

ORDINANCE NO. 19-01

AN ORDINANCE AMENDING TITLE 2 AND TITLE 3 OF THE WASATCH COUNTY CODE TO PROVIDE FOR THE OPEN LANDS BOARD AND TO FACILITATE THE PRESERVATION OF OPEN LANDS.

RECITALS

WHEREAS, Utah Code Section 17-50-302 authorizes the County to provide services, exercise powers, and perform functions that are reasonably related to the safety, health, morals, and welfare of their inhabitants;

WHEREAS, on October 18, 2017, the Wasatch County Council approved the Wasatch Open Lands Board Interlocal Agreement, and approved an amended version of the Interlocal Agreement on _____;

WHEREAS, on _____, the Midway City Council approved the Wasatch Open Lands Board Interlocal Agreement;

WHEREAS, on _____, the Heber County Council approved the Wasatch Open Lands Board Interlocal Agreement;

WHEREAS, attached as Exhibit A is a fully executed copy of the Wasatch Open Lands Board Interlocal Agreement (“Interlocal Agreement”);

WHEREAS, Wasatch County has determined that it is in the best interest of the County residents to enter into an effort to promote high value critical open space, both public and private, according to Utah Code 11-13-206, & Utah Code 17-50-302;

WHEREAS, Wasatch County desires to participate and work together in the establishment of a local land conservation advisory board, to be known as the Wasatch Open Lands Board (WOLB,) to assist in the administration of the desires and direction outlined in the inter-local agreement;

WHEREAS, Wasatch County desires to participate and work in the establishment of funding mechanisms which would provide the funds for the preservation of high value critical open land, both public and private, for the community benefit; and

WHEREAS, Wasatch County desires to preserve open lands and trail corridors pursuant to a common vision and strategy developed and maintained by WOLB to serve the public throughout Wasatch County.

NOW THEREFORE, The County Legislative Body of Wasatch County ordains as follows:

SECTION I: Enactment.

Only upon Heber City, Wasatch County, and Midway City adopting and executing the Interlocal Agreement on or before July 1, 2019, Title 2 of the Wasatch County Code is hereby AMENDED to add the following:

2.02.17: Wasatch Open Lands Board

- A. Establishment And Membership: Pursuant to the Interlocal Agreement, the Wasatch Open Lands Board (WOLB) is created.
1. **Membership:** The number of voting members shall initially be seven (7) members appointed as follows:
 - a. Two (2) Board Members appointed by the Wasatch County Council.
 - b. One (1) Board Member appointed by the Heber City Council.
 - c. One (1) Board Member appointed by the Midway City Council.
 - d. One (1) Board Member who is a representative from, and appointed by the Chamber of Commerce representing tourism and economic development interests.
 - e. Two (2) Board members that are citizens at large preferably with experience in open space preservation, appointed by the Wasatch County Council.
 - f. In the event that any of the Cities or Towns who have a right to appoint a Board Member do not appoint a Board member the Wasatch County Council may appoint a Board member, approved by the respective city council, to fill that seat. That representative appointed by the County shall have a special obligation to hear and make known to the Board any concerns of the legislative body of the municipality that the seat was reserved for, but they shall not be bound to vote in conformity with the wishes of the municipality. They shall maintain their seat for the remainder of their term after the County appoints them, unless they resign or become incapacitated.

Voting Members of the Board shall constitute the official Governing Board of the Wasatch Open Lands Board and shall have all the rights, powers, duties and responsibilities delegated to the Board as set forth herein. Action may be taken by a simple majority of all the Board Members. The Board is the administrator of the WOLB. At least five of the Board members must be present to take any official action. Board Member's votes are not weighted in any manner.

- B. **Terms:** Each Board Member shall serve at the will of their governing council, except for those appointed by the County in place of a municipality, and shall serve no more than two consecutive four year terms. Initially three of the Governing Board members would serve two year terms, and four Governing members would serve four year terms. Initial terms would be determined by lot at the first meeting of the Board with the two-year terms ending January 1, 2020 and the four- year terms ending January 1, 2022. Thereafter, the terms would run for four years on a staggered basis. The appointed Board Members serve at the will of the appointing

entity, and the appointment may be terminated according to the policies and procedures of that appointing entity, except for those who are appointed by the County in place of a municipality. If a vacancy happens among the Governing Members, the Board shall notify the member's appointing Council which shall fill the vacancy within 30 days by another appointment.

C. Powers And Duties: The WOLB shall have all power, authority and responsibility necessary to direct and conduct the business of the Wasatch Open Lands Board as allowed by law. The Board is created for the express purpose of ensuring that the obligations and purposes of the Interlocal Agreement are carried out in a productive and efficient manner. The Board shall, among other things, perform the following tasks:

1. The Board shall hold meetings with county citizens to determine priorities, preservation options, funding mechanisms, etc.
2. The Board shall implement the Interlocal Agreement which has been reviewed and recommended by the Heber and Midway City councils, and the Wasatch County Council. The Interlocal Agreement may serve as a guide for open space preservation and development and prioritization of open space areas for purchase and preservation.
3. The Board shall not have any power to receive funds, approve budgets and administer its operations. Instead, it shall encourage and advise the County Council and other incorporated areas and Parties on how to each establish funding through the TRD & Conservation Fee Ordinances, bonding revenues, grants and/or private donations for open space preservation.
4. The County, along with the other Parties to the Interlocal Agreement, is to support the efforts of the Board through providing meeting space, personnel, and other resources reasonably necessary to enable the Board to achieve its purposes.
5. The Board will set up procedures, templates, and guidelines that planning commissions, property owners, developers and land trust conservation organizations would use in encouraging, negotiating, and finalizing purchases of development rights (PDRs), transfer of development rights (TDRs) and placement of conservation easements.
6. Prepare policies, procedures, by-laws and resolutions necessary to carry out the work of the Board in a proper and businesslike manner.
7. The Board will serve on a volunteer basis.
8. The Board will hold meetings as necessary.

D. Exception: The board shall not review any decision of the county legislative body.

Only upon Heber City, Wasatch County, and Midway City adopting and executing the Interlocal Agreement on or before July 1, 2019, Title 3 of the Wasatch County Code is hereby AMENDED to add the following:

3.06: PRESERVATION OF OPEN LANDS

3.06.01: FINDINGS AND DECLARATION OF PURPOSE. The Wasatch County Legislative Body finds that:

A. Wasatch County is characterized by valuable open space and sensitive lands resources that contribute to the region's character and overall quality of life. Residents have long enjoyed views of and recreational access to the mountains, lived with abundant wildlife, and farmed the valley floors. They enjoy the ample open space that exists along main roads, which provide wide views along and into natural spaces and farmlands. While residents expect that real estate development will occur as population increases, they would like to see the rural heritage conserved for the enjoyment of future generations. Wasatch County's high value critical open spaces have ecological, agricultural, cultural, economic, tourism and recreational qualities, functions, and potential uses, and these lands are worthy of careful planning and conservation.

B. Wasatch County is partnering with its towns and cities to achieve a coordinated and effective open space conservation strategy. Together, the county and the cities and towns are working to conserve the high value critical agricultural and historic lands for the public good that will enhance and lend the region its character, economic benefit, and contributes to residents' quality of life.

C. It is the policy of the State of Utah and Wasatch County to protect, preserve and enhance agricultural and open space lands as evidenced by the Wasatch County Ordinance No. 01-27: AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF WASATCH COUNTY, UTAH, ADOPTING THE GENERAL PLAN, RELATING TO PRESENT AND FUTURE NEEDS OF THE COUNTY AND GROWTH AND DEVELOPMENT OF LAND WITHIN THE COUNTY- Approved and Passed December 10, 2001; & Wasatch County Ordinance No. 09-14: AN ORDINANCE OF WASATCH COUNTY, UTAH ADDING AN OPEN SPACE ELEMENT TO THE WASATCH COUNTY GENERAL PLAN- Approved and Passed November 4, 2009 - particularly Goals 1-5 and Policies 1.1; 2.1; 3.1; 3.2; 4.4 & 5.1.; as well as Utah Code 17-27-(102) & (104), Utah Code 57-18; all as amended; and this Chapter 3.06 of the Wasatch County Code. This Chapter 3.06 is not, and does not enact any land use regulations under the provisions of the County Land Use, Development, and Management Act of the Utah Code.

D. The permanent acquisition of conservations easements and use of other conservation tools by Wasatch County in these high value critical farmlands and open space lands within the county, as provided in this chapter and as authorized by statutes of the State of Utah, will permit these lands to remain in farm and open space uses in a developing urban area and provide long-term protection for the public interests which are served by farmlands and open space lands within the county.

3.06.02 – DEFINITIONS

These definitions apply to this Wasatch County Code Chapter 3.06.

CONSERVATION EASEMENT: an easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominantly in a natural, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat or other use or condition consistent with the protection of open space. A conservation easement is an interest in land and runs with the land benefited or burdened by the easement. A conservation easement is valid whether it is appurtenant or in gross. A conservation easement is enforceable by the holder to the easement and its successors and assigns. A conservation easement is enforceable against the grantor and its successors and assigns. The conservation easement should be owned by with a governmental agency or a qualified, accredited land conservation organization, and must be owned by an entity meeting the requirements of Utah Code 57-18-3 as amended.

GOVERNMENTAL AGENCY means the United States or any agency thereof, the state of Utah or any agency thereof, any county, city or municipal corporation.

FULL OWNERSHIP means fee simple ownership.

INTERLOCAL AGREEMENT: The Wasatch Lands Inter-local Agreement between Wasatch County, Midway City, and Heber City dated _____, as amended.

OPEN SPACE is agricultural and forest land, undeveloped scenic lands, undeveloped wetlands, public parks and preserves, wildlife habitats and corridors, viewsheds and other contiguous lands. Historic sites are often associated with open spaces and are also a part of our common heritage. Open space is high value critical lands and natural features, as the phrase is used in the Wasatch County General Plan.

OWNER means the party or parties having the fee simple interest, a real estate contract, vendor's or vendee's interest, a mortgagor's interest or a grantor of a deed of trust's interest in land.

WASATCH OPEN LANDS BOARD (“WOLB”) as created by the Interlocal Agreement between Wasatch County, Heber City, and Midway City, as amended, and is as described therein.

WASATCH COUNTY OPEN SPACE BOND is that bond that was authorized in the November 6, 2018 General Election.

VALUE OF DEVELOPMENT RIGHTS means the difference between the fair market value of the owner’s interests or rights in the subject property, excluding the buildings, easements or restrictive covenants thereon, and the fair market value of only the rights necessary to use the subject property for agricultural purposes.

3.06.03 – AUTHORIZATION

A. Pursuant to Wasatch County Open Space Bond approved in the November 6, 2018 General Election, and provided any other statutory requirements for bonding are complied with, the county may issue its general obligation bonds for money to acquire open space lands. The property interest in open space lands acquired may only be a conservation easement or full ownership. The acquisition of the open space may be accomplished by purchase, gift, grant, bequest, devise, covenant, restriction, deed or contract, but the County may only pay a price which is equal to or less than the appraised value of the property. The proceeds of the bonds shall be used to acquire such property interests only upon voluntary application of the owner.

B. If the owner meets selection criteria and processes within this ordinance, and upon recommendation of the Wasatch Open Lands Board, the Wasatch County legislative body may vote to authorize and pay the purchase price in a lump-sum single payment at time of closing, or to enter into contracts for installment payments against the purchase price consistent with applicable federal arbitrage regulations. When installment purchases are made, the county is authorized to pay interest on the declining unpaid principal balance at a legal rate of interest consistent with prevailing market conditions at the time of execution of the installment contract and adjusted for the tax-exempt status of such interest.

C. The Wasatch County legislative body is further authorized to contract with other governmental agencies and third-party non-profit agencies to participate jointly in the acquisition of interests in eligible open space lands on such terms as shall be approved by the legislative body consistent with the purposes and procedures of this Wasatch County Code Chapter 3.6. Upon recommendation of the Wasatch Open Lands Board, the Wasatch County legislative body should consider contracts with other governmental agencies and third-party non-profit agencies to participate jointly in the acquisition of interests in eligible open space lands.

D. Upon recommendation of the Wasatch Open Lands Board, and approval of the Wasatch County legislative body, property interests which the county or other willing, and able persons own in property may be exchanged for property interests in open space lands on an equivalent appraised value basis, or better. If the county has acquired full ownership of any open space lands, conservation rights in such lands may be exchanged for the development rights to other eligible land of equal or higher priority on an equivalent appraised value basis, or better. If the property interests exchanged are not exactly equal in appraised value, then upon a positive recommendation from the Wasatch County Open Lands Board, and approval of the Wasatch County legislative body, cash payments may be made to provide net equivalent value in the exchange.

E. Open Space bond moneys cannot be used to buy conservation easements upon open space land as part of a development application or approval, if that open space is already

mandated in the development under Wasatch County Land Use and Development Code, or the development code of the municipality the property is subject to.

F. Pursuant to the Interlocal Agreement, and in compliance with the manner in which the WOLB was created under Utah Code 11-13, the WOLB does not have any power to contract, receive funds, approve budgets or administer its operations. Instead, it shall encourage and advise the Wasatch County legislative body and other incorporated areas and Parties on how to each establish funding for open space preservation. Any operational costs, staff, or other resources utilized by the WOLB must be donated by other entities. WOLB does not have the authority to incur debt. As part of the Interlocal Agreement, Wasatch County, Midway City, and Heber City have agreed to help support the efforts of the WOLB through providing meeting space, personnel, and other resources reasonably necessary to enable the Board to achieve its purposes. Any resources or funds provided by the County to support the operations of WOLB and its mission must be authorized and dispersed in accordance with applicable law.

G. Purchases of Open Space Properties or Conservation Easements are not subject to the requirements of Wasatch Code Chapter 3.5, provided such purchases comply with all requirements of this Chapter 3.6. The county purchasing agent, under the direction and supervision of the county executive, shall affect all property purchases and other expenses authorized by the Wasatch County legislative body pursuant to this chapter, provided the purchases meet all requirements of applicable law.

H. - County Purpose. The County legislative body finds and declares that the use of county funds for the purpose of paying in whole or in part the cost of acquisition of interests in open space lands as set forth in this chapter, including any costs necessarily incident to such acquisition, to the sale, issuance and delivery of the Open Space bond(s), or to participation with any governmental agency for such purposes will promote the health, welfare, benefit and safety of the people of Wasatch County and is a strictly county capital purpose.

3.06.04 – SELECTION PROCESS

A. WOLB acts as an advisory body that can help facilitate the preservation of open land throughout Wasatch County, including open land in incorporated areas. In order for the Wasatch County legislative body to procure or facilitate the procurement and preservation of open land pursuant to this Wasatch Code Chapter 3.6, the following processes must be adhered to.

1. APPLICATION

a. At such times as the County determines in its reasonable discretion, including at such time as bonding funds are likely to be available, the County shall invite, on their county government website, all owners of eligible open space properties to submit applications in the form of a notice of interest (NOI) to WOLB describing the property interest which the owner is willing to sell. Landowners are encouraged to work with qualified land use organizations when preparing their NOI.

b. WOLB should respond to each initial notice of interest (NOI) submitted to determine whether the application meets the criteria for selection for Wasatch County. If the application does, the WOLB should invite the owner to submit a full application in conjunction with accredited land use organization(s) for possible utilization of open space bond revenue, or other funds or mechanisms available for preserving open space.

c. Application requirements may be set by the WOLB. At a minimum, the application must include:

- 1) Fee Owner Name, mailing addresses, phone numbers, and emails.
- 2) Parcel #(s), physical address of the subject property, and acreage.
- 3) Any ownership interests in the property, including mortgages, trust deeds, leaseholds, easements, liens, or licenses.
- 4) Whether there are any lawsuits or threats of lawsuits related to the property.
- 5) Whether there is any environmental conditions on the property, including if the property is subject to any DEQ or EPA restrictions.
- 6) What the current use of the land is. What has the land been used for over the past 10 years?
- 7) A layout of the property, including roads, houses, wells, easements, infrastructure, fences, water, wetlands, improvements, and other significant qualities of the property. A survey is preferred.
- 8) Is the property currently in greenbelt?
- 9) What water rights are associated with the property.
- 10) What water rights are proposed to be included?
- 11) What compensation, if any, is proposed?
- 12) Value of the property, unless the property or property interest is proposed to be donated. An appraisal is preferred.
- 13) The nature of the property interest to be provided, and who the property interest is proposed to be provided to? Conservation easement? Fee Simple? Other?
- 14) When was the property acquired? A title report is preferred.
- 15) A layout of the property in relation to other adjacent properties, showing open space, improvements, trails, roads, and showing the use of the properties.
- 16) Status of mineral rights on the property.
- 17) Additional information requested by the WOLB or Wasatch County.

d. If an application is denied, the applicant may reapply, so long as at least one year has passed since the application for the subject property was denied, and the applicant submits a new and complete application without reference to the previous application.

2. EVALUATION BY WOLB AND REPORT

a. Upon completion of a full application for receipt of open space funds, or other funds or mechanisms available through Wasatch County for preserving open space, the WOLB shall analyze, write, and present a report to Wasatch County legislative body, continue to monitor the application with any associated third party non-profits for matching funds from state, federal or private organizations. The report shall analyze the application utilizing the selection criteria outlined below, and shall recommend denial or approval.

3. EVALUATION BY THE COUNTY.

a. Upon receipt of the WOLB's report and recommendation to approve the application, the Wasatch County legislative body shall schedule a public hearing in a reasonable time. In no event shall the Wasatch County legislative body be required to hold a public hearing for an application that is anticipated to require bond funds if insufficient bond funds are available, but instead the Wasatch County executive may summarily deny the application, citing the lack of bond funds as the basis for the denial. If the WOLB recommends denial of the application, the Wasatch County legislative body may advance the application by placing the item on an agenda for a public hearing in the same manner other items is placed on the agenda. If the application is not placed on an agenda within 30 days of a recommended denial by the WOLB, the application shall be deemed denied, without any further action by the County. Notice of the first public hearing on an application shall be posted in three locations within the county, on the county's official website, published in the newspaper at least 10 days before the public hearing, mailed to the applicant property owner, and posted on or in the vicinity of the subject property in a location visible from a public street. The notice shall state:

1. The time, date and location of the public hearing.
2. A brief description of the proposed open-space purchase or transaction.
3. A brief summary of the recommendation of the WOLB.
4. A statement that interested persons may appear and be heard at the public hearing.

b. The Wasatch County legislative body, after holding the public hearing, shall use best efforts to approve, deny, or conditionally approve an application within one hundred twenty (120) days of the date of receiving a recommendation from the WOLB. Funding may be delayed, or an approval may be rescinded due to withdrawal or failure of Open Space bond moneys or other funding arrangements. The Wasatch County legislative body may place any conditions on an approval reasonably calculated to effectuate to purposes of this Wasatch County Code Chapter 3.06.

4. GENERAL CRITERIA FOR SELECTION. In evaluating applications requiring approval by the Wasatch County legislative body, including applications that will utilize Wasatch County bond monies, the WOLB and the Wasatch County legislative body shall consider all or some of the following criteria in

deciding whether to recommend approval or denial (note that several of these criteria come from “conservation purposes” specified in section 170(h)(4)(A) of the Internal Revenue Code):

- a. Agricultural use of the property, including grazing and ranch lands with required water rights for existing & historical uses;
- b. preservation of land areas for outdoor recreation by, or the education of, the general public;
- c. Protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems;
- d. Preservation of open space, including farmland and forest land, where such preservation is for the scenic enjoyment of the general public;
- e. Community separator;
- f. Viewsheds;
- g. The preservation of a historically important land area;
- h. Cultural resources;
- i. Urban passive-use natural area;
- j. Having and maintaining greenbelt status;
- k. Public Parks;
- l. Land contiguous to land that meets these criteria;
- m. The threat of reasonably imminent loss of existing open space resources;
- n. Ownership complexity;
- o. Partnerships to help purchase and maintain the property;
- p. Costs and feasibility of stewardship and maintenance of the property;
- q. Equity;
- r. Adopted financial policies;
- s. Preservation of open space, including farmland and forest land, where such preservation is consistent with the Wasatch County General Plan and this Wasatch County Code Chapter 3.06.

5. CRITERIA FOR SELECTION IF FUNDS ARE INADAQUATE. In the event that funds are not adequate to purchase all open space property interests for which valid applications have been received for consideration for approval by the county legislative body, the following criteria shall be considered in determining which applications to prioritize for recommended approval or denial:

- a. An application which is offered at below appraisal for the property interests offered shall be favored over an application which is at or above appraisal;
- b. An application of development rights through a conservation easement in land shall be favored over an application for the County’s full ownership;
- c. An application which is more threatened by urban development shall be favored over an application which is less threatened;
- d. An application which will form a contiguous open space area with other offered or acquired open space land shall be favored over an application which is separated;

- e. An application that provides matching funds from other governmental agencies or private funding sources will be favored over an application that contemplates full funding only by Wasatch County;
 - f. An application which includes adequate water rights shall be favored over an application that does not;
 - g. Applications which provide recent certified appraisals, recorded surveys of the subject property, legal contracts necessary to consummate the proposed transaction, title insurance, title reports, or other materials beyond the required applications materials helpful to evaluate the application shall be favored over applications that do not provide such materials;
 - h. Preservation of open space, including farmland and forest land, that maintains viewsheds regularly enjoyed by a substantial number of the general public of Wasatch County; and
 - i. The Interlocal Agreement Article IV contemplates Heber City and Midway City having an influence on the use of a percentage of the Wasatch County open space bond revenue based in proportion with the taxable value derived from properties in Heber City and Midway City, relative to the taxable value derived from all properties in Wasatch County; As such, applications recommended by the Council in Midway City or Heber City shall be given priority in the Wasatch County legislative body's decision to use Wasatch County open space bond revenue to acquire a property interest in a property for open space, provided:
 - 1. The municipality must have a functioning open space board appointed by the legislative body that will make recommendations to the WOLB;
 - 2. Provide a member of the appointed open space board to the WOLB;
 - 3. The municipality must have based its recommendations on the following criteria:
 - a. The preservation of land areas for outdoor recreation by, or the education of, the general public;
 - b. The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems;
 - c. The preservation of open space (including farmland and forest land) where such preservation is:
 - i. For the scenic enjoyment of the general public; or
 - ii. Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit; or
 - d. The preservation of a historically important land area;
- One or more of these criteria (from the "conservation purposes" under the Internal Revenue Code) must be used, but additional criteria not offensive to the purposes of this Interlocal Agreement may also be used by the municipality;

4. Taxable value will be determined by the County legislative body based on tax assessment numbers and updated as needed.

The weight to be given to each of the above criteria shall be determined by recommendation of WOLB and the decision of the Wasatch County legislative body.

6. ADDITIONAL CRITERIA FOR FULL OWNERSHIP PURCHASES. The WOLB and the Wasatch County legislative body may consider all or some of the following criteria, in addition to the other criteria, in deciding whether to recommend approval or denial or an application for full ownership:

- a. Public access,
- b. Multiple-use trails,
- c. Connectivity to open space lands; and
- d. Recreational uses.

7. CRITERIA WHICH MAKE A PROPERTY INELIGIBLE. The WOLB cannot recommend, and the Wasatch County legislative body cannot utilize Wasatch County open space bond revenue to purchase property if any of the following conditions are present:

- a. Historic water rights associated with the property have been recently sold, or are not offered as part of the application;
- b. A member of WOLB or the Wasatch County legislative body owns a substantial interest in the subject property; "Substantial interest" means the ownership, either legally or equitably, by an individual, the individual's spouse, the individual's parents, the individual's siblings, and the individual's children, of at least 10% of the subject property, the outstanding shares of a corporation that owns the subject property or 10% interest in any other business entity that owns the subject property; This criteria will not exempt the property if the member of the WOLB or the Wasatch County legislative body gives the property interest to the county for less than \$10.01 consideration, and all requirements of Utah Code 17-16a as amended are met;
- c. The subject property is part of an active development application, and all or part of the open space applied for would be required to be protected or dedicated pursuant to the Wasatch County Land Use and Development Code or the functionally equivalent code of a municipality;
- d. Any member of the WOLB or the Wasatch County legislative body have been offered any gift or payment to represent the property owner or their interests through the selection process;
- e. The application for a conservation easement does not meet the requirements of Utah Code Title 57 Chapter 18; the Land Conservation Easement Act, as amended; or
- f. The subject property changes ownership between the time of the application, and the full execution the application.

3.06.05 – EXECUTION

A. After an application has been approved, the county executive, in conjunction with the county attorney, the county planner, the county surveyor, the county recorder, and the county assessor, or any other professional helpful in the county

executive's discretion, shall diligently execute the approval. In the event approval conditions are not met by the applicant, unforeseen issues arise that materially interfere with the execution of the application approval, any change of ownership in the subject property that was not contemplated under the application occurs, a change of funding necessary to pay for the subject property occurs, or the applicant or necessary third parties do not cooperate in good faith with Wasatch County in drafting, executing, and recording all documents necessary to effectuate the purposes of the application, the Wasatch County Code Chapter 3.06, and the approval, the county executive shall not execute the approval, but may bring the application before the county legislative body for their re-consideration.

B. The County may utilize bond revenue, if authorized by the bonding documents and the county legislative body, to help cover costs associated with processing, reviewing, and executing applications under this Wasatch County Code Section 3.06.

C. Conservation easements purchased with the Wasatch County Open Space Bond money can only be relinquished as a result of eminent domain. All of the revenue received from the eminent domain action shall be used to purchase interests in open space lands pursuant to this Chapter 3.06.

3.06.06 – GENERAL

A. The Wasatch County legislative body and county employees must follow all requirements of the County Officers and Employees Disclosure Act found in Utah Code Title 17 Chapter 16a, as amended, and the Open and Public Meetings Act found in Utah Code Title 52 Chapter 4, as amended.

If Heber City, Wasatch County, and Midway City do not adopt and execute the Interlocal Agreement on or before July 1, 2019, this Ordinance shall not be enacted.

SECTION II: **Repealer.** If any provisions of the County Code heretofore adopted are inconsistent herewith they are hereby repealed.

SECTION III: **Amendment of Conflicting Ordinances.** To the extent that any ordinances, resolutions, or policies of Wasatch County conflict with the provisions of this ordinance, they are hereby amended to comply with the provisions hereof.

SECTION IV: **Effective Date.** This Ordinance shall become effective immediately upon execution by the Chair of the County Council and the completion of public notice requirements imposed by state statute.

SECTION V: **Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

SECTION VI: **Public Notice.** The Wasatch County Clerk, and ex officio Clerk of the Wasatch County Council, is hereby ordered, in accordance with the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, to do as follows:

- a. Enter at length this ordinance in the ordinance book;
- b. Deposit a copy of this ordinance in the office of the County Clerk;
- c. Publish a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk's office and with the name of the members voting for and against the ordinance, for at least one publication in a newspaper published in and having general circulation in the county; or post a complete copy of this ordinance in nine (9) public places within the County.

APPROVED and **PASSED** this _____ day of _____, 201_.

Attest:

WASATCH COUNTY COUNCIL:

Brent R. Titcomb
Wasatch County Clerk / Auditor

Danny Goode, Chair
Wasatch County Council

VOTE

Danny Goode, Chairman	_____
Mark Nelson, Vice-Chair	_____
Marilyn Crittenden	_____
Jeff Wade	_____
Mark Nelson	_____
Steve Farrell	_____
Spencer Park	_____

ADOPTION OF ORDINANCE AFFIDAVIT

STATE OF UTAH)
): ss.
COUNTY OF WASATCH)

I, the undersigned, the duly qualified and acting County Clerk of Wasatch County, Utah, and ex officio Clerk of the Wasatch County Council do hereby further certify, according to the records of said Council in my official possession, and upon my own knowledge and belief, that I have fulfilled the requirements of Section 17-53-208, Utah Code Annotated, 1953, as amended, by:

- (a) Causing this ordinance to be entered at length in the ordinance book;
- (b) Causing three (3) copies of this ordinance to be deposited in the office of the County Clerk;
- (c) Causing a short summary of this ordinance, together with a statement that a complete copy of the ordinance is available at the County Clerk’s office and with the name of the members voting for and against the ordinance to be published for at least one publication in *The Wasatch Wave*, a newspaper of general circulation within the geographical jurisdiction of Wasatch County; or posting a complete copy of this ordinance in nine (9) public places within the County.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the County Council of Wasatch County, Utah, this ____ day of _____, 201_.

Brent R. Titcomb
Wasatch County Clerk / Auditor

SUBSCRIBED AND SWORN to me, a Notary Public, this ____ day of _____, 201_.

Notary Public

Residing in:
My commission expires:

WASATCH OPEN LANDS INTER-LOCAL AGREEMENT

This Inter-local Agreement regarding the formation and operation of the Wasatch Open Lands Board (WOLB) is made and entered into this ___th day of _____, 2019, by and between Wasatch County, a political subdivision of the State of Utah, Heber City, a municipality organized and existing pursuant to the laws of the State of Utah, Midway City, a municipality organized and existing pursuant to the laws of the State of Utah, , and the Heber Valley Chamber of Commerce, a _____ organized and existing pursuant to the laws of the State of Utah, (individually “Party” and collectively “Parties”).

RECITALS

WHEREAS, Wasatch County, Heber City, Midway City, and the Chamber of Commerce have determined that it is in the best interest of the residents of their respective jurisdictions and unincorporated county residents to enter into a cooperative effort to promote open space, both public and private, according to Utah Code Annotated 11-13-206, UCA 17-27a-103 and UCA 10-9a-102.

WHEREAS, the Parties desire to participate and work together in the establishment of a local land conservation advisory board to assist in the administration of the desires and direction outlined in the inter-local agreement. This board will be known as the Wasatch Open Lands Board (WOLB).

WHEREAS, the Parties desire to participate and work in the establishment of funding mechanisms which would provide the funds for the preservation and development of high value critical open lands, both public and private, for the community benefit.

WHEREAS, the Parties desire to jointly develop strategies, in cooperation and coordination with the public, to establish funding mechanisms based on ordinance, and/or bonding and/or private contribution as described within: funding through ordinances based on UCA 10-9a-508 and UCA 17-27a-507 ‘exactions’ which establish Conservation Fees that are assessed to mitigate increased densities as requested by new development; funding through bonding achieved via revenue bonds approved by the voters of Wasatch County; and/or private contributions to be solicited from private donors for the purpose of acquiring and protecting open lands.

WHEREAS, the Parties desire to preserve open lands and trail corridors pursuant to a common vision and strategy developed and maintained by WOLB to serve the public throughout Wasatch County.

WHEREAS, it is in the best interest of the Parties to clearly define the rights, duties and obligations of the Parties with respect to this board. It will be the responsibility of the WOLB to make recommendations to the Wasatch County Council, Heber City Council and Midway City Council that establish the operational plan which will guide open space preservation in the future.

NOW THEREFORE, the Parties hereby expresses their support and endorsement for the establishment of an inter-local agreement for the creation of the WOLB.

TERMS OF AGREEMENT

I. CREATION OF THE WASATCH OPEN LANDS BOARD (WOLB)

A. Purpose of the Wasatch Open Lands Board:

To preserve agricultural and open lands in Wasatch County for the enjoyment of present and future generations. Open land preservation will ensure the protection of rich farm and ranchlands, unique wildlife habitats, critical watersheds, lakes & streams, historic areas, trail corridors, view sheds and our serene mountain settings (collectively, "Open Lands Purpose"). This is accomplished through voluntary programs, which will ensure the protection of open lands in perpetuity through open space local funding programs and development of land use ordinances and policies that facilitate the Open Lands Purpose.

Gaining the support and vision of the citizens of Wasatch County on open space preservation is an essential responsibility of the WOLB. The WOLB should hold open houses and public meetings to help create support and interest in open space preservation as well as guidance from the public on priority areas for open space preservation and funding options.

II. FORMATION OF THE WASATCH OPEN LANDS BOARD.

A. Delegation of authority to the Wasatch Open Lands Board.

The Parties hereby create the Wasatch Open Lands Board, and delegate to that Board all power, authority and responsibility necessary to direct and conduct the business of the Wasatch Open Lands Board as allowed by law. The Board is created for the express purpose of ensuring that the obligations and purposes of this inter-local agreement are carried out in a productive and efficient manner. The Board shall, among other things, perform the following tasks:

1. The Board shall hold meetings with county citizens to determine priorities, preservation options, funding mechanisms etc.
2. The Board shall implement this Interlocal Agreement which has been reviewed and recommended by the Heber and Midway City councils, and the Wasatch County Council. This Interlocal Agreement shall serve as a guide for open space preservation and development and prioritization of open space areas for purchase and preservation.
3. The Board shall not have any power to receive funds, approve budgets and administer its operations. Instead, it shall encourage and advise the County Council and other incorporated areas and Parties on how to each establish funding through the TRD & Conservation Fee Ordinances, bonding revenues, grants and/or private donations for open space preservation.

4. Each Party agrees to support the efforts of the Board through providing meeting space, personnel, and other resources reasonably necessary to enable the Board to achieve its purposes.
5. The Board will set up procedures, templates, and guidelines that planning commissions, property owners, developers and land trust conservation organizations would use in encouraging, negotiating, and finalizing purchases of development rights (PDRs), transfer of development rights (TDRs) and placement of conservation easements.
6. Prepare policies, procedures, by-laws and resolutions necessary to carry out the work of the Board in a proper and businesslike manner.
7. The Board will serve on a volunteer basis.
8. The Board will hold meetings as necessary.

III. ORGANIZATIONAL STRUCTURE

The Wasatch Open Lands Board will be comprised of: seven (7) voting members also known as the Governing Board Members.

A. VOTING MEMBERS OF THE BOARD – The Governing Members.

1.1 Membership: The number of voting members shall initially be seven (7) members appointed as follows:

1. Two (2) Board Members appointed by the Wasatch County Council.
2. One (1) Board Member appointed by the Heber City Council.
3. One (1) Board Member appointed by the Midway City Council.
4. One (1) Board Member who is a representative from, and appointed by the Chamber of commerce representing tourism and economic development interests.
5. Two (2) Board members that are citizens at large preferably with experience in open space preservation, who are appointed by the Wasatch County Council.
6. In the event that any of the Cities or Towns who have a right to appoint a Board Member do not appoint a Board member the Wasatch County Council may appoint a Board member, approved by the respective city council, to fill that seat. That representative appointed by the County shall have a special obligation to hear and make known to the Board any concerns of the legislative body of the municipality that the seat was reserved for, but they shall not be bound to vote in conformity with the wishes of the municipality. They shall maintain their seat for the remainder of their term after the County appoints them, unless they resign or become incapacitated.

Voting Members of the Board shall constitute the official Governing Board of the Wasatch Open Lands Board and shall have all the rights, powers, duties and

responsibilities delegated to the Board as set forth herein. Action may be taken by a simple majority of all the Board Members. The Board is the administrator of the WOLB. At least five of the Board members must be present to take any official action. Board Member's votes are not weighted in any manner.

1.2 Terms: Each Board Member shall serve at the will of their governing council, except for those appointed by the County in place of a municipality, and shall serve no more than two consecutive four year terms. Initially three of the Governing Board members would serve two year terms, and four Governing members would serve four year terms. Initial terms would be determined by lot at the first meeting of the Board with the two-year terms ending January 1, 2020 and the four- year terms ending January 1, 2022. Thereafter, the terms would run for four years on a staggered basis. The appointed Board Members serve at the will of the appointing entity, and the appointment may be terminated according to the policies and procedures of that appointing entity, except for those who are appointed by the County in place of a municipality. If a vacancy happens among the Governing Members, the Board shall notify the member's appointing Council which shall fill the vacancy within 30 days by another appointment.

IV. BOND SHARING BASED ON TAXABLE VALUE

The intent of the WOLB is to identify open space priorities that will be a benefit for the residents of the County. Participating municipalities may have different priorities than the WOLB, the County or other municipalities. During the November 6, 2018 general election, the voters of Wasatch County authorized Wasatch County to issue General Obligation Open Space Bonds in an amount not to exceed \$10,000,000.00 ("2018 Bond"). Any bond revenue issued by a government entity can only be issued by, and must be subject to the control of the issuing government entity. However, this Interlocal Agreement contemplates Heber City and Midway City having an influence on the use of a percentage of the 2018 Bond revenue in proportion with the taxable value derived from properties in Heber City and Midway City, relative to the taxable value derived from all properties in Wasatch County. The Wasatch County legislative body should accordingly consider the open space property interest purchase recommendations of the Heber City Council and the Midway City Council in using their percentage of the 2018 Bond revenue, provided the following requirements are met by the municipality:

1. The municipality must have a functioning open space board appointed by the legislative body that will make recommendations to the WOLB.
2. Provide a member of the appointed open space board to the WOLB.
3. The municipality must have based its recommendations on the following criteria:
 - a. The preservation of land areas for outdoor recreation by, or the education of, the general public;
 - b. The protection of a relatively natural habitat of fish, wildlife, plants, or similar ecosystems;

- c. The preservation of open space (including farmland and forest land) where such preservation is:
 - i. For the scenic enjoyment of the general public; or
 - ii. Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit; or
- d. The preservation of a historically important land area.

One or more of these criteria (from the “conservation purposes” under the Internal Revenue Code) must be used, but additional criteria not offensive to the purposes of this Interlocal Agreement may also be used by the municipality;

- 4. Taxable value will be determined by the County Council based on tax assessment numbers and updated as needed.

V. MISCELLANEOUS – Utah Code 11-13-206

- A. This Agreement shall continue for a term of not more than forty (40) years, though it may be terminated at any time by four or more of the six Parties to this Agreement passing resolutions terminating or withdrawing from the WOLB. A Party may withdraw at any time from this Agreement by the governing council of the Party passing a resolution withdrawing from the WOLB, and delivering the resolution to the WOLB. Any seat of the withdrawing Party shall be forfeit if the withdrawing member appointed a Board Member. If they did not, the Board Seat shall be removed when the term of the Board Member expires.
- B. This Agreement does not:
 - a. Require any Party to adjust its budget for a current or future fiscal year;
 - b. include an out-of-state public agency as a Party;
 - c. provides for a Party to acquire or construct:
 - i. a facility; or
 - ii. an improvement to real property;
 - d. provide for a Party to acquire or transfer title to real property;
 - e. provide for the public agency to issue bonds;
 - f. create an inter-local entity; or
 - g. provide for a Party to share taxes or other revenues; or
 - h. Include as a Party the state or any department, division, or agency of the state.
- C. The WOLB does not have the authority to own property, to dispose of property, to have employees, or to contract for services. With the voluntary cooperation of a Party, the WOLB shall work with Parties or other persons to facilitate the purchase of property and or easements, the disposal of property, direct the efforts of their employees, or contract for services.

The County, municipality, or WOLB may use or recommend different options to perpetually conserve purchased easements. Conservation easements may be held in different ways. One option is to set up conservation easements held by a third party non-profit organization that will manage the conservation easement or title to real property. Another option is to set up conservation easements to preserve open lands that are held by the county or municipality that has jurisdiction over the open lands. Conservation easements or ownership of the lands should be used to protect the open space. Any intellectual property created by WOLB shall be considered the joint property of each of the Parties.

- D. All Parties are governmental entities under the Governmental Immunity Act of Utah (Utah Code Ann. § 63G-7-101, et seq. as amended) (“Governmental Immunity Act”). Consistent with the terms of the Governmental Immunity Act, the Parties agree that each Party is responsible for any wrongful or negligent acts which it commits or which are committed by its authorized agents, officials, or employees, and neither Party shall have any liability whatsoever for any wrongful or negligent act of the other, its agents, officials, or employees. No Party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act and all other applicable law, and all Parties maintain all privileges, immunities, and other rights granted by the Governmental Immunity Act and all other applicable law. The Parties agree to assume any and all legal costs for their own defense. Each Party agrees to indemnify, hold harmless, and defend and release all other Parties, their agents, officials, and employees from and against any and all suits, claims, and proceedings for loss, damages, injury or liability, by the Party, or its representatives arising from this Agreement, unless caused by the negligence or willful misconduct of the other Party.
- E. No agent, employee or servant of a Party is or shall be deemed to be an employee, agent or servant of another Party as a result of this Agreement or the acts authorized hereby. None of the benefits provided by each Party to its employees, including but not limited to workers' compensation insurance, health insurance and unemployment insurance, are available to the employees, agents, or servants of the other party. Each Party shall each be solely and entirely responsible for its acts and for the acts of its agents, employees, and servants during the performance of this Agreement.
- F. In the event that any condition, covenant or other provision hereof is held to be invalid or void, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant, or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
- G. The Parties agree as follows:
 - a. This Agreement shall be approved by each Party by passing a resolution adopting this Agreement by July 1, 2019. This Agreement shall be reviewed as to the proper form and compliance with applicable law each Party;

- b. An executed original counterpart shall be filed with the keeper of records for each party pursuant to §11-13-209;
 - c. No real or personal property shall be acquired jointly by the Parties as a result of this Agreement. To the extent that a Party acquires, holds, or disposes of any real or personal property for use in the joint or cooperative undertaking contemplated by this Agreement, such Party shall do so in the same manner that it deals with other property of such Party; and
 - d. Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action taken pursuant to this Agreement, and for any financing of such costs.
- H. The Parties acknowledge and agree that this Agreement constitutes the entire integrated understanding between Parties, and that there are no other terms, conditions, representations or understanding, whether written or oral, concerning the rights and obligations of the Parties to this Agreement except as set forth in this Agreement. This Agreement may not be enlarged, modified or altered, except in writing, signed by all the Parties to the Agreement.
- I. This Agreement may only be amended by the mutual written agreement of all the Parties, which amendment will be attached to this Agreement. Any changes in the scope of the services to be performed under this Agreement, mutually agreed to and signed by both Parties, specifying any such changes.
- J. It is understood and agreed by the Parties hereto that this Agreement shall be governed by the laws of the State of Utah both as to interpretation and performance. All actions, including but not limited to court proceedings, administrative proceedings, arbitration and mediation proceedings, shall be commenced, maintained, adjudicated and resolved within the jurisdiction of the State of Utah.

IN WITNESS WHEREOF, the Parties execute this Agreement on the day and month recited above,

WASATCH COUNTY:

HEBER CITY

By: _____

By: _____

MIDWAY CITY:

HEBER VALLEY CHAMBER OF COMMERCE

By: _____

By: _____
