



## Teton County Scenic Preserve Trust - Staff Report

**Subject:** EAS2021-0003: Saddle Butte Ranch Conservation Easement Amendment Request

**Applicant/Property Owner:** Douglas Schrier

**Presenter:** Rian Rooney, Senior Long-Range Planner

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### **REQUESTED ACTION**

Request by applicant to amend the geometry of the Saddle Butte Ranch open space easement held by the Teton County Scenic Preserve Trust (TCSPT), at 505 W Saddle Butte Way, to remove 719 square feet from the easement to the northwest of the building envelope and to add 1,438 square feet to the easement along the northeast edge of the building envelope.

### **BACKGROUND/DESCRIPTION**

#### ***PROJECT DESCRIPTION***

This application requests to amend the Saddle Butte Ranch open space easement, held by the Teton County Scenic Preserve Trust at 505 W Saddle Butte Way, to change the easement and development areas to allow for the retention of a manicured, sod lawn that was established in the easement during development of the property, in violation of the terms of the easement encumbering the property. In exchange for amending the easement to remove the impacted lawn area, the applicant is proposing to add to the existing easement a new area double the size of the impacted area.

The 1,438 square foot area proposed to be added to the easement, which prior to development consisted of mesic shrub (sagebrush), was disturbed during construction, and replaced with sod lawn. The application notes that the area will be reclaimed to mesic shrub upon acceptance of this easement amendment.

Concurrently, the applicant has submitted an application for a revised habitat mitigation plan, MSC2021-0063, which reflects requested changes to the approved habitat mitigation plan for the property. Development of the residence at 505 W Saddle Butte Way created disturbances and impacts within the open space easement, and the as-built conditions do not follow the approved habitat mitigation plan. MSC2021-0063 includes a surety estimate for the costs of completing the reclamation and monitoring of the disturbed area proposed to be added to the easement. The surety deposit would be held by Teton County until the required reclamation work has been completed and monitoring confirms that the new plantings are established.

### **BACKGROUND**

The existing Saddle Butte Ranch TCSPT easement encumbers 14.22 acres of the 16.56-acre property, Lot 2 of Saddle Butte Ranch Subdivision. The easement and development area were established in 1997 and 1998 (DEV97-0032 & EAS1998-0001) through a Planned Residential Development (PRD). The PRD allowed for the division of one 22.5-acre property into two developable lots (Saddle Butte Ranch Lots 1 & 2) with the requirement of an open space easement over 70% of the base site area (all allocated to Lot 2 of Saddle Butte Ranch).

The purpose of the Saddle Butte Ranch Open Space Easement is to *"preserve and protect the Open Spaces Values of the Open Space and to confine the use of the Open Space to agricultural, wildlife, natural, scenic, open space, recreation, and other such uses consistent with the preservation and protection of said features and values."* Specifically, the approved development plan recognized the wildlife habitat and scenic values of the open space. The Property is in both the Natural Resources Overlay (NRO) and Scenic Resources Overlay (SRO) and is crucial winter range for mule deer.

The Saddle Butte Ranch Open Space Easement prohibits the *"clearing, grading or other movement of the natural topography of the land except such activities in connection with fisheries development, wildlife habitat*

*improvement or clearing for safety purposes (e.g. deadfall).*" It also prohibits the construction and location of buildings, industrial and mining uses, off-road and off-trail transportation, dumping and storage, and feedlots.

### ***EXISTING CONDITIONS***

Development and construction of the property, which occurred between 2019 and 2021, resulted in disturbance and impacts to the existing habitat within the TCSPT easement as the approved limits of disturbance were broken. The approved habitat mitigation plan for the development, dated February 7, 2019, was updated on January 29, 2020, and recognized the additional temporary disturbance that occurred within the TCSPT open space. The mitigation plan provided a methodology for reclamation of habitat disturbed by development. However, not all subsequent reclamation of the disturbed areas within the easement followed reclamation methods outlined in the approved and updated habitat mitigation plan. Some of the disturbed areas of native vegetation were replaced with sod lawn not mesic shrub (sagebrush).

Development also diverged from approved plans, including grading and construction of multiple retaining walls within the easement to create a terraced lawn area. This revised grading was subsequently approved by County Engineering during final inspection.

The impacts to the TCSPT Easement were identified during spring 2021 review of biennial monitoring reports. Staff notified the property owner of the noted violations, including both grading and the removal of native vegetation and installation of sod lawn within the easement. Staff determined that requiring further grading to remove the retaining walls and return the site to its previous state would result in additional, unnecessary disturbance to the easement. Staff did request the sod lawn areas within the easement be removed and those areas reclaimed in a manner consistent with the approved habitat mitigation plan methodology.



Figure 1 Retaining wall and sod area within the conservation easement area. Photo from November 19, 2021 site visit.

Following communication with the property owner, much of the sod lawn within the easement was removed; the applicant has begun the process of reseeding for reclamation. However, the applicant wishes to retain a 719 square foot, semicircular yard area adjacent to the existing yard outside of the easement and at the back of the primary dwelling. To accommodate this sod area, the applicant has requested to amend the easement to remove this area.

In exchange for removal of the 719 square foot sodded lawn area from the easement, the applicant is proposing the addition of 1,438 square feet of area to the easement along the northeastern edge of the building envelope. The area proposed to be added is currently sod lawn (see Figure 2); the previously existing mesic shrub (sagebrush) habitat was disturbed during construction. The area proposed to be added is a long, thin rectangular shape, approximately 5.5 feet by 240 feet.



Figure 2 Sod lawn in area proposed to be added to conservation easement. Photo from November 19, 2021 site visit.

## LOCATION

505 W Saddle Butte Ranch is located on Saddle Butte, accessed through the Town of Jackson.

<b>Legal Description:</b>	LOT 2, SADDLE BUTTE RANCH SUBDIVISION
<b>PIDN:</b>	22-41-16-28-1-03-001
<b>Site Size:</b>	16.56 acres
<b>Character District:</b>	9: County Valley
<b>Subarea:</b>	9.4: Gros Ventre Buttes
<b>Zone:</b>	Rural-3 (R-3)
<b>Overlays:</b>	Scenic Resources Overlay (SRO) and Natural Resources Overlay (NRO)

*EXISTING CONDITIONS*



Figure 3 2020 Aerial Imagery of 505 W Saddle Butte Way with existing conservation easement shown in green.



Figure 4 2020 Aerial Imagery of 505 W Saddle Butte Way.

*PROPOSED CONDITIONS*

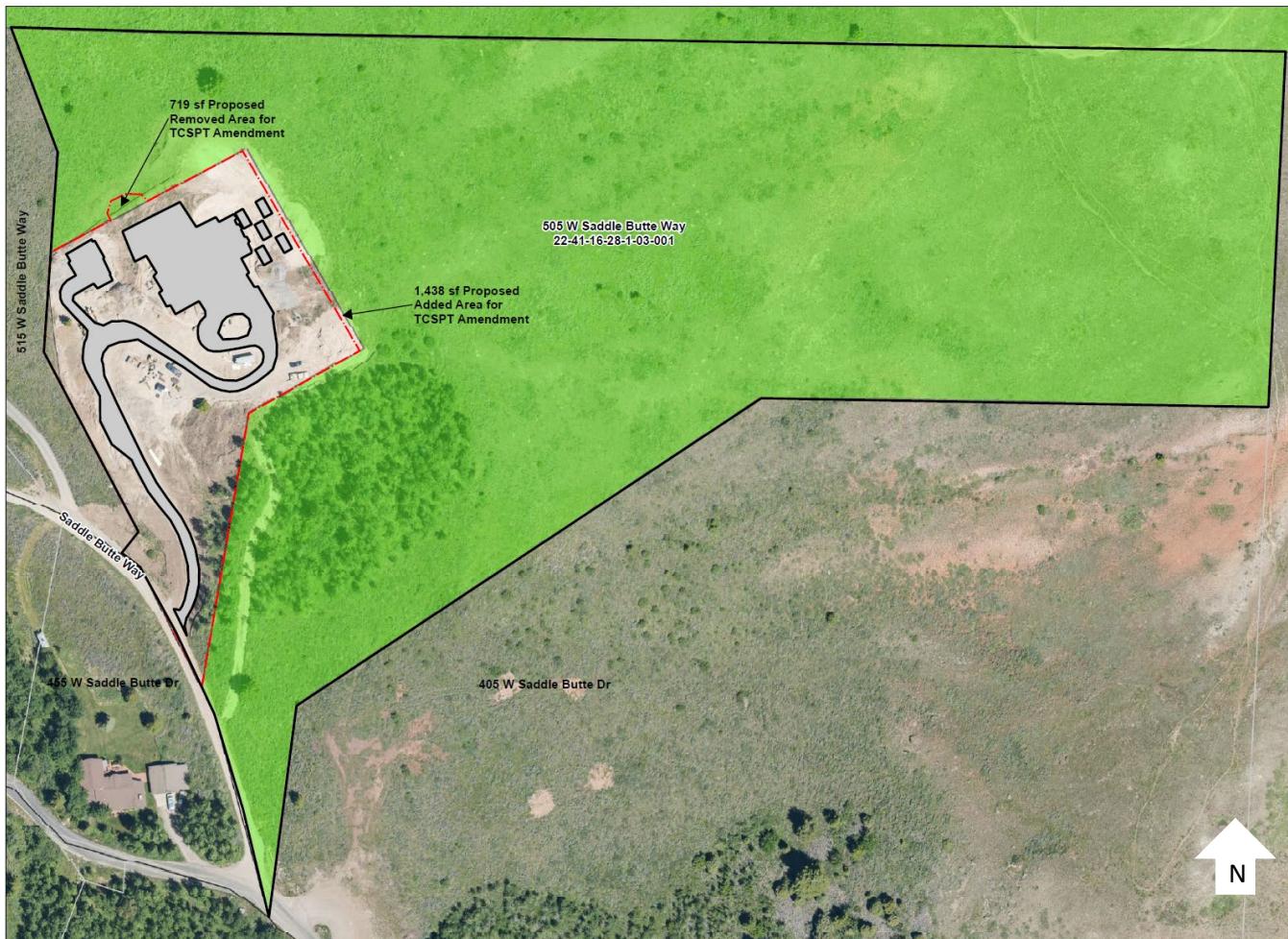


Figure 5 Proposed revision to conservation easement and building envelope. Red dashed line represents proposed revision to building envelope.



Figure 6 Detail view of proposed revisions to the conservation easement. Green line represents existing easement boundary. Red line represents area proposed to be removed. Blue line represents area proposed to be added.

## **STAFF ANALYSIS**

Planning staff has provided a review of the standards for amendment from the Open Space Resources Resolution of Teton County, Wyoming in the Recommendation section of this staff report.

### ***KEY ISSUE 1: Existing Violations and Relationship to Revised Habitat Mitigation Plan Application MSC2021-0063***

During construction and development of the site, multiple, unapproved disturbances occurred within the existing conservation easement. A revised habitat mitigation plan was approved in January 2020 to address changes to the development plans on the site and reflect additional temporary disturbance associated with the project. That updated mitigation plan noted that “additional temporary disturbance to the native mesic shrub-sagebrush and non-mesic aspen communities inadvertently occurred as a result of miscommunication between the owner and contractor” and that “these areas...will be fully reclaimed and restored back to the preexisting habitat type.” The updated mitigation plan required that the disturbances that occurred within the TCSPT easement, including the 719-sf area, which the applicant wishes to retain as a lawn, be reclaimed to native mesic shrub-sagebrush.

However, the applicant has failed to meet the requirements of the approved, updated mitigation plan and has applied for a modification with application MSC2021-0063.

The applicant has not successfully implemented the existing habitat mitigation plan, which would require that both the area proposed to be removed from the easement and the area to be added to the easement be reclaimed with mesic shrub. However, staff is in support of the revised habitat mitigation plan (MSC2021-0063) because the additional surety for reclamation and monitoring reports will help to ensure that the necessary reclamation within the TCSPT easement occurs. Staff recommends that approval of this easement amendment request should be paired with corresponding approval of the revised habitat mitigation plan request to ensure that the areas within the easement are reclaimed.

## **STAKEHOLDER ANALYSIS**

### ***DEPARTMENTAL REVIEWS***

The application was sent to the following agencies and departments for review. Comments received are attached to this staff report.

- Wyoming Department of Game and Fish
- Teton Conservation District
- Teton County Weed and Pest District

### ***LEGAL REVIEW***

Gingery

### ***PUBLIC COMMENT***

Notice of this hearing was mailed to property owners within 800 feet of the site on January 14, 2022. All written public comment received by the Planning & Building Services Department prior to completion of this staff report is attached.

## **RECOMMENDATIONS**

### ***PLANNING DIRECTOR RECOMMENDATION***

The Planning Director recommends **APPROVAL** of TCSPT amendment request **EAS2021-0003**, received November 5, 2021, revised on January 13, 2022, as proposed, with the following condition:

1. Within 120 days, the applicant shall submit a draft amendment of the conservation easement document, including an accurate legal description of the amendment. Prior to recordation, staff shall review to ensure accuracy and consistency with requested amendment.

## PLANNING DIRECTOR RECOMMENDED FINDINGS

The Open Space Resources Resolution of Teton County, Wyoming, adopted December 22, 2015, establishes standards and procedure for the TCSPT Board of Trustees to consider amendment of existing easements. Staff has reviewed this request for compliance with the standards stated in the Resolution.

### Section 10: Easement Amendments

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,*

**Not applicable.** The TCSPT is no longer a recognized exempt 501(c)(3) organization.

b. *The net result of an amendment shall not confer any private financial or economic benefit, and*

**Complies.** Although the applicant did not submit an appraisal of financial and economic impacts of the proposed amendment, the proposal would encumber twice as much area (1,438 sf) than is proposed to be removed from the easement (719 sf). In the absence of a formal review by an appraiser, this two-to-one ratio of conservation to development area ensures that the amended easement is more restrictive than the original and is unlikely to result in private financial or economic benefit. Further, the area to be removed from the easement is restricted to only the 719 square foot area which the owner wishes to maintain as a sod lawn.

Additionally, the proposed change will have no impact on the allowed floor area of the existing single-family residence on the property under the current Rural-3 zoning.

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.*

**Complies.** This item is scheduled to be heard by the Board of County Commissioners, convened as the Board of Trustees of the Teton County Scenic Preserve Trust, at its February 15, 2022, regular meeting. Amendment of this TCSPT easement will not be recorded in the Teton County Clerk's Office until approval from the Board of Trustees has been granted, finding that the application meets the standards of the Open Space Resources Resolution of Teton County, Wyoming.

#### 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.*

**Not applicable.** This amendment is not requested for the purposes of correcting an error or providing clarification.

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*

**Complies.** The purpose of the conservation easement is “*to preserve and protect the Open Space Values of the Open Space and to confine the use of the Open Space to agricultural, wildlife, natural, scenic, Open Space, recreation and other such uses as are consistent with the preservation and protection of said features and values.*” Restricting use and development within the easement on an additional 1,438 square feet (net 719 square feet) is consistent with the open space values of the easement. However, the area proposed to be encumbered currently has sod lawn, which has low habitat value. This area will need to be reclaimed with mesic shrub (sagebrush) in a manner consistent with the revised habitat mitigation plan proposed in MSC2021-0063.

- 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*

**Complies.** As the applicant has identified, the 719-sf area to be removed from the easement is adjacent to residential buildings and human activity, which limits the habitat value of that area. The proposed additional area, while currently sod lawn, would be both a 2:1 replacement of the area to be removed and would add additional buffer to the still undisturbed sagebrush habitat to the northeast of the building envelope. This new area, while located on the edge of the building envelope, is farther from the residential structures and activity than the area to be removed.

It is unfortunate that the disturbance to the 791-sf area has already occurred. As included in remarks on this application from the Teton Conservation District, “*reclamation is an inferior substitute for limiting initial disturbance.*” However, given the state of the easement, the proposal to add and reclaim additional area will strengthen protection of the conservation values of the easement. It is imperative that the proposed new area is reclaimed and monitored, consistent with the revised mitigation plan, MSC2021-0063.

- 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.*

**Complies.** As Teton County Scenic Preserve Trust easements are granted in perpetuity, amendment of TCSPT easements should be carefully considered. The Open Space Resources Resolution notes that “*a landowner may request an amendment that modifies the restricted uses or areas of an easement property due to unforeseen adverse conditions or hardships.*” The applicant has a history of violations of both the existing TCSPT easement and of approved habitat mitigation plans. If the Board of Trustees were to take a firm stance against this amendment, it would show determination to follow protocol and respect of land use agreements. However, staff finds that communication with the property owner leading to these applications for easement amendment and corresponding habitat mitigation plan has helped to improve understanding of the requirements of the conservation easement and the purpose of the Teton County Scenic Preserve Trust. Approval of the requested amendment and revised habitat mitigation plan, if implemented, will result in a net conservation benefit, and affirm a positive working relationship between the TCSPT and the property owner. Staff believes that this relationship-building and education with property owners is an important tool in producing better conservation outcomes, which should be looked upon favorably by the public.

*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.*

**Not applicable.** Terms of the conservation easement do not include allowing modifications at a future date under specified conditions.

## **ATTACHMENTS**

- Departmental Reviews
- Public Comment
- Saddle Butte Ranch Open Space Easement
- [2015 Open Space Resources Resolution](#)
- [Application, revised January 13, 2022](#) (physical copy available upon request)

## **SUGGESTED MOTION**

I move to **APPROVE EAS2021-0003**, received November 5, 2021 and revised January 13, 2022, for a requested amendment to the Saddle Butte Ranch Open Space Easement held by Teton County Scenic Preserve Trust, being able to make the findings for amendment in the Open Space Resources Resolution of Teton County, Wyoming.

### **Suggested Condition:**

1. Within 120 days, the applicant shall submit a draft amendment of the conservation easement document, including an accurate legal description of the amendment. Prior to recordation, staff shall review to ensure accuracy and consistency with requested amendment.



December 16, 2021

Rian Rooney, Associate Long Range Planner  
Teton County Planning and Development  
PO Box 1727  
200 South Willow Street  
Jackson, WY 83001

RE: 505 Saddle Butte Conservation Easement Amendment

Dear Mr. Rooney,

Thank you for the opportunity to review and comment on the proposed Teton County Scenic Preserve Trust (TCSPT) Easement amendment (EA2021-0003, Douglas Schrier, 505 W Saddle Butte Way). Teton Conservation District (TCD) staff does not interpret whether applications conflict with Teton County Land Development Regulations (LDR) but generally notes deficiencies and provides best management practice suggestions. TCD staff did not conduct a site visit but are generally familiar with the natural resources of the property and area.

Based on a review of aerial imagery and the map provided in the amendment proposal, site grading and landscaping has intruded onto the TCSPT easement. TCD subscribes to a commonly held value among natural resources professionals that reclamation is an inferior substitute for limiting initial disturbance. Reclamation to the original species composition and structure is the next best option. The proposed reclamation seed mix is appropriate for the site. Reclamation is a multi-step and long-term process. TCSPT should only consider a reclamation project successful after establishing a self-sustaining native plant community that controls erosion/invasive weeds and provides forage and cover for wildlife. As an example, arrowleaf balsamroot requires seven years of establishment before its first bloom. Mountain big sagebrush communities may take up to 40 years to fully establish.

The proposal to add 2x the land area into easement along the eastern building envelope for the described portion of the easement along the northern building envelope does not raise concerns for TCD staff. The concern that this scenario raises is the level of disturbance that occurred within the easement. Regardless of where the reclamation occurs, its success will be contingent upon TCSPT's management and the current and/or future landowner's long-term commitment to conserve vegetation and soil in the area of interest, through practices including weed and erosion control, and limiting disturbance.

Thank you for the opportunity to provide comment.

Sincerely,



Carlin Girard  
Executive Director

*Conserving our natural resources – air, land, water, vegetation, and wildlife*

## Rian Rooney

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**From:** Alyson Courtemanch <alyson.courtemanch@wyo.gov>  
**Sent:** Tuesday, December 21, 2021 2:45 PM  
**To:** Rian Rooney  
**Cc:** Hamilton Smith  
**Subject:** Re: Saddle Butte Conservation Easement Amendment - Plan Review Committee Request

**[NOTICE: This message originated outside of the Teton County's mail system -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]**

Hi Rian,

Thanks for sending this and giving us the opportunity to provide a review. I do not have any concerns regarding the proposed change in the easement on this property.

Thanks,  
Aly

On Tue, Dec 7, 2021 at 2:46 PM Rian Rooney <[rrooney@tetoncountywy.gov](mailto:rrooney@tetoncountywy.gov)> wrote:

Aly,

The Teton County Scenic Preserve Trust has received a request for an amendment to the geometry of the conservation easement encumbering [505 Saddle Butte Way](#). During construction of the residence, the property owner disturbed and graded within the conservation easement, and has added a manicured lawn area within the easement that he wishes to retain. The property owner has proposed to remove a 719 sf semi-circular area to the north of the main residence from the conservation easement (yellow in image below) and to add a 1,438 sf area to the easement along the eastern portion of the building envelope (red in image below).

To date, both areas have been disturbed and the prior existing sagebrush has been removed. The applicant is proposing to reclaim the proposed new area upon approval of the amendment request. In the letter accompanying the application, the applicant has described the “net benefit to conservation values” citing both a 2:1 area exchange and that the proposed new area will be of higher value due to its location.

Will you please review the application (attached) and share any comments to consider in my review by December 23, 2021? Let me know if you have any questions. Thank you as always for your review.



Best,

Rian Rooney  
Associate Long Range Planner  
Teton County Planning & Building Services  
PO Box 1727 | 200 S. Willow Street  
Jackson, WY 83001

Correspondence, including e-mail, to and from employees of Teton County, in connection with the transaction of public business, is subject to the Wyoming Public Records Act and may be disclosed to third parties.

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Aly Courtemanch, Wildlife Biologist  
Wyoming Game & Fish Department  
420 North Cache  
P.O. Box 67  
Jackson, WY 83001  
office: (307) 249-5807 (direct line)  
cell: (307) 730-2806

E-Mail to and from me, in connection with the transaction  
of public business, is subject to the Wyoming Public Records  
Act and may be disclosed to third parties.

# Invasive Species Management Plan

## 505 Saddle Butte Way

Management Plan Prepared By: Lesley Beckworth, Teton County Weed & Pest

### Pre-Construction Management Strategies:

1. Known infestations will be treated at least two weeks prior to construction using methods listed below.

### Active Construction Management Strategies (include on construction documents):

1. All construction equipment will be cleaned prior to entering the site.
2. Soil stockpiles will be routinely checked and treated for invasive species.
3. Disturbance outside of the construction zone and in areas where invasive species are present will be minimized.
4. All areas outside of the construction zone will be kept on active management using the methods listed below. This area will be monitored and treated at least twice each growing season.

### Post-Construction Management Strategies (include on construction documents):

1. Revegetation will occur immediately after construction is complete to prevent the establishment of invasive species in the disturbed areas.
2. Nursery stock will be used in accordance with W.S. 11-9-101 – 109 (Wyoming Nursery Stock Law), accompanied by a valid health certificate, and acquired through a dealer licensed by the Wyoming Department of Agriculture. Seeds will be used in accordance with W.S. 11-12-101 – 125 (Wyoming Seed Law), certified weed free, and acquired through a dealer licensed by the Wyoming Department of Agriculture.
3. Certified weed free straw, gravel, and soil will be utilized as possible.
4. **TCWP will be contacted to create a post-construction inventory.**

Dear Teton County Commissioners and TC Planning Department,

This letter is in response to an application that the owner of 505 Saddle Butte Way, Douglas Schrier, has requested from Teton County. I apologize that this letter is coming to you anonymously, but the character of Mr. Schrier ensures that if I put my name on this letter litigation, in one way or another, will follow. The intention of my letter is not to try and get in the way of Schrier's application, but to bring to light some of Mr. Schrier's activities in this neighborhood and the county rules that are being broken. 505 Saddle Butte is in both NRO and SRO, which I believe has restrictions on brightness of lights. Mr. Schrier has numerous outdoor lights that are not in compliance with these overlays. I realize there is nothing the county can do about the interior lights, but Mr. Schrier likes to leave every single light on in his 10,000-sf house all night long. 505 Saddle Butte sits above most of the houses on Saddle Butte way, which means every person on the street suffers from his light pollution.

Mr. Schrier has also rented his home for commercial use which impacted our neighborhood drastically. The commercial event involved a three-week event with shuttle buses and mass amount of cars came up a private road that normally has very limited traffic. For three weeks an armed security guard sat at the bottom of his driveway intimidating neighbors walking by. I believe the Saddle Butte HOA has drafted a complaint letter to the county about this event.

I realize this is not the venue to complain about a neighbor, so I am going to bullet point the rest of Mr. Schrier's activities.

- Refusal to pay HOA dues, forcing the HOA to record a lien (In the works)
- Calling the TC sheriff on members of our HOA trying to meet with Mr. Schrier about construction work taking place on the weekends and into the night keeping neighbors awake.
- Putting construction equipment and contractor parking on the road for months when they could have parked on his property.

I am going to stop there because I think you get the point. One last point I would like to make is that Mr. Schrier is applying to move an easement that was on the property when he purchased it, an easement that has been there since 1998. He knew exactly where this easement started and stopped, which is clear by looking at TC GIS server with the Conservation Easement layer on. From this picture you can see he knew where the line was because he bulldozed everything within the building envelope matching the lines exactly. In many places, his disturbance line went over his property line, and into the easement. He knew exactly what he was doing when he landscaped in the TCSPT easement and didn't care that he was doing it. Mr. Schrier has no respect for anyone else, or the county that governs these laws. Granting him a "pass" on this application will only condone his behavior and lack of respect for our community.

## OPEN SPACE EASEMENT

This Open Space Easement (this "Instrument") is made and entered into effective this 5th day of January, 1998 by and between Rob Broadbent and K'Lea Andreas, their successors and/or assigns (hereinafter referred to as the "Grantor"), and the TETON COUNTY SCENIC PRESERVE TRUST (hereinafter referred to as the Grantee") a trust comprised of the Teton County Commissioners as Trustees and established pursuant to the Teton County Scenic Resources Resolution.

### WITNESSETH:

WHEREAS, Grantor owns certain land located in Teton County, Wyoming, consisting of approximately twenty two and one half (22 1/2) acres (referred to herein as the "Property") more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof;

WHEREAS, much of the Property is currently undeveloped;

WHEREAS, in the Teton County Comprehensive Plan, Teton County has adopted goals and objectives which foster, promote and encourage preservation of land as open space for preservation of wildlife habitat, scenic resources, or agricultural uses;

WHEREAS, preservation of open space contributes much to the perpetuation of Teton County's western heritage and rural landscape, provides a special visitor experience, and may provide large blocks of space that benefit various types of wildlife;

WHEREAS, preservation of open space is important to the wildlife and scenic qualities and western atmosphere of Teton County, and therefore, to the tourist-based economy;

WHEREAS, the Property has scenic, wildlife and/or agricultural values (hereinafter referred to a "Open Space Values:") of importance to the people of Teton County, Wyoming, and their protection will yield a significant public benefit;

WHEREAS, the Teton County Land Development Regulations permit an increase in development potential in exchange for preservation of Open Space;

WHEREAS, the current Teton County Land Development Regulations permit two (2) dwelling units on twenty two and one half (22 1/2) acres if seventy percent (70%) of the base site area of the property is reserved as Open Space;

WHEREAS, Grantor desires to preserve and protect the natural, scenic and agricultural values of a portion of the Property and to take advantage of an increase in development potential in exchange for doing so;

WHEREAS, Grantor is willing to preserve seventy percent (70%) of the base site area of the Property as open space in consideration of his ability to develop two (2) dwelling units on the Property;

NOW, THEREFORE, in consideration of the increase in development potential to which Grantor shall be entitled by Teton County's Land Development Regulations, and the execution and acceptance of this Instrument and the Grantor's and Grantee's agreement thereby to abide by the terms and conditions hereof, Grantor grants and conveys to the Grantee an Open Space Easement as hereinafter defined (the "Open Space Easement" or "Easement") over and across a portion of the Property described in Exhibit "B" and hereinafter referred to as "Open Space" to preserve and protect the Open Space Values of the Property, which Open Space Easement shall be an easement in gross, shall benefit and be enforceable by the Grantee, and shall bind Grantor and Grantor's successors in ownership and/or use of the Property. Grantor warrants to the Grantee that the Open Space Easement is not subject to any senior mortgage, lien, or other encumbrance other than restrictive covenants, road and utility easements, and other similar encumbrances of sight or record existing at the time this

RELEASED	
INDEXED	
ABSTRACTED	
SCANNED	

Grantor: BROADBENT, ROB ET AL  
Grantee: TETON COUNTY SCENIC PRESERVE\*  
Doc 0455554 bl 346 pg 1102-1108 Filed at 4:22 on 01/06/98  
V Jolynn Coonce, Teton County Clerk fees: 10.00  
By JULIE HODGES Deputy

Instrument is signed, which could adversely affect or remove the covenants contained herein.

1. PURPOSE. The purpose of the Easement granted herein is to preserve and protect the Open Space Values of the Open Space and to confine the use of the Open Space to agricultural, wildlife, natural, scenic, open space, recreation, and other such uses consistent with the preservation and protection of said features and values.

2. AFFIRMATIVE RIGHTS CONVEYED BY THIS INSTRUMENT. The affirmative rights conveyed to the Grantee by this instrument include the following:

2.1 Preservation of Open Space Values. To preserve and protect the Open Space Values of the Open Space.

2.2 Entrance onto Open Space. To enter upon the Open Space to enforce the rights herein granted and in connection therewith to inspect and observe the Open Space, all in a manner that will not unreasonably interfere with the proper uses being made of the Open Space at the time of such entry and upon reasonable prior notice given by or on behalf of the Grantee to one or more of the then owners of the Property provided that no such notice shall be required when the Grantee reasonably determines that immediate entry upon the Property is essential to prevent or mitigate a material violation of this Open Space Easement.

2.3 Enforcement. To enjoin any activity on or use of the Open Space that is inconsistent with the Open Space Easement and to enforce the restoration of such areas or features of the Open Space that may be damaged by any such inconsistent activity or use, pursuant to Paragraph 5, Enforcement of Open Space Easement.

3. USE OF THE OPEN SPACE. Grantor intends that this Open Space Easement shall restrict the use and development of the Open Space to uses that preserve its Open Space Values – wildlife, scenic, natural, recreation and other such uses as are consistent with protection of the Open Space Values and not specifically prohibited herein.

4. PROHIBITED USES AND PRACTICES. The following uses shall be prohibited on the Open Space:

4.1 Buildings. The construction or location of any buildings, structures or accessory structures.

4.2 Industrial or Mining Use. Dredging, mining, excavation or the exploration for, extraction or processing of oil and gas or minerals, or the removal or processing of rock, sand and gravel not associated with a wildlife or fisheries habitat improvement project, or any other industrial use of the Open Space.

4.3 Off-Road/Off-Trail Transportation. Off-road use of vehicles and off-trail use of any form of motorized transportation, except where needed for maintenance and upkeep of the Open Space and excepting that a snowmobile may be used to set cross country ski tracks.

4.4 Dumping and Storage. The storage of recreational vehicles (including, but not limited to, boats, campers and motor homes). Dumping or storing of ashes, trash, garbage, junk or other unsightly or offensive materials.

4.5 Feedlot. Establishment or maintenance of any livestock feedlot. A feedlot is a relatively small, confined land area used for fattening livestock. The normal and usual feeding operations which have been traditionally conducted on ranches and farms in Teton County are not considered feedlots.

4.7 Clearing or Grading. Clearing, grading or other movement of the natural topography of the land except such activities in connection with fisheries development, wildlife habitat improvement or clearing for safety purposes (e.g., deadfall).

## **5. ENFORCEMENT OF OPEN SPACE EASEMENT.**

**5.1 Enforcement.** Any violation of the Open Space Easement shall be subject to termination through the procedures outlined in the Teton County Land Development Regulations for Enforcement in force at the time of the violation or through injunctive proceedings with the imposition of temporary restraining orders, or through any other legal means. The Grantee shall have the right to enforce the restoration of the portions of the Open Space affected by activities in violation of the Easement to the condition which existed prior to the violation.

**5.2 No Waiver.** Failure by the Grantee to exercise its rights under this Instrument in the event of any breach of any of the provisions of this Instrument shall not be deemed or construed to be a waiver of the Grantee's rights hereunder as to that breach or any subsequent breach.

**5.3 Fees and Costs.** In the event of dispute or enforcement of the Open Space Easement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs incurred in connection therewith, whether or not judicial proceedings are initiated.

**6. TRANSFER OF OPEN SPACE EASEMENT.** If the Grantee determines that it no longer is able to enforce its rights under this Instrument or that it no longer desires to enforce said rights, or if the Grantee ceases to exist or is otherwise prevented from enforcing its rights under this Instrument, the Grantee shall as soon as practicable convey all its rights under this Instrument and deliver a copy of this Instrument to an organization designated by the Grantor and agreed to by the Grantee to ensure that the Open Space Easement and this Instrument, in general, are enforced.

**7. OPEN SPACE EASEMENT GRANTED IN PERPETUITY.** The Open Space Easement shall be a burden upon and shall run with the Open Space in perpetuity and shall bind Grantor and Grantor's successors in ownership and/or use of the Open Space forever. If the land use regulations change in the future, the easement may be modified by the mutual consent of the Grantee and the Grantor.

**8. INDEMNIFICATION OF THE GRANTEE.** The Owners of the Open Space shall pay all real estate taxes or assessments levied by competent authorities upon the Open Space, and the Grantee shall have no obligation or responsibility for payment of taxes or assessments levied upon any of said Open Space.

**9. WAIVER OF HOMESTEAD EXEMPTION.** Grantor and Grantor's Spouse hereby release and waive all rights under and by virtue of the homestead exemption laws of the State of Wyoming, insofar as any of such rights affect the conveyance set forth herein.

**10. CONDITION OF THE PROPERTY.** The Property is located on East Gros Ventre Butte about  $\frac{1}{4}$  mile northwest of the Town of Jackson. The topography of the Property is varied and ranges in elevation from approximately 6,400 feet to 7,000 feet. Slopes are generally 5% to 15% with approximately 10 acres exceeding 25%. The Property is presently undeveloped. It is in its natural state, being covered by native grasses and sagebrush. There are three aspen stands present on the Property. An Environmental Analysis of the Property was prepared by Biota Research and Consulting, Inc. dated June 1, 1997. This report was included as part of the submittal package to Teton County for the development plan of the Property and is on file with the Teton County Planning Office. It defines the present conditions of the Open Space and includes an inventory of the relevant resources and features of the Property. The Grantor and Grantee agree that this report is an accurate representation of the Property, including the Open Space affected at the time of the signing of this instrument.

## **11. DEFINITIONS.**

**11.1 Grantor.** The term "Grantor," as used herein, shall mean Grantor and Grantor's successor in ownership and/or use of the Open Space or any affected portion thereof, including tenants, lessees, and licensees.

**11.2 Grantee.** The term "Grantee," as used herein, shall mean the Teton County Scenic Preserve Trust, and the permitted successors and assigns of the Teton County Scenic Preserve Trust.

11.3 Existing. The term "existing," as used herein, shall mean existing at the time of the signing of this instrument.

12. MISCELLANEOUS.

12.1 Severability. If any provisions of this instrument or the application thereof to any person or circumstance is found to be invalid, the remainder of this Instrument and the application of such provisions to persons or circumstances other than those as to which the provisions or application is found to be invalid shall not be affected.

12.2 Recordation. This Instrument shall be recorded in the Office of the County Clerk of Teton County, Wyoming.

12.3 Reference in Subsequent Documents. Reference to the Open Space Easement Shall be made in a separate paragraph of any subsequent deed or other legal instrument by which any interest (including a leasehold interest) in the Property is conveyed, and said reference shall include the recording data of this Instrument. Failure to comply with this requirement shall not adversely affect the Grantee's rights under this Instrument in any way.

12.4 Public Access. This Instrument creates no right in the general public to physical access to or on any portion of the Property or Open Space.

IN WITNESS WHEREOF, Grantor has executed this instrument effective the day and year first above written.

GRANTOR:



Rob Broadbent



K'Lea Andreas

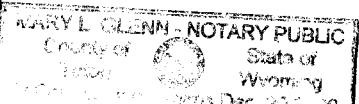
STATE OF WYOMING      )  
                            )ss  
COUNTY OF TETON      )

The foregoing instrument was acknowledged before me by Rob Broadbent on this 5th day of January, 1998.

Witness my hand and official seal.

Mary L. Glenn  
Notary Public

My commission Expires: 12-30-2000

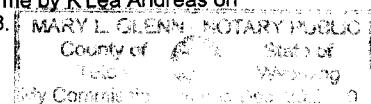


The foregoing instrument was acknowledged before me by K'Lea Andreas on this 5th day of January, 1998.

Witness my hand and official seal.

Mary L. Glenn  
Notary Public

My commission Expires: 12-30-2000



STATE OF WYOMING      )  
COUNTY OF TETON      )ss  
                        )

Accepted and agreed to by the Teton County Scenic Preserve Trust this  
16 day of January, 1998.

Sandy Shuptrine  
Sandy Shuptrine, Trustee

Bob Shervin  
Bob Shervin, Trustee

Mike Gierau  
Mike Gierau, Trustee

Bill Paddleford  
Bill Paddleford, Trustee

Ann Stephenson  
Ann Stephenson, Trustee

Attest:



V. Jolynn Coonce  
V. Jolynn Coonce, County Clerk

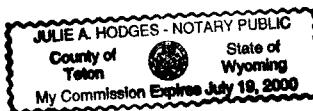
STATE OF WYOMING      )  
COUNTY OF TETON      )ss  
                        )

The foregoing instrument was acknowledged before me by Sandy Shuptrine, Bob Shervin, Mike Gierau, Bill Paddleford, and Ann Stephenson on this 16 day of January, 1998.

Witness my hand and official seal.  
Julie A. Hodges  
Notary Public

My commission Expires:

July 19, 2000



## SADDLE BUTTE RANCH SUBDIVISION

Those parts of the NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 28, T41N, R116W, Teton County, Wyoming described as follows:

Beginning at the E 1/16 corner between Sections 21 and 28, T41N, R116W, said point being marked by a 2" diameter brass cap;

THENCE S 02°15'40" W, 400.00 feet along the east line of said NW $\frac{1}{4}$ NE $\frac{1}{4}$  to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE N 89°31'16" W, 570.04 feet to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE S 56°00'49" W, 626.25 feet to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE S 06°55'36" W, 239.56 feet to a point which is identical with a point on the east boundary of that tract of land of record in book 156 of photo, pages 331 to 333 in the Office of the Clerk of Teton County and the most southerly corner of the tract of land of record in book 137 of photo, pages 50-51 in said Clerk's Office;

THENCE N 14°01'23" W, 124.14 feet along the east boundary of said record tract in book 137 of photo;

THENCE N 17°18'06" W, 112.63 feet continuing along the northeasterly boundary of said record tract in book 137 of photo;

THENCE N 25°47'40" W, 100.72 feet continuing along the northeasterly boundary of said record tract in book 137 of photo;

THENCE N 29°17'08" W, 83.64 feet continuing along the northeasterly boundary of said record tract in book 137 of photo;

THENCE N 52°25'21" W, 54.20 feet continuing along the northeasterly boundary of said record tract in book 137 of photo;

THENCE N 60°19'09" W, 49.90 feet continuing along the northeasterly boundary of said record tract in book 137 of photo to the most easterly corner of the tract of land of record in book 67 of photo, pages 370 to 372 in said Clerk's Office;

THENCE N 40°21'31" W, 153.01 feet along the northeasterly boundary of said record tract in book 67 of photo;

THENCE N 44°30'56" W, 349.80 feet continuing along the northeasterly boundary of said record tract in book 67 of photo;

THENCE S 11°39'05" W, 111.40 feet along the westerly boundary of said record tract in book 67 of photo to the most easterly corner of the tract of land of record in book 41 of photo, pages 455-456 recorded in said Office;

THENCE S 89°51'05" W, 419.62 feet along the northerly boundary of said tract in book 41 of photo to the most westerly corner of said tract in book 41 of photo, identical with the most easterly corner of the tract of land of record in book 30 of photo, pages 380-381 in said Clerk's Office;

THENCE N 64°54'00" W, 76.22 feet along the easterly boundary of said tract in book 30 of photo to the most southerly corner of the tract of land recorded in book 168 of photo, page 495 in said Clerk's Office;

THENCE N 23°39'00" E, 86.41 feet along the easterly boundary of said record tract in book 168 of photo;

THENCE N 10°30'00" E, 198.75 feet along the easterly boundary of said record tract in book 168 of photo to an intersection with the north line of said Section 28;

THENCE S 88°48'00" E, 898.74 feet along the north line of said Section 28 to the NW $\frac{1}{4}$  corner, marked by a 2" diameter brass cap;

THENCE S 89°31'16" E, 1254.67 feet along the north line of said Section 28 to the E 1/16 corner identical with the Point of Beginning.

Encompassing an area of 22.57 acres, more or less.

Pierson Land Surveys, PC  
Jackson, Wyoming  
October 23, 1997

EXHIBIT "A"

DESCRIPTION OF OPEN SPACE  
FOR  
SADDLE BUTTE RANCH SUBDIVISION

That part of Lot 2 of Broadbent Subdivision recorded as plat no. \_\_\_\_\_ in the Office of the Clerk of Teton County, Wyoming described as follows:

Beginning at the E 1/16 corner between Sections 21 and 28, T41N, R116W, said point being marked by a 2" diameter brass cap;

THENCE S 02°15'40" W, 400.00 feet along the east line of said NW $\frac{1}{4}$ NW $\frac{1}{4}$  to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE N 89°31'16" W, 570.04 feet to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE S 56°00'49" W, 626.25 feet to a point marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE S 06°55'36" W, 239.56 feet to a point which is identical with a point on the east boundary of that tract of land of record in book 156 of photo, pages 331 to 333 in the Office of the Clerk of Teton County and the most southerly corner of the tract of land of record in book 137 of photo, pages 50-51 in said Clerk's Office;

THENCE N 14°01'23" W, 124.14 feet along the east boundary of said record tract in book 137 of photo;

THENCE N 17°18'06" W, 112.63 feet continuing along the northeasterly boundary of said record tract in book 137 of photo;

THENCE N 25°47'40" W, 32.84 feet continuing along the northeasterly boundary

THENCE N 09°12'58" E, 312.10 feet to a point;

THENCE N 60°00'00" E, 148.67 feet to a point;

THENCE N 31°00'00" W, 260.00 feet to a point;

THENCE S 61°41'30" W, 249.03 feet to an intersection with the westerly lot line of said Lot 2;

THENCE N 03°24'00" E, 112.48 feet along said westerly line to a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE N 21°00'00" W, 150.00 feet continuing along said west line to the northwest corner of said lot 5 marked by a 5/8" diameter rebar with cap inscribed "PLS 3831";

THENCE S 88°48'00" E, 178.74 feet along the north line of said lot 2 to the N $\frac{1}{4}$  corner of Section 28, marked by a 2" diameter brass cap;

THENCE S 89°31'16" E, 1254.67 feet along the north line to the E 1/16 corner identical with the Point of Beginning.

Encompassing an area of 14.22 acres, more or less.

All in accordance with the map to be filed in the Office of the Clerk of Teton County, Wyoming titled "Saddle Butte Ranch Subdivision, located within NE $\frac{1}{4}$ NW $\frac{1}{4}$  and NW $\frac{1}{4}$ NE $\frac{1}{4}$  Section 28, T41N, R116W, Teton County, Wyoming".

Pierson Land Surveys, PC  
Jackson, Wyoming  
October 23, 1997

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