

City of Carson City
Agenda Report

Item #80

Date Submitted: January 27, 2009

Agenda Date Requested: February 5, 2009

Time Requested: 10 Minutes

To: Mayor and Supervisors

From: Parks and Recreation Department

Subject Title: Action to approve a "Deed Restriction Template" to be used for the reimbursement of awarded grants obtained through the State of Nevada Question-1 Conservation and Resource Protection Grant Program.

Staff Summary: The attached deed restriction is to be used as part of the funding agreement to obtain funds that were awarded for the fee title and conservation easement acquisitions already completed by the Open Space Program. The Board of Supervisors is asked to approve this document which was negotiated by staff with the help of Supervisors Aldean and Williamson.

Type of Action Requested: (check one)

☐ Resolution

☐ Ordinance

☒ Formal Action/Motion

☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: Move to approve a "Deed Restriction Template" to be used for the reimbursement of awarded grants obtained through the State of Nevada Question-1 Conservation and Resource Protection Grant Program.

Explanation for Recommended Board Action: Monies have already been awarded for land acquisition purchases conducted by the Open Space Program. The "Deed Restriction" document is necessary for the State of Nevada to ensure compliance with the regulations of the Conservation and Resource Protection Question-1 Program.

Applicable Statute, Code, Policy, Rule or Regulation: State of Nevada, Conservation and Resource Protection Grant Program.

Fiscal Impact: The approval of this document will facilitate Carson City in obtaining \$2.7 million on projects already completed and approximately \$4.75 million on future projects located by the Carson River.

Explanation of Impact: The Open Space acquisition account will be positively impacted by \$2.7 million.

Funding Source: State of Nevada, Conservation and Resource Protection Grants (Question-1)

Alternatives: Not to accept the agreement.

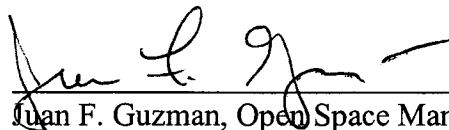
Supporting Material:

Staff report from December 15, 2008, Open Space Advisory Committee meeting

Deed Restriction template

Minutes from the December 15, 2008, Open Space Advisory Committee meeting

Prepared By:

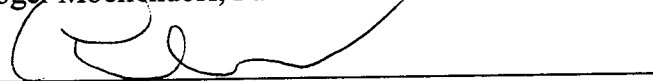

Juan F. Guzman, Open Space Manager

Date: 1/28/09

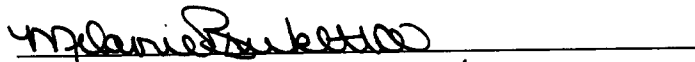
Reviewed By:


Roger Moellendorf, Parks & Recreation Director

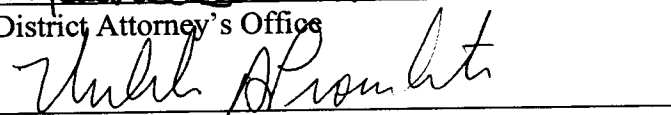
Date: 1/27/09


Larry Werner, City Manager

Date: 1/27/09


District Attorney's Office

Date: 1/27/09


Finance Department

Date: 1/27/09

Board Action Taken:

Motion: _____

1: _____

Aye/Nay

2: _____

(Vote Recorded By)

**OPEN SPACE ADVISORY COMMITTEE
STAFF REPORT**

MEETING DATE: December ¹⁵~~16~~, 2008

AGENDA ITEM NUMBER: 3C

STAFF: Juan F. Guzman 

REQUEST: Action to recommend to the Board of Supervisors approval and use of the revised template for the funding agreement and deed conservation easement by which the State of Nevada will transfer funds to Carson City for the purchase of open space properties.

GENERAL DISCUSSION: Staff received approval from the Open Space Advisory Committee for the funding agreement and deed restriction template to be used for the funding of acquisition of properties that have received grant awards through the Question-1 Program. Supervisors Williamson and Aldean joined Joel Benton and staff in discussions with Jim Lawrence, the State Lands Director, which resulted in a more agreeable deed restriction and funding agreement template to be used by Carson City and others throughout the State of Nevada. The template is attached for your use. This template will be presented to the Board of Supervisors at their meeting in January 2009.

RECOMMENDED ACTION: Move to recommend to the Board of Supervisors approval and use of the revised template for the funding agreement and deed conservation easement by which the State of Nevada will transfer funds to Carson City for the purchase of open space properties.

RECORDING REQUESTED BY:

Juan Guzman, Open Space Manager
3303 Butti Way, Building No. 9
Carson City, NV 89701

WHEN RECORDED MAIL TO:

Nevada Division of State Lands
Question 1 Program
901 S. Stewart St., Suite 5003
Carson City, Nevada 89701

NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY

This NONREVOCABLE AGREEMENT TO RESTRICT PROPERTY ("Agreement") is made and entered into this ____ day of December, 2008, by and between the Consolidated Municipality of Carson City ("Grantee"), and the State of Nevada ("State"). Grantee and State are sometimes hereinafter referred to collectively as the "Parties."

Recitals

WHEREAS, Grantee is the owner of that certain real property located in Carson City, State of Nevada, described as follows:

Carson City Assessor Parcel Number(s) 000-00-000, (hereinafter "Property"). For a complete legal description of the Property see "Exhibit A" attached hereto and incorporated herein by this reference.

WHEREAS, This Agreement is given to insure that the Property is maintained and used in a manner consistent with the regulations (NAC Section 321) adopted by the State for the Conservation and Resource Protection Grant Program, hereinafter referred to as "Question 1 Program." Regulatory authority is provided by Subsection 1-35, Section 2 of Assembly Bill No. 9 of the 17th Special Session of the Nevada Legislature, Chapter 6, Statutes of Nevada 2001. The referenced regulations require the Nevada Division of State Lands, (hereinafter "State Lands," an agency of the State), when entering into a Funding Agreement, to include pertinent nonrevocable deed restrictions and appropriate reversionary clauses to ensure that at all times the land is maintained in a manner consistent with the purpose of the Question 1 Program.

WHEREAS, Grantee has entered into a State Lands Question 1 Program Funding Agreement that provides funding to implement the project entitled the "_____" and which has been assigned Question 1 Program Project ID No. WI-LW-04000.

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WHEREAS, State Lands has authority to award grants of money from the sale of general obligation bonds to a county, or a municipality within a county for the acquisition of land and water or interests in land and water for the public benefit to protect and enhance wildlife habitat, sensitive or unique vegetation, historic or cultural resources, riparian corridors, floodplains, wetlands and other environmental resources pursuant to an adopted plan for open spaces.

Declarations

NOW, THEREFORE, in consideration of the grant funds received and the covenants and agreements contained herein, the Parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct.
2. Authorized Uses. Pursuant to this Nonrevocable Agreement to Restrict Property, Grantee agrees that the Property will be used only for open space purposes that are consistent with the objectives for which the Property is acquired and the local jurisdictions' adopted open space plan. The Grantee further agrees that the property will be used for purposes that are consistent with the protection or enhancement of wildlife habitat, protection of sensitive or unique vegetation, protection of historic or cultural resources, protection of riparian corridors, floodplains, or wetlands, and/or to protect or preserve the benefits of the Property or natural resources within the State for the public.
3. In Event of Unauthorized Uses. If at any time the Property, or any portion of it, is used for some purpose other than that stated in Paragraph 2 above, the following actions shall be taken:
 - A. In the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement, the State, or any person, shall give written notice to Grantee and request that the Grantee take corrective action sufficient to cure the violation or prevent the threatened violation. Grantee shall have 30 days to comply with the request. If Grantee is unable to cure the violation within the time allotted but is pursuing corrective measures with due diligence, the State ~~may permit the Grantee~~ a reasonable extension of time. If the State, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the permitted use of the property as described in Paragraph 2 of this Agreement, the State may pursue its remedies under this section without prior notice to Grantee or without waiting for the period provided for cure to expire. Nothing in this Agreement shall be construed to impair the State's, or any person's right to seek temporary or permanent injunctive or other relief to enforce the terms of this Agreement against a violation or threatened violation hereof.

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B. If the Grantee fails to take corrective action to cure the violation or prevent the threatened violation pursuant to subparagraph A., the Grantee shall offer to convey the Property, for no consideration, to the State for the purposes stated in paragraph 2 above; or, if said offer is rejected by the State or if the State fails to respond to the offer within ninety (90) days of the date of the offer, then Grantee shall offer to convey the Property, for no consideration, to each reasonably identifiable Nonprofit Conservation Organization active in Nevada. For purposes of this Agreement, the term "Nonprofit Conservation Organization" means a nonprofit organization, qualified in the State, that has as one of its primary purposes the acquisition of property for the protection, preservation and/or conservation of land, water, open space and/or the natural communities, resources and wildlife located thereon.

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Any offer made herein by Grantee must be made: (a) by delivering a written offer to the party to whom the offer is being made via certified U.S. Mail or hand delivery, and (b) by providing public notice of the offer, which public notice shall include, without limitation, notice of such offer by publication no less than three (3) times at one-week intervals in a newspaper of general circulation in Carson City. Both the written offer and the public notice described herein shall state that in the event multiple Parties are interested in accepting the offer and are otherwise qualified to accept the offer, the party to whom the Property will be conveyed will be determined promptly by the Grantee in its sole and absolute discretion. The written offer and public notice shall also include the date by which a qualified party must accept the offer in writing, which date shall be not less than sixty (60) days nor more than ninety (90) days after the date of third publication, and shall identify the representative to whom the written acceptance must be made and the place where such written acceptance must be delivered. The Grantee shall bear all costs for any offer required to be made by it hereunder.

Should an offer described herein be accepted, Grantee shall, at its sole cost and expense, promptly deliver to the qualified party accepting said offer, a duly executed warranty, grant bargain sale, or quitclaim deed capable of being recorded in order to convey clear title to the Property to said party.

If neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee shall, at the sole discretion of the State, promptly take one of the following actions (either sub-subparagraph i or sub-subparagraph ii):

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- i. Sell said Property or a portion of the property as determined by the Grantor to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State the pro rata share of the sale price of the portion of the Property sold, or the amount of the grant, whichever is greater.
- ii. Remit to the State a sum equivalent to the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the date paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.

Comment [dw1]: We should clarify whether the State is consenting to a sale of less than the entire property that is the subject of the Restriction.

Comment [dw2]: Suggests that the Grantee can sell only a portion of the property.

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4. Voluntary Transfer of Property. In the event the Grantee desires to sell or otherwise transfer the Property, prior to any such sale or transfer of the Property by Grantee, Grantee shall offer to convey the Property, for no consideration, to the entities described in sub-subparagraph 3(B) above, subject to the same terms and conditions, and according to the same procedures, set forth therein. If, after complying with the provisions of sub-subparagraph 3(B), neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may, at the sole discretion of the State, promptly take one of the following actions (either subparagraph A or subparagraph B):

A. Sell the Property to any other person or entity for fair market value, based on an appraisal of the property at the time of transfer. Upon such sale, other than to the State or a qualified Nonprofit Conservation Organization, Grantee shall promptly transmit to the State the sale price of the Property sold. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.

B. Promptly transmit to the State the amount of the Grant, together with interest thereon at the rate of 10% per annum, commencing from the date of the Grantee's acquisition of the Property until the state paid. Upon receipt of said payment, the State shall release the Grantee from any further obligations or liabilities under this Agreement.

5. Condemnation. Any and all funds received by Grantee in connection with any portion of the Property taken by right of eminent domain or by condemnation shall be delivered pro rata promptly to the State as reimbursement, in whole or part, for the amount of the Grant. If only a portion of the Property is taken by right of eminent domain or by condemnation, and if Grantee thereafter desires to dispose of that portion of the Property not taken by right of eminent domain or condemnation (hereinafter "the Remainder Portion"), Grantee shall offer to convey the Remainder Portion for no consideration, to the entities described in sub-subparagraph 3(B)(i) above, subject to the same terms and conditions, and according to the same procedures, set forth therein.

If, after complying with the provisions of the preceding paragraph, neither the State nor a qualified Nonprofit Conservation Organization has accepted Grantee's offer, Grantee may sell said Remainder Portion to any other person or entity for fair market value. Upon such sale, Grantee shall promptly transmit to the State the State's pro rata share of the sale price of the Remainder Portion sold, or the amount of the grant attributable to the Remainder Portion, whichever is greater.

Comment [dw3]: Pro rata share suggests that Grantee can sell less than the property subject to the Restriction. Do you really want to authorize this? I can see why partition might be necessary in the event of condemnation, but the State agreeing to a voluntary partition seems inconsistent with Question 1. If it's a voluntary sale of the entire property, why would there ever be a pro rata share?

6. Enforcement. The State, or any person, has the right to prevent any activity or use on this property that is inconsistent with the permitted use as described in paragraph 2 of this Agreement. The terms and conditions in this Agreement may be enforced as follows:

A. Enforcement of the provisions of this Agreement shall be at the discretion of the enforcing party. Any forbearance in the enforcement of rights and interest under this Agreement in the event of a violation or infringement, or threatened violation or infringement, of any provision of this Agreement shall not be deemed or construed to be a waiver of such provision or of any subsequent violation or threatened violation of the same or any other provision of this Agreement, and any failure to act shall not be deemed a waiver or forfeiture of the right to enforce the provisions of this Agreement in the future.

B. Grantee will not be responsible for injury to or change in the property subject to this Agreement resulting from natural causes or environmental catastrophe beyond Grantee's control, such as fire, flood, storm and earth movement, or from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the property resulting from such causes.

C. If Grantee fails to cure a violation or threatened violation of the terms and conditions as expressed herein after receiving written notice of the violation or threatened violation, the State or any person may institute a suit to enjoin the violation or infringement and/or to require the restoration to the condition that existed prior to the violation or infringement; in addition, the State or any person enforcing this Agreement may seek damages to which they may be entitled including reimbursement to the State of all or a portion of the grant funding provided to Grantee for acquisition of the property herein. The enforcement rights under this subparagraph shall apply equally in the event of either actual or threatened violations of the provisions of this Agreement. The Grantee agrees and acknowledges that the remedies at law for any violation of the provisions of this Agreement are inadequate and that any person enforcing this Agreement shall be entitled to the injunctive relief described in this subparagraph, both prohibitive and mandatory, in addition to such other relief, including damages, to which the enforcing person may be entitled, including specific performance of the provisions of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

D. If a court determines that this Agreement has been breached Grantee will reimburse the State or any other person bringing suit for relief under this section, for reasonable costs of enforcement, including court costs, reasonable attorney's fees, and any other payments ordered by the court.

7. Recordation. This Agreement shall be recorded in the Office of the Carson City Recorder and shall run with the land.

8. Amendments. This Agreement shall not be amended except upon the written agreement of the Parties after public notice by publication no less than three (3) times at one-week intervals in a newspaper of general circulation in Carson City.

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9. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings and agreements.
10. Further Assurances. Additional Documents. The Parties agree to execute any and all further documents, deeds and other writings, and to undertake any further action necessary to consummate the transactions contemplated herein.
11. Authority. Grantee and State, respectively, represent and warrant that, as of the date of this Agreement, each has the full right, power and authority to enter into this Agreement and to consummate the transaction contemplated herein, and that each has duly and properly taken all action required of it, to authorize the execution, delivery and performance by it of this Agreement.
12. Binding Effect. This Agreement is binding upon the representatives, successors, and assigns of the Parties hereto.
13. Captions. The captions and headings of the sections of this Agreement are for convenience of reference only and shall not be construed in interpreting the provisions hereof.
14. Severability. If any term or provision of this Agreement is deemed unenforceable by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect so long as the purpose and intent of this Agreement may be achieved.
15. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Nevada.
16. Attorneys Fees. In the event of any controversy, claim, or dispute relating to this Agreement or to the violation or infringement thereof, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs.

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the Parties hereto have entered into this
Agreement as of the date first written
above.

DATED this ____ day of _____, 2008.
"Grantee" Carson City

By: _____

Name: _____

Its: _____

"State" STATE OF NEVADA

By: _____

Name: _____

Its: _____

APPROVED as to Form:
Catherine Cortez Masto
Attorney General

By: _____ Date: _____

Douglas E. Walther .
Chief Deputy Attorney General

APPROVED as to Form:
NEIL ROMBARDO
Carson City District Attorney

By: _____ Date: _____

Joel C. Benton .
Senior Deputy District Attorney

STATE OF NEVADA . .)
) SS.

CITY OF CARSON CITY . .)

This instrument was acknowledged
before me on the ____ day of _____.

2008, by _____

NOTARY PUBLIC

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IN WITNESS WHEREOF, the parties hereto have entered into this agreement as of
the date first written above.

STATE: _____ **GRANTOR:** _____

STATE OF NEVADA _____ CARSON CITY
Division of State Lands

By: _____ By: _____
JAMES R. LAWRENCE
Administrator and Ex-Officio
State Land Registrar Date: _____

STATE OF NEVADA _____) STATE OF NEVADA _____)
:ss :ss
CITY OF CARSON CITY _____) COUNTY OF CARSON _____)

On _____, 2008	On _____, 2008
personally appeared before me, a	personally appeared before me,
Notary Public, JAMES R.	a Notary Public,
LAWRENCE, Administrator and	_____, known to
Ex-Officio State Land Registrar,	me to be authorized to sign on
Division of State Lands, who	behalf of the above
acknowledged that he executed	GRANTOR, who
the above document on this date.	acknowledged that (s)he
	executed the above document
	on this date.

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APPROVED as to Form:

CATHERINE CORTEZ MASTO
Attorney General

APPROVED as to Form:

NEIL ROMBARDO
Carson City District Attorney

By:

Douglas E. Walther
Chief Deputy Attorney General

By:

Thoran Towler
Senior Deputy District Attorney

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Exhibit A



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CARSON CITY OPEN SPACE ADVISORY COMMITTEE

Minutes of the December 15, 2008 Meeting

Page 3

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Management Act earmarked through the White Pine County federal lands bill. In response to a further question, he advised that no match was required. Member Lincoln commended Mr. Guzman and Open Space Coordinator Ann Bollinger on presentation of the work program. Vice Chairperson Jacquet commended Mr. Guzman on the concise demonstration of priorities and funding. He expressed general agreement with the listed priorities, and with Member Scott's preference to emphasize acquisition of the Jarrard property with the understanding of the requirement for a willing seller.

Vice Chairperson Jacquet entertained a motion. **Member Riedl moved to recommend to the Board of Supervisors for staff to continue to work on the land transactions, capital improvements / projects, planning activities, and management activities, as presented in the staff report. Member Scott seconded the motion.** Vice Chairperson Jacquet called for public comment and, when none was forthcoming, a vote on the pending motion. **Motion carried 5-0.**

* **3-C. ACTION TO RECOMMEND TO THE BOARD OF SUPERVISORS APPROVAL AND USE OF THE REVISED TEMPLATE FOR THE FUNDING AGREEMENT AND DEED CONSERVATION EASEMENT BY WHICH THE STATE OF NEVADA WILL TRANSFER FUNDS TO CARSON CITY FOR THE PURCHASE OF OPEN SPACE PROPERTIES (6:44:29) -** Mr. Guzman introduced this item, and reviewed the most recent revisions to the funding agreement template, in conjunction with the staff report. Member Scott expressed appreciation for the involvement of Supervisors Shelly Aldean and Robin Williamson in getting the funding agreement template approved by Division of State Lands representatives. **Member Scott moved to recommend approval of the funding agreement template by the Board of Supervisors. Member Riedl seconded the motion.** Vice Chairperson Jacquet called for public comment; however, none was forthcoming. Mr. Guzman acknowledged that approval of the funding agreement by the Board of Supervisors would result in allocation of Question #1 funding. Vice Chairperson Jacquet called for a vote on the pending motion. **Motion carried 5-0.**

3-D. DISCUSSION ONLY REGARDING THE ENVIRONMENTAL PHASE I REPORTS FOR THE WILSON, SCHULZ, LONG, AND DARLING PROPERTIES LOCATED AT THE CARSON RANGE BETWEEN ASH CANYON AND KINGS CANYON - Deferred.

4. NON-ACTION ITEMS:

STATUS REPORTS AND ANNOUNCEMENTS FROM STAFF (6:48:55) - Mr. Guzman referred to the "FYI" items included in the agenda materials. In response to a question, he provided an overview of discussion which took place between Parks Department staff and members of the Advisory Board to Manage Wildlife, as reflected in the November 10, 2008 minutes included in the agenda materials, regarding the possibility of creating an additional public access point near the Harrison Bridge at the Carson River. (6:51:48) Mr. Guzman wished the committee members Merry Christmas, and advised that this would likely be Member Perock's last meeting. He advised that both Chairperson Hartman and Member Scott had requested reappointment, and that the application period had been extended until early January.

MEMBERS' ANNOUNCEMENTS AND REQUESTS FOR INFORMATION - None.

5. FUTURE AGENDA ITEMS (6:51:28) - None.