

Everything the Alliance stands for – protecting wildlife and natural resources, preserving scenic views and ensuring responsible growth management – contributes to the valley’s community character.

And nowhere is that character more evident than in Teton County’s iconic open spaces, and in the wildlife they nurture. On the next few pages, we discuss why permanently protecting the remaining open space on Jackson Hole’s private lands is so important, and explore ways that our community might accomplish this.

Making the case for open space

Benefits for community and landowners make conservation worthwhile.

By Kristy Bruner,
Alliance Community Planning Director

Permanent conservation of remaining open space on private lands is a basic goal that must be met in order to protect the most important assets of Jackson Hole.

These assets include natural areas in our small Town of Jackson and our still-rural landscape, both of which offer sustenance for irreplaceable wildlife, amazing scenic vistas, and a high quality of life and experience for residents and visitors alike.

Open space on private lands serves many purposes. It enhances and protects the quality of our natural environment – our air, water, soil, plants and wildlife; it preserves scenic views; and it’s one of the most critical elements in maintaining the rural character of Teton County. Open space also makes it easier for wildlife to get where they need to go as they move between winter and summer range and take care of their daily needs, such as finding food, water and shelter.

Jackson Hole’s beautiful open spaces are also our bread and butter, drawing millions of visitors annually and making our economy tick.

One of the most effective ways to protect the valley’s open spaces and natural assets is to reduce our overall development potential. Fewer future additions to Teton County’s buildings and population mean fewer impacts on our already threatened resources. And a direct and fair way to accomplish this is to provide incentives for willing landowners to place conservation easements on their property.

The new Jackson/Teton County Comprehensive Plan will address a broad array of topics that are important to future land use in the valley. (See Page 8 for information about the current status of the Comp Plan.) It’s our hope that the final plan that’s adopted will include:

- A clear community vision for *permanent* open space protection; and
- A policy to establish a dedicated, long-term funding mechanism for purchasing conservation easements to protect important wildlife habitat and scenic vistas.

Read on for more information about conservation easements and some other methods that decision makers in our community are considering to protect the valley’s assets while honoring landowners’ rights. ■

Why are private lands so crucial for wildlife?

Some think that because 97 percent of Teton County is public land, it’s not going to hurt anything to develop the 3 percent that’s privately owned. However, because most of that private land overlaps with prime habitat, it’s crucial for wildlife’s survival.

When people first settled in Teton County, they mostly sought out areas where water was easily accessible, and places that had the least snow, the warmest temperatures and the most fertile soils. And as you might expect, the best places for people are often the best for wildlife, too.

Especially during the winter, many of the valley’s moose, elk, deer, swans and other species rely on this privately owned prime habitat. But as more and more people and buildings fill it up, more and more wildlife pay the price.

Low-lying clouds obscure the view of Spring Gulch, looking north from atop East Gros Ventre Butte. *Photo by Jeff Hogan*

Protection via easements, not temporary zoning, is key goal for Jackson Hole

As noted in the quotes at right, zoning is a temporary tool at best. That's because most zoning decisions are made by just 10 people – the Town of Jackson's mayor and four councilors, and the five Teton County commissioners – and future votes may be subject to change.

What's needed are ways to *permanently* conserve open spaces, and our community is very fortunate to have a local nonprofit that's been working on a major aspect of this goal since 1980. Through the use of conservation easements (see box), the Jackson Hole Land Trust “works to preserve open space and the scenic, ranching and wildlife values of Jackson Hole by assisting landowners who wish to protect their land in perpetuity.”

As of early 2011, according to figures from Teton County planning staff, 22,140 of the roughly 78,000 acres of private land in Teton County have been conserved through the efforts of property owners and the trust, plus those of other groups, such as The Nature Conservancy. It's great that so much land has been protected; however, many of the parcels most essential for wildlife still remain at risk. Looking ahead, even more private land could be protected from development if Teton County had a funding source to help pay for conservation easements, especially since matching money is available in Wyoming from several state and federal programs.

In 2009, the Jackson Hole Land Trust submitted comments recommending that the new Jackson/Teton County Comp Plan should include “creation of a permanent

“Permanent land protection, short of outright public ownership, can only occur through the use of conservation easements.”

– From *Comp Plan comments submitted by the Jackson Hole Land Trust, May 2009*

“It almost goes without saying that any zoning enactment that the county can approve can be disapproved by any future Board of County Commissioners, and so embarking on that course of action affords no predictability and no permanence for the future of open lands in the county.”

– From *Comp Plan comments submitted by David Larson, October 2009*

Conservation Easements

A conservation easement is a voluntary agreement between a landowner and a conservation organization or public agency. In most cases, willing landowners sell and/or donate their development rights in exchange for tax benefits, and these rights to develop or subdivide the parcels involved are permanently relinquished, with the restriction recorded in a conservation easement attached to the property deed.

For much more information on this topic, visit www.jhlandtrust.org and www.uwyo.edu/toolkit.

funding mechanism ... for the purchase of conservation easements over critical wildlife habitat and migration corridors.” The trust's comments continued: “The price of protecting such habitat has become prohibitive for private funding alone and contributions of conservation easements cannot be relied upon to protect critical properties. We believe that as the Plan's and the community's number one priority, meaningful funding of

the protection of critical habitat is called for and should be a top priority.”

Other communities have raised funds for conservation easements by issuing local general obligation bonds or by using special taxes, or through city and county sales taxes.

Last spring, a group of local citizens, with Alliance support, applied for \$1.5 million from the Special Purpose Excise Tax for seed money to help fund the acquisition of conservation easements on properties important for wildlife and community character. (SPET is a 1 percent sales tax approved by voters to fund capital facilities in Teton County.) However, the elected officials turned down this proposal, saying that while they supported the concept of creating a permanent funding source for protecting open space, they didn't think that SPET was the right tool. We hope discussions continue on what would be the right tool, especially since surveys have shown that the Jackson Hole community strongly supports this concept as well. Please consider telling your electeds what you think – their contact info is available at www.jhalliance.org/takeactioncontacts.htm. ■

Incentives have been used to encourage conservation of private lands

Protecting the valley's open spaces has long been a community priority. However, base zoning in Teton County has been largely determined by a Wyoming statute that allowed landowners to create one-unit-per-35-acre tracts without county review.

Faced with this challenge, the Teton County commissioners included a density option tool called the Planned Residential Development tool, or PRD, in the 1994 land development regulations. This tool allowed for three to nine units per 35 acres (depending on how big the overall parcel was), so long as development was "clustered" on the parcel.

The idea was to encourage the owners of large properties who wanted to develop their land to do so in a manner that would concentrate the buildings on only a small portion of the property, leaving the rest as open space. As spelled out in the regulations, PRDs "permit higher density in conjunction with greater amounts of open space. In return for higher density, a landowner must set aside open space that contributes to community goals." Almost always, a condition for PRD approval is that a land trust must agree to accept and monitor a conservation easement on the open space. The PRD regulations go on to list several "Areas of Public Benefit," including wildlife habitat and migration corridors, scenic vistas and natural skylines, natural waterbodies, agricultural activities and pathways.

According to a county planning staff presentation this past March, between 1994 and 2008, 54 PRDs have been approved on a total of about 3280 acres, with a total of 282 units permitted. Because of the required

“We cannot ‘zone’ our community to real open space.... If all bonuses were eliminated, the donation of conservation easements on large tracts of land would stop. That would leave local taxpayers in a situation to have to buy the open space needed for wildlife and view shed protection.”

– From *Comp Plan comments submitted by Bill Resor, September 2009*

clustering, 3,183 of the acres ended up being protected by conservation easements.

So it's a tradeoff – at the base zoning of one unit per 35 acres, only 94 houses could be built, but they'd be spread out across 3280 acres. Using the PRD, 282 houses ended up clustered on about 97 acres, and 3,183 acres were permanently protected. Still, there are multiple opinions about whether the PRD tool is working as intended.

Interestingly, the PRD has had the side effect of also increasing conservation incentives for landowners who *don't* want to develop their property. As explained in the Jackson Hole Land Trust's recent publication, *The Future is Open – Using Conservation Easements to Plan for the Future of Your Ranch*, that's because most conservation easement sales are structured as "bargain sales," meaning that the easement is sold to a land trust or government agency at a price below its appraised value.

"The good news," the publication states, "is that the difference between the appraised value of the easement and its purchase price can be considered a charitable contribution, and may entitle the landowner to income tax benefits if the easement meets the requirements of the federal tax code."

It's a little complicated, but the higher the development potential of a property, the

higher its appraised value will be. So the tax benefit (and thus the conservation incentive) is likely to be greater if a landowner is "giving up" the PRD potential of up to nine units per 35 acres, versus one unit per 35.

According to written comments filed in 2009 by Laurie Andrews and Peggy Gilday of the Jackson Hole Land Trust, "We know from experience that existing rural development *potential* is a major factor in the willingness of landowners to donate conservation easements. This development potential represents a value that many landowners do not choose to realize through development, but will extinguish *permanently* through the contribution of conservation easements. Since 1994, when the county adopted the PRD, over 10,000 acres of land have been protected by conservation easements held by the Jackson Hole Land Trust, compared with 5,000 acres during all the years prior to that."

The complexity involving incentive tools – such as the PRD and transfer of development rights programs (see next page) – is why the Alliance and other community members have asked our elected representatives to establish a task force to study the issue further before they make decisions during our ongoing community planning process that could have unintended consequences. ■

About a quarter of the private lands still considered open in the county are in Alta, Kelly and, above, Buffalo Valley. Photo by Doug Sobey

Tools to transfer development rights could also help protect open space

Many people think of sprawl mostly as the spread of strip malls, gas stations and such, expanding outward from already developed areas into rural ones. But as the quote from County Commission Chair Ben Ellis at right points out, sprawl could also mean one house on each of hundreds of 35-acre lots, spread across the valley floor.

To avoid this prospect, the crux of Jackson Hole's future lies in figuring out how to shift property entitlements in a fair way out of the large, still-rural areas that are crucial for wildlife and into areas that are already developed.

In their recent talks about the draft Jackson/Teton County Comp Plan, town and county elected officials have raised the possibility of encouraging the transfer of development rights away from lands with wildlife habitat and open spaces by using tools that allow – and possibly offer incentives for – such transfers.

“We’re going to have to use incentive tools,” Ellis has said. “The question is how we use those to shift development out of areas that are important to wildlife.”

One tool that’s being considered is a transfer of development rights program (TDR). The box at right gives a basic explanation of how they work, and provides a link to where much more information and examples are available. Depending on how it’s structured, a TDR tool could help give large landowners options and incentives to permanently conserve their properties.

Teton County already has a tool on the books called a “non-contiguous PRD” that

“If you look at the GIS [Geographic Information System] of Teton County, you can see we have 35-acre lots from the south end of the county to the north. That’s our development potential in the future. If that’s what our boards and the community want, then we’ll get sprawl.”

– Teton County Commissioner Ben Ellis, March 30, 2011, Jackson Hole News&Guide

essentially functions as a small-scale TDR program. Use of this tool is what allowed the Kemmerer family to conserve Rock Springs Canyon by transferring those development rights to the Stilson subdivision. Planners are currently exploring whether formal TDRs are legal under Wyoming statutes.

Meanwhile, the Alliance agrees with the “Jackson as Heart of the Region” concept, under which denser residential and mixed-use development is encouraged in town with the goal of limiting sprawl in the county. Adding density in Jackson, where infrastructure and services already exist, makes sense. However, without explicit restrictions on growing “out” into the county,

it won’t do any good to grow “up” in town – or in any of the other areas that are being considered for additional growth, such as Wilson, northern South Park, Teton Village and the Aspens. Nor will it help sustain our tourist-based economy and our wildlife if the density incentives are so high that use of the tools results in an overall increase in the county’s development potential.

Again, this is why the Alliance supports Comp Plan policies that manage growth within existing entitlements, and that incentivize the permanent conservation of open space by setting up a funding mechanism that allows the community to buy conservation easements from willing landowners. ■

How do transfer of development rights programs work?

Transfer of development rights programs (TDRs) are the process by which development rights are transferred from a parcel in a sending site, where land conservation is sought, to a parcel in a receiving area, where growth is preferred. Owners of parcels in sending sites can choose to record a perpetual conservation easement on their land in return for a marketable commodity called transferable development rights. Participating landowners are compensated by selling these TDRs to developers in the TDR receiving areas.

More than 200 communities nationwide have used TDRs, with widely varying degrees of success. TDR programs can be set up in a myriad of ways, so if our community is considering using one, it’s critical that we research the best possible programs, and customize them to work to protect our unparalleled wildlife, scenery and natural resources. Visit www.beyondtakingsandgivings.com for details and examples of working TDR programs.

Most remaining agricultural and vacant lands are around the Town of Jackson. This is Spring Gulch on a clear day. Photo by Jeff Hogan