

Mapleton City Planning Commission Staff Report

Meeting Date: December 9, 2010

Applicant: Mapleton City
Prepared by: Cory Branch
Public Hearing Item: Yes

REQUEST

Mapleton City requests a rezone of approximately 60 acres from CE-1 (Critical Environment) to RA-1 (Residential Agricultural) on property located generally at 2000 East Maple Street.

FINDINGS OF FACT:

1. On November 2, 2010 the citizens of Mapleton voted to overturn the PD-2 zone, thus the current zoning of the subject area is CE-1.
2. On May 15, 2007 Mapleton City and the Gibby Parties entered into a Settlement Agreement. Part of the Agreement required Mapleton City to bring forward an ordinance to rezone the 60+/- acres of the Gibby Parties land to other than in an environmentally restricted zone to a zone comparable to an RA-1 zone development and allowing for a total density on the land of 47 separate residential units with clustering of the homes within the 60+/- acres. (see Attachment 1 – Settlement Agreement)
3. At this time Mapleton City is requesting to rezone approximately 58.458+/- acres from the CE-1 zone to the RA-1 zone. (see Attachment 2 – Proposed RA-1 Zone Boundary Description)

STAFF RECOMMENDATION:

In order to fulfill the Settlement Agreement as discussed above Staff recommends approval of the rezone.

ATTACHMENTS:

1. May 15, 2007 – Settlement Agreement
2. RA-1 Zone Boundary Description
3. Topography Map of the Zone Boundary Description
4. Aerial Map of the Zone Boundary Description

Attachment 1

RESOLUTION NO. 2007-25

RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING TO SETTING PENDING LITIGATION AND ALL CLAIMS KNOWN AND UNKNOWN

WHEREAS, Mapleton City, Utah County, Utah (the "City"), and Wendell A. Gibby and Trudy Gibby individually and as co-trustees of the UVRA, Inc., WAG Pension Trust; Wendell A. Gibby Trustee Utah Valley Radiology (sic) Assoc., Inc., Money Purchase Pension Plan for Wendell A. Gibby and MCBRS, LLC (collectively, the "Gibby Parties") (the City and Gibby Parties are collectively referred to herein as the "Settling Parties"; and

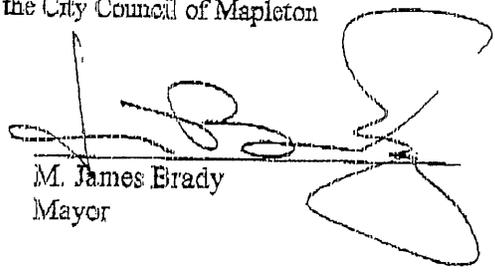
WHEREAS, the Settling Parties are presently involved in 4 lawsuits identified in a Memorandum of Understanding to Settle Pending Litigation and all Claims Known and Unknown (the "MOU"); and

WHEREAS, the City desires to enter into the MOU and has received assurances that the other parties thereto desire the same; and

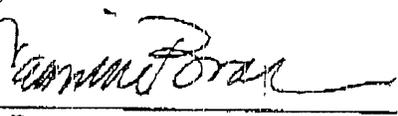
WHEREAS, the Settling Parties have reached an agreement in principle to resolve all of the disputes claimed in the lawsuits, and which would settle all claims between the parties, known and unknown.

NOW THEREFORE, BE IT RESOLVED by the City Council of Mapleton, Utah, that the Mayor is authorized to enter into and sign the MOU and the City Recorder is authorized to attest to the same and apply the City seal and thereby the City will agree and covenant to follow the terms of the Memorandum of Understanding to Settle Pending Litigation and all Claims Known and Unknown. The Mayor is further authorized to enter into and sign all needful and helpful documents to carry out or complete the transactions contemplated by the MOU and the City Recorder is authorized to attest to the same and apply the City seal.

APPROVED AND ADOPTED this May 15, 2007 by the City Council of Mapleton City, Utah County, Utah.


M. James Brady
Mayor




Michelle Brown
City Recorder

MEMORANDUM OF UNDERSTANDING TO SETTLE PENDING LITIGATION AND ALL CLAIMS KNOWN AND UNKNOWN

This Memorandum of Understanding to Settle Pending Litigation and All Claims Known and Unknown (the "Agreement") is entered into by and between Mapleton City, Utah ("Mapleton" or the "City"), a municipal corporation and body politic, and Wendell A. Gibby and Trudy Gibby individually and as co-trustees of the UVRA, Inc., WAG Pension Trust; Wendell A. Gibby Trustee Utah Valley Radiology (sic) Assoc., Inc., Money Purchase Pension Plan fbo Wendell A. Gibby and MCBRS, LLC (collectively, the "Gibby Parties") (the Mapleton and Gibby Parties are collectively referred to herein as the "Settling Parties") as of this 5th day of May, 2007.

WHEREAS, the Settling Parties are opposing parties in several lawsuits consisting of the following: (1) Case No. 05010068 Utah 4th Dist. Ct. pending before Judge Pullan (historical right of way and eminent domain); (2) Case No. 2:05-cv-632 DB U.S. Dist. Ct. of Utah pending before Judge Benson (civil rights); (3) Case No. 070100482 Utah 4th Dist. pending before Judge Pullan (rezone challenge); (4) Case No. 060402859 Utah 4th Dist. pending before Judge Howard (Dogwood Dr.); and

WHEREAS, 2007 legislative bill known as House Bill 334 proposed before the Utah State Legislative that would impact some of the above litigated matters; and was deferred by reason of the oral understanding preceding this Agreement; and

WHEREAS, the Gibby Parties have applied for a subdivision approval within Mapleton; and

WHEREAS, the Settling Parties have reached an agreement in principle to resolve all of the disputes claimed in the above lawsuits, and which would settle all claims between the parties, known and unknown; and

WHEREAS, the agreement in principle will require Mapleton to exercise its police power for purposes such as rezoning certain lands in the City; and

WHEREAS, the police powers of the City cannot be circumvented by agreement, and therefore, the parties desire to allow Mapleton sufficient time to exercise its police powers with respect to the land use laws contained within the Utah Code and the City Code; and

NOW THEREFORE, for good and valuable consideration, including the resolution of pending litigation, the Settling Parties hereby agree and covenant as follows:

1. The Gibby Parties will expeditiously, meaning no later than June 1, 2007, but in all events by July 1, 2007, submit all materials necessary to comply with Utah State law and all current applicable City Ordinances, Mapleton will bring forward an ordinance to rezone the 60+/- acres of the Gibby Parties' land to other than in an environmentally restricted zone to a zone comparable to an RA-1 zone development restrictions which are on an area with a slope less than 30%, which is included in the 124+/- acres of land owned or controlled by the Gibby Parties within the CE-1 zone

to allow for a total density on the Gibby Parties' land of 47 separate residential units with clustering of the homes within the 60 +/- acres and a plat to incorporate such development.

2. Mapleton will forthwith approve the Gibby Parties' application to move the power lines farther to the east, as per the previously filed application. A permit will be brought forward for the relocation of the power line that traverses the property at the developer's expense.
3. Upon approval of the plat described herein, the Gibby Parties agree to provide an easement for a trail from the north and south property lines of the Gibby Parties' property across the west escarpment of the property in substantial compliance with plats previously submitted by the Gibby Parties during the legislation session in 2007 to Mapleton, consistent with City's trail easement on the north across the adjoining Roundy property and connecting on the south to either the Forest Service or the City property. The Gibby Parties shall choose the location of the trail easement through the Gibby Parties' property.
4. Upon approval of the rezoning and plat approval described herein, the Gibby Parties will grant an easement, at no cost to the City, for its water main that is to be placed in a public right-of-way in a location to be determined by Mr. Gibby and approved by the City Engineer. The location of the proposed easement will be communicated to the City within the next 30 days except for where the water main is in a public street, the water main easement across the Gibby Parties' property shall be restricted to City employees for maintenance or repair of the water main. The City will provide a satisfactory mitigation plan and be responsible for any pipeline rupture or damage to private property. The City will bear the costs of the water main. It is agreed that culinary water needs of the Gibby Parties' property will be supplied from the water main that will be placed in the public right-of-way described above.
5. The development of the Gibby Parties' property must comply with the written objective standards already adopted by the City, and other than changes contemplated in paragraph 1, no conditions outside of the written objective development standards already adopted by the City will be imposed on the Gibby Parties' development.
6. Mapleton agrees to cooperate with a future land exchange, if any, between the Gibby Parties and the U.S. Forest Service which owns land immediately to the south of the Gibby Parties' subject property.
7. The Gibby Parties agree to use their best efforts to assist Mapleton City to complete the actions described in paragraphs 1 and 2 above before September 1, 2007. Any delay up to one month by the Gibby Parties in making submissions shall grant the

- City a corresponding extension of time to complete the actions described in paragraphs 1 and 2 up to one month.
8. The City will work in good faith with the developer of the Gibby Parties' property to ensure that adequate public facilities are available.
 9. The City and the developer of the Gibby Parties' property shall work in good faith to achieve an attractive and functional development.
 10. The City agrees that Dogwood Drive needs to be widened to the Gibby Parties' property to achieve safe traffic flow to accommodate the development of the Gibby Parties' property no to exceed 56' to the same width as the developers' design for the Gibby Parties' development. The City will widen the street at the City's expense.
 11. Upon completion prior to September 1, 2007 of the rezoning described in paragraph 1, and the permit issued for the moving of the power poles described in paragraph 2, the Settling Parties hereto agree as follows:
 - A. The Gibby Parties agree to settle and dismiss with prejudice the above litigations and all claims known and unknown against Mapleton and all individuals named in the above litigation and bear their own costs and attorney's fees.
 - B. Mapleton agrees to settle and dismiss with prejudice the above entitled litigation and all claims known and unknown against the Gibby Parties and bear their own costs and attorney's fees.
 12. The Gibby Parties will take all measures to assist Mapleton to efficiently process any development requests and will submit all development requests with ample time, meaning no later than June 1, 2007, but in all events by July 1, 2007, to allow the City to complete approvals contemplated by paragraphs 1 and 2.
 13. The Gibby Parties agree to work in good faith to heal rifts within the community.
 14. Mapleton agrees to work in good faith to heal rifts within the community.
 15. Mapleton agrees to expedite development requests from the Gibby Parties meaning no later than June 1, 2007, but in all events by July 1, 2007 to complete the applications contemplated herein prior to September 1, 2007.
 16. Upon receiving the rights of way for the trail and water main described herein, Mapleton agrees to publicly declare that the Gibby Parties' property is private property, and the public is not allowed to trespass, vandalize, or cross said property,

except where the City shall obtain rights of way, and that violations of the Gibby Parties' property rights will be prosecuted by the City.

17. The Settling Parties agree to fully cooperate and to execute any and all supplementary documents and to take all additional actions that may be reasonably necessary to give this Agreement full force and effect. The Settling Parties hereby authorize their counsel to do the same.
18. The Settling Parties understand and agree that this Agreement is entered into for the purpose of resolving doubtful and disputed claims and is not an admission of liability of any of the Settling Parties as any liability is expressly denied.
19. In any action brought to enforce, construe or rescind this Agreement, or any document required hereby, the state or federal courts of the State of Utah shall have exclusive jurisdiction over, and venue with respect to, each party. This Agreement shall be governed and construed in accordance with the laws of the State of Utah. In any action brought to enforce, construe, or rescind this Agreement, or any document required hereby, the prevailing parties shall be entitled to the recovery of reasonable attorney's fees and reasonably incurred costs and expenses of litigation.
20. This Agreement shall be binding upon the successors, assigns, administrators, and executors of the Settling Parties.
21. This Agreement is being executed in multiple counterpart originals and shall be deemed fully executed and binding when all of the parties hereto have executed one counterpart of this Agreement. This Agreement shall then have the same force and effect as if all signatures appeared on the same original.
22. In entering into this Agreement, the Settling Parties represent that they have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal consequences of this Agreement, that the terms of this Agreement have been completely read and explained to them by their attorneys, and that the terms of this Agreement are fully understood and voluntarily accepted by them.
23. The individuals executing this Agreement represent and warrant individually that they are duly authorized and empowered to enter into this Agreement on behalf of themselves or their respective principals.

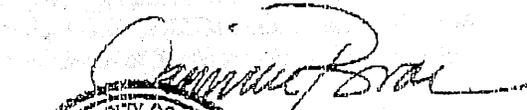
On Behalf of the Gibby Parties


Wendell A. Gibby

On Behalf of Mapleton City, Utah

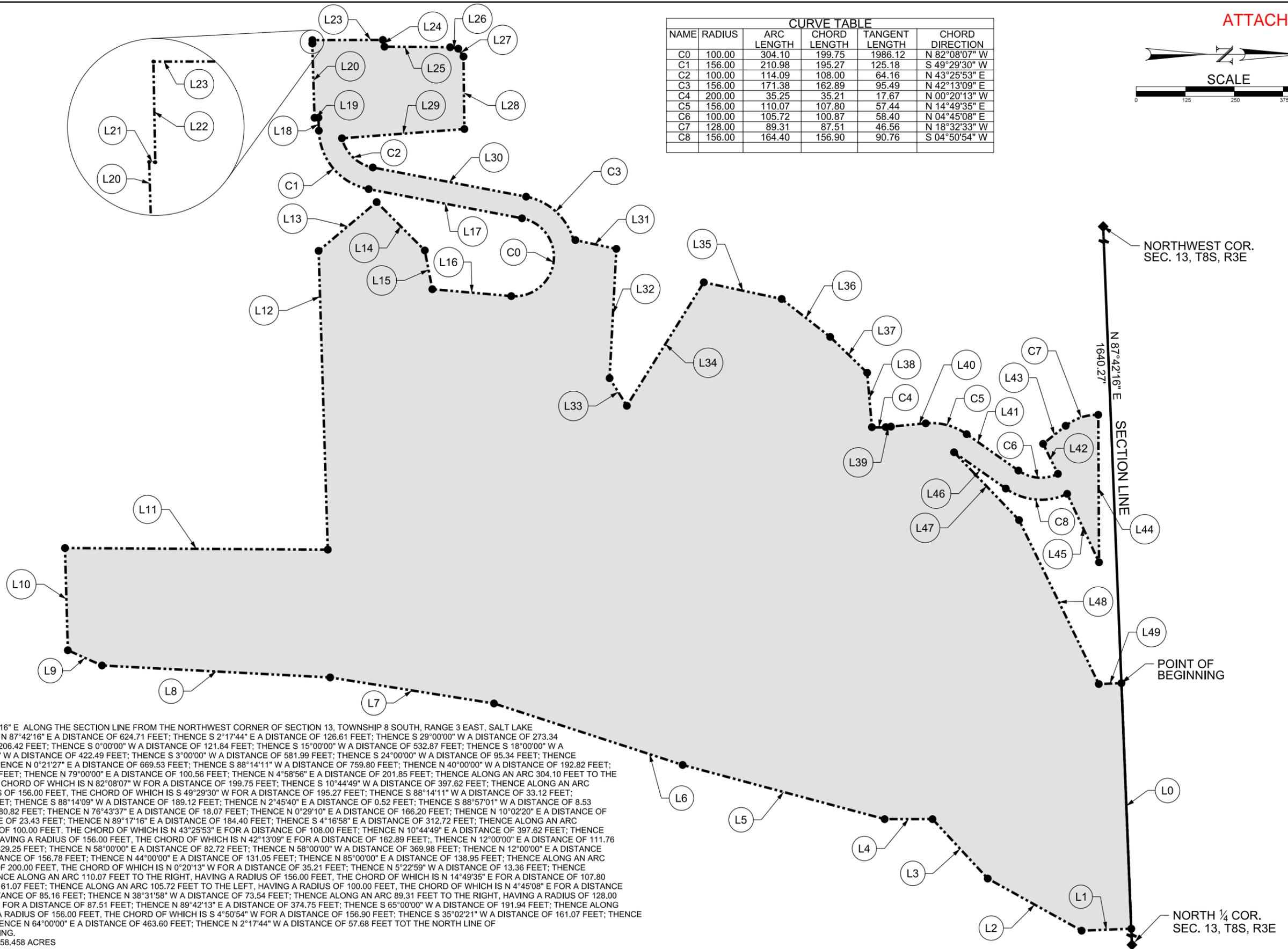
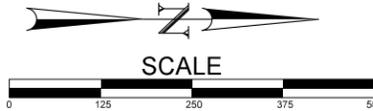

Mayor

ATTESTED:




LINE TABLE		
NAME	LENGTH FEET	DIRECTION
L0	624.71	N 87°42'16" E
L1	126.61	S 02°17'44" E
L2	273.34	S 29°00'00" W
L3	206.42	S 47°00'00" W
L4	121.84	S 00°00'00" W
L5	532.87	S 15°00'00" W
L6	505.27	S 18°00'00" W
L7	422.49	S 09°00'00" W
L8	581.99	S 03°00'00" W
L9	95.34	S 24°00'00" W
L10	259.91	S 88°24'59" W
L11	669.53	N 00°21'27" E
L12	759.80	S 88°14'11" W
L13	192.82	N 40°00'00" W
L14	173.62	N 45°00'00" E
L15	100.56	N 79°00'00" E
L16	201.85	N 04°58'56" E
L17	397.62	S 10°44'49" W
L18	33.12	S 88°14'11" W
L19	10.00	S 01°45'49" E
L20	189.12	S 88°14'09" W
L21	0.52	N 02°45'40" E
L22	8.53	S 88°57'01" W
L23	180.82	N 00°07'49" W
L24	18.07	N 76°43'37" E
L25	166.20	N 00°29'10" E
L26	21.08	N 10°02'20" E
L27	23.43	N 56°26'22" E
L28	184.40	N 89°17'16" E
L29	312.72	S 04°16'58" E
L30	397.62	N 10°44'49" E
L31	111.76	N 12°00'00" E
L32	329.25	S 87°00'00" E
L33	82.72	N 58°00'00" E
L34	369.98	N 58°00'00" W
L35	202.79	N 12°00'00" E
L36	156.78	N 38°00'00" E
L37	131.05	N 44°00'00" E
L38	138.95	N 85°00'00" E
L39	13.36	N 05°22'59" W
L40	89.03	N 05°23'13" W
L41	161.07	N 35°02'21" E
L42	85.16	S 63°45'53" W
L43	73.54	N 38°31'58" W
L44	374.75	N 89°42'13" E
L45	191.94	S 65°00'00" W
L46	161.07	S 35°02'21" W
L47	239.08	N 46°10'10" E
L48	463.60	N 64°00'00" E
L49	57.68	N 02°17'44" W

CURVE TABLE					
NAME	RADIUS	ARC LENGTH	CHORD LENGTH	TANGENT LENGTH	CHORD DIRECTION
C0	100.00	304.10	199.75	1986.12	N 82°08'07" W
C1	156.00	210.98	195.27	125.18	S 49°29'30" W
C2	100.00	114.09	108.00	64.16	N 43°25'53" E
C3	156.00	171.38	162.89	95.49	N 42°13'09" E
C4	200.00	35.25	35.21	17.67	N 00°20'13" W
C5	156.00	110.07	107.80	57.44	N 14°49'35" E
C6	100.00	105.72	100.87	58.40	N 04°45'08" E
C7	128.00	89.31	87.51	46.56	N 18°32'33" W
C8	156.00	164.40	156.90	90.76	S 04°50'54" W



**RA-1 REZONE
BOUNDARY DESCRIPTION**

BEGINNING AT A POINT 1640.27 FEET N 87°42'16" E ALONG THE SECTION LINE FROM THE NORTHWEST CORNER OF SECTION 13, TOWNSHIP 8 SOUTH, RANGE 3 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE N 87°42'16" E A DISTANCE OF 624.71 FEET; THENCE S 2°17'44" E A DISTANCE OF 126.61 FEET; THENCE S 29°00'00" W A DISTANCE OF 273.34 FEET; THENCE S 47°00'00" W A DISTANCE OF 206.42 FEET; THENCE S 0°00'00" W A DISTANCE OF 121.84 FEET; THENCE S 15°00'00" W A DISTANCE OF 532.87 FEET; THENCE S 18°00'00" W A DISTANCE OF 505.27 FEET; THENCE S 9°00'00" W A DISTANCE OF 422.49 FEET; THENCE S 3°00'00" W A DISTANCE OF 581.99 FEET; THENCE S 24°00'00" W A DISTANCE OF 95.34 FEET; THENCE S 88°24'59" W A DISTANCE OF 259.91 FEET; THENCE N 0°21'27" E A DISTANCE OF 669.53 FEET; THENCE S 88°14'11" W A DISTANCE OF 759.80 FEET; THENCE N 40°00'00" W A DISTANCE OF 192.82 FEET; THENCE N 45°00'00" E A DISTANCE OF 173.62 FEET; THENCE N 79°00'00" E A DISTANCE OF 100.56 FEET; THENCE N 4°58'56" E A DISTANCE OF 201.85 FEET; THENCE ALONG AN ARC 304.10 FEET TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THE CHORD OF WHICH IS N 82°08'07" W FOR A DISTANCE OF 199.75 FEET; THENCE S 10°44'49" W A DISTANCE OF 397.62 FEET; THENCE ALONG AN ARC 210.98 FEET TO THE RIGHT, HAVING A RADIUS OF 156.00 FEET, THE CHORD OF WHICH IS S 49°29'30" W FOR A DISTANCE OF 195.27 FEET; THENCE S 88°14'11" W A DISTANCE OF 33.12 FEET; THENCE S 1°45'49" E A DISTANCE OF 10.00 FEET; THENCE S 88°14'09" W A DISTANCE OF 189.12 FEET; THENCE N 2°45'40" E A DISTANCE OF 0.52 FEET; THENCE S 88°57'01" W A DISTANCE OF 8.53 FEET; THENCE N 0°07'49" W A DISTANCE OF 180.82 FEET; THENCE N 76°43'37" E A DISTANCE OF 18.07 FEET; THENCE N 0°29'10" E A DISTANCE OF 166.20 FEET; THENCE N 10°02'20" E A DISTANCE OF 21.08 FEET; THENCE N 56°26'22" E A DISTANCE OF 23.43 FEET; THENCE N 89°17'16" E A DISTANCE OF 184.40 FEET; THENCE S 4°16'58" E A DISTANCE OF 312.72 FEET; THENCE ALONG AN ARC 114.09 FEET TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THE CHORD OF WHICH IS N 43°25'53" E FOR A DISTANCE OF 108.00 FEET; THENCE N 10°44'49" E A DISTANCE OF 397.62 FEET; THENCE ALONG AN ARC 171.38 FEET TO THE RIGHT, HAVING A RADIUS OF 156.00 FEET, THE CHORD OF WHICH IS N 42°13'09" E FOR A DISTANCE OF 162.89 FEET; THENCE N 12°00'00" E A DISTANCE OF 111.76 FEET; THENCE S 87°00'00" E A DISTANCE OF 329.25 FEET; THENCE N 58°00'00" E A DISTANCE OF 82.72 FEET; THENCE N 58°00'00" W A DISTANCE OF 369.98 FEET; THENCE N 12°00'00" E A DISTANCE OF 202.79 FEET; THENCE N 38°00'00" E A DISTANCE OF 156.78 FEET; THENCE N 44°00'00" E A DISTANCE OF 131.05 FEET; THENCE N 85°00'00" E A DISTANCE OF 138.95 FEET; THENCE ALONG AN ARC 35.25 FEET TO THE LEFT, HAVING A RADIUS OF 200.00 FEET, THE CHORD OF WHICH IS N 0°20'13" W FOR A DISTANCE OF 35.21 FEET; THENCE N 5°22'59" W A DISTANCE OF 13.36 FEET; THENCE N 5°23'13" W A DISTANCE OF 89.03 FEET; THENCE ALONG AN ARC 110.07 FEET TO THE RIGHT, HAVING A RADIUS OF 156.00 FEET, THE CHORD OF WHICH IS N 14°49'35" E FOR A DISTANCE OF 107.80 FEET; THENCE N 35°02'21" E A DISTANCE OF 161.07 FEET; THENCE ALONG AN ARC 105.72 FEET TO THE LEFT, HAVING A RADIUS OF 100.00 FEET, THE CHORD OF WHICH IS N 4°45'08" E FOR A DISTANCE OF 100.87 FEET; THENCE S 63°45'53" W A DISTANCE OF 85.16 FEET; THENCE N 38°31'58" W A DISTANCE OF 73.54 FEET; THENCE ALONG AN ARC 89.31 FEET TO THE RIGHT, HAVING A RADIUS OF 128.00 FEET, THE CHORD OF WHICH IS N 18°32'33" W FOR A DISTANCE OF 87.51 FEET; THENCE N 89°42'13" E A DISTANCE OF 374.75 FEET; THENCE S 65°00'00" W A DISTANCE OF 191.94 FEET; THENCE ALONG AN ARC 164.40 FEET TO THE RIGHT, HAVING A RADIUS OF 156.00 FEET, THE CHORD OF WHICH IS S 4°50'54" W FOR A DISTANCE OF 156.90 FEET; THENCE S 35°02'21" W A DISTANCE OF 161.07 FEET; THENCE N 46°10'10" E A DISTANCE OF 239.08 FEET; THENCE N 64°00'00" E A DISTANCE OF 463.60 FEET; THENCE N 2°17'44" W A DISTANCE OF 57.68 FEET TO THE NORTH LINE OF SAID SECTION 13 AND THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS ±58,458 ACRES

SSdateSS
SSfileSS



1435 WEST 820 NORTH
PROVO, UTAH 84601-1343
801 374-5771
PROVO
SALT LAKE CITY

NO.	AUTHORIZED BY	REVISION	MADE BY	DATE

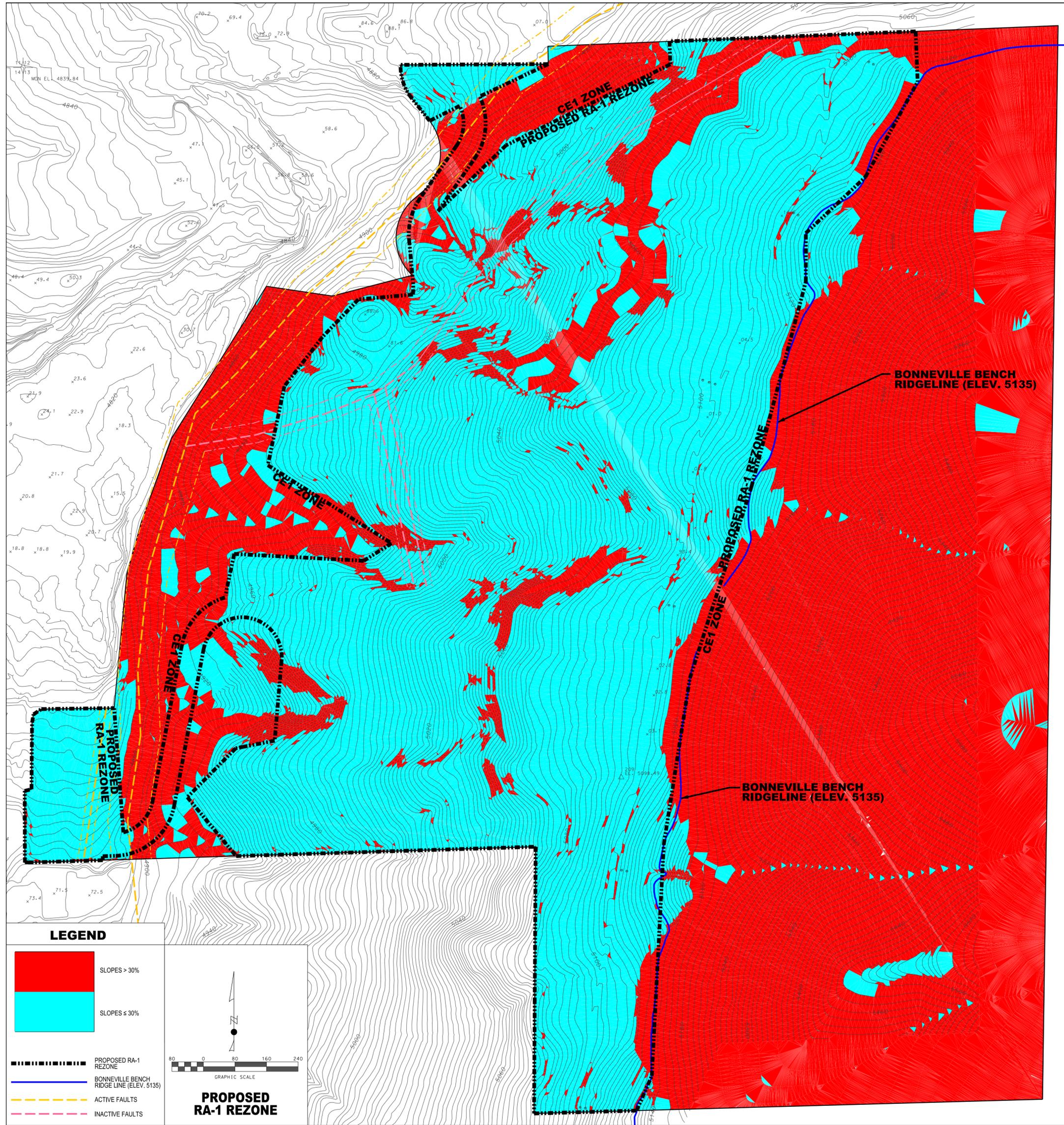
DESIGNED BY: C.L. COOK
DRAWN BY: J. RUSBY
CHECKED BY: C.L. COOK
SCALE: HORIZ.
VERT.
DATE: DECEMBER 2010

MAPLETON CITY, UTAH

RA-1 REZONE

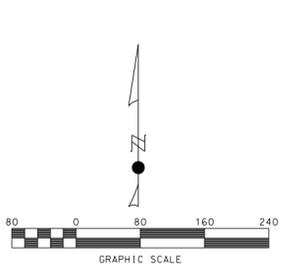
BOUNDARY DESCRIPTION

XXXX
PROJECT NO.
XXXX
FILE DRAWER NO.
SHEET 1
OF _____ SHEETS



LEGEND

-  SLOPES > 30%
-  SLOPES ≤ 30%
-  PROPOSED RA-1 REZONE
-  BONNEVILLE BENCH RIDGELINE (ELEV. 5135)
-  ACTIVE FAULTS
-  INACTIVE FAULTS



PROPOSED RA-1 REZONE

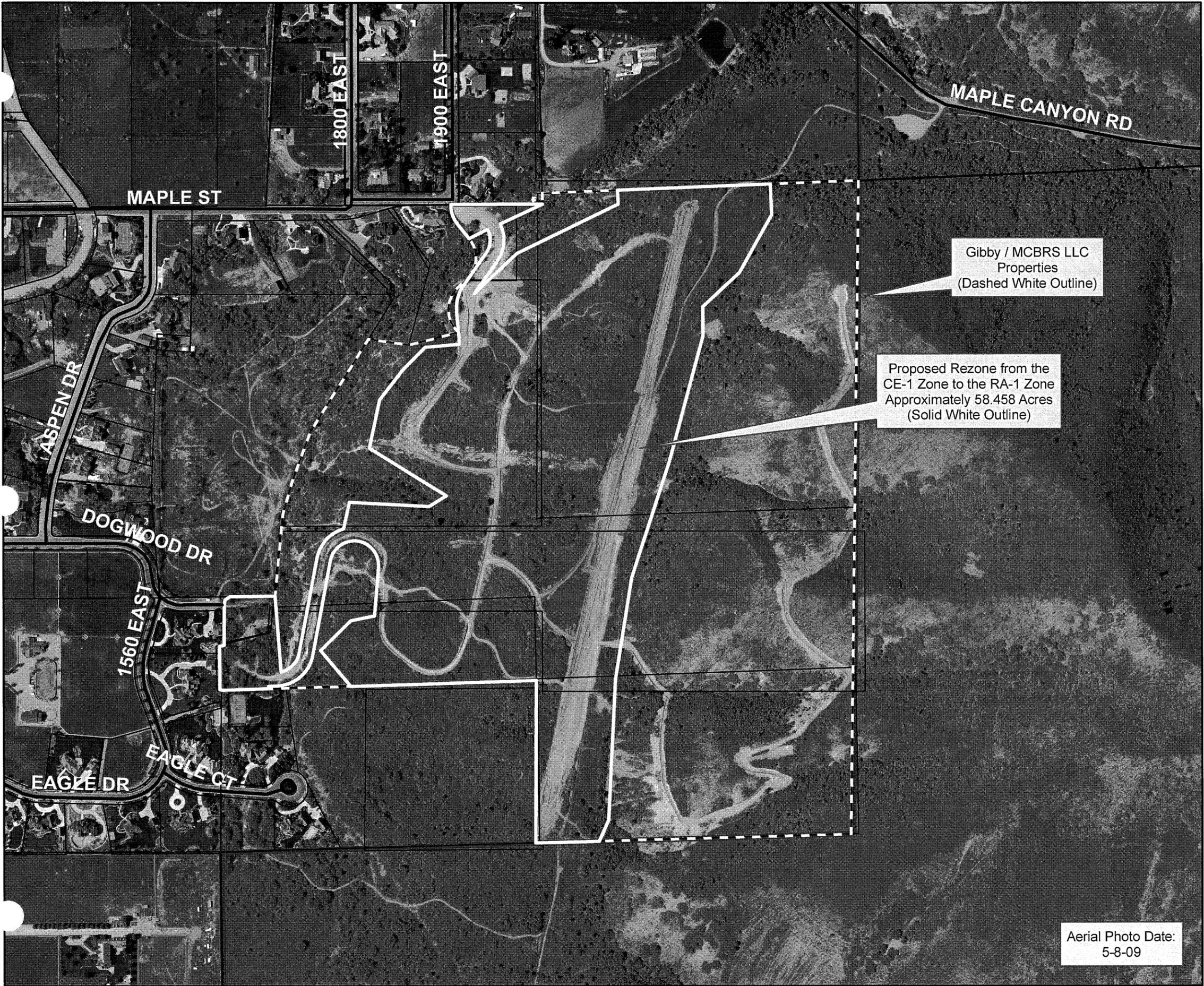
Proposed Rezone from CE-1 Zone to RA-1 Zone: Aerial Photo Overlay



1 inch equals 400 feet

Legend

-  Local Roads
-  Parcels as of 11-24-10
-  Uinta-Wasatch-Cache National Forest



Gibby / MCBRS LLC
Properties
(Dashed White Outline)

Proposed Rezone from the
CE-1 Zone to the RA-1 Zone
Approximately 58.458 Acres
(Solid White Outline)

Aerial Photo Date:
5-8-09



MAPLETON CITY CORPORATION

Mapleton City makes no warranty with respect to the accuracy, completeness, or usefulness of this map, and assumes no liability for any direct, indirect, special, or consequential damages resulting from the use or misuse of this map or any of the information contained hereon.