

OPEN SPACE RESOURCES RESOLUTION OF TETON COUNTY, WYOMING

JULY 15, 2015 DRAFT

CHAPTER 1: GENERAL PROVISIONS

SECTION 1: TITLE

This resolution shall be known as the Open Space Resources Resolution of Teton County, Wyoming, (hereinafter referred to as the "Resolution").

SECTION 2: AUTHORITY

WHEREAS, the Teton County Scenic Preserve Trust (hereinafter referred to as the "Trust") is authorized pursuant to Wyoming Statutes §§18-5-201 through 18-2-208 and Wyoming Statutes §§34-1-201 through 34-1-207, also known as the Uniform Conservation Easement Act;

WHEREAS, on August 1, 1978, the Teton County Board of County Commissioners created and established the Teton County Scenic Preserve Trust by Resolution and adopted By Laws; and

WHEREAS, on March 27, 1979, an amendment was made to the County Scenic Preserve Trust Resolution; and

WHEREAS, on May 3, 1983, certain amendments were made to the Teton County Scenic Preserve Trust Resolution, Chapter II, for the Scenic Resources Preservation Program; and

WHEREAS, on August 15, 1989, the Teton County Board of County Commissioners amended the Teton County Scenic Preserve Trust Resolution; and

WHEREAS, in 1992, the Teton County Board of County Commissioners amended the Teton County Scenic Preserve Trust Resolution; and

WHEREAS, on October 31, 2006, the Teton County Board of County Commissioners adopted certain amendments to the Teton County Scenic Preserve Trust Resolution, known as the "Resolution Governing Conservation Easement Amendments;" and

WHEREAS, the Teton County Scenic Preserve Trust, also known as the "Scenic Preserve Trust of Teton," has exempt status as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, the Board of Trustees of the Teton County Scenic Preserve Trust desires to update and replace all prior Resolutions and amendments thereto of the Teton County Scenic Preserve Trust, which was originally created and established on August 1, 1978; and

WHEREAS, the Board of Trustees of the Teton County Scenic Preserve Trust, after due notice and public hearing, met and conducted a public hearing on the matter to consider adopting this Open Space Resources Resolution, dated July 10, 2015.

NOW THEREFORE, this Resolution hereby repeals and replaces all prior adopted Resolutions and amendments thereto of the Teton County Scenic Preserve Trust, and shall be the effective and governing Resolution for the Teton County Scenic Preserve Trust of Teton County, Wyoming, consistent with the August 1, 1978, Resolution and By Laws, which established the Teton County Scenic Preserve Trust.

SECTION 3: PURPOSE

In the interest of protecting the public health, safety, and welfare; in the interest of protecting and stewarding Teton County's ecological resources; and in the interest of protecting heritage, culture, and economy, Jackson and Teton County have adopted the Comprehensive Plan.

The Jackson Teton County Comprehensive Plan identifies three Common Values of Community Character: Ecosystem Stewardship, Growth Management, and Quality of Life. The Common Value of Ecosystem Stewardship identifies preservation and protection of the area's unique and intact ecosystem as the core of the community's character. Wildlife, natural and scenic resources, and open space are integral to the values of Growth Management and Quality of Life as well, as these resources define the community's ecological, social and economic character.

Principle 1.1 of the Comprehensive Plan is maintenance of healthy populations of native wildlife. Principle 1.3 of the Comprehensive Plan is maintenance of the scenic resources of the community such as natural skylines, expansive hillside and foreground vistas, and natural landforms. Principle 1.4 of the Comprehensive Plan is protection and stewardship of open space. Protecting open space preserves wildlife habitat and scenery and maintains the community's agricultural western heritage. This resolution is intended to promote protection and stewardship of open space, including scenic and wildlife resources, as called for in the Comprehensive Plan.

The Board of County Commissioners also hereby reaffirms the establishment of the Teton County Scenic Preserve Trust (sometimes hereinafter referred to as the "Trust"), for the following purposes:

1. To serve as the entity in which real property rights are vested and the property maintained according to regulations for the administration of the Trust,
2. To accept open space easements on behalf of the citizens of Teton County,
3. To identify, evaluate, acquire, and steward open space resource property in Teton County, and
4. To conduct education and outreach about the value of open space resources and best stewardship practices for protecting and maintaining open space resources, and to coordinate with other agencies and organizations to achieve the open space goals identified in the Comprehensive Plan.

SECTION 4: JURISDICTION

The territorial jurisdiction of the Teton County Scenic Preserve Trust shall include all of the unincorporated private lands within Teton County, Wyoming.

SECTION 5: INTERPRETATION

When any provision of this Resolution imposes more stringent regulations, requirements, or limitations than imposed by any other resolution, requirement, or regulation of Teton County or any statute of the State of Wyoming, then the provisions of this Resolution shall govern.

CHAPTER II. TETON COUNTY SCENIC PRESERVE TRUST

SECTION 1: DESIGNATION OF THE TETON COUNTY SCENIC PRESERVE TRUST

The Teton County Scenic Preserve Trust shall be the repository for certain interests in real property owned by Teton County, Wyoming, for the purpose of implementing the Common Values of the Jackson Teton County Comprehensive Plan, as amended, and otherwise assisting in the preservation of the County's open space resources.

The interests in real property which constitute the assets of the Trust may be fee simple title to such property, open space easements in such property, development rights of such property, or such other less-than-fee interests in such property as are consistent with the purposes of this resolution.

The Trust shall be the repository of any moneys, securities, or negotiable instruments received by the Trust from any public agency or private person or corporation for the purpose of acquiring interests in real property, and of any interest, dividends, rents, or other income paid to the Trust. Such moneys, securities, and negotiable instruments shall be assets of the Trust until such time as they are expended, or converted to cash and expended, on acquisition of interests in real property which shall then become assets of the Trust.

SECTION 2: BOARD OF TRUSTEES

The Trust shall be governed by a Board of Directors or Trustees, which shall administer the interests and activities of the Trust. The Board of Trustees is the decision maker for the Trust and shall abide by the terms of this Resolution. The members of the Board of Trustees shall be the members of the Board of County Commissioners of Teton County.

SECTION 3: ACQUISITION OF INTERESTS IN REAL PROPERTY

The Trust may acquire interest or rights in real property, including land and water, which will cause the County's open space resources to be preserved in accord with this Resolution. The Trust may acquire such interests by any method of acquisition that is legally permissible under the

Constitution and Statutes of the State of Wyoming, including, but not limited to, the following methods:

- A. Acquisition by purchase, including outright purchase or purchase in installments,
- B. Acquisition by transfer of title to the Trust from Teton County, the Town of Jackson, the State of Wyoming, or any agency of the United States government,
- C. Acquisition by means of gift or bequest from a private person, corporation, foundation, or other private entity, or
- D. Acquisition by means of dedication to the Trust of open space land that is part of a parcel on which a development option requiring a conservation area is approved by the County.

SECTION 4: SELECTION CRITERIA

In addition to serving as the repository for certain rights in real property, the Trust shall evaluate open space resources to determine whether their acquisition and acceptance by the Trust is consistent with the goals of the Comprehensive Plan and the purposes of this Resolution. In conducting such evaluation, the Trust shall consider the following selection criteria:

- A. For open space easements and other interests in real property that are proposed for acceptance by the Trust as part of pursuit of approval of a development option requiring open space pursuant to the Teton County Land Development Regulations, the proposed open space shall be evaluated against the open space standards established in the Division 7.3 of the LDRs, or the current equivalent standard. If standards of Division 7.3 are met, the proposed open space land shall be considered eligible for acceptance by the Trust.
- B. For open space lands and resources proposed or identified for acquisition by the Trust apart from any requirement of the LDRs, the Trust will establish criteria for evaluation of the acquisition or acceptance proposal. Such criteria may be established in this Resolution, or in a separate acquisition policy or plan prepared and approved by the Board of Trustees.

SECTION 5: OPEN SPACE EASEMENT CRITERIA

The Trust may accept or acquire open space easements in order to cause the County's open space resources to be protected in accord with the Comprehensive Plan and the terms of this Resolution. In order to be accepted by the Trust, an open space easement shall comply with all requirements of Wyoming Statute governing conservation easements, and at a minimum, the easement shall include all of the following terms and conditions:

- A. Conveyance of the easement in perpetuity,
- B. A legal description of the open space,
- C. Statement of the conservation values of the easement and their relationship to the purposes of this resolution,

- D. Establishment of the affirmative rights of the grantee to monitor the open space and enforce the restriction,
- E. Specification of rights reserved by the grantor, including authorized uses, physical development, and subdivision or development options,
- F. Specification of the rights relinquished by the restriction, including uses, physical development, and subdivision or development options,
- G. Establishment of a management plan for long-term stewardship of the open space;
- H. Notice and approval requirements, and
- I. Provisions governing enforcement, amendment, and transfer of the easement.

For open space easements that are proposed for acceptance by the Trust as part of pursuit of approval of a development option requiring a conservation area pursuant to the Teton County LDRs, the easement shall meet the minimum criteria of restriction of conservation area established in Division 7.3 of the LDRs, or its current equivalent. Open space easements may take the form of a template, established by the Trust and amended from time to time, which is made available in the Teton County Planning Department.

SECTION 6. PURCHASES

The Trust is hereby authorized to purchase land in fee and to purchase open space easements or other less-than-fee interests in real property in order to cause the open space resources of the County to be preserved, utilizing for this purpose any moneys that are assets of the Trust, provided that sufficient funds shall be retained in the Trust to pay the current costs of necessary maintenance of lands owned in fee and the costs of ensuring, when necessary, that the terms of open space easements or other less-than-fee interests owned by the Trust are not violated.

SECTION 7: RIGHTS OF THE GRANTOR

The use of lands owned in fee by the Trust, or on which the Trust owns an open space easement or any other less-than-fee interest, which were accepted or acquired by the Trust as part of a development option under the LDRs, shall be limited in the open space easement to those uses allowed by Section 7.3.3 of the LDRs, or the current equivalent standard.

The use of lands owned in fee by the Trust, or on which the Trust owns an open space easement or any other less-than-fee interest, which were accepted or acquired by the Trust for any other purpose shall be established in the easement or sale agreement for the property. Flexibility is encouraged, and the authorized uses may vary widely, depending on the unique circumstances of the property and the intended purpose of the acquisition, provided that the intent of this Resolution, that the open space resources of the County be protected, is met.

SECTION 8: RIGHTS OF THE GRANTEE

The terms of open space easements or other less-than fee interests owned by the Scenic Preserve Trust shall limit the authorized uses of the land to those open space uses prescribed in this section.

A. Leases.

Lands owned in fee by the Trust may be leased provided that the terms of the lease limit the use of the land to those open space uses prescribed in this Section.

B. Income from Leases.

All rents and other income from leases of land owned by the Trust shall accrue to the Trust and shall become assets of the Trust; such income shall be expended only for the following purposes:

1. To acquire interests in real property in order to cause the open space resources of the County to be preserved,
2. To have performed necessary maintenance of open space lands owned by the Trust, or
3. To take necessary steps to ensure that the terms of open space easements or other less- than-fee interests in the Trust are not violated.

C. Stewardship of Fee Title Lands.

The Board of Trustees of the Trust are hereby authorized to expend assets of the Trust for the purpose of necessary maintenance of land owned in fee by the Trust, provided that no land, open space easement, or other less-than-fee interest in real property shall be sold to raise funds for this purpose.

D. Monitoring of Scenic Easements.

The Board of Trustees are hereby authorized to expend assets of the Trust, if necessary, for the purpose of ensuring that the terms of open space easements or other less-than-fee interests in real property owned by the Trust are not violated, and for taking necessary actions, including payment of attorney's fees and court costs, to secure the rights of the Trust, provided that no land, open space easement, or less-than-fee interest in real property shall be sold to raise funds for these purposes.

E. Sale or Transfer of Interests in Real Property.

No land, open space easement, or other less-than-fee interest in real property owned by the Scenic Preserve Trust shall be sold or transferred unless the proceeds of the sale or transfer are utilized to acquire other lands or interests in real property of at least equal market value and which are of at least equal worth in accomplishing the purposes of this resolution.

No land, open space easement, or other less-than-fee interest in real property owned by the Trust shall be traded unless the land or other interest in real property received in the

trade is of at least equal market value and is of at least equal worth in accomplishing the purposes of this resolution.

SECTION 9: COLLECTION OF STEWARDSHIP FEES

The Trust is hereby authorized to collect fees from landowners wishing to grant open space easements to the Trust to assist the Trust in ensuring that the terms of the agreements and this Resolution are upheld over time.

A. Applicability

This Section shall apply to all easements accepted by the Trust after the date this Section is filed with the Teton County Clerk. Applicability of this Section to amendments to existing Trust easements shall be decided on a case-by-case basis by the Board of Trustees, taking in to consideration the potential increase in stewardship responsibilities each amendment represents.

B. Use of funds

The funds shall be used by the Trust for activities related to the perpetual stewardship of the easements it holds, including, but not limited to, costs of annual monitoring visits and reports, as well as legal expenses associated with the enforcement of the terms of the easements. If an easement for which a fee has been collected is transferred to another land trust or qualified holder, any unspent portion of the fee collected shall be transferred to the new holder as well.

C. Amount of fee

The amount of the fee collected shall be designated as "Restricted Fund Balance," where the up-front fee collected would ideally be retained over time, and the annual interest earned would contribute to the annual stewardship expenditures of the Trust, as follows:

$$\text{Fee amount} = (\text{annual stewardship expenses}) / (\text{earned interest rate percentage})$$

Annual stewardship expenses shall be calculated based on an estimate of the average annual hours spent by staff on landowner correspondence, easement compliance reviews, notification of violations, resolution of violations, and other stewardship duties, plus the cost of completing an annual monitoring visit and report.

The earned interest rate percentage shall be based on the previous 20-year historic average interest for a 1 year CD.

The fee amount shall be updated as needed, but no more than annually, by the Board of County Commissioners, and published in the Planning Department fee schedule.

D. Timing of payment

The fee amount shall be collected prior to recordation of the Easement with the Office of the Teton County Clerk.

E. Transfer Agreement

In addition to the up-front Stewardship Fee described above, a Transfer Agreement shall also be required, which shall ensure that any time property ownership is transferred, a payment to the Trust stewardship fund would be made. The purpose of this requirement is to ensure that stewardship costs will be met in perpetuity. A Transfer Agreement is required to be recorded in the Office of the Teton County Clerk a separate document and would travel with the title of the easement-encumbered property. A sample transfer agreement follows:

“Transfer of Property. Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of 1/2 of 1 percent of the purchase price, unreduced by transaction costs and including the costs of any improvements, to the Grantee, to be used for the purpose of monitoring and enforcing the easement, or for other purposes consistent with Grantee’s mission. Transfer fee payments shall be due at closing. In the event of non-payment, the TCSPT shall have a lien against the property for the amount due. Said transfer fee shall be waived if the Property is transferred via gift, devise, foreclosure, or to a corporation, LLC, trust, or partnership in which all beneficial interests are owned by the Grantor. The term of the agreement should not exceed 40 years.”

F. Waiver of Stewardship Fee

If a landowner is unable to make the Stewardship Fee payment required above, and meets the standards of Section 7.4.1.F.1.d.ii of the LDRs, or its current equivalent, the Board of Trustees is hereby authorized to consider a request for waiver of the Stewardship Fee payment. The value of the land to be placed under easement shall be excluded from the asset limit calculations. A Transfer Agreement would still be required.

SECTION 10: EASEMENT AMENDMENTS

The Trust has accepted open space easements on behalf of the citizens in Teton County, and is legally bound to uphold the easement terms in perpetuity. The purpose of this section is to establish standards and a procedure for the Board of Trustees to consider amending those easements.

A. Standards. Amendments to open space easements shall only be authorized pursuant to the standards below. As every property is unique, no prior amendment decision by the Trust to an open space easement shall form a precedent with respect to any subsequent request for amendment.

1. General Standards

- a. In no case shall an amendment be allowed that adversely affects the Trust's exempt status as an organization under Section 501(c)(3) of the Internal Revenue Code,
- b. The net result of an amendment shall not confer any private financial or economic benefit, and

- c. Final approval of an amendment request lies with the Board of Trustees of the Trust, in their sole discretion, based on the standards recited in this resolution.

2. Standards for Considering the Approval of Open Space Easement Amendments

- a. *Correction of an error or clarification of an ambiguity.* The Trust shall allow amendments made to correct an error or oversight in an original conservation easement. This may include correction of a legal description, inclusion of standard language unintentionally omitted, or clarification of ambiguous language.
- b. *Modifications consistent with the conservation purposes.* At times, a landowner may request an amendment that modifies the restricted uses or areas of an easement property due to unforeseen adverse conditions or hardships. These requests for amendment may be allowed if
 - i. The amendment is consistent with the conservation purposes of the conservation easement, and
 - ii. The amendment creates a condition that strengthens protection of the conservation values identified in the easement and results in a net conservation benefit, and
 - iii. The amendment is not likely to create a significant adverse public perception of the Trust or significantly undermine the public's perception of the reliability of conservation easements as a land conservation tool.
- c. *Modifications required by easement terms.* The Trust shall allow amendments necessary to comply with the terms of the conservation easement, such as a provision in the easement allowing modifications at a future date under specified conditions.

B. Procedure.

- 1. *Requests must be made in writing.* Written requests to amend a conservation easement held by the Trust shall include a description of the proposed change, a map of the property showing affected areas, and reasons why the request is warranted (i.e., how a net benefit to conservation results from the proposed change). The applicant shall also submit a draft amendment document, including accurate legal descriptions of the affected property. Staff may request additional information as the process proceeds. Requests for amendment shall be submitted and filed with the Planning Department.

2. *Review.* The Planning Staff shall review requests for consistency with the standards recited in this resolution, the original conservation easement, related documentation, and the features of the land. A site visit may be arranged with the landowner and Planning Staff. A recommendation shall be made to the Board of Trustees and presented as a Matter From Staff at a public meeting to the Board of Trustees of the Teton County Scenic Preserve Trust. Planning Staff may request an applicant obtain an appraisal to ascertain the financial or economic benefit of a proposed amendment to ensure that no private benefit will result.
3. *Costs.* Costs shall be in accordance with the current adopted Planning Department Fee Schedule at the time of submittal.

SECTION 11: EASEMENT TRANSFERS

The Teton County Scenic Preserve Trust has accepted open space easements on behalf of the citizens in Teton County, and is contractually bound to uphold their terms in perpetuity. The purpose of this section is to establish standards and a procedure for transferring those easements.

As every property is unique, no decision by the TCSPT with respect to transfer of an open space easement shall form a precedent with respect to any other request for transfer. Transfers of open space easements shall only be authorized under the standards below:

1. The proposed transfer complies with the terms of the transfer provisions in the easement itself.
2. The agreement of the current landowner, and if possible, the original easement grantor, has been obtained in writing.
3. The agreement of any third parties who played a significant role in the project has been obtained in writing.
4. The agreement of the accepting organization has been obtained in writing.
5. Documentation has been obtained to demonstrate that the accepting organization is a 501c3 organization, qualified under Section 170h3 of the IRS Code to hold conservation easements.
6. Documentation has been obtained to demonstrate that the accepting organization has sufficient financial resources and a commitment to uphold the terms of the conservation easement in perpetuity. If not, the TCSPT shall be willing and able to transfer funds to the accepting organization to ensure the perpetual obligations outlined in the easement are met.
7. The accepting organization has an easement amendment policy in place that ensures that the conservation purposes of the TCSPT easements will be preserved. Amendments should only be allowed if a net increase in conservation occurs.

8. The TCSPT has copies of all necessary project records to provide to the accepting organization.
9. The proposed transfer complies with the terms of any development or development option plan approved for the property.
10. The TCSPT Board shall consider the effect of the transfer on the TCSPT program as a whole, and the effect on the program's public relations.
11. The majority of the TCSPT Board shall approve the transfer at a public hearing held in accordance with the law.

SECTION 12. GRANT APPLICATIONS

The Trust is hereby authorized to make applications for grants of funds to the State of Wyoming, to agencies of the United States government, to private foundations, individuals, and corporations, and to other possible sources of funds to be used to acquire interests in real property in order to cause the open space resources of the County to be preserved.

The Board of Trustees are hereby authorized to have necessary appraisals made of the values of lands owned in fee and of open space easements and other less-than-fee interests in real property owned by the Trust for the purposes of applying for grants.

SECTION 13: OUTREACH AND COORDINATION BEYOND TRUST LANDS

The Trust is hereby authorized to develop and implement an education and outreach program. The purpose of the program is to inform property owners, homeowner's associations, citizens' groups and other individuals and entities responsible for the management of land about the value of open space and certain best management practices for stewardship. The Trust is also authorized to engage in coordination with other organizations or governmental entities in order to better achieve the open space goals established in the Comprehensive Plan and this resolution.

SECTION 14. NONPROFIT STATUS AND ACTIVITIES

All lands, interest in lands, funds, or other assets received by the Trust, shall be held, managed, administered, and disposed of only in accordance with the provisions of this resolution. No part of the assets of this Trust shall inure or be payable to or for the benefit of any private individual, and no substantial part of the activities of this Trust shall be the carrying on of propaganda or otherwise attempting to influence legislation. No part of the activities of this Trust shall be the participation in, or the intervention in any political campaign on behalf of any candidate for public office.

Upon dissolution, the assets of the Trust shall be disposed of in a manner consistent with the purposes and assignments of the Trust as set forth in this resolution. Any transfer or other conveyance of any property interests of the Trust shall be made to such organization or organizations, organized and operated exclusively for charitable, educational or scientific purposes, as shall at the time qualify as exempt organizations under the provisions of the Internal Revenue Code.

In addition to the foregoing, the Trust shall not engage in any activity that would circumvent the Trust's exempt status as an organization under the provisions of the Internal Revenue Code.

SECTION 15: ADMINISTRATIVE PROCEDURES

The Trust, or its designee, is hereby authorized to establish standard procedures and policies for the administration of the interests and activities of the trust. Such procedures may be established in this resolution, or in a separate policy or procedural manual, and may include but are not limited to:

- i. Forms and templates necessary for the evaluation and processing of proposals related to open space interests of the Trust, including templates for easements, sales agreements, and other common documents.
- ii. Policies regarding appraisals and analysis of property for potential fee-simple acquisition by the Trust.
- iii. Provisions for public notice of Trust activities and decisions related to interests or properties held by the Trust, beyond notice of public hearings as required by law.
- iv. Strategic plans or policies to guide acquisition or education and outreach activities.
- v. Policies and provisions governing amendment or transfer of easements.

CHAPTER III: ADMINISTRATIVE PROVISIONS FOR THIS RESOLUTION

SECTION 1: AMENDMENT

After study and recommendation by the Planning Commission, and public hearings held in accordance with law, this Resolution may be amended by the Board of Trustees of the Teton County Scenic Preserve Trust and affirmed by the Teton County Board of County Commissioners, provided, however, that no amendment shall authorize the Board of Trustees to conduct the affairs of the Trust in any manner for any purpose contrary to the provisions of Section 501(c)(3) of the Internal Revenue Code

SECTION 2: VALIDITY

If any provision of this Resolution is declared to be invalid by a decision of a court of competent jurisdiction, it is hereby declared to be the legislative intent that:

- A. The effect of such decision shall be limited to that provision or those provisions which are expressly stated in the decision to be invalid; and
- B. Such decision shall not affect, impair, or nullify this resolution as a whole or any part thereof, but the rest of this resolution shall continue in full force and effect.

SECTION 3: EFFECTIVE DATE

This Resolution shall be in effect from the date of adoption by the Board of Trustees of the Teton County Scenic Preserve Trust and affirmation by the Teton County Board of County Commissioners.

PASSED, APPROVED, AND ADOPTED by the Board of Trustees of the Teton County Scenic Preserve Trust of Teton County, Wyoming, at a meeting held on this ____ day of _____, 2015.

**TETON COUNTY SCENIC PRESERVE TRUST
TETON COUNTY, WYOMING**

Barbara Allen, Vice-Chair of Board of Trustees

(Seal)

Attest:

Sherry L. Daigle, Teton County Clerk

AFFIRMED by the Board of County Commissioners, Teton County, Wyoming, at a meeting held on this ____ day of _____, 2015.

**BOARD OF COUNTY COMMISSIONERS
TETON COUNTY, WYOMING**

Barbara Allen, Vice-Chair

(Seal)

Attest:

Sherry L. Daigle, Teton County Clerk

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