cannot be revived.

As partners with Boulder County and other associations in the county, Gold Hill could help to support a vision in which Boulder County plays a more vital role in ensuring ecosystem stewardship and local trail dispute prevention and resolution. Community-based stewardship represents an opportunity for Boulder County to continue to be in the vanguard by supporting local wildland trails dispute prevention and resolution. In turn, supporting local wildland trail dispute prevention supports the capacity of local communities to steward, restore and preserve our wildlands, even those outside of designated wilderness and roadless areas. Relying on communities could redistribute the capacity to advocate for the environment effectively and directly.

Differentiating local use and general public use is an important factor in achieving stasis around local trail disputes. The county has already eliminated certain motorized ORV and mountain bike uses in parts of the county in order to prevent and resolve disputes. The next step would be to recognize the variance between general public access and local wildland access on trails that traverse both public and private land. In addition, County voters might support statutes that allow for the preservation of local historic trail use without general public access. Boulder County could consider how to prepare conditions that will allow for the resolution of these disputes through code changes and outreach.

Assistance could also come from the county or state in preserving local trail systems to offset public recreational demand. The Gold Hill community could also align with other Boulder Mountain communities in some form of mountain forum to ensure that local trail issues are addressed for the most beneficial long-term outcomes.

Finally, it is critical that the County review its R&PPA proposal to the BLM in light of the finding of this research and mediation effort (See testimony in the Appendix: “The BLM and Boulder County’s Proposed R&PPA Development”).

### ***Creating State Level Policy***

In terms of natural resource policy, a wilderness trail is one that remains unhindered by external forces to enforce harmony in its use. Still, outside forces may be required to support imperatives that fall outside of existing cost curves. It may also be that the political economy shifts and accountability for environmental and social impacts are included in economic cost curves. That is, for whatever economic activity is undertaken, including real estate investment, the costs to social welfare and ecological systems for products purchased are included in the cost. With time, accountability for externalities can either be an intrinsic cultural way of doing things or it can be formally accomplished as policy or legislative mandate.

Reliance for explicating local wildland trail systems by the Colorado State Historic Preservation Officer is a bit problematic. That office receives marginal funding. Perhaps with the shift to a Democratic majority in the Colorado State Legislature, a bipartisan proposal for historic designation and funding for local wildland trail preservation could be implemented. Another important point of awareness needs to be made regarding distinguishing living cultures from those that have long since stopped being active in the area. Archeology is about the past, but what is needed here is a deepened study and understanding of the unique present. The State Historic Preservation officer is a good target for raising future awareness of local trail systems and their role in living culture: local communities and their relationship to ecosystems.

## **The Community Conducts Participatory Action Research**

### ***About Participatory Action Research***

In its commonly used form, participatory action research elucidates local knowledge for local use in relation to outside agencies that seek to provide expertise and financial resources to the community. In those instances, PAR enhances the quality of community decision-making to meet local needs in health care, education, and infrastructure. PAR often supports local people in articulating where and who they are and where and who they might like to be. In a PAR intervention, community-derived data belongs to the community and not to the researcher or funding organization. That is, the information is shared for everyone's use and understanding, not simply collected for analysis never to be integrated, validated or corroborated by the locals under study.

“Participatory research seeks to break down the distinction between the researchers and the researcher and the subjects and objects of knowledge production through the participation of the people for themselves in the attainment and creation of knowledge. In the process, research is view not only as a means of creating knowledge; it is simultaneously a tool for the education and development of consciousness as well as mobilization for action.”

(Gaventa, 1991)

Participatory action research is a wonderful vehicle for elucidating culture and customary practice. Participatory research validates the contemporary experience of local custom and sense of place. Culture arises from the landscape and the ways that people adapt to it. We become linked to other mountain people by this experience of making it work; there is a common experience and practice in similar landscapes. This commonality of experience can bond those who are local. People come to have an understanding of where they live socially and ecologically. Heritage audits record people's memories and acknowledge their personal commitment to their community. (Howarth, 1998:68) Environmental history is of long-lived use in understanding ourselves, our past and our future. “Knowledge of site evolution is paramount. Recordings about land management, drainage, flowers, trees, game, birds, and many other aspects are worthy to be recorded.” (Howarth, 1998:73)

Oral history, workshops and a written repository of “community memory” are important foundations for making choices that are wise and stable. In the Gold Hill Case, the *Community Trail Mediation Guide* structured participatory research. The *Guide* is the direct result of attempting to resolve a dispute over local trail access by understanding all the factors involved in the dispute.

### ***Vision or Gold Hill's Trails and Landscape***

Some further discussion and forums might be useful to talk about trails. One idea would be to coincide an annual trails forum with national trails day at the beginning of June each year. At such a forum, the Trails Committee could prepare activities to engage locals with commercial interests, along with those who simply reside in Gold Hill in defining appropriate recreational use and how they would like trail system to work for them. Some group hikes might also be interesting. The vision and interests of generations to come should be considered. It is also important to engage the younger people of Gold Hill who are attached to where they were raised and may want to return. What are their desires and expectations about Gold Hill in the future?

The value of wilderness experience should also be explored as to whether it is critical for individuals living here, for the community and for the broader ecological matrix. In what ways should or can the landscape be preserved and what is the threshold level of acceptable change?

The next steps are to monitor the results of the mediation process and future planning in Gold Hill. There may be a need to modify the local policy or strategies. Things change, and the perspective of this moment may eventually become obsolete research. It remains important to continue doing research and improving contents of Volume One, policy, and Volume Two, reference, and Volume Three, history and broader policy.

### ***Trail Monitoring***

A primary concern around trail use is trail impact. Impact can include alterations of the trail: braiding, erosion due to wind and water of exposed rock and soil, and rutting from horse hooves and tires. Another form of impact is to ecological resources along a trail. Impact could affect bird species as well as plant life and other animal life along the trail. (See Volume Three under Stewardship for more details).

Locals can play a significant role as abutters to public trails in a requirement for limited hours of use for motorized and/or mechanized access to a trail. Such a restriction would likely improve the quality of life for many landowners near the Switzerland Trail in Gold Hill. Such a standard could also be applied to the use of loud music in designated public picnic areas.

In the case of Gold Hill, a few members of the Trail Committee are willing to perform trail maintenance. Also, a neighborhood watch and participatory monitoring of the local trail system could be helpful to landowners regarding maintenance needs, fire mitigation and protection, and preservation of special features and transect checks for wildlife use (See below).

### ***Research and Action for Ecosystem Stewardship***

A mutual interest exists in the community to preserve the landscape. In addition, community-based ecosystem stewardship is an effective way to ensure preservation of ecological resources by those most likely to impact them. This approach also shares the burden of national agencies with locals who are more likely to have a better understanding of the local landscape. In the case of Gold Hill, community members can choose to make caring for forests part of everyday life. The Gold Hill Volunteer Fire Protection Department already does that along with the Town Meeting's Fire Mitigation Committee.

These areas of research and action would be beneficial:

- Identify role of local area ecosystem in conservation in Southern Rockies;
- Environmental history of area leads to conservation;
- Identify local plants and their uses and educate locals and youth;
- Environmental education; and,
- Fostering local understanding of nature through trail preservation.

In Volume Three of this *Guide*, Community Based Ecosystem Stewardship is discussed and explained in the context of Gold Hill. A tracking list of endangered species is also presented for Gold Hill. Case examples of creating sound stewardship capacity for common pool resources such as trails are presented in Volume Three of this *Guide*: "History and Stewardship of Ecosystems and Trails." The examples illustrate community-based and public agency-based collaborations for restoring ecological systems on a local and global scale. (See also the Appendix on "Participatory Monitoring of Trail Use Impacts on Local Flora and Fauna.")

## **CASE STUDY: MOVING TOWARDS RESOLUTION ON THE NORTH TRAIL DISPUTE**

### **Overview**

The north trail dispute occurs in Gold Hill, Colorado. In order to preserve the anonymity of participants in the dispute resolution process, the names of individuals have been coded. Gold Hill is situated within the Southern Rockies ecoregion, nine miles west of Boulder. It is the site of the first gold strike of the Nebraska Territory in 1859. The community of just over three hundred persons resides for the most part in the original platted town site, which is now a National Historic District. Other residents live in either a subdivision of four to five acre parcels or in homes situated on larger parcels among the surrounding forests. Some homes are individually situated on mining claims staked during the Gold Rush of the 1860s.

The trail access dispute was triggered by an “outsider” purchase of land across which a segment of the trail traversed. When this trail segment was subsequently closed to local access, neighbors expressed concern over a potential threat to their lifestyle. When efforts to talk with the “outsider” failed, these individuals mobilized others in the community to act in defense of trail use by locals. This mobilization effort raised awareness of the issue in the community and precipitated a dispute resolution process to address concerns at a community-wide level. Several other local trail disputes emerged while conducting the participatory action research. Trail disputes remain on this particular trail, but all other trail disputes have been resolved with differing methods and results.

This trail dispute is not necessarily unique, but it does have unique qualities because of the sociocultural characteristics of the local population and the community-based beginnings of the mediation process. Divergent natural resource interests are central to the dispute. Primary among the interests are private property rights and access to the landscape. Interests also reflect the region’s environmental history, residential development patterns, and recreational demand. Another even broader interest lies in wilderness protection standards for the area’s montane forest landscape.

In the last fifteen years, the proximity of Gold Hill to Boulder has drawn bicyclists to Gold Hill’s previously uncharted trails. An increase in recreational demand by mountain bicyclists, Off Road Vehicle (ORV) and dirt bike enthusiasts and the growing number of new homes built in the surrounding montane forests has created tension between landowners and trail users. Previously, most trail use was by locals/neighbors who were familiar to landowners and was an integral part of community social life.

### **Intractable Dispute?**

The landowner whose land contains a segment of the north trail that he chose to close was unwilling to communicate with the local community. His reasons include the nature of the initial altercation with a neighbor, his recent arrival and subsequent lack of a social network in the community, and the legal framework in which land tenure occurs.

“The power of a more institutionalized party might be based on a combination of legislation, regulation and tradition. However, unless there is sufficient credible power on all sides, it is unlikely that the most powerful party will consider any negotiation on the issues.” (Cormick. 1980)

A Trails Mediation Workshop was held on March 15 and 16, 2003. The purpose of the Gold Hill Trails Open House and Workshop was to:

- Share Trail Committee’s research with the community interactively;
- Gather additional insights from the community; and
- Engage a conversation about how to avoid trails disputes.

Twenty-five locals attended the workshop and another twenty persons from Gold Hill conducted interviews, helped with the research and editing of this mediation *Guide* or served as facilitators at the Workshop.

In 2003, the issues involved in the catalyzing trail closure were not yet fully understood. To compound matters, the landowner who closed a contested segment of historic trail did not attend, nor did the selling agent for his property. The selling agent is also a partner in a ranching operation on the property. Earlier tensions needed to be resolved between neighbors and it was unfortunate that they were not. The tensions created an escalated dispute; the tensions juxtaposed the attentiveness required to keep every passerby off the trail against the insistence by locals of walking a favorite hiking trail

## **New Developments**

As of 2005, a restored effort at resolving tension over this trail has begun. An early member of the Trails Committee and a neighbor of the landowner who closed a segment of trail hosted a community social event that was attended by the landowner. Trails were gracefully avoided as a topic of discussion. The opportunity for dialogue in a friendly setting allowed for releasing a great deal of tension. The mere attendance by this landowner and the generous hospitality of an elder local are hopeful new developments.

It appears that the landowner seeks to be an ecologically minded good neighbor. Yet there was a wall of separation that supported oppositional posturing rather than integrative bargaining (Fisher and Ury, 1981, 7). The Gold Hill Town Meeting also approved a motion on April 10, 2006, to develop a local policy on trails. This may also serve well in resolving issues surrounding the North Trail dispute.

### ***The North Trail Bypass***

The catalyst's neighbor at Morning Sun is the most important and influential actor in resolving this dispute. She will be referred to as "Dedicated Trails Volunteer." She initiated the mapping project of the North Trail, the idea for a trails reference for Gold Hill and the establishment of a bypass trail that goes around the landowner's property. As the mediation process continued without tangible results in terms of dialogue, the option of a bypass became more and more important. Dedicated Trails Volunteer spearheaded and performed most of the work with a great deal of success. She made sure that the western entry point from the Switzerland Trail was completely dissimulated, so that it now takes a little searching to find the entry point.

Local reactions have been extremely positive. The Bypass offers some extraordinary views and experiences of differing ecological systems that the meadows segment of the North Trail does not. For some, the bypass was a little bit too out of the way and could not be used for mountain biking.

In order to address potential off road vehicle use, it was suggested by Selling Agent that a "no motorized vehicles" sign be placed on the western end. Instead, the Dedicated Trails Volunteer and Morning Sun resident have dissimulated the western entrance off of the Switzerland Trail to prevent entry by dirt bikes and ORVs.

In another development, Selling Agent has blocked off a portion of the trail in a switchback although he was initially favorable to the route. New Landowner has put in a fence along the northern property boundary of his property. This effectively changed the alignment of the Bypass in two places, but did not detrimentally affect the overall value of the bypass as a connector from the North Trail to the Switzerland Trail.

A positive sign in the development of the bypass is that the elk seem to be using the North Trail Bypass, according to the Dedicated Trails Volunteer and Morning Sun resident. This may have alleviated some of the concern over the elk being able to migrate through the fenced area along the forest service boundary of the meadows.

Still, it appears that without pursuing a more stable option on the North Trail segment that locals continue to use, tensions might continue to flair.

Several horse *Guides* or riders have voiced concern over the closure of the North Trail for horse use. Perhaps one way to meet their interests would include obtaining permission for horses and their riders to use the North Trail to their exclusive benefit. This does not meet the local customs criteria, but does meet goals associated with one set of interests. Alternatives could include loops specifically for local mountain bike riders and the annual Tour de Rump mountain bike rally. Downhill racing routes might also be possibly negotiable, as these routes do not represent a noise pollution source. The use of motorized ORV would probably not be accepted by any local landowner.



### ***Participatory Action Research in the North Trail Case***

In the north trail case, participatory action research (PAR) addresses power imbalances by supporting neutral research. Those who were initially protagonists became “operationally neutral” actors who conducted research to address the interests of all parties. Others helped coordinate the mediation effort. PAR redirected community discontent into a deeper understanding of the interests involved and options available in resolving the dispute.

In the North Trail case, the PAR was exploratory and there was a lack of demonstrable evidence of the generalizable relevance of the PAR work, which hindered a search for funding.

In one Gold Hill case, broad-based ecological and community interests as initially articulated were insufficient to draw a new landowner into dialogue. These interests as opened up by PAR and presented in this *Guide* may make a leveraging difference in the future. Still, individual interests must be acknowledged. If parties to a dispute do eventually negotiate in good faith, broad-based interests can broaden options for resolution.

The research is intended to encourage participation in dialogue through solid factual exchange of knowledge. The research also clarifies the legal ramifications of forgoing participatory dialogue (See above “Litigating Access to the North Trail”), although pursuing legal solutions is considered a last resort. Mediation may no longer be necessary and resolution may proceed independently from any involvement by the Trails Committee. In terms of a mediation process like the one in Gold Hill, providing a list of options might open the door toward encouraging a cautious stakeholder to participate.

- Gold Hill’s North Trail access dispute could be resolved in a multitude of ways.
- In general terms, leaning towards the ideal outcome of creating mutual understanding and strong community bonds is not necessary. Rather, a trails mediation process could be rooted in the parties working out an agreement that meets their distinct and individual needs.
- Mediation requires parties to a dispute to move past positions to underlying interests. Understanding the underlying interests of all stakeholders can form the fertile ground by which local customs are preserved and the North Trail dispute is fundamentally and sustainably resolved.
- In terms of a stymied mediation process like the one in Gold Hill, providing a list of options might open the door that encourages a cautious stakeholder, like New Landowner, into participating. Identifying options and possible solutions might create an incentive for New Landowner to negotiate. The premise is that by minimizing impact on a landowner with trails, the more likely that landowner will be in keeping a trail open for local use.
- Customs are what has worked in the past. Customs may have to be modified in order to address the changes of the future in recreational demand and residential growth.
- A landowner may be more likely to keep a trail open for local use voluntarily if the landowner is familiar with the trail users, or if the trail users can converse with the landowner comfortably, and also if trail use is predictable.

As a result of PAR, the community effort has provided grounded research into the role of trails in maintaining amenity value in rural communities, in preserving ecosystems and in sustaining community viability. Results of the process include written guidance for the community in preventing and resolving future trail disputes; these results may be generalizable. PAR results could raise awareness about locally emergent issues like trail access around which national organizations could mobilize. The effect of private control over public/private trails could also remedy concerns over ORV use on public lands. Non-local ORV use has been a contributing factor in the North Trail closure.

## **Landowner Incentives to Work with Trail Access Advocates**

### ***BATNAS***

According to the selling agent in this case, the meadows property was evaluated by New Landowner's attorneys prior to purchase, in order to ensure that no claims of access could be legitimate. RS2477 reinterpretations have occurred since that time. So the status of exposure on the land may differ with what had been expected. In addition, landowners with trails may wish to avoid the difficulty of enforcing trespass law particularly when the trail access has not been legally settled.

A strategic BATNA for the community could be to seek funding to litigate access. In the case of the "north trail," grounds exist to open access to the Old Stage Road. Up until this point, the likelihood of filing a lawsuit on behalf of local access has been small. As a result, the best alternative to a negotiated agreement (BATNA) for this landowner was initially not to engage the community.

In the Gold Hill North Trail dispute, BATNAs vary. BATNAs are not generally the same across a group of individuals no matter their ties. For instance in the Gold Hill community or the Trails Committee, individuals have differing levels of preference for an outcome and differing perceptions of opportunity cost. Based on the research conducted by the Trails Committee, BATNAs vary by individual in the community and the range of alternatives to aligning with the efforts of the Trails Committee include:

- Adversarial use of the trail even under prohibition of New Landowner;
- Hike the bypass and walk over private land as needed and unobtrusively.
- Wait it out and hope resolution happens spontaneously; or
- Engage in independent individualized dialogues and agreements.

### ***Disadvantages of Litigating Access***

Oppositional posturing generally leads to win/lose outcomes and will not likely lead to reaching mutual ecological or social interests during or after a court decision. According to comments of local trail users, locals do not want a high level of public access to the local trails. There is mutual interest for landowners and trail users in keeping local trails local. Litigating and winning access would not allow for local use only.

So, it would be preferable to negotiate local access than to pursue litigation for several reasons: more stable outcome and less cost socially. The transactional costs are substantial, and include time, money, and well-being. The need to perpetuate an adversarial typecasting of the opposition is socially costly and divisive. A virtually ubiquitous incentive to mediate rather than fight a legal battle is the avoidance of the wear and tear that the legal system engenders for all parties. A public trail is a trail upon which the public, as in all publics, has a "legal right to use the trail" (County Sheriff, Boulder County). A Boulder County attorney wrote:

Many times parties choose to litigate access rights. Litigation is usually an "all or nothing" proposition, i.e. the right of way in dispute will either be deemed a public road or not a public road. If a court declares the road "public," the public's uses of the road cannot be limited. In other words, the trail or road must remain open not only to hikers but also, e.g., to 4 wheel drive vehicles. (County Attorney, Fact sheet for workshop, 3/15/03)

A County Sheriff further clarifies the interpretation of public to mean a trail that is "publicly maintained." These public outcomes could lead to the erosion of the very nature of a local trail system in terms of community and ecological connectivity.

Keep in mind the likelihood that County Open Space that includes the East Trails area will appear on maps. County residents will likely be drawn to the area and in increasing numbers. This would not bode well for diminishing the impact of outside use in the area. The local trails issue points to the need for clear understanding whose very premise calls for mutual inquiry, suspended judgment and participatory decision-making.

## **Steps Toward Resolution**

With regards to the North Trail, entrenched positions of all directly affected parties may be softening. If the parties can accomplish the following trajectory, the North Trail dispute has a good chance of being resolved. In the meantime, Dedicated Trails Volunteer did an outstanding job in creating a beautiful alternative route with the wonderful assistance of Earth-Friendly Trail Design and Maintenance Volunteer.

### ***Step One - Learning***

Twenty five community members attended the Trails Workshop. In the last three years, the community research group - or committee - attempted to meet the information needs of a broad range of landowners with differing types of terrain and differing types of trail. And in not only serving other landowners, this research of identifying options and possible solutions might create an incentive for New Landowner to negotiate. The overarching goal is to minimize the impact on a landowner with trails of local trail use. In this way, it is more likely that a landowner will be willing to keep a trail open for local use.

Eventually the *Community Trails Mediation Guide* is going to be read by more and more of the community; as a result, the role of the local trails will be better understood in terms of their role in ecosystem stewardship and community life. When that happens, the set of options and strategies that were discovered through the research will come in handy for preparing local policy, for restoring customs of use and for resolving disputes.

### ***Step Two - Practice***

It takes a lot of practice to learn how to engage each other when we disagree. The mission of the Trails Committee has been to build relationships around trails and in many ways it continues to do so. With time, Gold Hill can become quite resilient in regard to discussing outside impacts. The community and each individual within it may learn to listen to each other regarding complicated matters in ways that are calm and peaceful. Gold Hill will become this way by virtue of its capacity to take an interest in the needs of all parties.

Mediation requires parties to a dispute to move past positions to underlying interests. Understanding the underlying interests of all stakeholders can form the fertile ground by which local customs are preserved and the North Trail dispute is fundamentally and sustainably resolved. Identifying options and possible solutions might create an incentive for landowners to talk with locals about their concerns.

### ***Step Three – Healing***

The two parties who clashed on the North Trail may have done so in ways that precipitated the closure, and any reparation of the damage caused on that day and the days that followed could go a long way to easing tensions all around. One lesson learned is that it might be prudent in the future to not take one's dogs onto the land of another who also has dogs and is already reluctant about trail use.

The community has demonstrated a responsible and effective effort to understand trail issues. There is a general willingness to meet landowner needs. The tensions around trail use are on the wane and many members of the community are ready to be proactive in creating a local policy on trails that meets the needs of all stakeholders.

Restoring informal and implicit local customs of use would also be a form of healing not only for individual trail users and landowners, but for many people in the community in the way we relate to the land and each other. Customs are ways of inter-relating that have worked in the past. Customs may have to be modified in order to address the changes of the future in recreational demand and residential growth.

#### ***Step Four – Agreements and Restoration of Local Custom***

A landowner may be more likely to keep a trail open for local use voluntarily if the landowner is familiar with the trail users, or if the trail users can converse with the landowner comfortably. That's what a local system is all about; everyone is familiar. The predictability of trail use is also important in terms of time of day and day of the week.

An informal agreement on the North Trail could generate a set of guidelines regarding trail use that would offer both social and ecological advantages and peace of mind. Many other trails around Gold Hill are case examples of effective and stable strategies to prevent dispute on the local trails.

Also, a locally designed, mediated or negotiated agreement could avoid the potential influx of non-local recreational demand, which is already on the rise. The Gold Hill community does not need agreements sanctioned by Boulder County Courts. Informal agreement that works for everyone, just as trail customs have worked in the past, would be just as viable if not more so.

#### **CONCLUSION**

The subject of local access trail disputes is a newly emergent one. Policy makers do not yet have explicit guidance in this area nor do they have the procedural tools to prevent disputes over trail use. Complex environmental and social disputes in a climate of highly differentiated public and private ownership need a great deal of space, time and solid research to resolve. Private property-owner control grounded in a full understanding of the issues, combined with stable local customs, might serve to prevent or resolve trail use disputes on local trail systems and even on trails that traverse public land.

A parallel exists between local access to trail systems and community-based ecosystem management: both are impeded by fractured landownership. To maintain viability, both require social mechanisms for long-term information exchange. PAR raises awareness about the fact that local trails and wildlife habitat are integral to community-based conservation and sustainable resource use. Trails are essential for resident communities to steward their proximate landscape environment. PAR emphasizes that trails are linked to ecosystems. Loss of trail segments mimics fragmentation processes that are rampant across global ecosystems.

PAR sets up the foundation for mediating or attempting to mediate an environmental dispute of the type presented in the Gold Hill case. Over the course of several years, the mediation process in Gold Hill served to bring people together in resolving a trail dispute. In the dispute resolution process, PAR improved local capacity for dispute prevention by enacting a process of learning about stakeholder interests and by creating the knowledge base to devise creative options for resolution. PAR constructively de-escalated the dispute and opened up a period for suspended judgment. PAR made room for patience and perseverance rather than escalated emotions over a perceived injustice.

Now, the ongoing use of this *Trails Mediation Guide* may make a positive difference for locals with trails. In the Gold Hill case, PAR activities offered opportunities for participants to express a positive affect, and share good feelings about being courteous, respectful and empowered to handle tensions and difficult situations. PAR allowed community members to retain the highest opinions of the future actions of the other. Such openness and clarity of mind and heart is an essential psychological and sociological attribute for transforming conflict into a stable outcome. The use of this *Guide* should help people in a range of communities in learning to discuss trails with hope for a stable outcome.